

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO,
TEXAS, AND THE SAN ANTONIO RIVER AUTHORITY FOR SERVICES
SUPPORTING SUSTAINABLE LAND USE AND STORM WATER
PROGRAMS AND PRACTICES
Task Order No. 11**

**Management of Panther Springs Creek Restoration Design, Construction,
and Post Construction Monitoring**

Project Background:

Panther Springs Creek has been impaired due to deposition of soil and organic material over time. The area of deposition is prohibiting the water from naturally flowing downstream and is causing excess ponding behind The Gardens at Greystone subdivision. This ponding increases flood risk and has caused a mosquito problem behind the homes that back up to the creek.

Project Description:

This project will help alleviate the excessive ponding caused by the deposition. The natural channel will be modified to return to its natural functioning state. This project will be procured using a design-build approach and will have design, construction, and monitoring phases. During the design phase, the project will include survey, environmental investigations, permit acquisitions, and public outreach.

Project Timeline:

The Project is slated to begin in August 2018. Keeping in mind the design and permit timelines, construction for this project is projected to begin in November 2019.

Scope:

The San Antonio River Authority (SARA) shall provide management, on behalf of the City of San Antonio (CITY), of the Panther Springs Creek Restoration Design, Construction, and Post Construction Monitoring Project (PROJECT) pursuant to this Task Order 11 to the Cooperative Agreement Between the City of San Antonio, Texas, and the San Antonio River Authority for Services Supporting Sustainable Land Use and Storm Water Programs and Practices (Agreement). PROJECT includes the design, construction, and post construction monitoring of **stream improvements to address degraded stream conditions including ponding on Panther Springs Creek.**

Responsibilities:

City shall:

1. provide timely direction to the River Authority on decisions requiring action by City relating to any changes to the PROJECT scope, budget, and/or schedule.
2. identify a point of contact for the PROJECT.

3. provide a list of public entities that should be included in public outreach/coordination efforts.
4. participate in design coordination meetings.
5. complete a timely review of all deliverables associated with the design phases and environmental due diligence.
6. review all environmental documentation prior to submittal to resource agencies.
7. On SARA's behalf, submit a jurisdictional determination and 404 permit application to the United States Army Corp of Engineers (USACE) via the CITY/USACE 214 agreement for USACE review and approval.
8. include SARA on any email communications or conference calls with the USACE regarding PROJECT during all design phases.
9. use the 214 agreement for all correspondences with the USACE regarding the project while the 214 agreement is in place.

River Authority shall:

1. manage the design, construction, and monitoring effort to include the tasks outlined in Exhibit A - Detailed Scope of Work.
2. serve as project manager of the PROJECT.
3. review all invoices and pay applications submitted by the design engineer and construction contractor to verify that work claimed has been performed satisfactorily.
4. With support from CITY, be responsible for securing all necessary land rights from TxDOT and other property owners as needed to allow for construction and maintenance of the PROJECT.
5. With support from CITY, be responsible for securing all necessary permits.
6. hold regular progress meetings, at least monthly.
7. Designate a point of contact who shall remain available throughout the PROJECT to attend meetings if requested by CITY.
8. Provide CITY with the opportunity to review all documentation pertaining to the environmental due diligence process prior to submittal to resource agencies.
9. Comply with CITY's SBEDA ordinance Compliance Provisions attached hereto as Exhibit B.

Deliverables and Duration of Project:

Design, construction, and monitoring work as shown in the attached schedule Exhibit D shall be completed by May 1, 2020 with the monitoring for the USACE permit to continue until the USACE is satisfied with the project and releases the River Authority from their monitoring obligation.

Funding:

CITY's obligations under this Agreement are subject to appropriations

CITY has established funding of \$1,100,000 for the PROJECT to be utilized for all costs associated with design, construction, and monitoring of the PROJECT, including River Authority project management fees. The one exception is CITY will utilize 3% (\$33,000.00)

of the project funds for CITY administration costs. See Exhibit C for Project Budget breakdown.

In consideration of SARA's performance in a satisfactory and efficient manner, as determined solely by CITY, of all services and activities set forth in this Agreement, CITY agrees to pay SARA the fixed price of \$1,067,000 and 00/100 U.S. Dollars (\$1,067,000.0000) as total compensation (CONTRACT AMOUNT), to be paid to SARA.

At the time of execution of this Agreement, available funding consists of CITY FUNDING and RIVER AUTHORITY FUNDING as outlined below. Should additional funding become available, this agreement does not preclude the incorporation and use of such funding to supplement or expand PROJECT budgets and scopes of work, as mutually agreed to by PARTIES, with such additional funding to be incorporated into this Agreement by CITY, through its Transportation and Capital Improvements Director.

CITY has established PROJECT funding of \$1,100,000 minus \$33,000 which will be retained by the City for the BOND PROJECT to be utilized for all costs associated with the design and construction of the BOND PROJECT. Allowable expenses to be approved by CITY from the CITY FUNDING are:

- Civil Engineering
- Permitting and Environmental Services
- Excavation Services
- Clearing and Grubbing Services
- Landscaping
- Traffic Control Services
- Ditch Maintenance
- SARA Project Administration Services
- other expenditures which may be approved by CITY.

Within ninety (90) calendar days following execution of the Agreement, SARA will develop a budget for the BOND PROJECT, based on the CITY FUNDING, to incorporate all allowable costs ("BUDGET"). The BUDGET will be subject to the CITY's review and approval.

The PARTIES acknowledge that the availability of the CITY FUNDING is dependent on the receipt of bond sales by CITY. The PARTIES will work together to plan and implement the PROJECT based on the SCHEDULE and CITY reserves the right to modify the SCHEDULE as needed based on actual and/or projected bond sales.

SARA may recommend modifications to the BUDGET, which will be subject to CITY's review and approval; however, such modifications must remain within the limits of the CITY FUNDING.

In each CITY fiscal year, CITY staff will request that the City Council appropriate a portion of the CITY FUNDING in the CITY's Capital Budget, based on the SCHEDULE and BUDGET.

Upon receipt by RIVER AUTHORITY of each installment of CITY FUNDING, the funds shall be immediately deposited into an appropriate RIVER AUTHORITY account with its depository financial institution. The CITY FUNDING shall be at all times fully secured by a combination of FDIC Insurance coverage, or other Federal insurance, and collateral, acceptable to CITY, at 102% of the amount of uninsured deposits, in accordance with the provisions of the Public Funds Collateral Act (Chapter 2257, Texas Government Code). CITY FUNDING shall be disbursed by RIVER AUTHORITY only in payment of allowable expenses as set forth above in this ARTICLE. If any portion of the CITY FUNDING is invested by RIVER AUTHORITY prior to disbursement, the funds shall be invested only in Authorized Investments, which are defined as any investment authorized pursuant to the SARA'S Investment Policy as amended from time to time. RIVER AUTHORITY shall notify CITY in writing of any changes in authorized investments (Changed Investments) under RIVER AUTHORITY'S Investment Policy prior to such changes becoming effective. CITY shall have the right to notify RIVER AUTHORITY in writing at the address specified below. Notice of this Agreement that CITY FUNDING may not be invested in any Changed Investments. RIVER AUTHORITY'S notice to CITY regarding Changed Investments shall be directed to CITY'S Transportation and Capital Improvements Department, Compliance Division.

For the entire term of this Agreement, RIVER AUTHORITY shall, maintain in full force and effect a fidelity bond providing "third party" coverage for each RIVER AUTHORITY employee who is authorized to access any portion of the CITY FUNDING. The minimum amount of coverage provided by the fidelity bond shall be equal to the advance(s) of CITY FUNDING the RIVER AUTHORITY has received and that are on deposit in the RIVER AUTHORITY account.

RIVER AUTHORITY shall provide CITY with a hard or electronic copy of its Comprehensive Annual Financial Report (CAFR) prepared by its external auditor along with the letter on the conduct of the audit. The CAFR and the letter shall be delivered to CITY at its Transportation and Capital Improvements Department not later than six (6) months after the end of each RIVER AUTHORITY fiscal year during the term of this Agreement, at the address listed below:

CITY:

Mike Frisbie, Director of Transportation and
Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

RIVER AUTHORITY:

Suzanne Scott General Manager
San Antonio River Authority
100 East Guenther Street
San Antonio, TX 78204

Payment Process:

RIVER AUTHORITY will prepare and submit to CoSA initial estimates of necessary and reasonable funds “the ADVANCE” needed for 90 days of cash flow at the beginning of the Design, Construction, and Monitoring Phases. These initial estimates will reflect approved PROJECT costs based on PROJECT SCHEDULE and BUDGET. Upon review and approval by CoSA, CoSA will provide a funds advance to RIVER AUTHORITY equal to said estimates and RIVER AUTHORITY will place all ADVANCE funds in an interest-bearing bank account and interest earned will be used for the PROJECT.

RIVER AUTHORITY will prepare and submit monthly invoices of direct and indirect costs incurred in designing, constructing, monitoring, and managing the PROJECT in a form and detail mutually acceptable to CoSA and RIVER AUTHORITY.

Amendment:

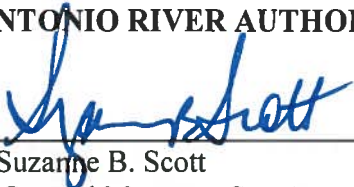
Any alterations, additions, or deletions to the terms of this Agreement or the associated scope of work shall be effected by amendment, in writing, executed by CoSA and SARA. The Assistant City Manager shall have the authority to execute amendments increasing the total contract value up to \$25,000.00 on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, _____.

CITY OF SAN ANTONIO

By: _____
Mike Frisbie, P.E.
Director, Transportation & Capital Improvements

SAN ANTONIO RIVER AUTHORITY

By: 
Suzanne B. Scott
General Manager, San Antonio River Authority

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

Panther Springs Creek Restoration Detailed Scope of Work

1. Design Phase

1.1 Project Management

- Contract administration
- Consultant management
- Project coordination meetings
- Invoicing and progress reports

1.2 Pre Design

- Identify Right-Of-Way and obtain Right-of-Entry if necessary
- Perform cultural resources investigation
- Perform geological assessment, karst feature survey, and preliminary habitat evaluation. Based on the results of these tasks, the following may be performed:
 - Karst feature excavations
 - Karst invertebrate biota surveys
 - Endangered species impact review
- Perform Jurisdictional Determination and Identify Ordinary High Water Mark (OHWM)
- Investigate potential utility conflicts.
- Update concept design based on additional data collected during pre-design investigations.

1.3 40% Design

1.3.1 Survey

- Conduct topographic survey
- Establish primary and secondary control
- Survey OHWM
- Conduct tree survey
- Locate geotechnical borings
- Prepare digital terrain model
- Prepare base map
- Survey cross-sections

1.3.2 Geotechnical

- Field verify boring locations
- Obtain borings
- Test soil properties
- Submit geotechnical report

1.3.3 General plans

- CITY and River Authority Title Blocks
- Index of sheets, project layout/control points
- General notes
- Summary of estimated quantities
- Typical sections: existing and proposed channel based on natural channel design

1.3.4 Stream restoration design

- Channel P&P sheets with existing and proposed channel alignments and profiles
- Natural channel design report including identification of reference reach and TXRAM scoring
- Floodplain analysis and report

1.3.5 Additional items

- Storm Water Pollution Prevention Plan (SW3P)
- Existing tree plan sheets and summary table
- Utility coordination report (if applicable)
- Phase I ESA
- Construction schedule
- Determine site access points for construction equipment.

1.3.6 QA/QC

- QA/QC reviews will be performed for all calculations and deliverables.
- River Authority and River Authority's consultants will attend design review meetings and prepare responses to design review comments

1.4 70% Design

1.4.1 General plans

- CITY and River Authority Title Blocks
- Index of sheets, project layout/control points
- General notes
- Summary of estimated quantities
- Typical sections: existing and proposed channel based on natural channel design

1.4.2 Stream restoration design

- Channel P&P sheets with existing and proposed channel alignments and profiles
- Natural channel design report including identification of reference reach and TXRAM scoring
- Floodplain analysis and report

1.4.3 Additional items

- Storm Water Pollution Prevention Plan (SW3P)
- Tree preservation plan
- Utility coordination report (if applicable)
- Phase II ESA
- Construction cost estimate
- Construction schedule
- List of governing specifications, special provisions, and special specifications

1.4.4 QA/QC

- QA/QC reviews will be performed for all calculations and deliverables.
- River Authority and River Authority's consultants will attend design review meetings and prepare responses to design review comments

1.5 95% Design

1.5.1 General plans

- CITY and River Authority Title Blocks
- Index of sheets, project layout/control points
- General notes
- Summary of estimated quantities
- Typical sections: existing and proposed channel based on natural channel design

1.5.2 Stream restoration design

- Channel P&P sheets with existing and proposed channel alignments and profiles
- Channel cross sections
- CLOMR to FEMA

1.5.3 Additional items

- Storm Water Pollution Prevention Plan (SW3P)
- Tree preservation plan
- Utility coordination report (if applicable)
- Finalize environmental coordination, incorporate EPIC sheet provided by CITY EMD
- Construction cost estimate
- Construction schedule
- List of governing specifications, special provisions, and special specifications

- Secure necessary permits
 - USACE
 - CITY floodplain development permit
 - CITY tree permit
 - TCEQ Water Pollution and Abatement Plan
 - Secure ROW, if needed
- 1.5.4 QA/QC
- QA/QC reviews will be performed for all calculations and deliverables.

1.6 Bid

- Secure and manage the construction contract.

2. Construction Phase

2.1 Project management

- Host and attend public meetings, if necessary
- Review and approve pay applications
- Review and approve change orders, as necessary
- Respond to RFIs and Submittals

2.2 Survey

- Perform staking and post construction survey

2.3 Construction administration

- Attend bi-weekly on-site progress meetings
- Perform daily construction inspections
- Review and approve record drawings

2.4 Project acceptance

- Perform substantial completion inspection
- Perform final completion inspection

3. Closeout

- Prepare Record Drawings.
- Submit Letter of Map Revision to CITY and FEMA.
- Perform warranty walk-through with CITY.
- River Authority to manage construction contractor who will fulfill permit monitoring until project is accepted by the USACE and River Authority is released from their monitoring obligation.

EXHIBIT B

SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Contract Requirements and Commitment

Grantee understands and agrees the following provisions shall be requirements of this Funding Agreement and Grantee, in acknowledging these requirements, commits to comply with these provisions.

Waiver Request - Grantee may request, for good cause, a full or partial Waiver of **specified subcontracting goal(s)** by submitting the *Respondent/ Vendor Subcontracting Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>). Grantee's Waiver request fully must document Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier unavailability despite Grantee's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Grantee including, but not limited to, which Consultants, Sub-Consultants, Contractors, Subcontractors and/or Suppliers were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

B. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on City's Economic Development (hereafter referred to as "EDD") website page and also is available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this clause are governed by the terms of said Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City, pursuant to said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual in effect as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this clause shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (hereafter referred to as "API") – refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter referred to as "S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater prime contract and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance).

Centralized Vendor Registration System (hereafter referred to as "CVR") – refers to a mandatory electronic system wherein City requires all prospective Consultants, Sub-Consultants,

Contractors and Subcontractors ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices and for receiving payments from City. The CVR-assigned identifiers also are used by City's Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE (as defined herein) firms by Industry or commodity codes and for establishing annual aspirational Goals and contract-by-contract Subcontracting Goals.

Certification or "Certified" – refers to the process by which City's Small Business Office (hereafter referred to as "SBO") staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as "ESBEs") automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and/or other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – means a S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it actually is performing, the S/M/WBE credit claimed for its performance of the work and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation when, in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Grantee to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by City as fraudulent, if Grantee attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Grantee shall not be given credit for the participation of its S/M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers or joint venture partner towards attainment of S/M/WBE utilization goals, and Grantee and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – means the documentation of Grantee’s intent to comply with S/M/WBE Program Goals and procedures including, but are not limited to, the following:

(1) documentation reflecting Grantee’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or

(2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes, to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Consultant’s posting of a bond covering the work of SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Grantee and the solicitation; and documentation of consultations with trade associations and Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers). The appropriate form and content of Grantee’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – means a business certified by the U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet all of the following criteria:

(1) The business is owned and Controlled by U.S. citizens;

(2) At least thirty five percent (35%) of the business’s employees must reside in a HUBZone; and

(3) The business’s Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – means the ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – means an adult person that is of legal majority age.

Industry Categories – means procurement groupings for City inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services and Goods and Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term sometimes may be referred to as “business categories.”

Minority/Women Business Enterprise (hereafter referred to as “M/WBE”) – refers to a firm certified as a Small Business Enterprise and also is certified as either a Minority Business Enterprise or as a Women Business Enterprise, is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members and/or women and is ready, willing and able to sell goods or services to be purchased by City.

M/WBE Directory – refers to a listing of minority- and women-owned businesses certified for participation in City’s M/WBE Program APIs.

Minority Business Enterprise (hereafter referred to as “MBE”) – means any legal entity, except a joint venture, organized to engage in for-profit transactions, certified a Small Business Enterprise and is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, as defined below, and is ready, willing and able to sell goods or services to be purchased by City. To qualify as a MBE, the enterprise shall meet the Significant Business Presence requirement defined herein. Unless otherwise stated, the term MBE, as used in City’s Ordinance, is not inclusive of women-owned business enterprises.

Minority Group Members – refers to African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in or that are citizens of the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than one sixteenth (1/16th) percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – refers to a City department or authorized representative of City managing the contract.

Payment – refers to the dollars actually paid to Grantee and/or Grantee’s Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and/or vendors for City-contracted goods and/or services.

Prime Consultant – refers to a Consultant, under contract to City, to whom a purchase order or contract is issued by City for the purposes of providing goods or services to City. For purposes of this Agreement, this term refers to Grantee.

Relevant Marketplace – means the geographic market area affecting the S/M/WBE Program, as determined for purposes of collecting data for NERA Economic Consulting and for determining eligibility for participation under various programs established by City’s SBEDA Ordinance, defined as the San Antonio Metropolitan Statistical Area (as defined herein), which currently includes the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – refers to an entity submitting a bid, Statement of Qualifications or Proposal in response to a solicitation issued by City. For purposes of this agreement, Grantee is Respondent.

Responsible – means a firm capable in all respects fully to perform the contractual requirements outlined in City’s solicitation and has the integrity and reliability to assure good faith performance of all project specifications.

San Antonio Metropolitan Statistical Area (hereafter referred to as “SAMSA”) – also known as the Relevant Marketplace, referring to the geographic market area from which City’s NERA Economic Consulting analyzed contract utilization and availability data for disparity. City’s SAMSA currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

SBE Directory – refers to a listing of small businesses certified for participation in City’s SBE Program APIs.

Significant Business Presence – defined as an established place of business in one or more of the eight (8) counties making up the SAMSA, from which twenty percent (20%) of the entity’s full-time, part-time and contract employees regularly are based, and from which a substantial role in the S/M/WBE’s performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence. To qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the Relevant Marketplace

Small Business Enterprise (hereafter referred to as “SBE”) – means a corporation, partnership, sole proprietorship or other recognized legal entity existing for the purpose of making a profit, is independently owned and operated by Individuals legally residing in or are citizens of the United States or its territories, meets the U.S. Small Business Administration (hereafter referred to as “SBA”) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements, as defined herein.

Small Business Office (hereafter referred to as “SBO”) – means the office within City’s EDD Department primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager (hereafter referred to as “SBO Manager”) – refers to the Assistant Director of EDD responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager also is responsible for enforcement of Grantee, Consultant and vendor compliance with contract participation requirements and ensuring that overall SBEDA Program goals and objectives are met.

Small Minority Women Business Enterprise Program (hereafter referred to as “S/M/WBE Program”) – refers to the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Sub-Consultant – means any vendor of Grantee providing goods or services to Grantee in furtherance of Grantee’s performance under an agreement, contract or purchase order with City. A copy of each binding agreement between Grantee and its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers shall be submitted to City in writing prior to execution of this Agreement and any modification to this Agreement.

Suspension – means the temporary stoppage of a SBE or M/WBE firm’s beneficial participation in City’s S/M/WBE Program for a finite period of time, due to the cumulative contract payments the S/M/WBE firm received during a fiscal year exceeding a certain dollar threshold, as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance; or the temporary stoppage of Grantee’s and/or S/M/WBE firm’s performance and payment under City contracts due to City’s imposition of Penalties and Sanctions, as set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Sub-Consultant/Supplier Utilization Plan – refers to the binding part of this Agreement stating Grantee’s commitment for the use of Joint Venture Partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the performance of this Agreement, stating the name, scope of work and dollar value of work to be performed by each of Grantee’s Joint Venture partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and/or Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or and Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement approved by the EDD Manager or his/her designee.

Women Business Enterprises (hereafter referred to as “WBEs”) – refers to any legal entity, except a Joint Venture, organized to engage in for-profit transactions, certified, for purposes of the SBEDA Ordinance, as being a Small Business Enterprise, is at least fifty-one percent (51%)

owned, managed and controlled by one or more non-minority women Individuals lawfully residing in or are citizens of the United States or its territories, is ready, willing and able to sell goods or services to be purchased by City and meets the Significant Business Presence requirements, as defined herein. Unless otherwise stated, WBE, as used in this Agreement, is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

Grantee acknowledges and accepts the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines and procedures set forth in City's SBEDA Policy & Procedure Manual, are in furtherance of City's efforts at economic inclusion and, moreover, such terms are part of Grantee's Scope of Work, as referenced in City's Funding Agreement, forming the basis for a Funding Agreement award and subsequent execution of this Agreement. These SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this Agreement and are considered by the Parties hereto to be material terms. Grantee's agreement fully to comply with these SBEDA program terms is a material condition for being awarded this Funding Agreement by City. Without limitation, Grantee further agrees to the following terms as part of its contract compliance responsibilities under City's SBEDA Program:

1. Grantee fully shall cooperate with the SBO and other City departments in the data collection and monitoring efforts regarding Grantee's utilization and payment of and to Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, S/M/WBE firms and HUBZone firms, as applicable, for their performance of Commercially Useful Functions pursuant to this Agreement including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, the timely entry of data into monitoring systems and ensuring the timely compliance of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers with this term;
2. Grantee fully shall cooperate with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Grantee, its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers;
3. Grantee shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks and work product, and to interview Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers and workers to determine whether there has been a violation of the terms of this

Agreement;

4. Grantee immediately shall notify the SBO, in writing, on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Grantee's Sub-Consultant/Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Grantee to replace the Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes by Grantee to its Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Grantee of work previously designated for performance by Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Supplier(s), substitutions of new Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, terminations of previously designated Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers or reductions in the scope of work and value of work awarded to Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Grantee immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
6. Grantee shall retain all records of its Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier payments pursuant to this Agreement for a minimum of four (4) years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this Agreement, for a minimum of four (4) years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in Grantee's Sub-Contractor/Supplier Utilization Plan, Grantee shall not be given credit for the participation of its S/M/WBE or HUBZone Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and/or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals and Grantee and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties, in accordance with the SBEDA Ordinance.

8. Grantee acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the Grantee and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and Grantee has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

City has applied the following contract-specific Affirmative Procurement Initiatives to this Agreement. Grantee hereby acknowledges and agrees the selected API requirement also shall be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least *twenty percent (20%)* of the contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA);

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (e), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least *one percent (1%)* of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This one percent (1%) subcontracting goal will also count toward the aforementioned twenty percent (20%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that Grantee submitted to CITY for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by Grantee on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Grantee to attain this subcontracting goal for SBE, M/WBE and AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE, M/WBE and AABE subcontracting goal, and/or shall be subject to any other remedies

available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, Grantee represents and warrants it has complied with, throughout the course of this solicitation and contract award process and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Grantee shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers vendors or commercial customers, nor shall Grantee retaliate against any person for reporting instances of such discrimination. Grantee shall provide equal opportunity for Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and vendors to participate in all of Grantee's public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this **clause** shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Grantee understands and agrees a material violation of this **clause** shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Grantee from participating in City contracts or other sanctions. This **clause** is not enforceable by or for the benefit of, and creates no obligation to, any third party. Grantee's certification of its compliance with this Commercial Nondiscrimination Policy, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. Grantee shall incorporate this Commercial Nondiscrimination Policy clause into each of its Consultant(s), Sub-Consultant(s), Contractor(s) Subcontractor(s) and Supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this Agreement, Grantee shall be required to submit to City accurate progress payment information with each invoice, with regard to each of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, including HUBZone Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, to ensure Grantee's reported subcontract participation is accurate. Grantee shall pay its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers in compliance with Chapter 2251, Texas Government Code (known as the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Grantee's noncompliance with these prompt payment provisions, no new City contracts shall be issued to Grantee until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

H. Violations, Sanctions and Penalties

In addition to the above terms, Grantee acknowledges and agrees it is a violation of the SBEDA Ordinance and shall be deemed to have committed a material breach of this Agreement if Grantee:

1. fraudulently obtains, retains, attempt to obtain, or aids another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. willfully falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statements or entries pursuant to the terms of the SBEDA Ordinance;
3. willfully obstructs, impedes or attempts to obstruct or impede any authorized official or employee investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. fraudulently obtains, attempts to obtain or aids another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. makes false statements to any entity that any other entity is or is not certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person of entity violating the provisions of this **clause** shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Grantee or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon approval by the San Antonio City Council).



City of San Antonio Subcontractor/Supplier Utilization Commitment Form

Solicitation Name: *Panther Springs Creek Restoration*

Respondent Name:

Please acknowledge the statements below by initialing the box:

- I understand that by executing the proposed contract with City of San Antonio ("CITY"), I hereby affirm my organization's commitment to meet the subcontracting requirements indicated in this Commitment Form and the contract.
- I understand a Minority/Women Business Enterprise (M/WBE) subcontracting goal of twenty percent (20%) of the CITY's appropriation for the Project applies to this contract.
- I understand a African American Business Enterprise (AABE) subcontracting goal of one percent (1%) of the CITY's appropriation for the Project applies to this contract.
- I understand that for a Subcontractor to count toward a CITY required subcontracting goal(s), the Subcontractor must be SBEDA eligible and have the same certification(s) as the CITY required subcontracting goal(s).
- I understand that to be SBEDA eligible, a Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency (www.SCTRCA.org) AND they must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area.
- I understand and affirm that I am required to submit the Change to Utilization Plan to the Small Business Office once comprehensive scope of work has been established.
- I understand and affirm that absent a Subcontracting Goal-Waiver approved by the Small Business Office, I will not commence any construction work until the Small Business Office has approved the Subcontractor/ Supplier Utilization Plan.
- I understand that absent a Subcontracting Goal-Waiver approved by the Small Business Office, failure to include a completed, signed copy of this Commitment Form to satisfy the subcontracting goals for this contract may render the contract voidable.

Prime Contractor's Authorized Agent:

Name:

Sign and Date:

EXHIBIT C
PROJECT BUDGET

| A | B | C | D |
|---------------------------------------|--|------------|--------------------------------------|
| Project Line Items | Partner/Agency Funds <i>(Rounded to nearest dollar)</i> | City Funds | Total Line Item Cost equals B + C |
| Civil Engineering | | \$173,000 | \$173,000 |
| Permitting Services, Environmental | | \$239,000 | \$239,000 |
| Excavation Services | | \$281,400 | \$281,400 |
| Clearing and Grubbing Services | | \$27,000 | \$27,000 |
| Landscaping | | \$36,200 | \$36,200 |
| Traffic Control Services | | \$21,720 | \$21,720 |
| Ditch Maintenance | | \$156,680 | \$156,680 |
| SARA Admin (12%) | | \$132,000 | \$132,000 |
| | | | |
| CITY Admin (3%) | | \$33,000 | \$33,000 |
| | | | |
| Bond Project Total | | | \$1,100,000 |
| | | | |
| | | | |
| | | | |
| | | | |

Exhibit D

| ID | Task Name | Duration | Start | Finish | Predecessors | 1st Quarter | | | 2nd Quarter | | | 3rd Quarter | | | 4th Quarter | | | |
|----|------------------------------|----------|--------------|--------------|--------------|-------------|-----|-----|-------------|-----|-----|-------------|-----|-----|-------------|-----|-----|-----|
| | | | | | | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan |
| 1 | Panther Springs Creek | | | | | | | | | | | | | | | | | |
| 2 | Right of Entry | 30 days | Thu 8/2/18 | Wed 9/12/18 | | | | | | | | | | | | | | |
| 3 | RFO/RFP Solicitation | 91 days | Mon 9/3/18 | Mon 1/7/19 | | | | | | | | | | | | | | |
| 4 | Environmental | 365 days | Thu 8/2/18 | Wed 12/25/19 | | | | | | | | | | | | | | |
| 5 | Phase I ESA | 1 mon | Thu 8/2/18 | Wed 8/29/18 | | | | | | | | | | | | | | |
| 6 | Karst and Biota Survey | 18 mons | Thu 8/2/18 | Wed 12/18/19 | | | | | | | | | | | | | | |
| 7 | Cultural Survey | 6 mons | Thu 8/2/18 | Wed 1/16/19 | | | | | | | | | | | | | | |
| 8 | Jurisdictional Determination | 3 mons | Thu 8/2/18 | Wed 10/24/18 | | | | | | | | | | | | | | |
| 9 | Design | 220 days | Mon 1/7/19 | Fri 11/8/19 | 3 | | | | | | | | | | | | | |
| 10 | 40% Design | 3 mons | Mon 1/7/19 | Fri 3/29/19 | | | | | | | | | | | | | | |
| 11 | 70% Design | 2 mons | Mon 4/1/19 | Fri 5/24/19 | 10 | | | | | | | | | | | | | |
| 12 | 95% Design | 1 mon | Mon 5/27/19 | Fri 6/21/19 | 11 | | | | | | | | | | | | | |
| 13 | 100% Design | 14 days | Mon 10/21/19 | Thu 11/7/19 | | | | | | | | | | | | | | |
| 14 | ROW Acquisition | 8 mons | Mon 4/1/19 | Fri 11/8/19 | 10 | | | | | | | | | | | | | |
| 15 | Permitting | 126 days | Mon 5/27/19 | Mon 11/18/19 | | | | | | | | | | | | | | |
| 16 | USACE | 90 days | Mon 5/27/19 | Fri 9/27/19 | 11 | | | | | | | | | | | | | |
| 17 | TCEQ permits | 75 days | Mon 6/24/19 | Fri 10/4/19 | 12 | | | | | | | | | | | | | |
| 18 | COSA permits | 21 days | Mon 10/21/19 | Mon 11/18/19 | | | | | | | | | | | | | | |
| 19 | CLOMR | 120 days | Mon 4/1/19 | Fri 9/13/19 | 10 | | | | | | | | | | | | | |
| 20 | Construction | 120 days | Mon 11/18/19 | Fri 5/1/20 | 17.16 | | | | | | | | | | | | | |
| 21 | Rock Check Dam Removal | 1 mon | Mon 11/18/19 | Fri 12/13/19 | | | | | | | | | | | | | | |
| 22 | Channel Reconstruction | 6 mons | Mon 11/18/19 | Fri 5/1/20 | | | | | | | | | | | | | | |

| Exhibit E | | Task | Project Summary | Inactive Milestone | Manual Summary Rollup | Deadline |
|-----------|---------|--------------------|--------------------|--------------------|-----------------------|-----------------|
| Task | Split | Milestone | Summary | External Tasks | Manual Summary | Progress |
| Milestone | Summary | External Milestone | Inactive Milestone | Manual Task | Start-only | Manual Progress |
| Summary | | Inactive Task | | Duration-only | Finish-only | |