



**ACTION SHEET  
CITY COUNCIL MEETING OF 04/29/09  
ITEM FROM FINANCE COMMITTEE MEETING OF 04/20/09**

**ISSUE:**

12. REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – ST. FRANCIS TRAIL DESIGN SERVICES; PB AMERICAS, INC. (LEROY PACHECO)

**FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM**

Requested approval of amendment no. 1 to professional services agreement for St. Francis Trail Design Services with PB Americas, Inc. in the amount of \$90,000 for a total amount of \$390,000. Budget is available in project fund.

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

<b>VOTE:</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR WURZBURGER		X	
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	X		
COUNCILOR DOMINGUEZ	X		
CHAIRPERSON ORTIZ			

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, APRIL 6, 2009**

**ITEM 8**

REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT DATED JANUARY 31, 2007 (RFP #07/26/P) WITH PB AMERICAS, INC. FOR AN ADDITIONAL \$90,000 FOR A TOTAL CONTRACT AMOUNT OF \$390,000 (LEROY PACHECO)

**PUBLIC WORKS COMMITTEE ACTION: Approved on consent**

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
<b>CHAIRPERSON BUSHEE</b>			
<b>COUNCILOR CALVERT</b>	<b>Excused</b>		
<b>COUNCILOR CHAVEZ</b>	<b>Not present at this time</b>		
<b>COUNCILOR ROMERO</b>	<b>X</b>		
<b>COUNCILOR TRUJILLO</b>	<b>X</b>		

# City of Santa Fe, New Mexico

# memo

**DATE:** March 30, 2009

**TO:** Public Works Committee

**VIA:** Robert Romero, Public Works Department Director   
Chris Ortega, Engineering Division Director 

**FROM:** Leroy Pacheco, Engineer Supervisor, Trails Development Section 

**SUBJECT:** Amendment #1 to Professional Services Agreement dated January 31, 2007 (RFP 07/26/P) with PB Americas, Inc. for additional design services for the St. Francis Trail (BTAC Trail 7).

## REQUESTED ACTION

Approval to amend the Professional Services Agreement dated January 31, 2007 (RFP 07/26/P) with PB Americas, Inc. for an additional \$90,000.00, for a total contract amount not to exceed \$390,000.00.

## BACKGROUND

The City awarded a Professional Services Agreement for an amount not to exceed \$300,000.00 to PB Americas, Inc. on January 31, 2007 as a result of Request for Proposals - RFP 07/26/P, for on-call planning and design engineering services for non-motorized trails. To date PB Americas, Inc. has worked on the three trails design projects, and the value of its work has nearly reached the approved contract amount of \$300,000 set by city council in 2007. It is necessary to increase the contract amount with PB Americas, Inc. for design services that are currently required or that may be required for future design work as shown below:

<b>TRAIL PROJECT NAME</b>	<b>CONTRACT AMOUNT</b>	<b>PAID TO DATE</b>
Trail 6 Evaluate Alternatives	\$ 45,836.16	\$ 45,516.75
Trails 7 & 8 Evaluate Alternatives	\$ 79,243.76	\$ 79,243.76
CIP #419 B - St. Francis Tunnel (N/O Zia Rd.)	\$ 145,863.22	\$ 37,092.80
<b>Current Total Contract Amount</b>	<b>\$ 270,943.14</b>	<b>\$ 161,853.31</b>
<i>St. Francis Trail (Trail 7) Final Design</i>	\$ 88,048.35	\$ 0
<b><i>Proposed Amended Contract Amount</i></b>	<b>\$ 390,000.00</b>	<b>\$ 161,853.31</b>

Funds for these services have been identified and are budgeted as needed for each individual CIP trail project. Approval of this Amendment does not constitute a promise to purchase any said amount of future work.

Amended contract will use Business Unit, and Line Item 32803.572960

alignment. He said the design work was 90% complete and they had an issue with drainage.

Mr. Pacheco reported the Arroyo Chamiso at Rodeo Road alignment was in process and would be bid in November. It included the Corps of Engineers' 401 process. A public meeting recommended the intersection be at grade with night lighting and it would have a pedestrian refuge.

At the St. Francis crossing, they were boring a new tunnel.

Ms. Wellington mentioned that there was a water problem in the dredging process.

Mr. Franklin said they were developing the trail at Siringo back of the bridge trail east with a new piece of trail.

## **2. Trail Projects and Issues**

### **a. Proposed Arroyo Chamiso Trail 7 & 8, St. Francis to St. Michael's (Bob Siqueros)**

The BTAC members had a map in their packet for the proposed alignment of Arroyo Chamiso Trail. The alignment preferred by BTAC was Alternative 2 (Parker -Brinkerhoff's recommended alignment that was shown in green on the map). They recommended the following modifications:

- 1) Trail 7 alignment should follow the St. Francis Drive easternmost right-of-way alignment, continue along the eastbound exist ramp onto St. Michael's Drive and terminate at the existing bike lanes/sidewalk at the Galisteo Street signalized intersection on St. Michael's Drive.
- 2) The segment of trail depicted on the north side of St. Michael's Drive was not recommended as bicyclists and pedestrians would use the existing infrastructure on St. Michael's Drive.
- 3) The small spur from St. Francis Drive to the cul-de-sac at the southern end of Galisteo Street was recommended.
- 4) The connection north of St. Michael's Drive from St. Vincent's Hospital north towards Don Gaspar should also be further explored.

It was noted that the preferred alignment for Arroyo Chamiso Trail 8 had been discussed at the previous BTAC meeting in August.

## **3. Education Outreach Program – Discussion regarding Survey Questions etc. (Bob Siqueros)**

The Committee discussed the need for educational outreach but decided it should be refined. They decided not to do the educational outreach until everyone was in agreement and not to rush into a mail out before.

**CITY OF SANTA FE  
AMENDMENT No. 1 TO  
PROFESSIONAL SERVICES AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated January 31, 2007 (the "Agreement"), between the City of Santa Fe (the "City") and PB Americas Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City.

**RECITALS**

A. Under the terms of the Agreement, Contractor has agreed to provide planning and engineering design services for non-motorized trails to the City.

B. Pursuant to Article 18 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of ninety thousand dollars (\$90,000) so that Article 3, paragraph A reads in its entirety as follows:

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed three hundred ninety thousand dollars (\$390,000), inclusive of gross receipts tax in total for the term of this Agreement.

2. TERM AND EFFECTIVE DATE

Article 5 is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

This Agreement shall be effective when signed by the City and terminate on June 30, 2011, unless sooner pursuant to Article 6 below.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Professional Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

By: \_\_\_\_\_  
DAVID COSS, MAYOR  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
FRANK D. KATZ, CITY ATTORNEY

CONTRACTOR:  
PB Americas

By: \_\_\_\_\_  
Steven Harris, PE, LBE  
Date: \_\_\_\_\_

APPROVED:

CRS# 01-1954-58002  
City of Santa Fe Business  
Registration #09-00012146

\_\_\_\_\_  
DAVID N. MILLICAN, FINANCE DIRECTOR

## CITY OF SANTA FE

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and PB Americas (the "Contractor").

The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Provide, upon written notice to proceed, planning and engineering design services for non-motorized trails for the City, which meets the criteria described in Exhibit A, attached hereto and made a part hereof.

B. Negotiate with the City a Performance Schedule for each phase of work for each survey and engineering design services for the non-motorized trails project.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed three hundred thousand dollars (\$300,000), inclusive of gross receipts tax in total for the term of this Agreement.

B. The Contractor and the City shall negotiate a fee for each phase of work in accordance with Exhibit B, attached hereto and made a part hereof.

C. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

D. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on June 30, 2010, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its

agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003, as well as any subsequent changes to the ordinance throughout the term of this contract.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property.

Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage of one million dollars (\$1,000,000) per occurrence.

### 13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's negligent performance under this Agreement as well as the negligent performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall

not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the

parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:  
Anne McLaughlin  
Parks, Trails &  
Watershed Division  
Public Works Department  
PO Box 909  
1142 Siler Rd  
Santa Fe, NM 87504-0909

Contractor:  
David Pennington  
PB Americas  
6100 Uptown Blvd NE  
Suite 700  
Albuquerque, NM 87110

IN WITNESS WHEREOF, the parties have executed this Agreement  
on the date set forth below.

CITY OF SANTA FE:

David Coss  
DAVID COSS, MAYOR

DATE: 2-5-07

ATTEST:

Yolanda Y. Gigli  
YOLANDA Y. GIGLI, CITY CLERK  
conty 1/31/07

CONTRACTOR:

By: David Pennington  
David Pennington  
Assistant Vice President

APPROVED AS TO FORM:

Frank D. Katz  
FRANK D. KATZ, CITY ATTORNEY

CRS # 01195458002  
City of Santa Fe Business  
Registration # 12146

APPROVED:

Kathryn L. Raveling  
KATHRYN L. RAVELING, DIRECTOR  
FINANCE DEPARTMENT

**EXHIBIT A**  
**SCOPE OF WORK**

**A. PHASE I - ANALYSIS AND SCHEMATIC ALTERNATIVES**

- Propose and implement appropriate level of environmental review for city, state, or federal funded project
- Analyze Existing Conditions, Opportunities & Constraints:
  1. Property Ownership, Public Easements & Rights-of-Way
  2. Topography & Drainage
  3. Road Crossings & Points of Access
  4. Existing Built Environment
  5. Trail Connectivity
  6. Alternative Trail Types, Widths & Paving Treatments
  7. Environmental and Cultural Features
- Public Input Meeting
- Develop Alternative Alignments and Design Concepts
  1. Easement acquisition
  2. Trail width, surface treatment, typical cross sections
  3. Trail heads, bridges, grades, and alignment
  4. Road crossings - intersection layouts, review of signal warrants
  5. Landscaping, signage and historic features
  6. Project scope, costs, and sequencing
- Geotechnical Survey, Soils Report and Pavement Design
- Field Design Review with City, Bicycle and Trails Advisory Committee
- Summary Report

**B. PHASE II - PRELIMINARY DESIGN PHASE**

- Preliminary Plans and Profiles
- Preliminary Design Report
- Grading Limits
- Preliminary Cross Section Sheets
- Preliminary Structure Plans
- Preliminary Landscaping/Re-Vegetation/Erosion Control Plan
- Preliminary Construction Traffic Control Plan, as applicable
- Plan and Quantity Checking, Preliminary Quantities and Cost Estimate
- Preliminary Construction Staging Recommendations
- Grade and Drain Review with the City, Summary Report
- Final Right-of-Way Maps and Taking Descriptions
- Public Involvement
- Review by Boards and Commissions, Acequia Madre Ditch Association

**C. PHASE III - FINAL DESIGN PHASE**

- Detailed Construction Plans and Profile Sheets
- Construction Details
- Final Cross Sections
- Permanent Signing and Striping Plan
- Traffic Control and Detour Plan
- Landscaping/Re-Vegetation/Erosion Control Plan
- Final Structural and Drainage Plans
- Final Schedule of Quantities and Cost Estimate
- Consultant Plan Checking and Quantity Verifications
- Bidding Documents
  1. The City will prepare the Project Manual
  2. Consultant to provide bid forms and special specifications
- Plan-in-Hand Review with the City, Summary Report
- Final, Bound, Design Report

**D. PHASE IV - CONSTRUCTION MANGEMENT (This phase may be either deleted or revised, at the option of the City at the implementation of construction. It has been the general practice of the Public Works Department to perform construction management with in-house staff if available.)**

- Preconstruction Meeting with Contractor, Owner, Utilities
- Contractor Notice to Proceed
- Daily Construction Observation and Diary
- Construction Engineering Basic Services
  1. Review Contractor Material Submittals
  2. General Project Review by Principal Engineer
  3. Verify Structure Drawings
  4. Change Order Review and Preparation
  5. Claims Review, Documentation and Correspondence
  6. Provide As-Constructed Quantities, Prepare Progress Payments
  7. Prepare and Authorize Field Design Adjustments
  8. Project Close-Out, Final Inspection, Punch List
  9. "As-Built" Drawings
  10. One-year Warranty Inspection and Report