



Buckman Direct Diversion

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

Memorandum

Date: For November 5, 2015 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: Amendment to the Joint Powers Agreement creating the Buckman Direct Diversion Board

ITEM AND ISSUE:

Consideration of amendment to the Joint Powers Agreement (“JPA”) to allow for an alternate citizen member and removing criteria for appointment of the citizen member upon expiration of their term.

BACKGROUND AND SUMMARY:

The JPA establishing the BDDDB, provides that a citizen member to the Board shall be appointed by a majority vote of the four other members for a two year term. The citizen member may be re-appointed without limit. That term extends for an additional sixty (60) days after expiration if a re-appointment or new appointment has not been made and if no appointment has been made, the Chief Judge of the First Judicial District appoints the citizen member. At its September Board meeting, the BDDDB directed the preparation of an amendment to the JPA to allow for the appointment of an alternate citizen member and to remove the provisions that the Chief District Judge of the First Judicial District appoint a successor citizen member should the Board fail to make the appointment sixty (60) days following the expiration of the citizen member’s term.

RECOMMENDATION:

It is recommended that the Board request approval of Amendment Number One to the JPA to the City of Santa Fe and Santa Fe County.



**AMENDMENT NO. 1
TO THE JOINT POWERS AGREEMENT BETWEEN
THE CITY OF SANTA FE AND SANTA FE COUNTY
GOVERNING THE BUCKMAN DIRECT DIVERSION PROJECT**

THIS AMENDMENT NO. 1 is made and entered by and between the City of Santa Fe (“City”) and Santa Fe County (“County”), effective as of the date it is approved by the New Mexico Department of Finance and Administration.

RECITALS

WHEREAS, the City and County entered into a Joint Powers Agreement dated March 5, 2005 (“JPA”), to provide for the establishment and management of the Buckman Direct Diversion Board, “BDDB;”

WHEREAS, the City and County agree that the JPA should be amended to provide for an alternate citizen member of the BDDB who will serve on the BDDB in the absence of the citizen member; and

WHEREAS, the City and County agree that the JPA should also be amended to remove the provision that the Chief Judge of the First Judicial District appoint the citizen member upon sixty (60) days following the expiration of the citizen member’s term.

NOW THEREFORE, it is agreed by the City and County that the JPA be amended as follows:

1. Section 5, **Appointment of BDD Board Members and Chairperson**, is amended by the deletion of the third full paragraph in its entirety and replacement with the following:

One citizen member and one alternate citizen member shall be appointed by a majority vote of the four other members each for a two-year term and each who may be re-appointed without limit. Prior to the end of any term, the citizen member, or alternate citizen member, may only be removed by unanimous action of the four other members. In the event that the citizen member’s term, or alternate citizen member’s term, expires but a citizen member, or alternate citizen member, has not been appointed for the following term, the citizen member, and/or alternate citizen member, shall continue to serve as a member or alternate member of the BDD Board until a replacement has been appointed by the Board.

2. All other provisions of the JPA not specifically amended by this Amendment Number 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal this day and year set forth below.

CITY OF SANTA FE:

JAVIER GONZALES, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY BRENNAN, CITY ATTORNEY

SANTA FE COUNTY:

ROBERT ANAYA, CHAIR, BOARD OF
COUNTY COMMISSIONERS

ATTEST:

GERALDINE SALAZAR, COUNTY
CLERK

APPROVED AS TO FORM:

GREG SHAFFER, COUNTY ATTORNEY

**This AMENDMENT HAS BEEN
APPROVED BY:**

State of New Mexico
Department of Finance Administration

By:

Date:



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

Memorandum

Date: For November 5, 2015 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: **Process for Appointment of Citizen Member and Possible Alternate Citizen Member to the BDDB**

ITEM AND ISSUE:

Discussion and possible action on the process for appointment of the citizen member and possible alternate citizen member to the Board

BACKGROUND AND SUMMARY:

The Joint Powers Agreement (“JPA”) establishing the Buckman Direct Diversion Board provides for the appointment of a citizen member to the Board by a majority vote of the four other members of the Board. The term of the citizen member is two years and the current citizen member’s term expires on January 7, 2016. Ms. Bokum may continue to serve for sixty (60) days beyond the expiration of her term under the current JPA.

The Board has determined that it wishes an amendment to the JPA to provide for an alternate citizen member. The amendment must be passed by the respective governing bodies and approved by the Department of Finance & Administration. If the amendment is passed and approved, it would be prudent to advertise for the citizen member and alternate citizen member at the same time.

The Board discussed the optimal role of the alternate citizen member and the process for selecting the citizen member at its September board meeting. The direction provided was that the request for applicants for both members include a description of the duties and a description of expectations for both the citizen member and the alternate member. The alternate member would be encouraged to review materials, attend meetings as frequently as possible and participate in discussions but not have a vote unless the regular citizen member is absent. This will align with the Board’s rules for alternate elected official members.



RECOMMENDATION:

It is recommended that the Board issue an announcement for a citizen member and alternate citizen member once the amendment to the JPA is approved. The Board's Public Relations Coordinator can provide input regarding, and implement, the publication of the announcement.

A committee will review the submissions, interview the finalists and recommend candidates to the Board. The committee can consist of one or two members of the Board, the Facilities Manager and another staff member if desired.



Buckman Direct Diversion

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

Memorandum

Date: October 26, 2015
To: Buckman Direct Diversion Board
From: Charles Vokes, BDD Facilities Manager *CV*
Subject: Request to purchase four (4) Raw Water Pumps

ITEM AND ISSUE:

Request for authorization to enter into contracts in an amount not to exceed \$500,000.00 for four (4) raw water pumps utilizing funds from the Major Equipment Repair and Replacement Fund.

BACKGROUND AND SUMMARY:

Currently, there are four (4) raw water pumps that are out of service at the Buckman Direct Diversion Booster Stations 1A (2 pumps) and 2A (2 pumps). Each of the stations is equipped with four (4) pumps. Due to the heavy sediment in the raw water being pumped, there have been numerous repairs to all of the BDD raw water pumps. These four pumps can no longer be effectively repaired. The engineering firm of Deere and Ault is currently researching the best pump solutions and will be making recommendations this week. They have estimated a not to exceed amount of \$500,000 for the replacement of these pumps.

RECOMMENDATION:

It is recommended that the Board approve this expenditure and authorize the Facilities Manager to execute the necessary contracts to purchase the replacement pumps. Depending on which pump system is recommended, the lead time can be anywhere from six (6) to twelve (12) months, so it is critical that this process be expedited.

<u>Fund Source</u>	<u>Business Unit/Line Item/Description</u>	<u>Amount</u>
FY 2015/2016	07415.570550.930124	\$500,000

Funding is available in the BDD Major Repair and Replacement Fund. Funds will be budgeted based on the awarded amounts.





Buckman Direct Diversion

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

Memorandum

Date: For November 5, 2015 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: **Consideration of Extension to the Term of the PMFSA**

ITEM AND ISSUE:

Discussion and possible action to extend the term of the Project Management and Fiscal Services Agreement (PMFSA) from December 1, 2015 to June 30, 2016.

BACKGROUND AND SUMMARY:

The Staff Advisory Group recommended that the Buckman Direct Diversion Board select the City of Santa Fe to continue to serve as the Support Entity for the BDDDB and enter into a new agreement for support services with a term through June 30, 2020. The Board adopted the Staff Advisory Group's recommendation.

Negotiations are ongoing regarding the terms of the new Support Entity Agreement. The agreement will not be finalized prior to the expiration of the term of the PMFSA which is December 1, 2015. It is therefore recommended that the term of the PMFSA be extended through June 30, 2016 when the new agreement with the City of Santa Fe will be effective.

RECOMMENDATION:

It is recommended that the Board approve Amendment No. 4 to the PMFSA, extending the term of the agreement to June 30, 2016.



**AMENDMENT NO. 4
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 4 to the Project Management and Fiscal Services Agreement (hereinafter referred to as “Amendment No. 4”) is entered into by and between the Buckman Direct Diversion Project Board (the “BDD Board”), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe (“City”) and Santa Fe County (“County”), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe (“Project Manager”).

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the “Agreement”) for the Buckman Direct Diversion Project (“Project”) on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager’s monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager’s monetary authority from \$30,000 to \$50,000; and pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is exclusive of gross receipts tax; and

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 4 to extend the term of the Agreement.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 4, the BDD Board and the Project Manager agree as follows:

1. **ARTICLE 2, TERM, EFFECTIVE DATE**, is amended to extend the term of the Agreement from December 1, 2015 to June 30, 2016.
2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 4 to be executed and delivered by its duly authorized representatives as of the date specified below the signatory for the Sangre de Cristo Water Division of the City of Santa Fe.

BUCKMAN DIRECT DIVERSION BOARD

**THE SANGRE DE CRISTO WATER
DIVISION OF THE CITY OF SANTA FE**

By: _____
Liz Stefanics, BDDDB Chair

By: _____
Javier Gonzales,
Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Geraldine Salazar, Santa Fe County Clerk
File Date: _____

City Attorney
Date: _____

APPROVED AS TO FORM:

Nancy R. Long, BDDDB Counsel

Yolanda Vigil, City of Santa Fe Clerk
Date: _____

APPROVED:

Oscar Rodriguez, City Finance Director

Business Unit/Line Item



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

Memorandum

Date: For November 5, 2015 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: Approval of PSA for Litigation Services in Conjunction with RFP # '16/12/P

ITEM AND ISSUE:

Request consideration and approval of a PSA with Sheehan & Sheehan, PA. to serve as litigation counsel for the Buckman Direct Diversion Board.

BACKGROUND AND SUMMARY:

On September 23, 2015, the Buckman Direct Diversion Board (BDDDB) released its second Request for Proposals (RFP) to procure litigation services related to Diversion Structure Issues. In response to the RFP, five (5) proposals were received. On October 19, 2015, a selection committee consisting of City of Santa Fe staff, Santa Fe County staff and Buckman Direct Diversion staff, met to evaluate the proposals received. The selection committee then conducted interviews of two firms on October 19, 2015. Following the interviews, the Committee recommended Sheehan & Sheehan, P.A. for consideration by the Board. If a final contract is approved, Sheehan & Sheehan, P.A. will serve as litigation counsel for the BDDDB.

The Scope of Services consists of:

- Serve as legal counsel to the Board at the direction of the Board and/or management;
- Represent the BDDDB in litigation related to design/inspection/construction issues at the BDD Project;
- Evaluation of the issues at the BDD Project, evaluation of the operative documents pertaining to the construction of the Project, retaining and/or working with experts regarding liability and damage issues, evaluation of case strength and advice regarding insurance and bonding;



- Attend Board meetings, as needed, and relevant meetings of the Governing Body of the City, the Board of County Commissioners, and BDD Project staff meetings to provide legal advice and updates related to the BDD Project defects and legal proceedings; and
- Brief Board Project Partners' officials and staff members, as directed by the Board.

RECOMMENDATION:

It is recommended that the Board approve the award of RFP # '16/12/P to Sheehan & Sheehan, P.A., with the final terms of a Professional Services Agreement to be negotiated and finalized.

**BUCKMAN DIRECT DIVERSION BOARD
LEGAL SERVICES AGREEMENT
WITH
SHEEHAN & SHEEHAN, P.A.**

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

SCOPE OF SERVICES

The Scope of Services is contained in Exhibit “A” attached hereto.

1. STANDARD OF PERFORMANCE; LICENSES

A. Contractor must possess the personnel, experience and knowledge necessary to perform the Scope of Services described above. Contractor must be licensed to practice law and must obtain and maintain all applicable business and professional license and registration required by law.

B. 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.

2. COMPENSATION

A. The compensation to be paid under this Agreement is contained in the fee schedule attached hereto as Exhibit B.

B. Contractor shall be responsible for making the payment of New Mexico gross receipts taxes to 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 Contractor will be made within thirty (30) days after the date of billing.

3. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDDB 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 BDDDB to Contractor. The BDDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

4. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDDB'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.

5. TERMINATION

A. This Agreement may be terminated by the BDDDB upon 10 days written notice to Contractor. In the event of such termination:

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

2. 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.

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

A. Contractor and its subcontractors, agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB 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. Contractor shall comply with the City of Santa Fe Minimum Wage Ordinance, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

7. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

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

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 BDDB. Contractor shall not further subcontract any portion of the services to be performed under this Agreement (other than as contained in Contractor's proposal for services) without the prior written approval of the BDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, the City of Santa Fe and Santa Fe County, 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, Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. Contractor agrees not to purport to bind the BDDB to any obligation not assumed herein by the BDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (ii) obtained BDDB 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 BDDDB.

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

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

1. 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)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence	\$2,000,000

2. Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, 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 BDDDB that reflects coverage for any automobile [any auto].

3. **Professional Liability.** For Contractor and all of 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 \$2,000,000 per claim and \$2,000,000 annual aggregate. 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, Contractors policy shall not contain exclusions for those activities.

4. **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, 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	\$1,000,000	Each Accident
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Bodily Injury by Disease	\$1,000,000	Each Employee
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Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDB, City of Santa Fe and Santa Fe County of Santa Fe 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 BDDB 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 Contractor's insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDB 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 BDDB. The BDDB 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 Contractor.

G. Specific Provisions Required.

1. Each policy shall expressly provide, and an endorsement shall be submitted to the BDDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDDB, the City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives.

2. All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDDB, the City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDDB.

- a. Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDDB's exposure to loss.
- b. Before performing any Professional Services, Contractor shall provide the BDDDB with all Certificates of Insurance accompanied with all endorsements.
- c. The BDDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self insured retentions to determine if they are acceptable to the BDDDB. The BDDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDDB in excess of that required by this Agreement without overhead, profit, or any other markup.
- d. Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

General Indemnification. To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDDB, the City of Santa Fe, Santa Fe County 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 Contractor's performance or non-performance under this Agreement as well as the performance or non-performance of 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 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 BDDDB and 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. Contractor shall conform with and participate in the Document Control policies of the BDDB 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 BDDB and the City of Santa Fe shall have the right to audit the billing both before and after payment to Contractor. Payment under this Agreement shall not foreclose the right of the BDDB 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 BDDB. In any action, suit or legal dispute arising from this Agreement, 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: Charles Vokes, Facilities Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R.Long, BDDDB Counsel
Long, Komer & Associates
P.O. Box 50968
Santa Fe, NM 87502-5098

CONTRACTOR: David P. Gorman
Sheehan & Sheehan, P.A.
6001 Indian School Road NE, Suite 400
P.O. Box 271
Albuquerque, NM 87103-0271

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.

BUCKMAN DIRECT DIVERSION BOARD

CONTRACTOR:

By: _____
Liz Stefanics, BDDDB Chair

Signature: _____

Printed Name: David P. Gorman

Date: _____

Title: _____

Date: _____

ATTEST

NM Taxation & Revenue
CRS # _____

Geraldine Salazar, County Clerk

City of Santa Fe Business
Registration # _____

APPROVED AS TO FORM

Nancy R. Long, BDDDB Counsel

APPROVED

Oscar S. Rodriguez, City Finance Director

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform the following services:

- Represent the Board in litigation related to design, inspection, manufacturing and construction issues;
- Evaluate the design-build and construction issues at the BDD Project, evaluate the operative documents pertaining to the construction of the Project, retain and/or work with experts regarding potential contractual, warranty, insurance and tort liability and damage issues, evaluate case strength and advise regarding insurance and bonding;
- Attend Board meetings, as needed, and relevant meetings of the Governing Body of the City, the Board of County Commissioners, and BDD Project staff meetings to provide legal advice and updates related to the BDD Project defects and legal proceedings; and
- Brief Board Project Partners' officials and staff members, as directed by the Board

Exhibit B

Schedule of Hourly Rates and Costs

Hourly Rates

Attorney/Shareholder	\$225.00 per hour
Associate Attorney	\$200.00 per hour
Paralegal	\$ 90.00 per hour
Law Clerk	\$ 90.00 per hour
Data Entry Specialist	\$ 25.00 per horn

New Mexico Gross Receipts Tax will be charged in addition to the foregoing hourly rates.

Reimbursement of Indirect Costs and Travel

- Filing fees, service and statutory fees shall be charged at actual rates charged by court, process server or administrative agency.
- Computerized legal research (e.g., LEXIS, WESTLAW and other computerized legal research) shall be charged at the actual rate charged to Contractor for computer time, number of pages printed, number of searches, etc.
- Photocopies shall be charged at \$0.10 per page. For large copying projects where confidentiality is not paramount, services of an outside copying service may be used and charges billed at actual cost.
- Postage for mailings which cost more than \$1.00 (e.g., Federal Express or similar express mail delivery charges and multiple mailings) shall be charged at actual cost.
- Miscellaneous (e.g. special supplies) shall be charged at actual cost.
- The BDDDB shall reimburse the Contractor at actual reasonable costs for travel expenses related to the performance of this contract. Travel expenses will be limited to economy class airfare, car rental, lodging and meals.