



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 7/24/2012

Report Type: Consent

Title: Agreement: American River Parkway Naturalization Project

Report ID: 2012-00651

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager, or his designee, to execute an Interagency Reimbursement and Performance Agreement for design work related to the American River Parkway Cordova Creek Naturalization Project, on behalf of the City-County Office of Metropolitan Water Planning (CCOMWP).

Contact: Tom Gohring, Executive Director, (916) 808-1998, Community Support Department

Presenter: None

Department: Community Support

Division: CCOMWP

Dept ID: 80004101

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A, Agreement

City Attorney Review

Approved as to Form
Joe Robinson
7/16/2012 10:05:50 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
7/10/2012 1:13:49 PM

Approvals/Acknowledgements

Department Director or Designee: Tom Gohring - 7/12/2012 11:39:03 AM

Description: On November 18, 2008, the Sacramento County Board of Supervisors approved the grant application for the County to pursue funding under the State of California Safe Drinking Water Bond Act of 2006 (Proposition 84). The County was successful in its application and obtained \$1,732,407 in grant funding to restore natural form and function to Cordova Creek, a concrete-lined, channelized stream. This is a collaborative project with multiple project partners, and the City of Sacramento-County Office of Metropolitan Water Planning (CCOMWP) will contract for and administer professional service agreements necessary to design the Project and prepare a design report to be used in the preparation of construction documents by the County. A Reimbursement and Performance Agreement (Agreement) between the City and the County has been prepared for City Council approval.

Policy Considerations: This report is submitted in compliance with the policy direction provided by the City Council and Sacramento County Board of Supervisors in forming the CCOMWP, approving its work plan, and supporting the efforts of the Water Forum. Under the interagency agreement that governs the CCOMWP, City contracting procedures are followed for the services to be performed by the CCOMWP.

Economic Impacts: None.

Environmental Considerations: Any environmental documentation and compliance required for the Cordova Creek Naturalization Project will be conducted by the County of Sacramento concurrently with development of the Project design, and the County will be responsible for any approvals required under the California Environmental Quality Act and any other applicable environmental laws and regulations prior to awarding any contract(s) to construct the Project.

Commission/Committee Action: None

Rationale for Recommendation: Approval of this interagency agreement will further enable the Water Forum to continue its services and projects related to implementation of the Habitat Management Element in collaboration with multiple project partners.

Financial Considerations: This Agreement has no effect on the City's General Fund. The County of Sacramento has been awarded a grant of \$1,732,407 in Proposition 84 funds from the California Natural Resources Agency to fund the project. The County has asked the CCOMWP, on behalf of the Water Forum, to contract for and administer professional service agreements necessary to design the Project and prepare a design report to be used in the preparation of construction documents by the County, subject to reimbursement for these services from the Grant funds.

The project design cost is estimated at an amount not to exceed \$200,000. Sufficient funds are available in the Habitat Management Element (HME) Fund 7104 to cover expenses until expenditures are reimbursed by the County of Sacramento pursuant to

the Agreement. Funding for the CCOMWP Habitat Management Element in Fund 7104 is provided by cost sharing agreements between the City of Sacramento and County of Sacramento. Other purveyors with contracts for Central Valley Project water also contribute to the HME in those years when they divert non-CVP water above their baseline.

Emerging Small Business Development (ESBD): Sacramento County is a public entity that is not certified as an emerging or small business enterprise.

Background Information:

- The City and County of Sacramento created the City-County Office of Metropolitan Water Planning (CCOMWP) in 1991 to pursue a joint water planning effort in the greater Sacramento Metropolitan area.
- In 1993, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments formed the Sacramento Area Water Forum.
- In 1999, Water Forum members approved a comprehensive Water Forum Agreement (WFA) (City Agreement No. 1999-222). The WFA consists of integrated actions necessary for providing a regional solution to water shortages, environmental damage, groundwater contamination, and limited economic prosperity.
- The CCOMWP has been charged with staffing the effort to implement the WFA, known as the Water Forum Successor Effort (WFSE).
- California voters passed the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) on November 7, 2006. It authorized the Legislature to appropriate the sum of \$62 million for the acquisition, restoration, protection and development of river parkways in accordance with the California River Parkway Act of 2004.
- In June 2011 the final round of the Proposition 84 River Parkway Grant Program was announced (\$30 million available for awards).
- The County of Sacramento Parks Department (Parks) submitted an application for the Cordova Creek Naturalization Project (Project), and in the spring of 2011 it was notified that the Project was selected to receive \$1,732,407 in grant funding. During the summer of 2011, the County was informed that the grant contracts were prepared and ready for review and signature. During that time Parks was going through an organizational transformation. Based on the nature and scope of the Project, Parks and the Department of Water Resources (DWR) agreed on a new approach to project oversight and implementation. The budget was revised, and a project management plan was created that paved the way for the County to proceed with the project. Project management will be provided by DWR staff, with support from Parks and the City of Sacramento-County Office of Metropolitan Water Planning, also referred to as the Water Forum. Approval of this Reimbursement and Performance Agreement is one of the key actions required to launch the start of the work.



Contract No. _____

CITY CONTRACT NO. _____

COUNTY OF SACRAMENTO

REIMBURSEMENT AND PERFORMANCE AGREEMENT WITH THE CITY OF SACRAMENTO, ON BEHALF OF THE CITY COUNTY OFFICE OF METROPOLITAN WATER PLANNING, FOR WORK RELATED TO THE AMERICAN RIVER PARKWAY CORDOVA CREEK NATURALIZATION PROJECT

This Agreement is entered into on this ____ day of _____ 2012, by and between the City of Sacramento, a municipal corporation ("City"), on behalf of the City County Office of Metropolitan Water Planning ("CCOMWP"), and the County of Sacramento, a political subdivision of the State of California ("County"), (together referred to as the "Parties").

RECITALS

WHEREAS, the County has partnered with the CCOMWP, on behalf of the Sacramento Water Forum, and others, in development of the American River Parkway Cordova Creek Naturalization Project (the "Project"). The project will restore Cordova Creek to a more natural state. Currently, the creek, commonly known as Clifton Drain, flows through a 2,600-foot concrete ditch and unused agricultural land to the American River in the American River Parkway, where it discharges groundwater and stormwater runoff from the City of Rancho Cordova. This project will remove the ditch and create approximately 15 acres of natural riparian habitat, with areas designated for seasonal flood events. The project will also include a mile of walking trails through the area that will connect with the Parkway bike trail and the Soil Born Farms American River Ranch; and

WHEREAS, the County has been awarded a grant (the "Grant") of \$1,732,407 in Proposition 84 funds from the California Natural Resources Agency, to fund the Project; and

WHEREAS, the County will bid, award and administer the contract(s) necessary to construct the Project, and County will be solely responsible for obtaining all necessary permits and approvals for Project construction and for overseeing and inspecting construction of the Project; and

WHEREAS, the County has asked the CCOMWP, on behalf of the Sacramento Water Forum, to contract for and administer the professional service agreements necessary to design the Project and prepare a design report to be used in the preparation of construction documents by the County, subject to reimbursement for these services from the Grant funds; and

WHEREAS, the CCOMWP, on behalf of the Sacramento Water Forum, is willing to provide these services to be paid for by the Grant funds, subject to the terms and conditions of this Agreement; and

WHEREAS, in accordance with the Interagency Agreement creating the CCOMWP, agreements between the CCOMWP and other parties are approved by the City in accordance with the City's contracting procedures and requirements; and

WHEREAS, the services to be contracted for by the City, on behalf of the CCOMWP, are not services provided by County employees and, therefore, are not subject to the requirements of Sacramento County Charter Section 71-J; and

WHEREAS, the services to be contracted for by the City, on behalf of the CCOMWP, are special services the County is authorized to obtain by contract under Government Code Section 31000.

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants and agreements set forth herein, the Parties mutually agree and promise as follows:

AGREEMENT

1. **Purpose and Scope of Work.** The City, on behalf of the CCOMWP, will contract for and administer the professional service agreements necessary to design the Project and prepare the Design Report, as generally outlined in the attached Exhibit A – “Work Plan.” The work plan generally captures the services to be performed, with the understanding that further details will be identified by mutual agreement of the Parties and will constitute an inherent part of the work scope.
2. **Responsibilities of the Parties.**
 - A. The City, on behalf of the CCOMWP, shall be responsible for the following:
 - i. Advertise a request for qualifications for a design consultant or consultants adhering to City procurement policies and following City policies in selection of a qualified consultant(s).
 - ii. Contract with the selected consultant(s) following City contracting policies, for an amount not to exceed \$200,000.
 - iii. Manage the consultant work and pay invoices.
 - B. County shall be responsible for the following:
 - i. Prepare construction documents based on recommendations set forth in the Design Report provided by the consultant(s) retained by the City.
 - ii. Bid, award, and administer the contract(s) necessary to construct the Project.
 - iii. Obtain all necessary permits for the construction of the Project.
 - iv. Reimburse the City for the invoiced cost of consultants pursuant to the guidelines set forth in the River Parkways Grant Program – Proposition 84
3. **Financial Responsibility.**
 - A. Invoice and Payment Requirements:

- i. City will pay consultant invoices pursuant to the contract between City and consultant(s).
 - ii. City will submit consultant invoices to the County on a quarterly basis for reimbursement. Reimbursed costs shall be for consultant invoices only. Costs to administer the contract between the City and the consultant(s) shall be borne by the City and shall not be reimbursed by the County.
 - iii. County shall submit reimbursement packages to the State River Parkways Grant Program pursuant to the guidelines set forth in the Grant agreement. County shall reimburse City for each invoiced amount upon County's receipt of State approval of each reimbursement request and State approval to distribute funds.
- B. Financial Records
- i. City shall maintain satisfactory financial accounts, documents and records for the City's activities related to the Project and shall make them available to the County or State for auditing at reasonable times. City shall also retain such financial accounts, documents and records for three (3) years after final payment or for one (1) year following an audit, whichever occurs first.
 - ii. City agrees that during regular office hours, the County or State and its duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or matters related thereto. City shall maintain and make available for inspection by the County or State accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
 - iii. City shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the County.
- C. Proposition 84 grant-funded projects are subject to audit by the State annually and for three (3) years following the final payment of Grant funds. The audit shall include all books, papers, accounts, documents, or other records of the City, as they relate to the Project for which the Grant funds were granted.

4. Insurance or Self-Insurance.

Each party, at its sole cost and expense, shall carry insurance-or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

5. **Indemnification and Hold Harmless.**

- A. **Indemnification by County.** County shall defend, indemnify and hold harmless City, its City Council, officers, directors, agents, employees, including CCOMWP employees, and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of County, its Board of Supervisors, officers, directors, agents, employees, consultants, contractors, subcontractors, or volunteers.
- B. **Indemnification by City.** City shall defend, indemnify, and hold harmless County, its Board of Supervisors, officers, directors, agents, employees, and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of City, its City Council, officers, directors, agents, employees, including CCOMWP employees, consultants, contractors, subcontractors, or volunteers.
- C. **Comparative Fault.** It is the intention of County and City that the provisions of this indemnification be interpreted to impose on each party responsibility to the other for the acts omissions of their respective officers, directors, employees, volunteers, Board of Supervisors, City Council, consultants, contractors, and subcontractors. It is also the intention of County and City that, where fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of the party, its officers, directors, agents, employees, volunteers, Board of Supervisors, City Council, consultants, contractors, and subcontractors.

- 6. **Amendments to the Agreement.** This Agreement can only be amended by way of written agreement approved and executed by the Parties.
- 7. **Jurisdiction and Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that jurisdiction over such action shall be vested exclusively in the state courts of California in the County of Sacramento or in the United States District Court for the Eastern District of California.
- 8. **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 9. **Interpretation.** This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

10. Termination.

- A. County or City may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing.
- B. County may terminate this Agreement for cause immediately upon giving written notice to City should City materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by County to City and it is later determined that City was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. City may terminate this Agreement for cause immediately upon giving written notice to County should County materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by City to County and it is later determined that County was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- D. County may terminate or amend this Agreement immediately upon giving written notice to City, 1) if advised by the State that Grant funds are not available for the services covered by this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; or 2) if funds for the services covered by this Agreement are not appropriated by the State.
- E. If this Agreement is terminated under paragraph A, B or C above, City shall only be paid for any services performed prior to notice of termination, plus any costs for which the City is legally obligated prior to receiving the notice of termination from County to the extent that such obligation(s) cannot be cancelled after termination without penalty. In the event of termination under paragraph A, B or C above, City shall be paid an amount which bears the same ratio to the total reimbursement authorized by the Agreement as the services actually performed bear to the total services covered by this Agreement, plus the cost of any obligations that the City cannot legally cancel without penalty after receiving a notice of termination from County, less payments of compensation previously made.
- F. City shall not incur any new expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that City can legally cancel without penalty.

11. Notice. Any notice, demand, request, consent, or approval that either party hereto may be, or is, required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY
Scott Hutcheson, P.E.
Sacramento County Dept. of Water
Resources
827 7th Street, Room 301
Sacramento, CA 95814

TO CITY
Tom Gohring, Executive Director
City-County Office of Metropolitan Water Planning
2831 G Street, Suite 100
Sacramento, CA 95816

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

12. Force Majeure.

Neither CITY nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

13. Survival Of Terms.

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms and conditions set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

14. Authority To Execute.

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

15. Counterparts.

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

Exhibits:

Exhibit A – Work Plan

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

This agreement is executed as follows:

Single Agreement: This Interagency Agreement may be signed in multiple counterparts, which together will constitute a single Interagency Agreement.

This agreement is executed as follows:

County of Sacramento,
A Political Subdivision of the State of California

By: _____

Date: _____

Print Name: _____

Title

APPROVED AS TO FORM:

By: _____

Date: _____

Print Name: _____
County Counsel

ATTEST:

By: _____

Date: _____

Print Name: _____
Clerk of the Board of Supervisors

Single Agreement: This Interagency Agreement may be signed in multiple counterparts, which together will constitute a single Interagency Agreement.

This agreement is executed as follows:

City of Sacramento, a municipal corporation

By: _____ Date _____

Print Name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED AS TO FORM:

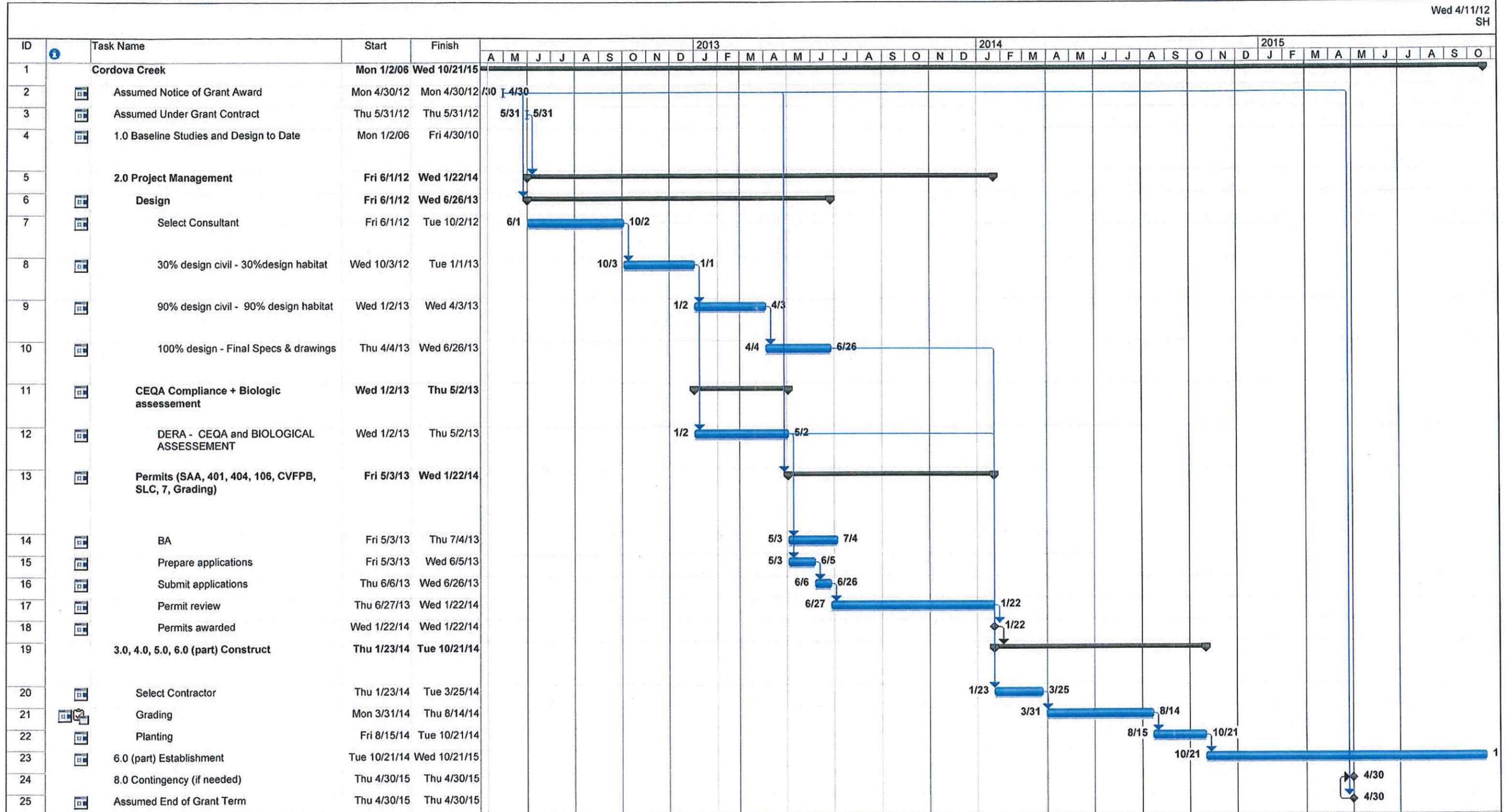
By: _____ Date _____

Print Name: _____
Deputy City Attorney

ATTEST:

By: _____ Date _____

Print Name: _____
City Clerk



Project: Cordova Creek
Date: Wed 4/11/12

Task Progress Summary External Tasks Deadline

Split Milestone Project Summary External Milestone