ACTION SHEET
CITY COUNCIL MEETING OF 05/27/09
ITEM FROM FINANCE COMMITTEE MEETING OF 05/18/09

ISSUE:

13. REQUEST FOR APPROVAL OF STATE OF NEW MEXICO GOVERNMENTAL SERVICES AGREEMENT – SANTA FE RIVER RESTORATION AND TRAIL PROJECT; STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT (RACHEL FRIEDMAN)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of State of New Mexico Governmental Services agreement for Santa Fe River Restoration and Trail Project with State of New Mexico Energy, Minerals and Natural Resources Department in the amount of $815,000 with the State reimbursement of $425,000 and $390,000 from Santa Fe trails. Budget is available in Santa Fe Rail, Trail and River Fund.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR WURZBURGER	not present		
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	not present		
COUNCILOR DOMINGUEZ	X		
CHAIRPERSON ORTIZ	X		

DISK fc1/fcmissue

ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, MAY 11, 2009

ITEM 7

SANTA FE RIVER TRAIL PROJECT

- UPDATE
- REQUEST FOR APPROVAL OF STATE OF NEW MEXICO GOVERNMENTAL SERVICES AGREEMENT BETWEEN THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT AND THE CITY OF SANTA FE FOR $815,000 FOR THE SANTA FE RIVER RESTORATION AND TRAIL PROJECT **(RACHEL FRIEDMAN)**

PUBLIC WORKS COMMITTEE ACTION: Approved

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON BUSHEE			
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	X		
COUNCILOR ROMERO	Excused		
COUNCILOR TRUJILLO	X		

City of Santa Fe, New Mexico

memo

DATE: April 28, 2009

TO: Public Works Committee

VIA: Robert P. Romero, Public Works Department Director

FROM: Rachel Friedman, Santa Fe River and Watershed Coordinator
Parks, Trails and Watershed Division

Request for approval of State of New Mexico Governmental Services Agreement between the Energy, Minerals and Natural Resources Department and the City of Santa Fe for eight hundred fifteen thousand dollars ($815,000) for the Santa Fe River Restoration and Trail Project

ITEM & ISSUE:
The City of Santa Fe has received funding from the New Mexico Energy, Minerals and Natural Resources Department for the Santa Fe River Restoration and Trail Project. The two components of the funding are:

1: Easement acquisition: Purchase 20 public access easements for trail construction, and four easements for drainage and floodway improvements within the Santa Fe River Corridor. Provide EMNRD with copies of appraisals and easement documents as the easements are acquired. Task amount - $425,000.00

2: Trail and restoration component: Plan, design and construct a multi-use pedestrian trail of approximately 1.5 miles in length, linking Alto Park east of Camino Alire to Frenchy's Park, east of Camino Carlos Rael. Install site furniture such as benches and handrails. Permanently install 14 boulder run downs, four baffles, and 10 sets of vanes for stream stabilization and flood protection within approximately 6,650 linear feet of the Santa Fe River Corridor between Camino Alire and Camino Carlos Rael. (Task amount - $390,000.00)

This Agreement shall terminate on June 30, 2012

ACTION
Please recommend approval to the Finance Committee and City Council the agreement in the amount of $815,000 to the City of Santa Fe. Funding will be available and reimbursed from the State in the amount of $425,000 in 32803.572940 (EXP Trails/ WIP Land Costs) and the amount of $390,000 in 32755.572970 (EXP SF R&T II/ WIP Construction).

Attachments:
State of New Mexico Governmental Services Agreement between the Energy, Minerals and Natural Resources Department and the City of Santa Fe

SS001.PM5 - 7/05

STATE OF NEW MEXICO
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
THE CITY OF SANTA FE

THIS AGREEMENT is made and entered into by and between the State of New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) and the City of Santa Fe (Contractor).

THE PARTIES MUTUALLY AGREE:

1. Scope of Work: Contractor shall:

A. Purchase 20 public access easements for trail construction, and four easements for drainage and floodway improvements within the Santa Fe River Corridor. Provide EMNRD with copies of appraisals and easement documents as the easements are acquired. Complete task by contract termination date. (Task amount - $425,000.00)

B. Plan, design and construct a multi-use pedestrian trail of approximately 1.5 miles in length, linking Alto Park east of Camino Alire to Frenchy's Park, east of Camino Carlos Rael. Install site furniture such as benches and handrails. Permanently install 14 boulder run downs, four baffles, and 10 sets of vanes for stream stabilization and flood protection within approximately 6,650 linear feet of the Santa Fe River Corridor between Camino Alire and Camino Carlos Rael. Complete task by contract termination date. (Task amount - $390,000.00)

C. Provide EMNRD with brief written progress reports on a quarterly basis, including status of improvements that have been made within the Santa Fe River Corridor.

2. Compensation:

A. Within 30 days of EMNRD's signature, EMNRD shall transfer to Contractor an amount not to exceed eight hundred fifteen thousand dollars ($815,000.00) which shall include New Mexico Governmental Gross Receipts Taxes, if applicable. Payment shall not relieve Contractor of any unperformed obligations under the Scope of Work.

Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

B. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement, if applicable.

3. Term: This Agreement becomes effective when executed by an authorized representative of the Contractor and of EMNRD and when the Department of Finance and Administration (DFA) encumbers funds for this Agreement. This Agreement shall terminate on June 30, 2012, unless earlier terminated pursuant to the Termination Paragraph or the Appropriations Paragraph.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify obligations or duties incurred prior to the termination date. If a party fails to fulfill this Agreement's terms, after the other party provides written notice of the failure to perform and an opportunity to comply, the notifying party may immediately terminate this Agreement for breach of contract. These provisions are not exclusive and do not waive other legal rights and remedies afforded EMNRD in such circumstances as Contractor's default or breach of contract.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be final, binding and accepted by Contractor.

6. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment: Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD's prior written approval.

8. Subcontracting: Contractor may subcontract the activities specified in the Scope of Work, with the exception of the reporting requirements. Contractor shall not obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval.

9. Release: Contractor, upon final payment of all amounts due under this Agreement, releases EMNRD and its employees from all liabilities, claims and obligations whatsoever arising from this Agreement. Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein, without EMNRD's express written authorization, and then only within the strict limits of that written authority.

10. Product of Services; Copyright: All materials developed or acquired by Contractor under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Contractor produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Contractor. EMNRD agrees that Contractor shall retain all of Contractor's proprietary methodologies which were not created under this Agreement.

11. Conflict of Interest: Contractor warrants that it presently has no interest in and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through –18, regarding contracting with a public officer or state employee have been followed.

12. Amendment: This Agreement shall not be altered, changed or amended except by written instrument executed and approved by the parties hereto.

13. Waiver: No waiver of any breach of this Agreement or any of the terms or conditions hereof shall be a waiver of any other or subsequent breach; no waiver shall be valid or binding unless the same be in writing and signed by the party alleged to have granted the waiver.

14. Merger: This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

15. Penalties for Violation of Law: The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance: Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with

all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Compliance with Funding Source Conditions: Contractor shall comply with all applicable state and federal statutes and regulations imposed as a consequence of funding pursuant to this Agreement.

19.. Insurance Coverage: Contractor shall provide EMNRD a statement indicating that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves or insurance provided by a third party, prior to commencing work under this Agreement and in no case later than fifteen (15) days after this Agreement's execution. Contractor shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Contractor shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.

20. Records and Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them until June 30, 2015. These records shall be maintained and available within the State of New Mexico if the Contractor

has an office within the state; otherwise, Contractor shall make such records available to EMNRD within thirty (30) days upon EMNRD's request. The records shall be subject to inspection by EMNRD, DFA and the State Auditor. Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. The periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement and shall continue until all potential litigation, appeals, claims or exceptions have expired or been resolved.

21 Liability: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq., as amended.

22. Procurement, Utilization and Disposition of Property: Contractor shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Contractor has any property in its possession belonging to EMNRD, Contractor shall account for the property and dispose of it as EMNRD directs.

23. Minimum Wage Rate: If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor and Industrial Division, and with all other applicable requirements of that Division, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

24. Invalid Term or Condition: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Authority: If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By:_____ Date:_____
Cabinet Secretary or Designee

CITY OF SANTA FE

By:_____ Date:
David Coss, Mayor

ATTEST:

By:_____ Date:_____
Yolanda Y. Vigil, City Clerk

APPROVED AS TO FORM:

By:_____ Date:_____
Frank D. Katz, City Attorney

APPROVED:

By:_____ Date:_____
David N. Millican, Finance Director