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.

Date: **May 24, 2013**

To: **Buckman Direct Diversion Board**

From: **Erika Schwender, BDD Interim Facilities Manager**

Re: **Request Approval to Renewal the Professional Services Agreement (PSA) #11-0465 with Chavez Security in the amount not to exceed $159,900.00 plus NMGRT for Security Services at BDD Facilities.**

Issue and Item:

Staff requests approval to extend the current Agreement with Chavez Security one (1) additional year per Section 5 of the Agreement:

"This Agreement shall have the option to be renewed for up to two (2) additional years with the mutual agreement of both parties."

Background:

In June 2012, the Board approved a contract with Chavez Security in the amount not to exceed $159,900. The current contract expires June 30, 2013. Today's requested action allows the Board to procure security services one (1) additional year through June 30, 2014.

Chavez Security will continue to conduct patrols along the Buckman Road corridor. The Scope of Services includes:

- Report suspicious activity, security breaches, and unusual findings to the BRWTP Control Room;
- Check locked doors, fencing and gates at the raw water buildings to ensure they are locked and have not been intruded upon;
- Provide on-call service during evening, midnight, and early morning hours to accompany BDD Operators to the river and provide security protection as requested
- Submit reports at the end of each shift to the BDD Office outlining any investigative services and observations.

Evaluation:

Chavez provides armed patrols of an 11-mile unimproved road over remote, rugged terrain. Given the special vehicle mileage and fuel requirements, Chavez's hourly rate of $23.72 is deemed competitive and equitable.

Additional justification for extending the contract is:

- The Vendor will continue to perform under the 2010 calendar year price schedule. The competitive hourly rate covers Security Guard wages, vehicle and fuel costs, communication expenses, and related overhead expenses. The contract contains no fuel adjustment factor.

- BDD staff has devoted a significant amount of time coordinating specific requirements unique to BDD patrols, including after-hours communications, remote area staff escort protocols, and activist group public relations expectations. Given this amount of "up-front" effort, it would be advantageous to leverage this contract extension for continued efficiency and effectiveness in the best public interest.

Recommendation:

Staff recommends approval of a Professional Services Agreement with Chavez Security in an amount not to exceed $159,900.00 plus NMGRT.

Financial Implications:

Initial Cost:	$159,900.00 plus NMGRT
Long Term Cost:	N/A
Savings:	Cost avoidance related to issuing a new RFP

Fund Source	Business Unit / Line Item	Amount
FY 2013/2014	Prof. Services / #7280000.510300.740010	$159,900.00 plus NMGRT

CSI

May 28, 2013

Erika Schwender
BDD Interim Facility Manager
email ebschwender@santafenm.gov
505-955-4504

Erika,

As part of our original contract for Security Services for the Buckman Direct Diversion, Chavez Security is *NOT* requesting any yearly increase under this contract. Although, CSI has experienced an increase in its costs (fuel, insurances & vehicle repairs) we are committed in not having to pass that on to BDD. Our price remains flats.

Thank You
Peso Chavez, Owner-President

Simple Security Solutions

CHAVEZ SECURITY INC
T 505.988.2663 - F 505.473.1513
1925 Aspen Drive • Suite 703 • Santa Fe • New Mexico • 87505
info@chavezsecurity.com
www.ChavezSecurity.com

DRAFT

BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT

AMENDMENT No. 2 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated May 18, 2011 , and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board (the "BDDB") and Chavez Security (the "Contractor"). The date of this Amendment shall be effective as of the date it is executed by the BDDB.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide professional security services to the Board.

B. Pursuant to Article 19 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Board and the Contractor agree as follows:

1. COMPENSATION.

Article 3 of the Agreement is amended to increase the amount of compensation by a total of one hundred fifty nine thousand, nine hundred dollars ($159,900) exclusive of New Mexico Gross Receipts Tax.

2. TERM.

The term of the Agreement is amended to extend the Agreement termination date from July 1, 2013 to June 30, 2014.

DRAFT

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains, and shall remain, in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.2 to the Professional Services Agreement.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Commissioner Kathy Holian,
Chairperson

Date: _____

ATTEST:

_____
Geraldine Salazar, County Clerk

CONTRACTOR:

By: _____
Name:
Title: _____

Date: _____

NM Taxation & Revenue
CRS #02948554001
City of Santa Fe Business
Registration #

APPROVED AS TO FORM:

_____
Nancy R. Long, BDDB Counsel

APPROVED:

_____
Marcos A. Tapia, City Finance Director

ATTEST:

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

728000

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 Chavez Security

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $164,355.88

Termination Date: June 30, 2012

☑ Approved by BDDB Date: May 1, 2012

☐ or by Project Manager Date:

Contract is for: Security Services

Amendment # 211-0465 to the Original Contract# 10-0067

Increase/(Decrease) Amount $ 159900

Extend Termination Date to: June 30, 2014

☑ Approved by BDDB Date: Pending

☐ or by Project Manager Date:

Amendment is for: Insurance

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

Amount $ 164,355.88 of original Contract# 11-0465 Termination Date: 06/30/2012
Reason: security services

Amount $ 159,900.00 amendment # 1 Termination Date: 06/30/2013
Reason: Term and Comp

Amount $ amendment # Termination Date:
Reason:

Amount $ amendment # Termination Date:
Reason:

Total of Original Contract plus all amendments: $ 484,156

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

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

RFP# 11/04/P Date: October 28, 2010

RFQ ☐ _____ Date: _____

Sole Source ☑ _____ Date: _____

Other _____

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

7 **Funding Source:** _____ **BU/Line Item:** 72800

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:

DRAFT

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH CHAVEZ SECURITY

This Amendment No. 1 (the "Amendment") to the Professional Services Agreement, dated May 18, 2011, and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board (the "BDDB") and Chavez Security (the "Contractor"). The date of this Amendment shall be effective as of the date it is executed by the BDDB.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide professional legal services to the Board.

B. Pursuant to Article 19 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Board and the Contractor agree as follows:

1. COMPENSATION

Article 3 of the Agreement is amended to increase the amount of compensation by a total of one hundred fifty nine thousand, nine hundred dollars ($159,900) exclusive of New Mexico Gross Receipts Tax.

2. TERM.

The term of the Agreement is amended to extend the Agreement termination date from July 1, 2012 to June 30, 2013.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains, and shall remain, in full force and effect, in accordance with its terms.

DRAFT

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Professional Services Agreement.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Chris Calvert
Chairperson
Date: _____

ATTEST:

_____
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

_____
BDDB Legal Counsel

APPROVED:

_____
Dr. Melville Morgan, Finance Director

7280000.510300.740010
Business Unit/Line Item

ATTEST:

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

CONTRACTOR:
CHAVEZ SECURITY

By: _____
Name: Peso Chavez
Title: President/Partner
Date: _____

NM Taxation & Revenue
CRS #02-234197-00-8

City of Santa Fe Business
Registration #10-00094401

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 Chavez Security

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $159,000.00

Termination Date: June 30, 2012

☑ Approved by BDDB Date: May 1, 2012

☐ or by Project Manager Date: _____

Contract is for: Legal Services

Amendment # 1 to the Original Contract# 11-0465

Increase/(Decrease) Amount $ 159,900

Extend Termination Date to: June 30 2013

☐ Approved by BDDB Date: _____

☐ or by Facilities Manager Date: _____

Amendment is for: Security Services

---

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

Amount $ 164,355.88 of original Contract# 11-0465 Termination Date 06/30/2012

Reason: Security Services

Amount $ 159,900.00 amendment # 1 Termination Date: 06/30/2013

Reason: Security Services

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# 11/04/P Date: October 28, 2010

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

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

7 **Funding Source:** Professional Services **BU/Line Item:** 7280000/510300/740010

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:** Robert Mulvey

Phone # -4502

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:

ITEM # 11-0465

BUCKMAN DIRECT DIVERSION BOARD

PROFESSIONAL SERVICES AGREEMENT
WITH
CHAVEZ SECURITY

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDB") and Chavez Security (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 Contractor shall provide the following uniformed security services:

A. One (1) uniformed security officer in a patrol unit shall patrol the Buckman Regional Water Treatment facilities including: the raw water lift station, booster station (1A)/sediment removal facility, booster station (2A) and the infrastructure between the Buckman Regional Water Treatment Plant and the diversion structure.

B. Services shall be provided 24 hours a day, 365 days a year, except for Mondays-Fridays during the hours of 8AM and 5PM.

C. The security officer shall provide the following services:

i. Conduct patrols as to the areas described in paragraph A above;

ii. Contact the Buckman Regional Water Treatment Plant control room (505-955-4505) with any suspicious activity, security breaches or unusual findings and immediately report such situations to the operator on duty.

iii. Utilize the toggle verification to check locked doors at the raw water lift station and buildings at 1A and 2A.

iv. Check fencing and gates surrounding the buildings at 1A and 2A, and the raw water lift station buildings to ensure they are locked.

v. Provide on-call service during the evening and/or early morning hours to accompany facility operators to the river in an effort to provide security protection while sampling is conducted.

vi. Provide written reports at the end of each shift to the facility control room outlining any investigative services that were conducted, an inventory of persons or activities on facility property and details of whether suspicious activity was deterred or if fire/police were notified for unauthorized entry or emergency situations that were observed.

vii. Contractor shall supply armed guard services as directed and at locations specified by the Buckman Direct Diversion Facility Manager.

2. STANDARD OF PERFORMANCE; LICENSES

A. At no time shall the Contractor assign an employee to provide services under the terms and conditions of this Agreement who has been convicted of a felony or a crime of moral turpitude.

B. At no time shall the Contractor or its employees assigned under the terms and conditions of this Agreement; accept fees or other monetary compensation of any kind from patrons or invitees for services rendered or under this Agreement.

C. Contractor shall assign a contract manager who shall be responsible for the direct supervision of Contractor's employees assigned to perform services under this Agreement who shall be available at reasonable times to consult with the Source of Supply Operations Manager or designated BDDB representative regarding the services rendered or services to be rendered under this Agreement.

D. Contractor shall submit to the BDDB, a complete background investigation report for all personnel assigned to the City under the terms of this Agreement, seven (7) days prior to each assignment. The background investigation report shall include, but not be limited to:

(1) Verification of criminal history and background.

(2) Confirmation of previous employment.

(3) Verification of all application information.

(4) Verification of application filed with the Bureau of Private Investigations.

E. The BDDB reserves the right to fingerprint and photograph all personnel assigned under the terms of this Agreement. If the Contractor receives an unsuitable report on any of its employees assigned to this Agreement subsequent to the commencement of service, or the BDDB finds a Contractor's employee unsuitable or unfit for assigned duties, the employee will not be allowed to continue work, or be assigned to work, under the terms of this Agreement

F. Contractor shall assign personnel who have the same comparable training levels and the following qualifications:

(1) the Contractor shall have available for review by the BDDB the following items and or documents: (a) Contractor must be registered, be in good standing, and maintain a current license with the New Mexico Bureau of Private Investigators and Polygraphers in compliance with Section 61-27-1 et. seq. NMSA 1978. In addition, Contractor shall comply with required federal, state and local licensing requirements. Contractor shall report the potential for license suspension, revocation, or limitation to the BDDB within ten (10) days of notice from the State, County or City Licensing Boards; (b) Contractor shall assign only personnel that are licensed by the New Mexico Bureau of Private Investigators and Polygraphers in compliance with Section 61-27-1 et. seq. NMSA 1978; (c) Contractor and its employees shall abide by the Code Of Ethics as prescribed in the New Mexico Bureau of Private Investigators and Polygraphers in compliance with Section 61-27-1 et. seq. NMSA 1978; (d) Contractor's

employees shall have the ability to read and write English, particularly in emergency situations requiring clear and definitive articulation to assure confidence, control and safety to those involved; (e) Contractor's employees shall possess the ability to pass an annual physical fitness examination, including but not limited to drug and alcohol testing, by a licensed physician; (f) Contractor's employees shall possess cardio pulmonary resuscitation (CPR) and First Aid certification as set forth by the American Red Cross or an equivalent association; (g) Contractor's employees shall possess a valid appropriate driver's license; (h) be current and fully qualified to carry a firearm when required to, when and if requested by Source of Supply Operations Manager;

G. Contractor shall deliver to the BDDB, no less than 24 hours prior to an employee being assigned to their post, a Letter of Affidavit for each employee assigned or subsequently assigned under the terms of this Agreement, certifying that the employee has met all of the hiring and training requirements. The Letter of Affidavit shall include but not be limited to:

(1) Outline of security experience

(2) Outline of classroom training to include but not be limited to courses, dates, hours, and any certification(s).

(3) Outline of related training to include but not be limited to courses, dates, hours, and certifications(s).

(4) Verification of all employment application information.

(5) Verification that Contractor's employee assigned under the terms of this Agreement has received and reviewed all post orders.

(6) Verification of license application to Bureau of Private Investigators.

H. Contractor shall supply all standard uniforms and assure that they are regularly cleaned and maintained.

I. Contractor shall supply and maintain the following equipment:

(1) Contractor shall supply all vehicles, weather gear, leather gear, flashlights, pagers, cellular phones, radios for and other equipment as is mutually agreed upon between the BDDB and the Contractor, in order to meet the requirements of this Agreement. The Contractor will also provide the necessary radio equipment as mutually agreed upon by both parties;

(2) Contractor will be required to repair or replace, at its cost, any equipment that is damaged or lost through abuse or neglect by the Contractor or its employees.

J. Contractor shall be required to submit all incident reports, logs or ledgers to the BDDB or its designated representatives on a daily basis, and additionally upon request.

K. Contractor shall have a dispatch center answering its phones 24 hours every day. A contract answering service or answering machine is not acceptable. Contractor shall respond to all telephone inquiries in a timely manner and immediately in the event of an urgent matter requiring attention.

L. Contractor shall be required to replace or repair at its cost any equipment owned by the BDDB (without limitation, communication equipment, fire equipment, safety equipment, locks, keys, access control systems, etc.) damaged or lost through abuse or neglect by the Contractor or its employees. Use of the BDDB's telephone system for personal use is prohibited, and the cost of such usage will either be billed to the Contractor or deducted from the monthly payment, at the discretion of the BDDB.

3. COMPENSATION

A. Payment shall be made for services actually rendered at an hourly rate of twenty three dollars and 72/100 ($23.72) per hour for each Security Officer I, including the vehicle and all equipment for each Security Officer I. The BDDB shall pay to the Contractor for services rendered, a sum not to exceed one hundred sixty four thousand three hundred fifty eight dollars and 88/100 ($164.355.88) plus applicable gross receipts taxes during the one year term of this Agreement. Compensation to be paid for any renewal term shall be agreed upon by the parties.

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

C. Payment shall be made upon receipt 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, 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 no later than June 30, 2012, unless terminated sooner pursuant to Article 6 below. This Agreement shall have the option to be renewed for up to two (2) additional years with the mutual agreement of both parties.

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:

(1) 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.

(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 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 subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Board.

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:

(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)	$1,000,000
Products/Completed Operations Aggregate Limit	$1,000,000
Personal Injury Limit	$1,000,000
Each Occurrence	$1,000.000

(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 $1 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 $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.

(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	$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 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 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, City of Santa Fe, County of Santa Fe, Las Campanas, LP 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, 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.

(a) 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.

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

(c) 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.

(d) 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 BDDB 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 BDDB 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 no waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Trot 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:
Robert Mulvey
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R. Long, Esq.
BDDB Independent Counsel
Long, Pound & Komer, P.A.
2200 Brothers Road
P. O. Box 5098
Santa Fe, NM 87502-5098

CONTRACTOR: Chavez Security Inc.
Attn: Peso Chavez
1925 Aspen Drive, Suite 703
Santa Fe, NM 87505

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 o 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]