MEMORANDUM

TO: Buckman Direct Diversion Board

FROM: Nancy Long

DATE: For Board Meeting of November 1, 2012

RE: **Amendment No. 3 to the Project Management and Fiscal Services Agreement**

The Project Management and Fiscal Services Agreement ("PMFSA") between the Buckman Direct Diversion Board and the City of Santa Fe has been amended on two previous occasions. In both instances, the amendments were made to increase the Project Manager's monetary authority to enter into contracts to keep pace with the monetary authority amount allowed by the City of Santa Fe. The Project Manager's current monetary authority is $50,000 consistent with City of Santa Fe policy and that authority was provided by an amendment approved in 2009. The amendment however is not clear as to whether gross receipts tax is included in the contract amount to determine the total contract value. The City of Santa Fe's policy is to exclude gross receipts tax from the value of the contract and it seems prudent to allow the Project Manager's authority to be consistent with that policy. Therefore, we are presenting to you for approval, Amendment No. 3 to the PMFSA which specifies that any applicable gross receipts tax to be paid under the contract is not included in computing whether the Project Manager has authority to enter into the contract. Once approved by this Board, the Amendment will then proceed through the City process for approval.

It is recommended that the Board approve Amendment No. 3 to the Project Management and Fiscal Services Agreement.

AMENDMENT NO. 3
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT

BUCKMAN DIRECT DIVERSION PROJECT

This Amendment No. 3 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 3") 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 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 City, the County and Las Campanas 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, approved by the BDD Board on July 10, 2008, to increase the Project Manager's monetary authority to enter into contracts and expenditures for the project from $20,000 to $30,000;

WHEREAS, the Agreement was amended pursuant to Amendment No. 2 to the Agreement, approved by the BDD Board on September 3, 2009, to increase the Project Manager's monetary authority to enter into contracts and expenditures for the project from $30,000 to $50,000; and

WHEREAS, the BDD Board and the Project Manager desire to enter into Amendment No. 3 to clarify that the Project Manager's monetary authority excludes any applicable gross receipts tax.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 3, the BDD Board and the Project Manager agree as follows:

1. **Article 3, Section C,** third paragraph, is amended by the addition of the underscored language:

> Contracts and expenditures in amounts of $50,000 or less, <u>excluding any applicable gross receipts tax to be paid</u>, may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures over $50,000 if it is not practical to submit the contracts or expenditures to the BDD Board for approval prior to the transaction. In that event, the BDD Board shall be informed of the emergency procurement in excess of $50,000 at the next scheduled meeting.

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. 3 to be executed and delivered by its duly authorized representatives as of the date specified below.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Councilor Chris Calvert
Chairperson

ATTEST:

_____
Valerie Espinoza, County Clerk
File Date: _____

APPROVED AS TO FORM:

_____
Nancy R. Long, BDDB Counsel

APPROVED:

_____
Dr. Melville L. Morgan
City Finance Director

_____
Business Unit/Line Item

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

By: _____
David Coss
Mayor
Date: _____

APPROVED AS TO FORM:

_____
City Attorney
Date: _____

ATTEST:

_____
City of Santa Fe Clerk
Date: _____