Buckman Direct Diversion Project

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

MEMO

TO: BDD BOARD

FROM: Rick Carpenter, BDD Project Manager

SUBJECT: Discussion and Request for Approval of Contract Between BDD Board and GeoSystems, Inc., for Management and Oversight of BDD Habitat Restoration Implementation Plan

DATE: August 28, 2012

BACKGROUND:

The BDD Project is required to perform certain mitigation measures pursuant to the federally approved environmental impact statement, and in particular, the Project is required to restore important and valuable riparian habitat in the vicinity of the BDD intake/diversion structure on the east bank of the Rio Grande near the terminus of Buckman Road. Pursuant to a competitive bid process, GeoSystems, Inc. was selected as the preferred bidder to provide specialized management and oversight of habitat restoration that will be performed by other contractors. Specifically, GeoSystems, Inc., will perform baseline vegetation monitoring, perform effectiveness monitoring in the riverside habitat area near the BDD facilities, oversee vegetation removal of non-natives and construction associated with habitat restoration, install several shallow groundwater monitoring wells, and provide general technical support.

RECOMMENDATION:

Staff requests approval of the attached contract with GeoSystems for management and oversight of the required habitat restoration efforts as outlined in the approved Implementation Plan.

BUCKMAN DIRECT DIVERSION BOARD

PROFESSIONAL SERVICES AGREEMENT

WITH

GeoSystems, Inc

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BOARD (the "BDDB") and GeoSystems, Inc, (the "GeoSystems or Contractor"). The date of this Agreement shall be the date when it is executed by the BDDB Facilities Manager.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the BDD:

A. Contractor will perform baseline vegetation monitoring, perform effectiveness monitoring in the riverside habitat area near the BDD facilities, oversee vegetation removal of non-natives and construction associated with habitat restoration, install several shallow groundwater monitoring wells, and provide general technical support.

Task 1. Baseline Vegetation Monitoring: GeoSystems Analysis will develop and implement a baseline vegetation monitoring plan for the 25-acre upland mitigation area. The purpose of the monitoring is to quantitatively describe the plant species composition and aerial cover, as well as ground cover at the initiation of restoration treatments. GeoSystems will deliver a technical memo that describes the study design, field methods and results from Year 1 monitoring.

Task 2. Effectiveness Monitoring in the Riverside Habitat Area: GeoSystems Analysis will implement effectiveness monitoring in the 7-acre riverside habitat mitigation area. Effectiveness monitoring will focus on evaluating health of planted vegetation and effectiveness of herbicide treatments applied to non-native trees during winter forestry treatments. Health assessments of planted vegetation will involve frequent site visits to inspect plant vigor and evaluating groundwater and soil moisture conditions. Herbicide treatment effectiveness will evaluate level of herbicide control via cut-stump treatments on Russian olive, saltcedar and Siberian elm trees, as well as girdling treatments on large Siberian elms.

GeoSystems will communicate regularly and coordinate closely with the BDD Project Manager on adaptive management strategies, as needed, to maximize plant survival and herbicide effectiveness.

Task 3. Restoration Construction Oversight: GeoSystems Analysis will serve as client field representative responsible for managing and overseeing daily restoration implementation activities. This tasks includes: marking equipment staging areas, staking swale and backwater treatment area perimeters, and flagging vegetation as appropriate; coordinating with contractors on all aspects of the project and ensuring that they follow treatment specifications described in their contracts; coordinating and managing revegetation treatments in the 7-acre riverside habitat area, including coordinating volunteers and/or student labor; assisting with plant installation, as appropriate. Daily activities and accomplishments will be documented and photographed, and weekly email summaries will be submitted to the BDD Project Manager. A final implementation summary report will be submitted to the BDD Project Manager in June 2013.
Oversight of revegetation in the upland habitat area is not included in this task as the planned upland seeding treatment is currently scheduled for July 2013. If timing of upland seeding is changed to occur prior to June 30, 2013, this task will be modified accordingly.

Task 4. Install Groundwater Monitoring Wells: GeoSystems Analysis will purchase, install and instrument three shallow groundwater monitoring wells (piezometers) in the riverside habitat area. Piezometer installation will occur in late winter 2013. Piezometer data will be downloaded monthly through the June 2013.

Task 5. General Technical Support: GeoSystems will provide up to 80 hours of general technical support services associated with miscellaneous project implementation activities. Foreseeable activities include meetings, conference calls, and on-site field visits with BDD staff, federal agencies, and others as appropriate for: 1) discussing signage regarding construction activities and restricted public access; 2) identifying appropriate staging areas for each step of the construction sequence; 3) identifying and selecting qualified implementation contractors; 4) obtaining the NPDES-SWPPP Construction General Permit (CGP) from the Environmental Protection Agency; 5) evaluating cost-saving opportunities for coordinating with adjacent habitat restoration efforts by the New Mexico Wildlife Federation; and 6) maintaining close communication and coordination on the implementation schedule, including addressing unanticipated issues that may arise.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The BDDB shall pay to the Contractor in full payment for services rendered, a sum not to exceed eighty one thousand three hundred ninety five dollars ($81,395), plus applicable gross receipts taxes, as outlined in Exhibit "A" attached hereto.

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

C. Invoices for services will be made on a monthly basis. Payment shall be made upon receipt and approval by the BDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made by the BDDB, 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 BDDB Facilities Manager and terminate on June 30, 2013, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

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

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

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

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

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

A. The Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. The 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 subcontractors retained by Contractor in the performance of the services under 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 BDDB.

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 BDDB. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB.

11. RELEASE

The 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. The Contractor agrees not to purport to bind the BDDB to any obligation

not assumed herein by the BDDB 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: (a) 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; (b) obtained Board approval of each company or companies as required below; and (c) 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:

(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)	$5,000,000
Products/Completed Operations Aggregate Limit	$5,000,000
Personal Injury Limit	$5,000,000
Each Occurrence	$5,000.000

(2) 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 $5 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

(3) 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 $5,000,000 per claim and $5,000,000 annual aggregate. The Contractor shall ensure both that: (1) the

policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) 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.

(4) 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	$5,000,000	Each Accident
Bodily Injury by Disease	$5,000,000	Each Employee
Bodily Injury by Disease	$5,000,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, the City of Santa Fe, and Santa Fe County 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. 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 Contractors' insurance carriers will not agree to this notice requirement, the Contractor will provide written notice to the Board within four working days of Contractors 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 "VII" 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.

(1) 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, the City of Santa Fe and 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 Board, 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 Board.

(3) 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.

(4) Before performing any Professional Services, the Contractor shall provide the Board with all Certificates of Insurance accompanied with all endorsements.

(5) 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.

(6) The Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Board, the City of Santa Fe, and 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 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.

B. INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct 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 omission unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

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

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB 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 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 and 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 the 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, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

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

BUCKMAN DIRECT DIVERSION BOARD:

Buckman Direct Diversion Project
341 Caja del Rio,
Santa Fe, New Mexico 87507
BDD Facilities Manager

Contractor:

GeoSystems, Inc.
3393 N. Dodge Blvd.
Tucson, AZ 85716

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Chris Calvert
Chairperson
Date: _____

ATTEST:

_____
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

Nancy Long
Nancy Long, BDDB Counsel

APPROVED:

_____
City Finance Director

72410.510200
Business Unit/Line Item

ATTEST:

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

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS #86-0836946
City of Santa Fe Business
Registration #_12-00114045

TASK	COST
1. Baseline Vegetation Monitoring	$7,495
2. Effectiveness Monitoring in Riverside Area	$10,259
3. Restoration Construction Oversight	$47,825
4. Install Groundwater Monitoring Wells	$5,711
5. General Technical Support	$10,105
TOTAL COST (excluding NMGRT)	**$81,395**

SCOPE OF WORK

Task 1. Baseline Vegetation Monitoring: GeoSystems Analysis will develop and implement a baseline vegetation monitoring plan for the 25-acre upland mitigation area. The purpose of the monitoring is to quantitatively describe the plant species composition and aerial cover, as well as ground cover at the initiation of restoration treatments. GeoSystems will deliver a technical memo that describes the study design, field methods and results from Year 1 monitoring.

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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 Geosystems Inc.

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $85,395.00

Termination Date: _____

☐ Approved by BDDB Date: Pending

☑ or by Project Manager Date: _____

Contract is for: Mititagtion

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: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ _____

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

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

RFP# _____ Date: _____

RFQ ☑ _____ Date: August 24, 2012

Sole Source ☐ _____ Date: _____

Other _____

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

7 **Funding Source:** _____ **BU/Line Item:** 7280000

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: