


Buckman Direct Diversion

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*A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.*

## Memorandum

**Date:** February 5, 2015  
**To:** Buckman Direct Diversion Board  
**From:** Mackie Romero, BDD Financial Manager   
**Subject:** 2<sup>nd</sup> Quarter Financial Statements

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**Purpose:**

This memo is intended to update the BDD Board and its partners on our 2<sup>nd</sup> Quarter financial position as of December 31, 2014.

**Budget Overview** – A financial plan that quantifies our current and future operations.

- Beginning Budget – FY14/15 Adopted Budget.
- Expended – Expenses for services and/or goods received as of 12/31/2014.
- Encumbrances – Executed purchase orders for goods and services.
- Projected – Projected salary and benefits as currently staffed, pending requisitions and or contracts to be executed within the fiscal year.
- Available Balance – Represents vacancy savings and uncommitted budget balance as of 12/31/2014.

**90 Day Cash Reserve Credit** – Represents the partners cash reserve credit, which is used to fund current and future obligations as per the BDD Working Capital and Billing Policy.

**Cash Balance** – Cash receipts held by the fiscal agent, to pay current and future obligations.

**Fixed & Variable Costs** - Expenses billed and/or pending billing to partners for services and/or goods received as of December 31, 2014.

**Outstanding Accounts Receivables** - Represents the dollar amount owed by each partner as of December 31, 2014 for the monthly reimbursement bills.

**Other Funds** - Major Repair and Replacement & Emergency Reserve Fund monthly contributions.

BDD will continue to provide quarterly updates with useful financial information to provide the highest level of transparency to our partners and the board.

If you feel any additional information should be included in our report, please contact me.





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## 2<sup>nd</sup> Quarter Financial Statement – Operations (Unaudited 07/01/2014-12/31/2014)

### Budget Overview

CATEGORY	BEGINNING	EXPENDED	EXPENDED	ENCUMB	PROJECTED	TOTAL	BALANCE
	BUDGET	1st Quarter	2nd Quarter	Thru 12/31/2014	EXPEND		AVAILABLE
Salaries & Benefits	3,344,594	584,500	760,060	-	1,464,092	2,808,652	535,942
Electricity	1,378,000	316,346	283,756	777,898	-	1,378,000	-
Chemicals	265,000	91,515	56,711	-	116,774	265,000	-
Solids	60,800	13,045	14,609	-	33,146	60,800	-
Materials & Supplies	503,329	28,113	115,809	223,751	103,970	471,643	31,686
Other Operating Costs	908,277	195,517	128,376	398,450	155,264	877,607	30,670
Fiscal Agent Fees	64,600	16,150	16,150	-	32,300	64,600	-
<b>TOTAL</b>	<b>6,524,600</b>	<b>1,245,186</b>	<b>1,375,470</b>	<b>1,400,099</b>	<b>1,905,546</b>	<b>5,926,302</b>	<b>598,298</b>
FY14/15 Carryforward	205,130	-	72,181	132,949	-	205,130	-

### 90-Day Cash Reserve Credit

	Balance
City of Santa Fe	1,156,534
Santa Fe County	372,845
Las Campanas	56,771
	<b>1,586,150</b>

### Cash Balance

	Balance
<b>Cash at 12/31/2014</b>	<b>262,085</b>

### Fixed Cost (billed) - Operations

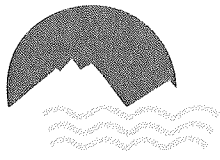
	1st Quarter	2nd Quarter	October	November	December
City of Santa Fe	604,944	747,902	283,661	196,473	267,768
Santa Fe County	201,041	249,788	95,213	65,513	89,061
Las Campanas	16,702	19,312	7,245	4,811	7,257
	<b>822,687</b>	<b>1,017,002</b>	<b>386,119</b>	<b>266,797</b>	<b>364,086</b>

### Variable Cost (Pending billing) - Operations

	1st Quarter	2nd Quarter	October	November	December
Variable Expenses	422,500	358,468	114,770	127,955	115,743
	<b>422,500</b>	<b>358,468</b>	<b>114,770</b>	<b>127,955</b>	<b>115,743</b>

### \*Outstanding Accounts Receivable

	Balance
City of Santa Fe	267,768
Santa Fe County	154,574
Las Campanas	7,257
	<b>429,599</b>



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**2<sup>nd</sup> Quarter Financial Statement – Other Funds (Cumulative)**  
**(Unaudited 07/01/2013-12/31/2014)**

**Pre-Bills – Major Repair & Emergency Reserve Funds**

	Total	City of SF	SF County	Las Campanas
Major Repair Fund	205,902	145,920	53,081	6,901
	<b>205,902</b>	145,920	53,081	6,901

**Financial Position**

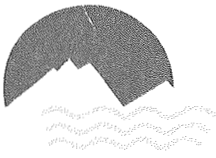
	Emergency Reserve*	Major Repair
Balance at 06/30/2014	2,000,000	823,624
thru 2nd Quarter Billing	-	205,902
<b>Total</b>	2,000,000	1,029,526
<b>Target Balance</b>	2,000,000	1,235,428
<b>Remaining Balance</b>	-	205,902

\* Emergency Reserve Fund have reached its funding target, per the established policy.

**\*Outstanding Accounts Receivable**

	Balance
City of Santa Fe	24,320
Santa Fe County	35,387
Las Campanas	1,150
	<b>60,857</b>





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## Memo

**DATE:** February 5, 2015  
**TO:** Buckman Direct Diversion Board  
**FROM:** Mackie Romero, BDD Financial Manager *MR*

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### **ITEM AND ISSUE:**

Request approval of PSA # XX-XXXX with Long, Komer & Associates, P.A. in the amount of \$103,000 to serve as legal counsel for the Buckman Direct Diversion Board for fiscal year beginning July 1, 2015 thru June 30, 2016.

### **BACKGROUND AND SUMMARY:**

On October 2, 2014, the Buckman Direct Diversion Board approved our request to release a Request for Proposal to procure legal services for fiscal year 2015/2016. In response to our request only one proposal was received. On January 13, 2015, a selection committee consisting of City of Santa Fe staff, Santa Fe County staff and Buckman Direct Diversion staff, met via conference call to evaluate the proposal received. The selection committee was unanimous in its decision to award the contract to Long, Komer & Associates, P.A.

### **EVALUATION:**

Long, Komer & Associates, P.A. will serve as legal counsel for the Buckman Direct Diversion Board.

The Scope of Services consists of:

- Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- Represent the Board in litigation not covered by insurance and in administrative matters,
- Providing legal advice on state and federal permitting such as, but not limited to; 1) the Environmental Impact Statement (EIS) for the BDD 2) NEPA 3) the Biological Opinion covering the BDD, and 4) NPDES permitting for the BDD.
- Advise and represent the BDD on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;



- Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;
- Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD as directed by the Board;
- Attend all Board meetings and relevant meetings of the governing Body of the City of Santa Fe, the BDD Board or County Commissioners, and BDD Staff meetings;
- Brief BDD Support Entity Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

**ACTION REQUESTED:**

Staff recommends approval of PSA # xx-xxxx with Long, Komer & Associates, P.A. in the amount of \$103,000 plus NMGRT for legal services effective July 1, 2015 thru June 30, 2016. Funding is available in the 2015/2016 approved budget.

<u>Fund Source</u>	<u>Business Unit/Line Item/Description</u>	<u>Amount</u>
FY 2015/2016	7280000.510200.900010 Legal Services	\$103,000 + GRT

**ATTACHMENTS:**

PSA # XX-XXXX

Approved by BDDDB February 5, 2015

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Joseph M. Maestas, BDDDB Chairman

## **BUCKMAN DIRECT DIVERSION BOARD**

### **LEGAL SERVICES AGREEMENT WITH**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB" or "Board") and Long, Komer & Associates, P.A. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the Chair of the Board.

#### **1. SCOPE OF SERVICES**

The Board seeks to use an independent contractor, qualified attorney to service as legal counsel for the Board on matters related to the Board's provision of regional water resources through the Buckman Direct Diversion ("BDD") Project. The required legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

A. The Contactor shall perform the following under the legal services agreement contemplated by this Request for Proposals ("RFP"):

- Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- Represent the Board in litigation not covered by insurance and in administrative matters,
- Providing legal advice on state and federal permitting such as, but not limited to; 1) the Environmental Impact Statement (EIS) for the BDD Project, 2) NEPA 3) the Biological Opinion covering the Project, and 4) NPDES permitting for the Project;
- Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;
- Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;
- Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;



- Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

## **2. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES:**

A. The Contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

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 total compensation to be paid under this Agreement for the first year of the term shall be one hundred and three thousand dollars and no100/s (\$103,000) plus New Mexico Gross Receipts Tax as outlined in Exhibit A attached hereto.

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

C. Detailed invoices for services will be made on a monthly basis.

D. Payment to the Contractor will be made within thirty (30) days after the date of billing.

E. No Travel or per diem shall be paid by the Board under this Agreement. All costs of travel or per diem for the Contractor or the Contractor's staff are the sole responsibility of the Contractor.

#### **4. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDB to the Contractor. The BDDB'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 Board's Chair and terminate on June 30, 2016. This Agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years from the date of last signatory to this initial agreement.

#### **6. TERMINATION**

- A. This Agreement may be terminated by the Board upon 10 days written notice to the Contractor. In the event of such termination:
  - i. The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Board original copies of all work product, research or papers prepared under this Agreement.
  - ii. If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

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

A. The Contractor and its subcontractors, agents and employees are independent contractors performing professional services for the Board and are not employees of the Board. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Board vehicles, or any other benefits afforded to employees of the Board 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 contractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

## **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 Board.

## **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 Board. The Contractor shall not further subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Board or the BDDB Facility Manager.

## **11. RELEASE**

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Board, the City of Santa Fe, The County of Santa Fe and Las Campanas, L.P., their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, the Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. The Contractor agrees not to purport to bind the Board to any obligation not assumed herein by the Board 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 shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the Board's request provided to the Board, insurance certificates reflecting evidence of all insurance required herein; however, the Board reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by the Board; (ii) obtained Board approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under

this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the Board.

B. Further, the Contractor shall not modify any policy or endorsement thereto which increases the Board's exposure to loss for the duration of this Agreement.

C. **Types of Insurance.** At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

- i. **Commercial General Liability.** Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate(other than Products/Completed Operation)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

- ii. **Automobile Liability.** For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

- iii. **Professional Liability.** For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. The Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to

environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

- iv. **Workers' Compensation.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, City of Santa Fe, County of Santa Fe, Las Campanas LLC and their respective elected officials, officers, employees, agents, volunteers and representatives.

**D. Cancellation.**

Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the Board is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event the Contractor's insurance carriers will not agree to this notice requirement, the Contractor will provide written notice to the BDDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

**E. Insurer Requirements.**

All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the Board. The Board will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

**F. Deductibles.**

All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

### G. Specific Provisions Required.

- i. Each policy shall expressly provide, and an endorsement shall be submitted to the Board, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives.
- ii. All policies required herein are primary and non-contributory to any insurance that may be carried by the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the Board.
  1. The Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Board's exposure to loss.
  2. Before performing any Professional Services, the Contractor shall provide the Board with all Certificates of Insurance accompanied with all endorsements.
  3. The Board reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Board. The Board will reimburse the Contractor for the cost of the additional premium for any coverage requested by the Board in excess of that required by this Agreement without overhead, profit, or any other markup.
  4. The Contractor may obtain additional insurance not required by this Agreement.

### 13. INDEMNIFICATION

**General Indemnification.** To the greatest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LLC and their respective elected officials, officers, employees, agents, volunteers and representatives 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 the Contractors performance or non-performance under this Agreement as well as the performance or non-performance of the Contractor's employees, agents, representatives and subcontractors or any tier.

**Indemnification for Professional Acts, Errors or Omissions.** Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of the Contractor, or its employees, agents, representatives or sub-consultants, the

General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

#### **14. NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the BDDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDDB and their "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 Board 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, DOCUMENT CONTROL AND AUDIT**

- A. The Contractor shall conform with and participate in the Document Control policies of the Board or the City of Santa Fe. The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.
- B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The Board and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the Board or the City of Santa Fe 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 Board. 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. 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 requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

**BOARD:** Facility Manager  
Buckman Direct Diversion  
801 San Mateo  
Santa Fe, NM 87504

**CONTRACTOR:**  
Nancy Long  
Long, Komer & Associates, P.A.  
2200 Brothers Road  
Santa Fe, NM 87502-5098



Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]***

**BUCKMAN DIRECT DIVERSION BOARD**

**CONTRACTOR:**

By: \_\_\_\_\_

Chairperson

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

NM Taxation & Revenue  
CRS # 08-0058116

City of Santa Fe Business  
Registration # 07-58116

\_\_\_\_\_  
County Clerk

**APPROVED AS TO FORM:**

MDM 1/23/15  
\_\_\_\_\_  
Kelley A. Brennan, City Attorney

**APPROVED:**

\_\_\_\_\_  
Oscar Rodriguez, City Finance Director

724800  
Business Unit/Line Item

**ATTEST:**

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk  
File Date: \_\_\_\_\_

Exhibit A

Fee Schedule

1. The Board shall pay compensation to the Contractor based upon hourly rates for provision of legal and administrative services. Such services shall be tracked and billed in one-tenth (0.01) hour increment to be paid as follows:

• The following attorneys shall be paid an hourly rate as stated:

- Nancy R. Long, Partner \$170
- Mark E. Komer, Partner \$170
- Justin W. Miller, Associate \$155
- Little V. West, Associate \$155
- Vicki R. Marco, Paralegal \$75
- Kyle Harwood, Of Counsel \$170

2. All charges are subject to NM gross receipts tax which will be added to the billing invoices.

3. Invoices shall be submitted to BDD Financial Manager, 341 Caja del Rio, Santa Fe, NM 87507, and should include the following detailed information:

- i. Dates
- ii. Attorney
- iii. Description of billed service
- iv. # of billed hours
- v. Hourly rate
- vi. Total fees



## Buckman Direct Diversion Board Summary of Contracts, Agreements, & Amendments

**Section to be completed by department for each contract or contract amendment**

1 **FOR: ORIGINAL CONTRACT**  or **CONTRACT AMENDMENT**

2 Name of Contractor Long, Komer & Associates

3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$103,000.00

Termination Date: June 30, 2016

Approved by BDDB Date: Pending

or by Project Manager Date: \_\_\_\_\_

**Contract is for:** Legal Services

Amendment # \_\_\_\_\_ to the Original Contract# \_\_\_\_\_

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

Approved by BDDB Date: \_\_\_\_\_

or by Project Manager Date: \_\_\_\_\_

**Amendment is for:**

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments)  Plus GRT  
 Inclusive of GRT

Amount \$ \_\_\_\_\_ of original Contract# \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: Increase comp

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ 103,000



## Buckman Direct Diversion Board Summary of Contracts, Agreements, & Amendments

**5 Procurement Method of Original Contract:** (complete one of the lines)

RFP# 15/13/P Date: \_\_\_\_\_

RFQ  \_\_\_\_\_ Date: \_\_\_\_\_

Sole Source  \_\_\_\_\_ Date: \_\_\_\_\_

Other \_\_\_\_\_

**6 Procurement History:** \_\_\_\_\_  
example: (First year of 4 year contract)

**7 Funding Source:** \_\_\_\_\_ **BU/Line Item:** \_\_\_\_\_ **728000**

**8 Any out-of-the ordinary or unusual issues or concerns:**  
none  
(Memo may be attached to explain detail.)

**9 Staff Contact who completed this form:** Maya Martinez  
Phone # 955-4271

**10 Certificate of Insurance attached.** (if original Contract)

**Submit to City Attorney for review/signature**

Forward to Finance Director for review/signature  
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

**To be recorded by City Clerk:**

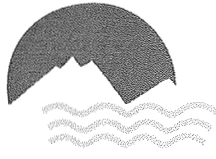
Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

Note: If further information needs to be included, attach a separate memo.

**Comments:**





Buckman Direct Diversion

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*A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.*

## Memorandum

**Date:** January 27, 2015  
**To:** BDD Board  
**From:** Nancy R. Long  
**Subject:** Possible Revisions to the Board's Rules of Order

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### **ITEM AND ISSUE:**

Revision of the Board's Rules of Order

### **BACKGROUND AND SUMMARY:**

The Board's Rules of Order call for the election of the Chair and Vice-Chair as follows:

**Chair/Chair Pro-Tempore, Election.** During the first meeting of each calendar year, or sooner if required, a Chair and Chair Pro-Tempore of the Board shall be elected. The Chair position shall rotate between a City and County member each year. The Chair Pro-Tempore shall be elected from the opposite entity.

The repeated problem with having the election of officers in January of each year is that the County has not had its organizational meeting by the time of the Buckman Board meeting in January and the City holds the election of councilors every two years in March. Last year, the election of the Chair did not occur until April due to City elections in March and the subsequent organizational meeting with committee assignments all occurring after the March date for the Buckman Board meeting. This resulted in the postponement of the election of the Chair and Vice-Chair until the April meeting last year. Previous years have seen similar problems and delays in the election of officers

Following the discussion at last month's meeting, I was asked to provide possible options for the time to elect officers. The following incorporates those discussions:



**April to June 30 Term.** A term of 14 to 15 months was discussed as a possibility but this proposal runs contrary to the spirit and custom of rotating the chair position between the two entities each year. This also does not solve the problem of the County Commissioners' appointments to committees only through each calendar year.

**February or March Election Each Year.** A February or March election of officers would take account of the County organizational meeting in January but every other year when the City holds elections in March, a City officer could conceivably only hold their office for one or two months. This would result in elections in February or March and again in April of that year. The City as an entity would continue to hold the office of Chair or Vice Chair as prescribed for that year but the individual holding the office would change rather abruptly without a chance for a longer term.

**April Election.** Elections in April each year would take account of both the County committee assignments and the City committee assignments. The problem for County Commissioners is that their committee assignments run for the calendar year, meaning that if they are not re-appointed to the Buckman Board in January following their election in April, their term could be cut short. A possible solution for the County, as well as for the City, is to have their respective entities acknowledge through their rules of procedure, or otherwise, that committee assignments to the joint powers, Buckman Board, be made respecting any elected officer position so that the individual is re-appointed to allow fulfillment of their officer position.

There are several other revisions I have made to the Board's rules for your consideration. A redlined version of the rules outlining the revisions is included for your review of these changes.

### **RECOMMENDATION**

The Board's direction is sought as to when it wishes to conduct its officer elections taking into account the issues raised. If the revised rules of order are acceptable to the Board, we recommend approval subject to a decision on the time of officer elections. If additional revisions are recommended, we will bring final rules to the Board at the March meeting.





1 | duties and privileges as the absent board member. If, during the course of the meeting, the  
2 | regular member joins the meeting, the alternate for that member, if any, may not vote on any  
3 | matter appearing on the agenda, but may continue to participate in the meeting, including in the  
4 | discussion of action and other agenda items. Alternate members are permitted to attend and  
5 | participate in any meeting of the Board but shall have no voting power unless the alternate is  
6 | attending for an absent member. If, during the course of the meeting, a regular member is  
7 | excused for the rest of the meeting, the alternate may be recognized by the Chair to serve on  
8 | behalf of the regular member until the conclusion of the meeting. If, during the course of the  
9 | meeting, a regular member is excused from the meeting by recusal for an item, the alternate shall  
10 | not be recognized by the Chair and the recusal shall not impact quorum.

11 |       **2. Loss of Quorum.** No action may be taken without a quorum except actions  
12 | determined necessary to obtain a quorum, adjournment or recess. If a quorum is lost during any  
13 | part of a meeting, no action may be taken in the absence of a quorum except actions necessary to  
14 | obtain a quorum, adjournment or recess.

15 |       **23. Chair and Vice-Chair.**

16 |           **a. Duties.** Each meeting of the Board shall be under the direction of a Chair.  
17 | The Chair shall open and close meetings, announce the business before the Board and manage  
18 | the agenda, manage the meeting, stating and calling for a vote on all motions properly made,  
19 | announcing the results of all votes, enforcing order and decorum, and ensuring that members of  
20 | the Board, staff and members of the public conduct themselves in a respectful and appropriate  
21 | manner.

22 |           **b. Duties/Vice-Chair.** Whenever the Chair is not present or is unable to  
23 | participate in the discussion of a matter before the Board, the Vice-Chair shall serve as the Chair.  
24 | If the Chair of the Board is not present when a meeting begins but arrives during the course of a  
25 | meeting, the Vice-Chair shall continue to act as Chair for the duration of the specific matter

1 | under consideration and thereafter shall relinquish the Chair to the elected Chair. Whenever the  
2 | Chair and Vice-Chair are not present, the members may appoint a temporary chair to conduct the  
3 | meeting.

4 |           **c. Chair/Vice-Chair, Election.** During the first \_\_\_\_\_ meeting of  
5 | each calendar year, ~~or sooner if required~~, a Chair and Vice-Chair of the Board shall be elected.  
6 | The Chair position shall rotate between a City and County member each year. The Vice-Chair  
7 | shall be elected from the opposite entity. Elections shall also be held when required to fill any  
8 | vacancy that occurs in the Chair or Vice-Chair position.

9 |           **d. Voting/Chair.** The Chair has all rights as any other member for purposes of  
10 | voting and making and seconding motions.

11 |           **e. Discussions/Chair.** The Chair may take part in any discussion of any matter  
12 | before the Board.

13 |           **34. Agenda.** The agenda shall be prepared under the direction of the Chair, and shall  
14 | include an item for approval of the minutes of the previous meeting, approval of the agenda,  
15 | matters from the Board members, action items to be considered during the meeting, and matters  
16 | from the City and County staff. The agenda may include a consent calendar containing matters  
17 | that will be considered and voted upon as a group, presentations, or a closed executive session.  
18 | The Board may only act on those items listed on the agenda.

19 |           **45. Presentations.** The Chair may permit staff to present a report on a given item and to  
20 | answer questions from the members of the Board. Only Board members shall be permitted to  
21 | address questions to staff. Members of the public or interested persons may be permitted to  
22 | address the Board on a given item. The Chair may impose reasonable restrictions on such  
23 | presentations, including time restrictions as necessary. If such a presentation is made, members  
24 | of the Board may be permitted to question the person. ~~If necessary, the Board may conduct a~~  
25 | ~~public hearing and take evidence on a given item; all testimony under such circumstances shall~~

1 | ~~be under oath and members of the Board and opposing parties shall be permitted the right to~~  
2 | ~~cross-examine witnesses.~~

3 |           **56. Motions**

4 |           **a. Requirement of Motion.** Before any action may be taken by the Board, a  
5 | motion must be made by a member who has obtained the floor.

6 |           **b. Motions/How Made.** A member obtains the floor by addressing the Chair and  
7 | asking to be recognized. After the Chair has recognized the member, the member may state any  
8 | request for action in the form of a motion. After a motion is made, the Chair shall call for a  
9 | second. A motion may be seconded by a member saying, "I second the motion." A motion must  
10 | be seconded before any further action may take place. A motion that is not seconded cannot be  
11 | discussed or voted upon and fails. If a motion is not seconded, the Chair shall state that the  
12 | motion has failed for lack of a second. After a motion has been seconded, the Chair shall restate  
13 | the motion or refer to the motion as stated by the member and ask for debate on the motion.  
14 | Debate shall be limited to the motion on the floor. If a member wishes to debate the motion, the  
15 | member shall ask to be recognized by the Chair. During such debate, the Chair or a member  
16 | may question staff, the applicant, witness or member of the public for information. Unless  
17 | specifically requested by a member and approved by the Chair, public input from the floor shall  
18 | not be permitted.

19 |           **c. Parliamentary Motions.** While a motion is on the floor, the Chair may  
20 | entertain a motion to amend the pending motion or a procedural motion. There are two methods  
21 | to amend a motion on the floor:

22 |           **i. Friendly Amendment.** A friendly amendment may be made if the  
23 | maker of the motion consents to a change to the motion. If the maker of the motion agrees, the  
24 | motion is amended as requested, without a vote, and the Chair shall restate the amended motion.

1                           **ii. Unfriendly Amendment.** If the maker of the motion does not consent  
2 to adopt a suggested change to the motion, the amendment is deemed unfriendly or hostile. The  
3 Chair shall hold a vote to adopt the unfriendly amendment. If the vote is successful, the main  
4 motion has changed and the Chair shall restate the amended motion.

5                           **iii. Procedural Motion.** A procedural motion must be resolved by vote  
6 before the primary motion may be considered. A procedural motion is non-debatable, and is a  
7 motion to adjourn, a motion to table, a motion to limit, extend or end debate, or a motion to call  
8 the question. The Chair has discretion to permit or disallow a motion to call the question.

9                           **d. Ending Debate and Voting.** When debate has ended, the Chair shall restate  
10 the motion, as amended, ~~calling upon the Clerk, if necessary.~~ The Chair shall then call for the  
11 affirmative and then the negative votes and, if applicable, any abstentions. An abstention by a  
12 member otherwise qualified to vote is a non-vote, having neither an affirmative or negative  
13 effect. Each member's vote shall be recorded. The Chair shall then announce the vote. A simple  
14 majority of the members present shall be necessary to pass a motion, unless a given matter  
15 requires the affirmative votes of a specified number of members. If a vote results in a tie, the  
16 motion is defeated.

17                           **e. Motions to Reconsider.** A motion to reconsider may be made to reconsider  
18 any matter on which the Board has previously taken formal action. A motion to reconsider  
19 formal action taken during a meeting shall be in order only when it is made no later than the next  
20 meeting. A motion to reconsider shall be in order only when it is made by a member who voted  
21 with the prevailing side on the matter proposed for reconsideration; however, in the case of a tie  
22 vote resulting in a defeated motion, any member who voted may propose the matter for  
23 reconsideration. A vote on a motion to reconsider shall only be made when the matter is placed  
24 on the agenda for reconsideration. A motion to reconsider is not in order on any question that  
25 has been reconsidered previously. Votes on the following matters may not be reconsidered:

1 Motions to Adjourn, a Motion to Table, a Motion to Take a Recess, a Motion to Reconsider, a  
2 Motion to Approve the Agenda, a Motion to Amend the Rules of Order, and a Motion to  
3 Approve membership on any ~~board or~~ committee.

4 **f. Improper Motion.** The Chair cannot permit a motion that conflicts with these  
5 Rules. A motion to suspend these Rules shall be out of order.

6 **g. Question of Order.** A member of the Board may raise a question of order. A  
7 question of order may be invoked for the purpose of calling to the attention of the Chair that a  
8 rule of procedure is being violated. A question of order shall take precedence over any pending  
9 matter, even interrupting a speaker. The question of order, once raised, must be ruled upon by  
10 the Chair, who may seek the advice of others before rendering a decision. The ruling of the  
11 Chair on a question of order may be reversed only upon the affirmative vote of a majority of  
12 members present.

13 **h. Interpretation of Rules.** If there is a question raised concerning the meaning  
14 or proper interpretation of these rules or if a matter arises that is not addressed by these rules, the  
15 Chair shall rule on the issue and may seek the advice of others before rendering a decision.

16 ~~**6. Documents.** Prior to consideration of an item, the presenter of the item shall~~  
17 ~~designate documents or copies that are to be entered into the official record of the proceedings.~~  
18 ~~A copy of each document and exhibit so designated shall be provided to each member and to~~  
19 ~~staff well prior to the meeting. If documents are not presented prior to the meeting, the item may~~  
20 ~~be tabled. Original documents entered into the official record of proceedings will not be~~  
21 ~~returned. Any and all documents may not be larger than eleven inches by seventeen inches (11"~~  
22 ~~x 17"). A copy of any video or media presentation shown to the Board shall be provided and~~  
23 ~~shall become a part of the official record and filed with the Clerk. Once submitted, exhibits shall~~  
24 ~~remain in the custody of the Clerk. An exhibit not identified sequentially shall be marked for~~  
25 ~~identification by the Clerk.~~

1 | **77. Adjournment.** A meeting of the Board shall continue until terminated by motion  
2 | and order of adjournment. The Chair shall not arbitrarily adjourn a meeting. If adjournment is  
3 | moved and ordered, further business shall not be transacted.

4 | **PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_,**  
5 | **~~2008~~2015.**

6 | **BUCKMAN DIRECT DIVERSION BOARD:**

7 |  
8 | \_\_\_\_\_

9 | \_\_\_\_\_, Chairman

10 | **ATTEST:**

**FILED:**

11 |  
12 | \_\_\_\_\_

\_\_\_\_\_

13 | GERALDINE SALAZAR, COUNTY CLERK

YOLANDA Y. VIGIL, CITY CLERK

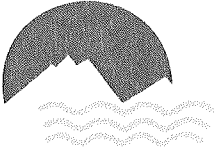
14 | **APPROVED AS TO FORM:**

15 |  
16 | \_\_\_\_\_

17 | BOARD COUNSEL







Buckman Direct Diversion

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*A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.*

## Memorandum

**Date:** February 5, 2015  
**To:** Buckman Direct Diversion Board  
**From:** Charles Vokes, BDD Facilities Manager *CV*  
**Subject:** Request for approval of expenditures related to the inspection and repair of the BDD diversion structure

---

### **Background:**

The Buckman Direct Diversion (BDD) staff has been investigating issues with the structure that diverts water from the Rio Grande. BDD has contacted the project engineering firms (CDM Smith and CH2M Hill) and is working with them to determine solutions to these issues. Throughout this process, the BDD has continued to treat water and there has been no degradation to the quality of the finished water as a result of these issues.

The BDD Diversion Structure is a submerged structure built into the river bank that allows diversion of raw water to the Buckman Regional Water Treatment Plant. It consists of five "cells" which are each covered with metal screens to prevent the intake of fish and large debris into the pumping stations. These are redundant cells as the BDD can divert approximately 5 million gallons per day through each one of the cells. Beginning in July, 2013, the BDD staff noticed that the system that removes excess sediment from the diverted river water was being subjected to unusually large amounts of sediment. The subsequent investigation revealed that the screen from cell 1 was missing from the structure. This was most likely the result of the flooding that had occurred on the river during July, 2013. It was also discovered that the screen from cell 5 was not properly seated. The cell 5 screen was reinstalled and an order was placed for spare screens to replace the screen on cell 1. The new screens were received in January, 2014 however, a new screen would not fit properly onto cell 1 and therefore, this cell was taken out of service.

Throughout 2014, the BDD staff continued to have issues with the sediment removal system. Further investigations of the original screens revealed structural damage to the screens that



appeared to be a result of the system used to clean the screens (air-burst system). It was also discovered that the screens had been modified on-sight at the time of the original installation. These modifications were not documented on the “as-built” plan drawings or mentioned in the staff training that occurred before and during the plant startup process.

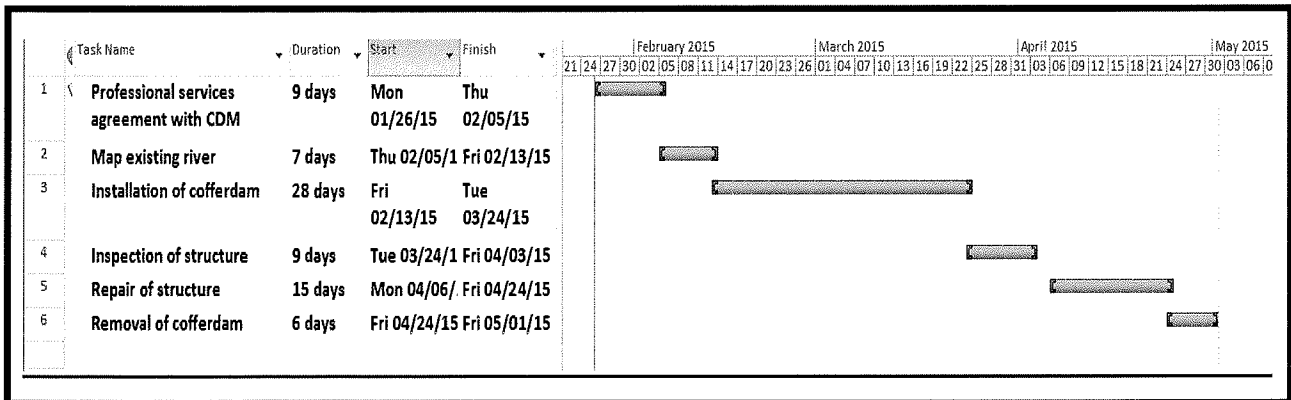
The BDD is a key component of the regional water supply. It is critical that the functionality of the BDD diversion structure be restored before the 2015 summer high demands. CDM Smith (who was originally hired as the “Board’s Engineer”) has offered to assist with inspection, diagnosis and coordination of necessary repairs to address operational problems encountered with the BDD Diversion Structure. The short-term goal is to meet the diversion requirements of the 2015 summer season. They propose to provide the services on a pro bono basis with the opportunity to recoup costs incurred dependent upon the resolution of responsibilities following the inspection. The BDD staff proposes this plan for the diversion structure:

1. Enlist CDM Smith as the “Board’s Engineer” to provide oversight of the inspection and repair of the diversion structure (No cost)
2. Enlist a firm to map the current river conditions before the installation of a cofferdam (Estimate \$20,000)
3. Install a cofferdam and pump the water from around the diversion structure (Estimate \$150,000)
4. (CDM) Perform an inspection of the diversion structure to determine and document issues (No cost)
5. (BDD staff) Repair as many cells as is possible to allow use of the structure during the 2015 summer season (Estimate \$12,000)
6. Return the BDD WTP to service
7. Determine the long term solutions to the diversion structure issues (Unknown cost)

<b>Estimated costs for Phase 1</b>	
Map current river conditions	\$20,000.00
Install cofferdam and pump water	\$150,000.00
Repair existing cells	\$12,000.00
Contingency (10%)	\$18,000.00
<b>Total</b>	<b>\$200,000.00</b>



## Project Timeline



### Recommendations:

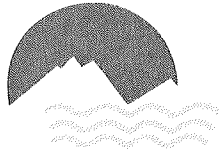
Staff submits the following recommendations for Board approval:

1. Approve negotiations for a professional services agreement (pro-bono) with CDM Smith to assist with inspection, diagnosis and coordination of necessary repairs to address operational problems encountered with the BDD Diversion Structure with the short-term goal of meeting diversion requirements of the 2015 season (**No cost**)
2. Approve negotiations for professional services agreement to map the current River conditions (**Estimate \$20,000**)
3. Approve the expenditures to have a cofferdam installed to allow the inspection and repair of the diversion structure (**Estimate \$150,000**)
4. Approve the expenditures to repair the existing structure (**Estimate \$12,000**)

Funds for these expenditures (\$200,000) will be made available in fund 07416 BDD Emergency Reserve fund upon Board approval.








Buckman Direct Diversion

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*A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.*

## Memorandum

**Date:** February 5, 2015  
**To:** Buckman Direct Diversion Board  
**From:** Mackie Romero, BDD Financial Manager   
**Subject:** BDD Emergency Reserve Fund

---

### **ITEM & ISSUE:**

This memo is to request approval to budget an estimated \$200,000 from the BDD Emergency Reserve Fund to make funds available for the BDD diversion structure.

### **BACKGROUND & SUMMARY:**

The Buckman Direct Diversion staff has been investigating issues with the structure that diverts water from the Rio Grande. This investigation will require BDD to procure services and/or goods to inspect and repair the BDD diversion structure.

The BDD feels it is appropriate to utilize the funds designated in the emergency reserve fund, until a resolution of responsibilities has been determined. An estimated \$200,000 has been recommended based on preliminary proposals. These funds will be made available via budgeted lines items, once the procurement process has been determined and completed.

Upon resolution the BDD will report back to the BDD Board and its partners, the actual amount of costs incurred and the method of replenishment to the BDD emergency reserve fund.

If additional funds are needed, a request will be submitted to the BDD Board for further approval.

### **ACTION REQUESTED:**

Staff recommends approval to budget an estimated \$200,000 from the BDD Emergency Reserve Fund.

Fund: 07416 Line Items: To be determined

Approved by BDDDB February 5, 2015

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Joseph M. Maestas, BDDDB Chairman

