



Buckman Direct Diversion Project

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

DATE: November 18, 2014

TO: Buckman Direct Diversion Board

FROM: Stephanie Lopez, Office Manager

ITEM AND ISSUE:

2015 Fiscal Services and Audit Committee Schedule

BACKGROUND AND SUMMARY:

Currently, the FSAC meetings are generally held on the Tuesday before the Buckman Direct Diversion Board meetings. The FSAC meetings are held in the City Councilor's Conference Room at City Hall on the 1st floor. The following is the proposed 2015 schedule for the Fiscal Services and Audit Committee meetings:

<u>FSAC</u>	<u>BDDDB</u>	<u>BCC</u>
February 3 rd	February 5 th	February 10 th & 24 th
March 3 rd	March 5 th	March 10 th & 31 st
March 31 st	April 2 nd	April 14 th & 28 th
May 5 th	May 7 th	May 12 th & 26 th
June 2 nd	June 4 th	June 9 th & 30 th
June 30 th	July 2 nd	July 14 th & 28 th
August 4 th	August 6 th	August 11 th & 25 th
September 1 st	September 3 rd	September 8 th & 29 th
September 29 th	October 1 st	October 13 th & 27 th
November 3 rd	November 5 th	November 10 th & 24 th
December 1 st	December 3 rd	December 8 th and 29 th

This schedule was drafted so as not to conflict with Santa Fe County Commission meetings and miscellaneous City of Santa Fe committee meetings and City Council meetings.

RECOMMENDED ACTION:

For your approval.



2015 BCC Meeting and Packet Deadline schedule

Packet material due @ 1:30	BCC Meeting
12/31	1/13
1/14	1/27
1/28	2/10
2/11	2/24
2/25	3/10
3/11	3/31
4/1	4/14
4/15	4/28
4/29	5/12
5/13	5/26
5/27	6/9
6/10	6/30
7/1	7/14
7/15	7/28
7/29	8/11
8/12	8/25
8/26	9/8
9/9	9/29
9/30	10/13
10/14	10/27
10/28	11/10
11/11	11/24
11/25	12/8
12/9	12/29

Packet Material is to be provided to the CMO by 1:30 pm with all required signatures (legal, finance, etc.)



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Memorandum

Date: December 4, 2014
To: Buckman Direct Diversion Board
From: Mackie Romero, BDD Financial Manager *MR*
Subject: 1st Quarter Financial Statements

Purpose:

This memo is intended to update the BDD Board and its partners on our 1st Quarter financial position as of September 30, 2014.

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

- Beginning Budget – FY14/15 Adopted Budget.
- Expended – Expenses for services and/or goods received as of 09/30/2014.
- Encumbrances – Executed purchase orders for goods and services.
- Projected – Projected salary and benefits as currently staffed, pending requisitions and or contracts to be executed within the fiscal year.
- Available Balance – Represents vacancy savings and uncommitted budget balance as of 09/30/2014.

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

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

Fixed & Variable Costs - Expenses billed and/or pending billing to partners for services and/or goods received as of September 30, 2014.

Outstanding Accounts Receivables - Represents the dollar amount owed by each partner as of September 30, 2014 for the monthly reimbursement bills.

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

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

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





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1st Quarter Financial Statement – Operations

(Unaudited 07/01/2014-9/30/2014)

Budget Overview

CATEGORY	BEGINNING BUDGET	EXPENDED 1st Quarter	ENCUMB Thru 09/30/2014	PROJECTED EXPEND	TOTAL	BALANCE AVAILABLE
Salaries & Benefits	3,344,594	584,500	-	2,419,877	3,004,377	340,217
Electricity	1,378,000	316,346	1,061,654	-	1,378,000	-
Chemicals	265,000	53,699	-	200,000	253,699	11,301
Solids	60,800	13,045	-	47,000	60,045	755
Materials & Supplies	503,329	28,113	264,282	148,462	440,857	62,472
Other Operating Costs	908,277	195,517	419,008	256,412	870,937	37,340
Fiscal Agent Fees	64,600	16,150	-	48,450	64,600	-
TOTAL	6,524,600	1,207,370	1,685,502	3,120,201	6,072,515	452,085

90-Day Cash Reserve Credit

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

Cash Balance

	Balance
Cash at 9/30/2014	558,183

Fixed Cost (billed) - Operations

	1st Quarter	July	August	September
City of Santa Fe	604,944	126,192	252,432	226,320
Santa Fe County	201,041	42,088	83,802	75,150
Las Campanas	16,702	3,144	7,405	6,152
	822,686	171,425	343,639	307,622

Variable Cost (Pending billing) - Operations

	1st Quarter	July	August	September
Variable Expenses	384,684	124,749	123,114	136,821
	384,684	124,749	123,114	136,821

*Outstanding Accounts Receivable

	Balance
City of Santa Fe	-
Santa Fe County	-
Las Campanas	8,760
	8,760



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1st Quarter Financial Statement – Other Funds (Cumulative)
(Unaudited 07/01/2013-3/31/2014)

Pre-Bills – Major Repair & Emergency Reserve Funds

	Total	City of SF	SF County	Las Campanas
Major Repair Fund	102,951	72,960	26,540	3,451
	102,951	72,960	26,540	3,451

Financial Position

	Emergency Reserve	Major Repair
Balance at 06/30/2014	2,000,000	823,624
*1st Quarter Billing	-	102,951
Total	2,000,000	926,575
Target Balance	2,000,000	1,235,428
Remaining Balance	-	308,853

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

***Outstanding Accounts Receivable**

	Balance
City of Santa Fe	-
Santa Fe County	-
Las Campanas	1,740
	1,740



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Memorandum

Date: December 4, 2014
To: Buckman Direct Diversion Board *CV*
From: Charles Vokes, BDD Facility Manager
Subject: Chavez Security Contract

ITEM:

Request approval of PSA #xx-xxxx with Chavez Security in the amount of \$69,166.79 plus NMGRT for security services through June 30, 2015.

BACKGROUND:

On September 24, 2014 the BDD released a Request for Bid for security services at the Buckman Direct Diversion. On October 16, 2014, five (5) security firms submitted bids, and of the five (5) firms the bid was awarded to Chavez Security.

EVALUATION:

Chavez Security will 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.



RECOMMENDED ACTION:

Staff recommends approval of PSA # xx-xxxx with Chavez Security in the amount of \$69,166.79 plus NMGRT for security service through June 30, 2015. Funding is available in the 2014/2015 budgeted fiscal year under BU/LI Prof. Services/#7280000.510300.910010.

ATTACHMENTS:

- Bid Tabulation Sheet
- PSA # xx-xxxx

**BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT
WITH
CHAVEZ SECURITY INC.**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Chavez Security, Inc. ("Contractor"). The date of this Agreement shall be the date when it is executed by the Chair of the BDDDB.

1. SCOPE OF SERVICES:

The Contractor shall provide the service of physical prevention and protection to persons and property for the BDDDB at the Buckman Direct Diversion facilities. Contractor shall assign a contract manager who shall be responsible for the direct supervision of Contractor's employees assigned to the BDDDB and shall be available at reasonable times to consult with the BDD Facilities Manager or designated representative regarding the services rendered or services to be rendered under this Agreement. A description of the required services is as follows:

A. BDDDB Facilities:

Contractor shall provide One (1) Level III uniformed security officer, as defined pursuant to 16.48.2.19 D. NMAC, in a clearly marked patrol unit (unit defined as a high clearance four wheel drive vehicle) to patrol the Buckman Regional Water Treatment facilities including: the raw water lift station, booster station (1A) /sediment removal facility, booster station (2A) including solar facility and the infrastructure between the Buckman Regional Water Treatment Plant and the diversion structure. Services shall be provided 24 hours a day, 365 days a year.

The security officer shall provide the following services:

- (1) Conduct patrols as to the areas described above.
- (2) 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.

- (3) Immediately notify the fire department, police department and manager/operators on duty at the BDDB of incidents, acts of violence, fire/emergency.
- (4) Utilize the toggle verification (physically operate the door handle) to check locked doors at the raw water lift station and buildings at 1A and 2A.
- (5) Check fencing and gates surrounding the buildings at the raw water lift station buildings, 1A and 2A including the solar facility to ensure they are locked.
- (6) 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.
- (7) Provide response on an on-call basis to incidents as directed by the operator on duty.
- (8) 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.
- (9) Contractor shall supply Level III armed or unarmed security services as directed and at locations specified by the BDD Facilities Manager.

2. STANDARD OF PERFORMANCE; LICENSES

At no time shall 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 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 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.

E. The BDDDB reserves the right to fingerprint and photograph all personnel assigned under the terms of this Agreement. If Contractor receives an unsuitable report on any of its employees assigned to this Agreement subsequent to the commencement of service, or the BDDDB 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 as outlined below and shall have all documents available for review by the BDDDB:

- 1) Contractor shall comply with required federal, state and local licensing requirements. Contractor shall report the potential for license suspension, revocation, or limitation to the BDDDB within ten (10) days of notice from the State, County or City Licensing authorities.
- 2) 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;
- 3) 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;
- 4) 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;
- 5) Contractor's employees shall possess a valid appropriate driver's license
- 6) Contractor's employees shall be current and fully qualified to carry a firearm when required to.

G. Contractor shall deliver to the BDDDB, 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.

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 a vehicle for each shift that allows travel through dirt roads that could be snow packed or washed out by weather. Unit shall be a clearly marked security unit with emergency lights.
- (2) Contractor shall supply all weather gear, leather gear, flashlights, pagers, cellular phones, radios for and other equipment as is mutually agreed upon between the BDDDB and Contractor, in order to meet the requirements of this Agreement. Contractor will also provide the necessary cell phone or radio equipment as mutually agreed upon by both parties;
- (3) Contractor will be required to repair or replace, at its cost, any equipment that is damaged or lost through abuse or neglect by Contractor or its employees.

J. Contractor shall be required to submit all incident reports, logs or ledgers to the BDDDB 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 BDDDB (without limitation, communication equipment, fire equipment, safety equipment, locks, keys, access control systems, etc.) damaged or lost through abuse or neglect by Contractor or its employees. Use of the BDDDB's telephone system for personal use is prohibited,

and the cost of such usage will either be billed to 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 as described below for each Security Officer III, including the vehicle and all equipment for each Security Officer III.

Hourly Rate for Regular hours up to 5496 hours at \$20.89 per hour;
Hourly Rate for Holiday hours up to 120 hours at \$20.89 per hour;
Emergency Call In Hourly Rate up to 60 hours at \$20.89 per hour

The BDDB shall pay to the Contractor for services rendered, a sum not to exceed sixty nine thousand one hundred sixty-six dollars and 79/100's (\$69,166.79), 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. 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 Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDDB's Chair and terminate no later than June 30, 2015, unless terminated sooner pursuant to Article 6 below. This Agreement may be renewed for up to three (3) additional twelve (12) month terms (plus four (4) additional months) for no more than four (4) years, with the mutual agreement of both parties.

6. TERMINATION

A. This Agreement may be terminated by the BDDDB upon 30 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 compensation is not based upon hourly rates for services rendered, the BDDDB shall pay 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. Contractor and its agents and employees are independent contractors performing professional services for the BDDDB and are not employees of the BDDDB. Contractor, and its agents

and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDDB vehicles, or any other benefits afforded to employees of the BDDDB 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, 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 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 BDDDB.

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

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 BDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDB'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)	\$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 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 BDDb 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, 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. 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	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDDB, City of Santa Fe, 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 BDDDB 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 BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, City of Santa Fe, County of Santa Fe 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 BDDB, 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 BDDB.

- (a) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDB's exposure to loss.
- (b) Before performing any Professional Services, Contractor shall provide the BDDB with all Certificates of Insurance accompanied with all endorsements.
- (c) The BDDB 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 BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB 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 BDDB, 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 BDDDB or the City of Santa Fe. 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 BDDDB 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 BDDDB 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 BDDDB. 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:

BDDDB:	Charles Vokes BDD Facilities Manager Buckman Direct Diversion 801 San Mateo Santa Fe, NM 87504
With a copy to:	Nancy R. Long, Esq. BDDDB Independent Counsel Long, Pound & Komer, P.A. 2200 Brothers Road P. O. Box 5098 Santa Fe, NM 87502-5098
CONTRACTOR:	Peso Chavez Chavez Security Inc. 1925 Aspen Dr. 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 of the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

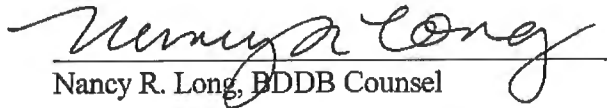
***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]***

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, BDDDB Chair

Date: _____

APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel

APPROVED:

Teresita Garcia,
Interim City Finance Director

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

Chavez Security Inc.

By: _____

Name: Peso Chavez

Title: _____

Date: _____

NM Taxation & Revenue
CRS # 02-234197-00-8
City of Santa Fe Business
Registration # 1400094401



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: \$69,166.79

Termination Date: June 30, 2015

☒ Approved by BDDB Date: pending

☐ or by Project Manager Date: _____

Contract is for: Security Services

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for: _____

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

☐ Inclusive of GRT

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

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: term comp

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# 15/06/B Date: October 16, 2014

RFQ ☐ _____ Date: _____

Sole Source ☒ _____ Date: _____

Other _____

6 Procurement History: 7 months of contract thru FY 14/15
example: (First year of 4 year contract)

7 Funding Source: _____ **BU/Line Item:** 7280000.510310.740010

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: 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:



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

Memorandum

Date: November 20, 2014
To: BDD Board
From: Nancy R. Long, *NRL*
BDDB Counsel
Subject: Memorandum of Agreement between the Buckman Direct Diversion Board and San Ildefonso Pueblo

ITEM AND ISSUE:

Memorandum of Agreement ("MOA") between the BDDB and San Ildefonso Pueblo for entering Pueblo lands for testing and sampling purposes.

BACKGROUND AND SUMMARY:

We have been working with San Ildefonso Pueblo to establish the ability of Board staff or consultants to enter Pueblo lands for testing and sampling purposes. San Ildefonso Pueblo has developed a fairly standard access agreement that includes a series of referenced protocols that address: access to Pueblo lands; protecting confidential Pueblo information; and inadvertent discoveries of Native American human remains and cultural items.

The MOA will give the BDDB the ability to access lands within the Pueblo boundaries for sampling and possible establishment of temporary or permanent sampling facilities. The MOA allows for the protocols to be amended as desirable or necessary without having to negotiate and enter into a new or amended MOA. This is a process that the Pueblo reports has worked well with other entities such as the New Mexico Environment Department.

It is recommended that the Board approve the MOA with San Ildefonso Pueblo.



Memorandum of Agreement between the Buckman Direct Diversion Board and the Pueblo de San Ildefonso

A. Introduction

This Memorandum of Agreement (MOA) is made between the Pueblo de San Ildefonso (Pueblo), a federally recognized Indian Tribe, and the Buckman Direct Diversion Board ("BDDDB") (henceforth, "Parties" or "Party" for the singular). The purpose of this MOA is to document the cooperation between the Parties and establish and document procedures for access to Pueblo Lands and information, data sharing, sampling, and responding to inadvertent discoveries, and to formalize a process for government-to-government relations between the Parties. This MOA shall be used by the Parties to facilitate the Pueblo's involvement in the BDDDB's activities on Pueblo Lands, including, but not limited to, monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project) that may affect water quality in the Rio Grande River or groundwater for the region.

The intent of this MOA is to facilitate a cooperative effort regarding BDDDB's activities on Pueblo Lands, including but not limited to, environmental surveillance, within the exterior boundaries of the Pueblo (Pueblo Lands). The purpose of this MOA is to provide a procedure by which the Pueblo and BDDDB will coordinate and carry out BDDDB activities, including but not limited to the BDDDB's sampling program. The MOA addresses only those responsibilities and functions that must be coordinated.

B. Project Description

The BDDDB desires to conduct environmental monitoring and sampling on Pueblo Lands. Samples of water and soil materials are needed to evaluate the potential impacts environmental changes on Pueblo and LANL/DOE lands have on the BDDDB facility operations. The parties shall develop an annual sampling plan by March 1 of each year. The most recent agreed upon sampling plan will remain in effect if a new plan is not agreed upon by March 1 of each year. This sampling plan is included as Appendix A to this MOA. Generally, the annual sampling plan shall contain a schedule of sampling locations and, to the extent practicable, sampling criteria and constituents for which the samples will be tested, reporting procedures, and disclosure of whether the sampling will involve ground disturbing activities, to ensure adequate information is collected and duplicative efforts are minimized. The amount of sampling performed each year will be dependent on available funding to support sampling.

Changes to the sampling plan, attached as Appendix A to this MOA, may be made by mutual agreement of the parties without formal modification of this MOA.

While the sampling program is of immediate interest to the BDDDB, the Parties anticipate that the BDDDB may desire to conduct other activities beyond the scope of a sampling program, such as flow measurements, collaborative studies, educational outreach, construct or place permanent or

temporary sampling equipment etc. In such an event, this MOA is designed to apply to any other activities that the BDDDB desires to conduct on Pueblo Lands. This MOA facilitates the Pueblo's involvement in the BDDDB's activities and anticipates the BDDDB's need to access Pueblo Lands, as well as to protect and share confidential information held by the Pueblo or by other federal agencies. This MOA sets forth responsibilities of the Pueblo and the BDDDB concerning requests to access Pueblo Lands and data sensitive to the Pueblo to help facilitate the BDDDB's activities.

C. Nature of Agreement

This MOA serves as the underlying Agreement between the Parties concerning the Pueblo's involvement in the BDDDB's activities on Pueblo Lands. In carrying out any BDDDB projects, the Parties anticipate that the BDDDB and its contractors will need 1) access to the Pueblo's Lands, 2) access to confidential data (as defined in the Protocol for Protecting Confidential Pueblo Information) that may already exist within the Pueblo's or other agencies' resources, and 3) access to the Pueblo's Lands for purposes of environmental surveillance or data gathering. This MOA requires the BDDDB and its contractors to protect confidential Pueblo information, comply with Pueblo written laws to the extent they do not conflict with applicable federal law, and obtain the different types of access permits designed specifically for each type of access request.

The BDDDB and its contractors are required to comply with the terms and conditions of each type of access permit as provided therein. The Parties also anticipate that the activities of the BDDDB and its contractors may result in "inadvertent discoveries" of cultural resources or human remains as new data is gathered or when performing ground-disturbing activities on the Pueblo's Lands. This MOA requires the BDDDB and its contractors to follow the protocols between the parties applicable to inadvertent discoveries of Native American human remains and cultural items. The Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items will apply to all ground disturbing activities permits.

1) Protocols

Protocols for confidentiality, access to Pueblo Lands, data collection, and inadvertent discoveries of Native American human remains and cultural items are developed to implement this MOA. They may be revised, amended, or supplemented without amending this MOA.

Additional protocols may be developed and agreed to between the Pueblo and the BDDDB staff as needed to implement this MOA.

2) Additional Subsidiary Agreements

Additional specific agreements, including, but not limited to the sampling plan or identification of any other project that the BDDDB desires to carry out on Pueblo Lands, may be executed in relation to the BDDDB's proposed activities on Pueblo Lands. Any such additional agreements will be subject to the terms of this MOA, and the implementing protocols.

The Parties expect that permits will be issued by the Pueblo for several purposes including, but not limited to: (1) Access permit for observation purposes only; (2) Access permit for ground

disturbing activities, which will refer to the protocols for treatment of inadvertent discoveries; and (3) Permit for data sharing with the BDDDB by Pueblo and other federal agencies. The Pueblo may request other federal agencies to share data relating to the Pueblo if the BDDDB requests assistance in the Project. BDDDB will make certain that the Pueblo receives copies of all data shared.

Confidentiality requirements in this MOA, protocols, and other agreements between the Pueblo and the BDDDB shall apply to all permits issued by the Pueblo, consistent with the Protocol for Protecting Confidential Pueblo Information.

The BDDDB and the Pueblo will each designate a representative and a backup representative to act as the point of contact for this MOA. Either Party may change its point of contact at any time by providing written notice to the other Party. The following points of contact are designated by each of the Parties:

3) Pueblo Designees

The Pueblo's Primary Point of Contact shall be its Department of Environment and Cultural Protection Director or his designee. The Pueblo's backup point of contact shall be the Natural Resources Department Director.

4) BDDDB Designees

The BDDDB's Primary Point of Contact shall be the BDD Facilities Manager, and the BDDDB's backup point of contact shall be the BDD Regulatory Compliance Officer or his/her designee.

D. Limitations

1. This Agreement does not create any independent right of action subject to judicial review.
2. Nothing in this MOA shall be deemed to affect the BDDDB's obligations under the New Mexico Inspection of Public Records Act or the BDDDB's ability to assert exemptions with regard to information requests.
3. This MOA shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this MOA be construed to alter, amend, repeal, interpret, or modify the Pueblo's sovereignty or sovereign immunity, any treaty rights, or other rights of the Pueblo or preempt, modify, or limit the exercise of any such rights.
4. Nothing in this MOA shall be applied to authorize the taking of species listed pursuant to the Endangered Species Act of 1973, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

E. Governing Law and Jurisdiction

This MOA shall be construed in accordance with the laws of the United States and Pueblo law.

The Project will be performed in part within the exterior boundaries of the Pueblo.

The Pueblo has the right as a government to protect its Pueblo from conduct and activities that threatens or directly affects its political integrity, economic security, health and welfare. In order to protect the Pueblo's cultural resources, any unlawful damage, destruction, disturbance or defacement of any archeological resource located on the Pueblo will be considered a violation of Section 6 of the Archeological Resources Protection Act ("ARPA"), 16 U.S.C. 470aa-mm, and may result in fines up to \$20,000 and up to 2 years in prison. Any violation of ARPA will be referred to the United States Department of Justice, along with all supporting documentation related to the violation. The Parties understand and agree that the provisions of ARPA apply to all BDDDB employees and contractors in the conduct of their activities on the Pueblo under this MOA.

Violation of any terms of any permit issued by the Pueblo to implement this MOA shall be considered a trespass which may result in immediate exclusion from the Pueblo of the individual who engaged in actions that violate either the permit or ARPA, or both.

F. Acknowledgement and Permit

Each person entering Pueblo land in order to implement this MOA must sign an acknowledgment of BDDDB's obligations under this MOA, and carry the permit issued by the Pueblo at all times while on Pueblo Lands. The Pueblo will provide the acknowledgment form for signature to accompany each permit application, and shall issue permits needed to implement this MOA.

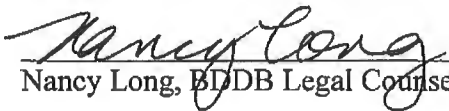
The Parties hereto have executed this MOA as of the latest date written below.

G. Amendment/Termination

This MOA may be modified or amended by written agreement between the Chair of the BDDDB and Pueblo Governor, and this MOA may be terminated by any party upon 30 days written notice to the other. This MOA is effective when signed by all parties and will remain in effect until terminated as described herein.

Buckman Direct Diversion Board

Approved to Form



Nancy Long, BDDDB Legal Counsel

Date

Joseph Maestas, BDDDB Chair

Date

Pueblo de San Ildefonso

Terry Aguilar, Governor

Date

APPENDIX A

PLAN FOR WATER QUALITY SAMPLING AT SAN ILDEFONSO PUEBLO BY BUCKMAN DIRECT DIVERSION BOARD

As agreed between San Ildefonso Pueblo (Pueblo) and the Buckman Direct Diversion Board (BDDDB), the sampling described below will be coordinated and performed by BDDDB and Pueblo designated personnel. Appropriate coordination will occur before sampling events.

This document is updated annually and attached as Appendix A to the Memorandum of Agreement (dated 2014) between the Pueblo and the BDDDB. As agreed between the Pueblo and the BDDDB, the sampling described below will be coordinated and performed by BDDDB and Pueblo-designated personnel.

For locations with automated samplers, the BDDDB will notify the San Ildefonso DECP by phone and email at any time when access is needed to a station for sample retrieval or equipment maintenance. BDDDB personnel may access only the immediate area around these locations.

BDDDB Sampling at San Ildefonso Pueblo (2015)

Surface Water				
Sampling Location	Rad	Metals	Inorganics	Organics
Rio Grande at Otowi	E	E	E	E
Los Alamos near Otowi Bridge (E110)	E	E	E	E

Other potential sampling or field work

If any additional sampling and field work becomes necessary, such activities will be coordinated with the Pueblo on a case-by-case basis. Personnel from San Ildefonso DECP will be notified a minimum of two weeks prior to conducting sampling activities to allow sufficient time for coordinating field activities.

Rad = ^{137}Cs , $^{238,239,240}\text{Pu}$, tritium, $^{234,235,238}\text{U}$, total U, gross gamma, ^{241}Am , ^{90}Sr , gross alpha and gross beta

Metals = Ag, Al, As, B, Ba, Be, Bi, Cd, Co, Cr, Cs, Cu, Fe, Ga, Hg, Li, Mn, Mo, Ni, P, Pb, Rb, Re, Sb, Se, Si, Sn, Sr, Te, Th, Ti, Tl, U, V, W, Y, Zn, Zr

Inorganics = SiO_2 , Ca, Mg, K, Na, Cl, F, CO_3 , HCO_3 , $\text{PO}_4\text{-P}$, SO_4 , $\text{NO}_3\text{-N}$, CN, TDS, pH, Conductance, Hardness, TSS, SSC, iodate, bromate, chlorate and perchlorate

E = Event Based Sampling

Protocol for Access to Pueblo Lands

This Protocol supplements the Memorandum of Agreement (MOA) between Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy(DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This Protocol applies to all offices, personnel, agents, consultants and contractors of BDDDB that desire access to Pueblo Lands. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable protocols. For example, if the requested access also involves obtaining data located on Pueblo Lands or performing ground disturbing activities on Pueblo Lands, then BDDDB agrees to comply with the *Protocol for Protecting Confidential Pueblo Information* and *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items*, respectively.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Procedure for Obtaining Access

BDDDB (except as noted in Section 3), its contractors, consultants or agents, seeking to access Pueblo Lands for any reason must obtain an Access Permit issued by the Pueblo de San Ildefonso. The following procedure will be followed for such requests for Access Permits:

- a. The BDDDB Primary Contact Person (or Backup Contact Person), as identified in Section C(4) of the MOA, shall contact the Pueblo de San Ildefonso Primary Contact Person and Backup Contact Person with a written request a minimum of two weeks before the actual requested date of access to Pueblo Lands or actual date of access to Pueblo Lands, subject to the exceptions in Section 3. The written request may be made on a permit application form provided by the Pueblo and shall be accompanied by a signed Acknowledgement Form from each individual requesting access to Pueblo Lands. The Acknowledgement Form, provided by the Pueblo, provides that each individual requesting access to Pueblo Lands understands BDDDB's obligations under the MOA, that each individual's access is

conditioned on complying with the terms of the permit and federal law, and that any violation of such permit or federal law may result in exclusion and/or prosecution. The requests and Acknowledgement Form may be submitted via electronic mail. At a minimum, the request shall specify the names of the BDDB personnel or contractors, consultants, or agents requesting access, the purpose for accessing Pueblo Lands, a general description of the scope of work to be performed on Pueblo Lands, and a general description of the location(s) of the visit to Pueblo Lands.

- b. The Pueblo Primary Contact Person (or Backup Contact Person), as identified in Section C(3) of the MOA, shall approve or deny the access request within two business days after receipt of the written request and Acknowledgement Form(s). If the request is denied, the reason(s) for doing so shall be stated so that the Pueblo's concern can be addressed in a renewed request. Permits will be processed through the Pueblo Natural Resources Department Director. Based on the request, the Pueblo may grant the following:

- i. Access Permit for Observation Purposes Only.* If the request is approved and neither involves the physical retrieval of data from Pueblo Lands nor the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit to the BDDB Primary Contact Person that describes in detail the terms and conditions, if any, to be applied to the access.
- ii. Access Permit/or Ground Disturbing Activities.* If the request is approved and involves the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit, consistent with the *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items* and the *Protocol for Protecting Confidential Pueblo Information*.
- iii. Permitfor Data Sharing.* If the request is approved and involves the physical retrieval of field, observational, or chemical analysis data from Pueblo offices or Pueblo Lands, or the collection of samples, except those connected to storm or unforeseen events then the Pueblo Primary Contact Person shall issue an Access Permit, consistent with the *Protocol for Protecting Confidential Pueblo Information*.

3. Exceptions to Access Policy

- a. The following BDDB key staff positions may seek access to Pueblo Lands under an exception to Section 2 of this Protocol for specific administrative reasons discussed at subsection (c) below:
 - i. BDD Water Analyst
 - ii. BDD Automation Security Specialist Administrator
 - iii. BDD Instrumentations Control Hardware & Software Administrator
- b. The appropriate individuals named above may request an exception to the permit application requirement by calling the Pueblo Point of Contact for immediate access to the affected location. The notification shall identify the type of exception requested (pursuant to subsection (c) below), provide a general description of the scope of work to be performed on Pueblo Lands, and provide a general description of the location(s)

of the visit to or through Pueblo Lands. BDDDB shall follow-up with a written notification (electronic mail is acceptable) to the Pueblo Primary Contact Person **and** Backup Contact Person.

- c. The exception to the permit application requirement applies only for the following reasons:
 - i. Safety of BDDDB employees, contractors, agents or consultants. An exception under this provision may be granted to BDDDB to respond to an emergency that involves injury to any project field staff member that requires medical assistance.
 - ii. Health and Welfare of the Pueblo. An exception under this provision may be granted to BDDDB for 1) sampling in the event of unplanned release or any "off normal occurrence" affecting or potentially affecting the Pueblo lands, or 2) emergency repair and maintenance of equipment.
 - iii. Violation of any federal law, Protocol or Access Permit. An exception under this provision may be granted to BDDDB to respond to monitor (or in the event a Pueblo staff member reports) a violation of any condition of any Protocol under the MOA or Access Permit or federal law.
 - iv. Contract management and oversight. An exception under this provision may be granted to BDDDB to respond to issues that arise with one of BDDDB's contractors, or in the performance of a contract. The appropriate official will request the exception pursuant to subsection (b).
 - v. General Administrative Purposes. An exception under this provision may be granted to BDDDB for general administrative purposes including, but not limited to, managerial contact with BDDDB staff or contractors already on Pueblo Lands under an authorized Access Permit. The appropriate official will request the exception pursuant to subsection (b).
 - vi. Storm and Other Unforeseen Events. An exception to the Permit requirement is allowed for BDDDB staff [listed in 3.a] to check, maintain, or collect samples from storm water monitoring stations close to public roads along routes normally taken by BDDDB staff, after calling Pueblo Department of Environmental and Cultural Protection (DECP) Director or designee directly and requesting (and receiving) permission to check the samplers. Immediately after receiving a call from BDDDB which requests access to Pueblo Lands pursuant to this exception, the DECP Director or designee shall notify the Pueblo's Natural Resources Director for proper internal follow up. Time, date, and location(s) to be visited for each request and data or samples collected on each such visit will be recorded and summarized by BDDDB. BDDDB staff shall contact Pueblo staff immediately upon leaving the Pueblo, confirming sites visited and data and samples collected. BDDDB staff will confirm the above information to the DECP Director by email or other written format within 72 hours of each such visit.
- d. Upon arrival on Pueblo Lands, all individuals expecting access under any exception shall check in at the tribal administration office upon arrival and will be granted access to or through Pueblo Lands by the Primary or Backup Contact Person.

4. Data Access Not Involving Physical Access to Pueblo Lands

The procedure for obtaining Access Permits, required by Section 2 of this Protocol, shall be used for requests that involve the retrieval of certain confidential data that does not require physical access to Pueblo Lands. If the request is approved for any of the requests described below, the Pueblo Primary Contact Person shall issue a Data Access Permit together with the *Protocol for Protecting confidential Pueblo Information* for the following:

- a. **Confidential Data held in Pueblo Offices.** If the request is approved and involves the review of confidential data held in Pueblo offices and such request does not involve BDDb, its contractors, consultants, or agents to access Pueblo Lands to obtain the Pueblo data, the Pueblo Primary Contact Person shall make arrangements to submit the requested data to BDDb, its contractors, consultants, or agents.
- b. **Confidential Data held in other federal agency files.** If the request is approved and involves the review of confidential data held in other federal agency offices, then the Pueblo Primary Contact Person shall send a disclosure letter to the appropriate federal agency.

5. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By: _____

Title: _____

Date: _____

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By: _____
(Signature)

(Print/Type Name)

Title: _____

Date: _____

Protocol for Protecting Confidential Pueblo Information

This Protocol supplements the Memorandum of Agreement (MOA) between the Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This Protocol applies to all offices, personnel, agents, consultants, and contractors of BDDDB in the collection, receipt, possession, use, review, disclosure, or dissemination of Confidential Pueblo Information and Sensitive Sampling Data for the Project. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable Protocols. For example, if BDDDB desires to obtain data located on Pueblo Land, then BDDDB agrees to comply with the *Protocol for Access to Pueblo Lands*.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any Protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Limitations on Access and Data Collection

BDDDB and its Contractors are authorized, subject to the terms of the MOA, *Protocol for Access to Pueblo Lands*, and Access Permits, to access the Pueblo Lands identified in the Access Permits, for the sole purpose of certain data collection for the Project. In no event shall BDDDB or its Contractors have access to collect data beyond the extent depicted in any Access Permit. Data collection authorized under this Agreement shall be limited to the collection of Sensitive Sampling Data identified in the Access Permit and within the sampling locations identified in the Access Permit.

3. Effective Date and Duration of Protocol and Obligations

BDDDB and its Contractors agree that their obligations hereunder were, are, or shall be effective as of the first date on which BDDDB or its Contractors first had, has, or shall have access to any Confidential Pueblo Information or prior to entering on the Pueblo Lands. Obligations of BDDDB and its Contractors hereunder shall survive the term of this Protocol and shall continue indefinitely.

4. Definitions

- a. "Confidential Pueblo Information" means all information of or about the Pueblo that is religious, cultural, ceremonial, proprietary, financial, technical, commercial, privileged, sensitive, or confidential in nature or content that relates to natural resources, cultural resources, or resource management practices of the Pueblo, and includes, but is not limited to, information pertaining to:
- i. any federally threatened, endangered, or candidate species;
 - ii. habitat or ecosystem conditions on Pueblo lands;
 - iii. natural resource management practices or plans of the Pueblo;
 - iv. location and nature of sites of traditional cultural significance to the Pueblo;
 - v. commercial activities of the Pueblo;
 - vi. information that the Pueblo would not customarily release to the general public; and
 - vii. information gathered on Pueblo Lands related to cultural or natural resources.
- b. "Sensitive Sampling Data" means that information (including but not limited to geotechnical, hydrographic, geomorphological, and ground and surface water quality, demand and usage data), gathered or collected by BDDDB, including
- i. Control Surveys: Field notes, global positioning system data (GPS data), point files, and maps for establishing survey control end points.
 - ii. Hydrographic Surveys: Field notes, GPS data, and point files for cross-section surveys of the river channel, field notes describing river bed material at cross section locations, and samples of river bed material and laboratory analysis of material gradation.
 - iii. Geomorphic Surveys: Field notes and sketches, or GPS files, defining river channel and floodplain locations and characteristics for assessing past changes in the river over time, and anticipated future changes to the river.
 - iv. Geotechnical Investigations: Field notes and sketches, reports, maps, or GPS files depicting subsurface geology and soil information.
 - v. Environmental Site Assessments: Field notes and other data collected to determine whether a property is, has been, or has the potential to have a hazardous substance or petroleum presence by a series of testing and interviews of current and past owners or managers. (Note: Environmental Site Assessments are distinct from environmental assessments provided under the National Environmental Policy Act [NEPA].)
 - vi. Water quality and quantity data of the Pueblo's water resources, including surface water and groundwater and related suspended sediments;
 1. BDDDB will include non-disclosure requirements into contracts that require Sensitive Sampling Data to be shared with or developed by BDDDB's contractors.
 2. Products: Products that are technical and produced for this Project by BDDDB or its Contractors from the data collection

activities specified in Sections 4(a)(i) through 4(b)(vii) of this Paragraph.

- c. "Information" means any verbal, visual, pictorial, specimen, graphic, electronically stored, printed, recorded, or written material acquired from the Pueblo or other person or entity or obtained in any way and includes, but is not limited to reports, summaries, data, maps, photographs, correspondence, phone call records, audio or video recordings, and any other information pertaining to the Pueblo or its property, assets, or interests, including information in the custody of BDDB.

5. Use of Confidential Pueblo Information and Sensitive Sampling Data

Confidential Pueblo Information and Sensitive Sampling Data shall be used by BDDB solely for purposes described in the MOA and cannot be used for any other purposes by BDDB or its Contractors without prior written authorization of the Pueblo Governor (Governor).

- a. BDDB and its Contractors acknowledge that serious damage could result to the Pueblo if any of the Confidential Pueblo Information is disclosed to any third party other than as provided herein and that such Confidential Pueblo Information has been furnished to BDDB and its Contractors subject to, and in consideration of, BDDB's and its Contractors' agreement to keep the information confidential as intended herein, to the extent possible under federal law and state law.
- b. BDDB shall not copy, cite, or incorporate any Confidential Pueblo Information in any document or publication without obtaining prior written consent from the Governor for either the use of such Information or the use of certain redacted or summarized Information. BDDB shall provide a 60 day opportunity for the Pueblo to review and consult on a draft of any document containing Confidential Pueblo Information or Sensitive Sampling Data prior to its disclosure or completion as a final document, unless otherwise required by law. The Pueblo recognizes that BDDB responses to requests for records under the New Mexico Inspection of Public Records Act have response time parameters, and the Pueblo will be mindful of such. On day 61, following BDDB's request, Pueblo consent shall be deemed given.
- c. Non-disclosure agreements shall be signed by BDDB's contractors prior to disclosure of any Confidential Pueblo Data or Sensitive Sampling Data to BDDB's contractors.

6. Retention of Sensitive Sampling Data by BDDB

- a. The Pueblo agrees that BDDB may retain Sensitive Sampling Data after the completion of the Project. BDDB shall retain any original documents and electronic versions of Sensitive Sampling Data, and provide copies of all retained Sampling Data to the Pueblo. When Sensitive Sampling Data is acquired or prepared by a Contractor of BDDB, such Contractor may also retain a copy of the Sensitive Sampling Data, provided that the Contractor or BDDB provides copies to the Pueblo. At some point after the completion of the Project, BDDB may update products produced for the Project or may produce new, similar products from the Sensitive Sampling Data. If so, BDDB shall provide copies of updated products and new, similar products to the Pueblo.

- b. The BDDB agrees that it will not release Sensitive Sampling Data, including analytical results for samples, to the general public or any other governmental agency without providing a 60 day opportunity for consultation with the Pueblo. BDDB shall provide a 60 day opportunity for the Pueblo to review and consult on the proposed release of Sensitive Sampling Data to the public or submitted to any other governmental agency unless otherwise required by law. The Bddb may however rely on Sensitive Sampling Data in making decisions regarding its operations. The Pueblo recognizes that BDDB responses to requests for records under the New Mexico Inspection of Public Records Act have response time parameters, and the Pueblo will be mindful of such.
- c. The BDDB agrees that it will not publish any Sensitive Sampling Data arising from Pueblo land without providing prior written notice and a 60 consultation period to the Pueblo.
- d. A concerted effort will be made by both parties to share Sensitive Sampling Data that will not infringe upon the proprietary nature of such data.
 - i. For samples collected by BDDB, part of each sample will be made available to accompanying Pueblo personnel (split sampling)..
 - ii. BDDB shall provide the Pueblo with test results on all samples collected as part of the Sampling Plan described as Exhibit A to the MOA between the Parties. The entire process of sample handling, laboratory analysis, quality control, quality assurance, compilation, reduction, and communication of data will be designed to be completed within six months of sample collection. If unforeseen delays occur, the Pueblo will be notified and results will be provided in a timely manner after receiving quality assured data. More timely access to data will be sought through implementing new technologies such as internet connections, subject to the terms of the underlying MOA and any applicable Protocols issued therein.

7. Disclosure of Confidential Pueblo Information

- a. BDDB shall keep all Confidential Pueblo Information confidential, and shall not disclose any Confidential Pueblo Information in any manner whatsoever, in whole or in part, to any person or entity, except disclosures:
 - i. to another person approved in writing by the Governor upon the receipt by the Pueblo and BDDB of a Confidentiality Agreement acceptable to the Pueblo and BDDB executed by the person;
 - ii. as otherwise required by applicable law; or
 - iii. as otherwise authorized by the Pueblo de San Ildefonso Council.
- b. The requirements of this paragraph shall not extend to any portion of the Confidential Pueblo Information that is or becomes generally available to the public other than as a result of a disclosure by BDDB.
- c. In the event that BDDB or its Contractors receive a request to disclose or become legally compelled to disclose any of the Confidential Pueblo Information pursuant to this paragraph, BDDB and its Contractors who have received the request shall

promptly provide notice thereof to the Governor so that the Pueblo, at its sole option and expense, but without obligation to do so, may attempt to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Protocol. BDDDB and the Pueblo recognize that *United States Department of Interior v. Klamath*, 532 U.S. 1 (2001), may apply to certain communications and result in an inability to withhold such Confidential Pueblo information.

8. Restriction on Removal of Confidential Pueblo Information from Pueblo de San Ildefonso Lands

- a. All Confidential Pueblo Information shall remain the exclusive property of the Pueblo and shall not be removed from the Pueblo's land.
- b. Upon the written approval by the Governor of an official specific written request by BDDDB to review Confidential Pueblo Information, BDDDB may review the specified Information at the Pueblo's Department of Environment and Cultural Protection (DECP) by prior appointment with the Primary Contact Person designated pursuant to Paragraph D(1) of the MOA.
- c. Upon the written approval by the Governor or Pueblo de San Ildefonso Council, of an official specific written request by BDDDB to remove Confidential Pueblo Information from Pueblo lands, BDDDB may remove Confidential Pueblo Information from Pueblo lands to carry out Pueblo-authorized purposes so long as:
 - i. only those BDDDB personnel (or BDDDB contractors, consultants, or agents) specifically authorized by the Pueblo to review the Information shall have access to it and BDDDB will take every precaution to secure the confidentiality of the Information;
 - ii. the Information shall not be photocopied, digitally copied, or reproduced in any other manner without prior written consent of the Governor;
 - iii. BDDDB will maintain and provide to the Pueblo a written record of all such Information including without limitation the date of removal, description of the Information, name of individual removing Information, the purpose and justification, and the date of return;
 - iv. the Information will not be removed for a period longer than 30 days unless otherwise specified by the Pueblo; and
 - v. BDDDB (or BDDDB contractors, consultants, or agents) shall return all information, including copies, to the Pueblo upon completion of the authorized purpose or the authorized period, whichever is sooner. The Pueblo shall also have the right to request the immediate return of any and all Information at any time, and BDDDB (or BDDDB contractors, consultants, or agents) shall immediately return it. All information shall remain the property of the Pueblo, and not of BDDDB (or BDDDB contractors, consultants, or agents).
- d. The Pueblo may develop redacted versions or summaries of Confidential Pueblo Information and, by explicit written approval by the Governor, authorize BDDDB to retain or publish such Information in the public record or in other documents. However, providing such Information in this or any other form does not indicate that similar or like Information would customarily be released to the public by the Pueblo.

9. Audio and Video Recording and Photography

- a. BDDDB or its contractors, consultants, or agents are not permitted to make audio or video recordings or to take photographs without the prior written permission of the Governor. If requested by the Pueblo, such recording will only be conducted in the presence of a Pueblo representative designated by the Governor. All photographs and audio and video recordings shall be returned to the Pueblo and BDDDB shall not keep copies of returned photographs and audio and video recordings of Confidential Pueblo Information.
- b. Notwithstanding the foregoing, BDDDB may retain certain photographs or audio or video recordings upon written request by BDDDB and written approval of the Governor for the specified photographs or recordings to document Project work completed.

10. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By: _____

Title: _____

Date: _____

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By: _____
(Signature)

(Print/Type Name)

Title: _____

Date: _____

Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items

This protocol supplements the Memorandum of Agreement (MOA) between the Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This protocol applies to all offices, personnel, agents, consultants and contractors of BDDDB who desire to undertake ground-disturbing activities on Pueblo Lands for the Project. The Parties acknowledge that this protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable protocols. For example, to conduct ground disturbing activities on Pueblo Lands, BDDDB understands that it must comply with the *Protocol for Access to Pueblo Lands*. Further, since any ground disturbing activity on Pueblo Lands will result in data collection, BDDDB agrees to comply with the *Protocol for Protecting Confidential Pueblo Information*.

For the purpose of this Protocol and for all references to the Native American Grave Protection and Repatriation Act (NAGPRA), Pueblo Lands is defined as all land within the limits of the Pueblo de San Ildefonso exterior boundaries.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this protocol, the provisions of the MOA will govern and control with respect to the interpretation of this protocol. In the event of any conflict between the provisions of this protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Scope of Protocol

This protocol applies only to NAGPRA Cultural Items discovered on Pueblo Lands. For NAGPRA Cultural Items discovered on Pueblo Lands, the Pueblo is considered to have standing to claim cultural affiliation for all human remains and associated material cultural items covered by NAGPRA throughout Pueblo Lands, and for non-Pueblo Native American sites. This Protocol applies to inadvertent discoveries on Pueblo Lands for which the Pueblo is considered to have cultural affiliation. Ground disturbing activities may take place on locations identified in the sampling plan. More specific information may be requested by the Pueblo pursuant to BDDDB's request for access pursuant to the *Protocol for Access to Pueblo Lands*.

3. Inadvertent Discovery Procedure/Notification to the Pueblo.

When notified of the discovery of human remains or other NAGPRA-related objects, the BDDDB will immediately notify the Pueblo and arrangements to visit the site will be scheduled immediately to determine if the remains are part of a recent crime scene and, if not, whether the remains are likely archaeological and of Native American descent. If the remains are determined to be Native American and not associated with a crime, the Pueblo will then take appropriate actions. The human remains and cultural objects will be evaluated in place to the extent possible. Destructive analysis is prohibited. The site will be protected and stabilized or covered as may be appropriate. Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items.

4. Options for Disposition of Human Remains or Cultural Items.

It is BDDDB's solemn intent to undertake no intentional excavation of any historic or archaeological site known or believed to include human remains or funerary items during this Project. If human remains or cultural items are inadvertently discovered, BDDDB will leave the items in place, unless, in consultation with the Pueblo, the Pueblo requests another disposition. Any other disposition will be under the Pueblo's NAGPRA authority and responsibility. The Pueblo's disposition options include leaving the human remains or cultural items in place, reburial at another site selected by the Pueblo, giving the human remains or cultural items to the Pueblo for disposition by the Pueblo, or another disposition mutually agreed to by the Parties consultation.

5. Procedures for Inadvertent Discoveries.

Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items. In a case where it is not prudent and feasible to leave human remains or cultural items in place until consultation with the Pueblo (for example, there is a danger of erosion, or where contemporaneous activities in the area might cause damage), excavation and removal of human remains and cultural items will be undertaken by BDDDB under the Pueblo's NAGPRA authority and responsibility using current professional standards for archeological data recovery. BDDDB is not proposing intentional excavation in historic properties or areas of historic properties where human remains are likely to occur; however, inadvertent discoveries could occur during the Project. In such an event, BDDDB and/or its contractors shall adhere to the following procedures:

- All trenching, sampling, excavation, photography, etc. shall cease immediately until the nature and extent of the feature are determined.
- To help identify lineal descendants, cultural resource professionals shall immediately determine the nature and extent of the burial and funerary items, while leaving all other items in place and protected.
- Analysis of human remains recovered from Pueblo Lands will be performed by a professional physical anthropologist in the field and at the site, but will be limited to standard non-destructive metrical analyses and non-metrical analyses for cultural ethnicity as required by NAGPRA. Cultural items will be subject to analysis and

documentation by photography and line drawings as warranted. There will be no destructive analysis performed on cultural items. Upon completion of analysis, the remains will be replaced in the original site and reburied or as determined by the Pueblo.

Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items.

6. Amendments.

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By: _____

Title: _____

Date: _____

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By: _____
(Signature)

(Print/Type Name)

Title: _____

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: December 4, 2014
TO: Buckman Direct Diversion Board
FROM: Mackie M. Romero, BDD Financial Manager *ml*
SUBJECT: Proposed FY15/16 Annual Operating Budget Request

Item & Issue:

Request for approval and recommendation of the BDD Annual Operating Budget for FY15/16.

Background and Discussion:

BDD is pleased to present the proposed Buckman Direct Diversion (BDD) Annual Operating Budget for FY15/16 and proposed contributions to our Major Repair & Replacement Fund. The proposed budget accounts for all necessary costs to meet the Board's service level objectives and to provide high quality water to our partners the City of Santa Fe, Santa Fe County and Las Campanas entities.

In fiscal year 2015/2016, the BDD will be in its fifth year of operations. This major milestone was a prime consideration in our analysis of costs, while continuing to ensure we reduced the gap between actual expenditures and our requested budget amount. Therefore the BDD actively collaborated with its partners on the development of this budget and due to valuable discussions and input we were able to come to an agreement on our proposed budget request.

Budget Highlights & Considerations:

- Requesting budget approval of \$6,807,400 for FY15/16 Operations (Page 2-4)
 - \$6,617,400 – Partner Reimbursements
 - \$190,000 – PNM Solar Rebate Revenue
- Requesting approval of \$411,804 in contributions for Major Repair & Replacement Fund. (Page 13)



- Increased FY15/16 Budget Request by \$282,000 from FY14/15 Adopted Budget (Page 3-4)
 - Capital Asset Purchase \$225,000
 - Materials and Supplies for Public Outreach and Awareness Program
 - Leadership and Teambuilding Training
- Emergency Reserve Fund is fully funded at \$2,000,000 (Page 12)
- Five-year Cost Projection Report

Recommended Action:

We would like to request approval and BDDB recommendation of the BDD Annual Operating Budget for FY15/16 and contributions to our Major Repair and Replacement Fund to Santa Fe County Board of Commissioners and City of Santa Fe's City Council.

We look forward to presenting the proposed budget and addressing your comments and questions.

Thank you

FY 2015/16

Prepared by: Charles M. Vokes BDD Facilities Manager
Mackie M. Romero BDD Financial Manager

Buckman Direct Diversion



Proposed Annual Operating Budget

Buckman Direct Diversion

Fiscal Year 2015/2016 Proposed Operating Budget

Joseph M. Maestas

Chair, Buckman Direct Diversion Board
City Councilor, District 2

Liz Stefanics

Vice-Chair, Buckman Direct Diversion Board
County Commissioner, District 5

Carmichael A. Dominguez

City Member, Buckman Direct Diversion Board
City Council, District 3

Miguel M. Chavez

County Member, Buckman Direct Diversion Board
County Commissioners, District 2

Consuelo Bokum

At-Large Member, Buckman Direct Diversion Board

Javier M. Gonzales

City Alternate Member, Buckman Direct Diversion Board
City of Santa Fe Mayor

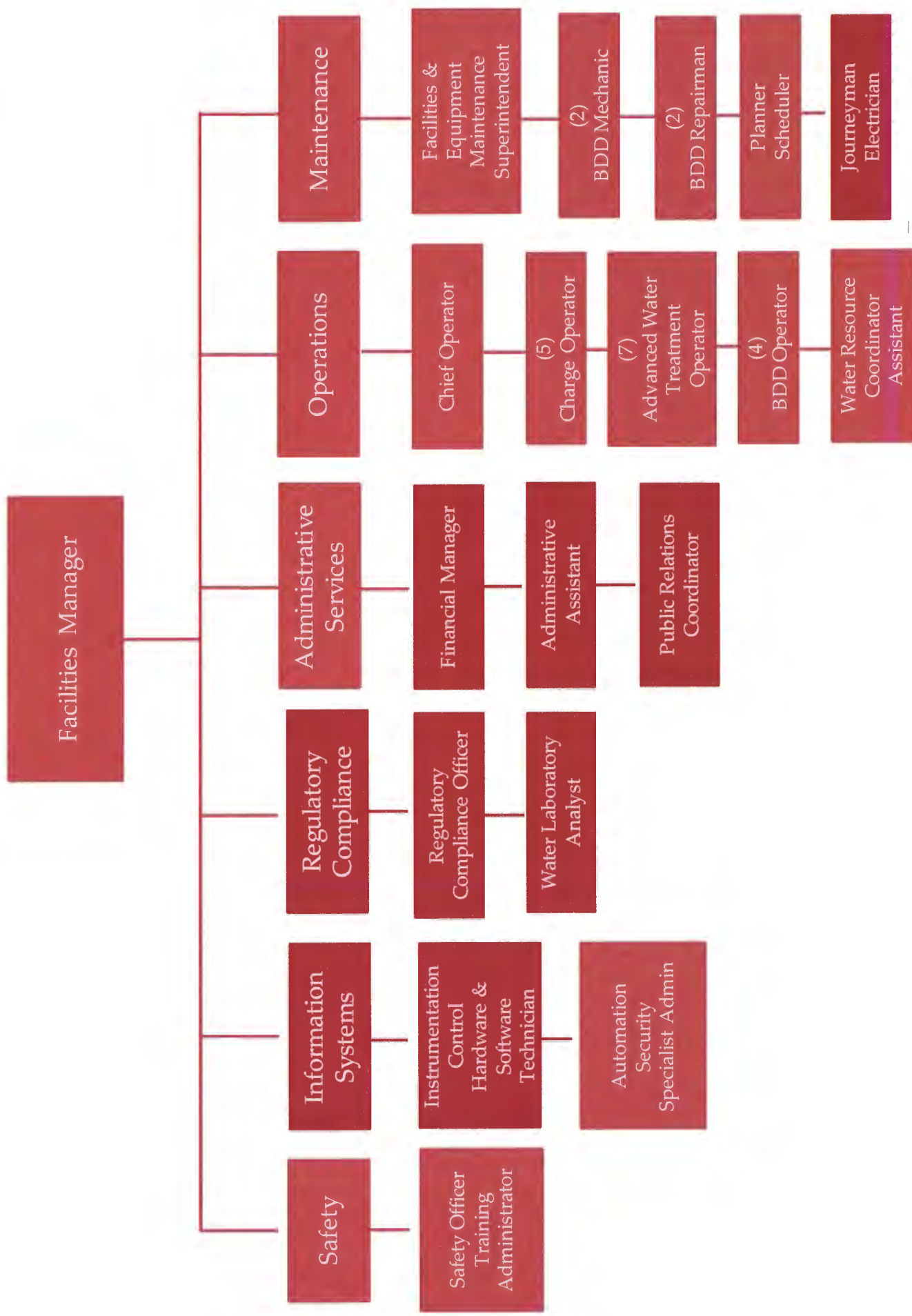
Daniel Mayfield

County Alternate Member, Buckman Direct Diversion Board
County Commissioners, District 1

Charles M. Vokes

BDD Facilities Manager

BUCKMAN DIRECT DIVERSION REGIONAL WATER PLANT ORGANIZATIONAL CHART



Buckman Direct Diversion (BDD) Proposed Annual Operating Budget, FY2015/16

Budget Message

The *Project Management and Fiscal Services Agreement* (PMFSA) requires the Project Manager to submit an Annual Operating Budget, including a 5-year projection, no later than December 15th of each fiscal year. With this submittal, the Project Manager requests the Buckman Direct Diversion Board (BDDDB) approve and recommended the Fiscal Year 2015-2016 Operating Budget of \$6,807,400. The portion of fixed vs. variable costs and the partner share by major expenditure category is presented below:

BUDGET REVENUE/REIMBURSEMENT SUMMARY - PARTNER SHARE OF TOTAL PROPOSED FY2014/15 BUDGET - (TABLE A)

Revenues/Reimbursements by Source:		Fixed	Variable	Total	%
PNM Solar Rebates	\$	-	\$ 190,000	\$ 190,000	2.8%
City of Santa Fe		3,666,866	1,145,480	4,812,346	70.7%
Santa Fe County		1,313,986	319,352	1,633,338	24.0%
Las Campanas (Club)		72,671	49,168	121,839	1.8%
Las Campanas (Coop)		49,877	-	49,877	0.7%
Total Revenues by Source	\$	5,103,400	\$ 1,704,000	\$ 6,807,400	100%
% of overall budget		75%	25%	100%	

BUDGET EXPENDITURE SUMMARY - PARTNER SHARE OF TOTAL PROPOSED FY2015/16 BUDGET - (TABLE B)

Expenditure by Category	City of Santa Fe	Santa Fe County	Las Campanas (Club)	Las Campanas (Coop)	Total
Personnel	\$ 2,447,774	\$ 840,556	\$ 45,996	\$ 31,569	\$ 3,365,895
Electricity	1,039,400	289,432	49,168	-	1,378,000
Chemicals	195,000	55,000	-	-	250,000
Solids	67,416	19,384	-	-	86,800
Materials & Supplies	453,563	229,486	11,318	7,768	702,134
Other Operating Costs	707,963	225,090	14,302	9,816	957,171
Fiscal Agent Fee	49,431	16,189	1,055	724	67,400
Total	4,960,546	1,675,138	\$ 121,839	\$ 49,877	\$ 6,807,400
PNM Solar Rebates	(148,200)	(41,800)			
Total	\$ 4,812,346	\$ 1,633,338			

Budget Summary & Analysis

Closing the gap between actual expenditures and budget will continue to be considered in development of BDD's operating budget requests.

- FY11/12 Actual Expenditures \$5,775,863, which was \$3,092,539 lower than our adopted budget
- FY12/13 Actual Expenditures \$5,588,198, which was \$2,876,314 lower than our adopted budget
- FY13/14 Actual Expenditures \$6,372,941, which was \$664,662 lower than our adopted budget
- FY14/15 Projected to expend \$6,101,536 with 5 vacant positions, which is \$423,064 lower than our adopted budget

The BDD has actively collaborated with its partners on the development of this budget and because of this collaboration, was able to limit the increase to our current adopted budget, as follows:

- The proposed Annual Operating Budget for FY2015/16 is \$6,740,000 plus the fiscal agent fee of \$67,400 which represents a \$282,800 or 4.3% increase to our current adopted budget of \$6,524,600.
- The proposed budget includes the following major initiatives:
 - Capital purchase of a crane truck, estimated to cost \$225,000
 - Materials and Supplies for our Public Outreach and Awareness Program
 - Leadership and Teambuilding Training

In fiscal year 2015/2016, the BDD will be in its fifth year of operation. This major milestone was a prime consideration in our analysis of costs needed to sustain operation to the level established by the BDD. The BDD also used yearly volumetric flow predictions provided by each partner for our variable expenditures including chemicals, solids management and electricity.

The BDD has presented the monthly PNM Solar Rebates received from the Water Treatment Plant Solar Array as a source of revenue. This means reimbursement requests for American Capital Energy expenses (primary owner of solar system) from the City of Santa Fe and Santa Fe County will be reduced by the revenue received. Our budget request for electricity has remained flat, as our new solar array at Booster Station 2A has only been operational for 4 months, which provides insufficient data for accurately predicting our budget savings. This fiscal year savings will be used as an indicator of our potential budget savings and will be included in future proposals.

BUCKMAN DIRECT DIVERSION REGIONAL WATER PLANT

* UNAUDITED RESULTS - ACCRUAL BASIS - BEST ESTIMATES

	FY2013/14 Adopted Budget	FY2013/14 Unaudited Actual 6/30/14	FY2013/14 Variance \$ (Under) / Over Budget	FY2014/15 Adopted Budget	FY2015/16 Proposed Budget	\$ Change FY15/16 vs FY14/15
Revenues/Reimbursements by Fund:						
BDD Operating 7280000	\$ 7,037,603	\$ 6,372,941	664,662	\$ 6,524,600	\$ 6,807,400	\$ (282,800)
Total	<u>\$ 7,037,603</u>	<u>\$ 6,372,941</u>	<u>\$ 664,662</u>	<u>\$ 6,524,600</u>	<u>\$ 6,807,400</u>	<u>\$ (282,800)</u>
Expenditures by Category:						
Salaries and Wages	\$ 1,567,607	\$ 1,499,573	\$ (68,034)	\$ 2,029,947	\$ 1,989,965	\$ (39,982)
Overtime and Shift Differential	200,000	197,717	(2,283)	182,250	183,000	750
Benefits	938,641	870,915	(67,726)	1,132,397	1,192,930	60,533
Electricity	1,361,255	1,236,534	(124,721)	1,378,000	1,378,000	-
Chemicals	327,283	217,193	(110,090)	265,000	250,000	(15,000)
Solids	121,800	118,129	(3,671)	60,800	86,800	26,000
Materials & Supplies	763,529	650,536	(112,993)	503,329	702,134	198,805
Other Operating Costs	1,653,992	1,478,848	(175,144)	908,277	957,171	48,894
Total	<u>6,934,107</u>	<u>6,269,445</u>	<u>(664,662)</u>	<u>6,460,000</u>	<u>6,740,000</u>	<u>280,000</u>
Fiscal Agent Fee	103,496	103,496	-	64,600	67,400	2,800
Total	<u>\$ 7,037,603</u>	<u>\$ 6,372,941</u>	<u>\$ (664,662)</u>	<u>\$ 6,524,600</u>	<u>\$ 6,807,400</u>	<u>\$ 282,800</u>

Table C, presents actual expenses, by major category for fiscal year 2013/2014, and our current year adopted budget in comparison to our fiscal year 2015/2016 operating budget request. This information includes budget adjustments to our major categories. The BDD staff will continue to closely collaborate with its partners, the City of Santa Fe, the County of Santa Fe and Las Campanas Entities in determining the best allocation of costs to achieve maximum efficiency of the BDD water treatment facility.

Budget Fixed & Variable Costs Analysis

The BDD's annual operating budget consists of fixed and variable costs, which are determined by percentage allocations contained in the Facility Operations and Procedures Agreement (FOPA). Santa Fe County is currently circulating an amendment to the Facility Operations and Procedures Agreement (FOPA) to change the percentage allocation for "Cost Sharing of Fixed OMR&R (Shared Facilities) – Section 20 of FOPA, due to acquisition of additional acre feet from Las Campanas Water & Sewer Cooperative. In anticipation that this amendment will be executed prior to the beginning of fiscal year 2015/16, the budget was been presented with the proposed percentage allocations, which only affects cost sharing among the County of Santa Fe and Las Campanas entities.

Cost Sharing (TABLE D)

Partner	Fixed (Shared Facilities)	Fixed (Separate Facilities)	(Projected Volumetric Flow)
City of Santa Fe	62.09%	75.33%	75%
Santa Fe County	28.85%	24.67%	20%
Las Campanas (Club)	5.38%	0%	5%
Las Campanas (Coop)	3.68%	0%	0%
	100%	100%	100%

Annual volumetric flow predictions provided by the partners are used as the basis for variable costs primarily related to chemicals, power, and solids management.

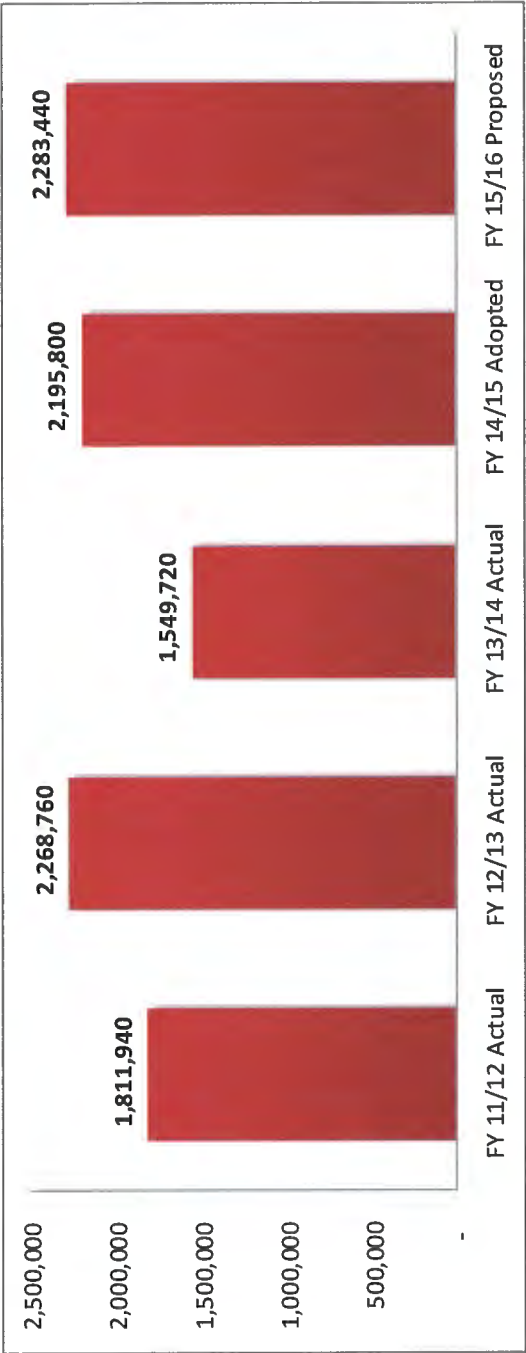
Volumetric Flow History and Predictions (TABLE E)

Volumetric Flow (acft)	City of Santa Fe	Santa Fe County	Las Campanas (Raw Water)	Total	Delivered	Increase
FY2011/2012	4,765.10	436.18	150.37	5,351.65	98%	N/A
FY2012/2013	4,677.75	714.49	589.00	5,981.24	116%	12%
FY2013/2014	5,236.46	819.24	695.00	6,750.70	70%	13%
FY2014/2015	4,982.61	1,108.27	650.22	6,741.10	N/A	0%
FY2015/2016	5,223.00	1,436.00	350.00	7,009.00	N/A	4%
%	75%	20%	5%	100%		
% Percentage is used in calculation of partner share of variable costs						

BDD has completed a budget analysis for FY2015/16, including historical data. The proposed budget for FY2015/16 is based on volumetric predictions of 2,283,440 gallons. This is a 4% increase in water delivery over the FY2014/15 predicted water call.

Total gallons delivered in 1,000's
(includes raw water)

(CHART F)



BDD's budget development utilizes several complex cost accounting models to determine solids management, power, and chemical costs, which make up 25% of the total FY2015/16 proposed budget. Variable costs are associated with the amount of water delivered and are closely related to raw water quality. Raw water carrying elevated levels of solids require increased chemical dosing, create increased maintenance activities, and result in greater solids management costs. Power costs are directly influenced by varying on-peak and off-peak rates.

Cost Analysis in 1,000's (TABLE G)

BUCKMAN DIRECT DIVERSION REGIONAL WATER PLANT

*UNAUDITED RESULTS - ACCRUAL BASIS - BEST ESTIMATES

	FY2014/15 Adopted Budget	FY2015/16 Proposed Budget	City of Santa Fe	Santa Fe County	Las Campanas	Total
Expenditures						
Chemical Expenditures	\$ 327,283	\$ 250,000	\$ 195,000	\$ 55,000	\$ -	\$ 250,000
Electric Expenditures*	1,361,255	1,188,000	891,200	247,632	49,168	1,188,000
All Other Expenditures	5,349,065	5,179,400	3,726,146	1,330,706	122,548	5,179,400
Total Operating Expenditures	\$7,037,603	\$6,617,400	\$4,812,346	\$1,633,338	\$ 171,716	\$6,617,400
Operational Efficiencies						
Total gallons raw water in 1,000's	211,798	211,810	-	97,760	114,050	211,810
Total Cost per 1,000 gallons	\$ 1.62	\$ 1.22	\$ -	\$ -	\$ 1.51	
Electric Cost per 1,000 gallons	\$ 0.51	\$ 0.06	\$ -	\$ 0.49	\$ 0.43	
Total gallons finished water in 1,000's	1,984,000	2,071,630	1,701,400	370,230	-	2,071,630
Total Cost per 1,000 gallons	\$ 3.37	\$ 2.87	\$ 2.83	\$ 4.41	\$ -	
Electric Cost per 1,000 gallons	\$ 0.56	\$ 0.45	\$ 0.52	\$ 0.54	\$ -	
Chemical Cost per 1,000 gallons	\$ 0.16	\$ 0.12	\$ 0.11	\$ 0.15	\$ -	
Monthly Average Costs	\$ 586,467	\$ 551,450	\$ 401,029	\$ 136,112	\$ 14,310	\$ 551,450
*Excludes Solar Rebate Revenue Received						

Programs

As the focal point for key resource decisions, the budget process is a powerful tool. The *National Advisory Council for State and Local Budgeting* (NACSLB) was created in 1997 to provide assistance to governments to improve their budgeting processes. In fulfilling that role, the NACSLB set forth a voluntary framework that provides budgeting guidance for state and local governments. The NACSLB established “Best Budgeting Practices” (BBP) which link budget decisions to desired outcomes consistent with organizational goals. This budget incorporates many BBP’s set forth by NACSLB.

While local governments struggle with declining revenues, *Outcome-based* budgeting has become an increasingly important national budgeting standard. This type of advanced budgeting links resources to key business strategies and performance indicators. This “performance-based” approach connects key financial decisions to interdependent concepts of strategy, planning, business execution and measurement. Hence, this budget document contains more than a tabulation of financial figures. Rather than narrowly focusing on expenditures, we’ve established a structure for measuring the “value” citizens receive for their dollars by quantifying organizational achievement. In other words, the heart of this budget centers on determining how well the BDD executes its core business functions. We’ve shifted the focus from “paying for costs” to “buying results”. In addition, this budget simultaneously unifies our financial planning efforts with the *High Performance Organization* (HPO) principles which have become thriving core values of the BDD’s working culture.

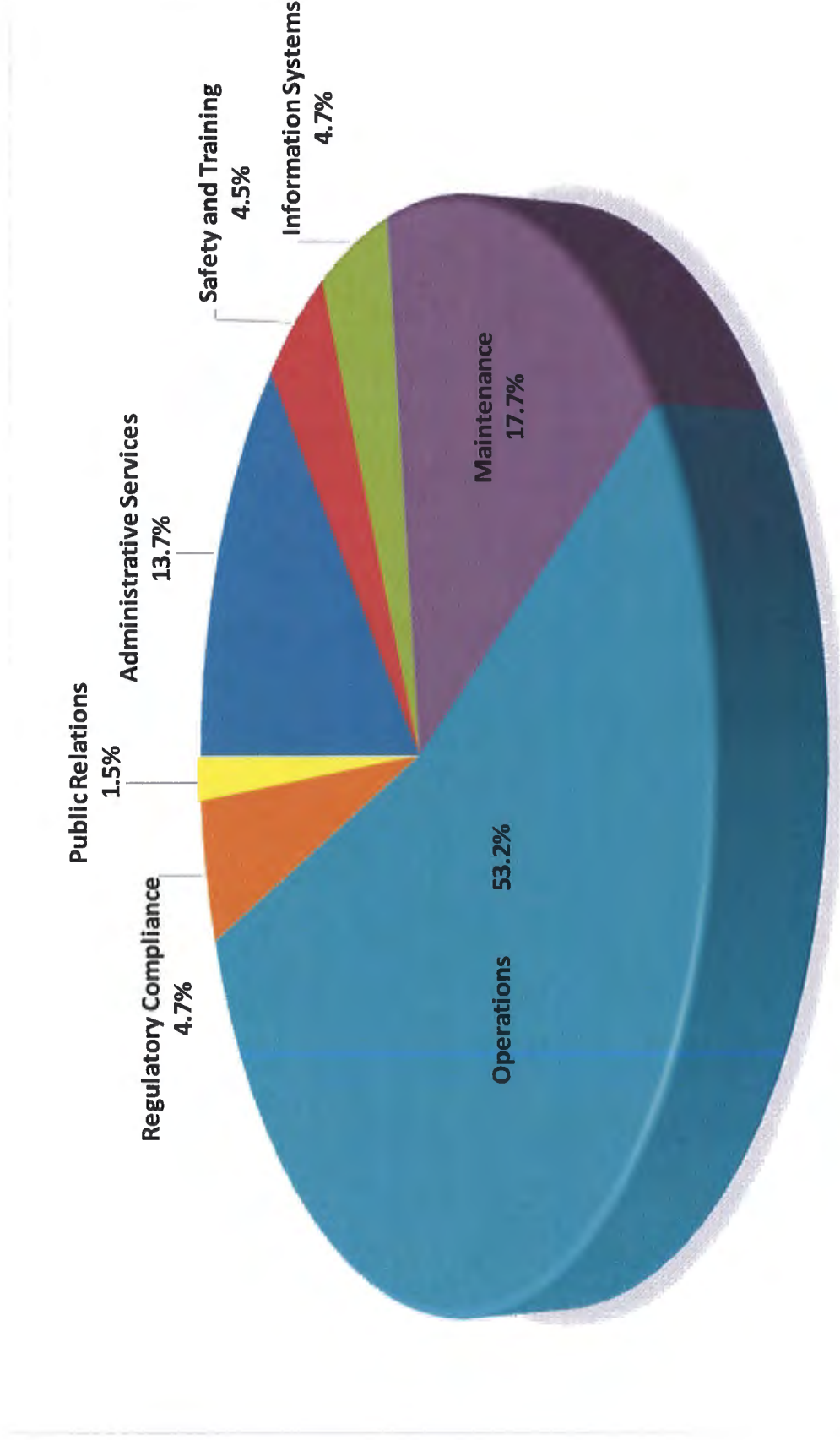
The BDD is divided into six (7) key Programs with explicit business functions as shown in Figure 1. Each Program was developed to support specific goals and objectives. These business activities encompass all functions necessary to operate the regional water treatment plant, maintain full regulatory compliance, execute Fiscal Agent responsibilities, and optimize infrastructure investments through comprehensive asset management.

FIGURE 1

Key Program	Business Function
1. Operations	Produce high quality drinking water
2. Regulatory Compliance	Provide full compliance with State and Federal water quality standards
3. Asset Management and Maintenance	Provide cost-effective maintenance services to BDD Operations and optimize infrastructure life-cycle costs
4. Safety and Training	Provides full compliance with State and Federal Health and Safety Regulations
5. Administrative Services	Provides general oversight and management support. Provides accounting, budgeting, procurement and payroll services as well as records
6. Information Systems	Provides automation security and communications services
7. Public Relations	Provides public outreach and awareness

Key Programs and Cost Allocation Percentages

(CHART H)



The expenditure budgets for these seven key programs are presented below and in the Performance Report. Total program funding includes all employee wages and benefits for full time equivalents employees, and associated overhead expenses. These key programs incorporate all business expenses necessary to execute core business functions, and allow the reader to understand how limited resources are allocated within the project. In the Performance Reports section, expenditure budgets are linked to specific strategic initiatives and performance measures.

(TABLE D)

BUCKMAN DIRECT DIVERSION REGIONAL WATER PLANT

*UNAUDITED RESULTS - ACCRUAL BASIS - BEST ESTIMATES

	FY2013/14 Adopted Budget	FY2013/14 Unaudited 6/30/14	FY2013/14 Variance to Actual \$ (Under) or Over Budget	FY2014/15 Adopted Budget	FY2015/16 Proposed Budget	\$ Change FY 15/16 vs FY14/15
Expenditures by Program:						
1. Operations (18 FTE)	\$ 3,426,576	\$ 3,230,165	\$ (196,411)	\$ 3,593,573	\$ 3,589,473	\$ (4,100)
2. Regulatory Compliance (2 FTE)	498,691	303,894	(194,797)	316,567	313,373	(3,194)
3. Asset Management & Maintenance (7 FTE)	1,144,195	1,038,251	(105,944)	953,385	1,191,590	238,205
4. Safety and Training (1 FTE)	276,757	207,931	(68,826)	285,771	305,497	19,726
5. Administrative Services (3 FTE)	1,106,179	1,058,185	(47,994)	911,638	920,987	9,349
6. Information Systems (2 FTE)	416,053	409,078	(6,975)	320,222	319,629	(593)
7. Public Relations (1 FTE)	65,655	21,941	(43,714)	78,844	99,451	20,607
Total Expenditures by Program (34 FTE)	6,934,107	6,269,445	(664,662)	6,460,000	6,740,000	280,000
Fiscal Agent Fee	103,496	103,496	-	64,600	67,400	2,800
Total	\$ 7,037,603	\$ 6,372,941	\$ (664,662)	\$ 6,524,600	\$ 6,807,400	\$ 282,800

Emergency Reserve Fund (ERF)

The Project Management and Fiscal Services Agreement, Article 3. (E.) requires the BDD Board create an Emergency Reserve Fund, and establish procedures for its management. The Emergency Fund provides immediate reserves for unforeseen or catastrophic infrastructure failures that render facilities unable to deliver water at the needed capacity. The Project Manager, in consultation with the partners, must submit to the BDD Board an analysis of the funds required for an emergency reserve and suggest procedures for creation of and management of the Emergency Fund.

The BDD Board previously approved the Emergency Reserve Fund as part of the FY 2011/12 Budget. The BDD pre-bills the partners on a monthly basis for these costs.

The Emergency Reserve Fund is currently funded at our target balance of \$2,000,000; therefore we will not request any additional contributions in FY15/16 and will replenish dollars as they are spent in accordance to our policy.

Emergency Reserve Fund

(TABLE J)

Emergency Fund	City of Santa Fe	Santa Fe County	Las Campanas	Balance
Contributions as of FY14/15	1,306,335	466,283	227,382	2,000,000

Major Repair and Replacement Fund (RRF)

The BDD Board also previously approved the Major Repair and Replacement Fund as part of the FY11/12 Budget. The BDD pre-bills the partners on a monthly basis for these costs.

The Major Repair and Replacement Fund will receive the annual contribution of \$411,804 for FY15/16. This will increase the balance from \$1,235,428 to \$1,647,232 by the end of fiscal 2015/16. The BDD has hired an engineering firm to develop an asset management plan, which includes identifying all assets, estimated life cycle, preventive maintenance and cost replacement analysis. This data will be used in future requests to support any potential adjustments to contributions to the Major Repair and Replacement Fund.

Major Repair and Replacement Fund Balance

(TABLE K)

Major Repair & Replacement Fund	City of Santa Fe	Santa Fe County	Las Campanas Entities	Balance
Contributions as of FY14/15	875,530	199,972	53,764	1,129,266

Major Repair and Replacement Fund FY15/16 Contributions

(TABLE L)

Major Repair & Replacement Fund	City of Santa Fe	Santa Fe County	Las Campanas (Club)	Las Campanas (Coop)	Total
Annual Contribution	291,840	106,162	7,083	6,719	411,804

Summary

With this submittal, the Project Manager requests the Buckman Direct Diversion Board to approve and recommend the funding for our Fiscal Year 2015-2016 Operating Budget of \$6,617,400 plus the annual contribution of \$411,804 for the Major Repair and Replacement Fund, for a total request of \$7,029,204. With your approval, the BDD will also budget \$190,000 of the PNM solar rebates, increasing our total budget to \$7,219,204. We appreciate all the input and support from our partners and our Buckman Direct Diversion Board members.

FY 2015/2016 Funding Allocation

(TABLE M)

Funds	City of Santa Fe	Santa Fe County	Las Campanas (Club)	Las Campanas (Coop)	Total
Operating Fund	\$ 4,812,346	\$ 1,633,338	\$ 121,839	\$ 49,877	\$ 6,617,400
Major Repair & Replacement	291,840	106,162	7,083	6,719	411,804
	<u>\$ 5,104,186</u>	<u>\$ 1,739,500</u>	<u>\$ 128,922</u>	<u>\$ 56,596</u>	<u>7,029,204</u>
				PNM Solar Rebates	190,000
					<u>\$ 7,219,204</u>

The Project Management and Fiscal Services Agreement (PMFSA) for the Buckman Direct Diversion Project Article 4, paragraph D states “D. Prepare and submit to the BDD Board, the City, the County, and Las Campanas....an Annual Operating Budget which shall include annual and 5 year projected OMR&R costs....”

Five-year Cost Projection

Five-year Cost Projection

Paragraph D of Article 4 of the Project Management and Fiscal Services Agreement (PMFSA) states that the Annual Operating Budget shall include a five-year projection of OMR&R costs. The purpose of providing this information herein is to aid decision makers and stakeholders in their planning. In future year budget development cycles, staff plans to present more detailed, longer-term projections that would also include potential capital improvements, the operating impacts of such improvements, and detailed requests for sources and uses of funds to construct necessary major repairs and replacements to the facilities.

In Table A (next page), the annual budgets are assumed to be held relatively flat for the foreseeable future, all else being equal, at approximately \$6.8 – \$6.9 million. Additionally, the expenditures are estimated based on a monthly average expenditure of approximately \$500-600k based on 36 months of operating history and should be regarded as a very general and preliminary estimate subject to future refinement and clarification. Annual operating expenditures are forecasted by multiplying them year over year with a very modest inflation factor of 3.0 % annually based on the Gross Domestic Product (GDP) Index. The GDP Index is a board indicator based on major industrial sectors, including utilities. The GDP Index is maintained and published on the World Wide Web by the World Bank. As depicted in Chart B, it is reasonable to expect the trend between annual budget requests and annual expenditures levels to practically converge at some point in the next five years since staff will have more historical data upon which to base its budget requests. The actual figures used are less important than the desired trend being presented by the convergence of the blue (budgets) and red (expenditures) trend lines presented in the subsequent graph.

(TABLE A)

5 Year Forecast BDD OPERATING Budget in Millions \$U.S.										
FORECAST YEAR	Actual	Actual	Actual	Estimate	1	2	3	4	5	
FISCAL YEAR	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	
Operating Budget	\$ 8.86	8.64	7.037	6.524	6.8	6.8	6.8	6.9	7.1	
Major Repair & Replacement Func	\$ 0.2	0.4	0.2	0.4	0.4	0.4	0.4	0.5	0.5	
EXPENDITURES										
ACTUAL EXPENDITURE	5.8	5.5	6.37							
1st Qtr ACTUAL EXPENDITURE				1.20						
Average (\$/mo.)	\$ 0.49	0.46	0.53	0.54	0.56	0.56	0.57	0.59	0.61	
X % Inflation Factor***				2.1%	3.0%	3.0%	3.0%	3.0%	3.0%	
X MONTHS	12	12	12	9	12	12	12	12	12	
=EXPENDITURES	5.8	5.5	6.4	6.1	6.7	6.7	6.9	7.1	7.3	
=TOTAL NET EXPENDITURES	\$ 5.8	5.5	6.4	6.1	6.7	6.7	6.9	7.1	7.3	
Unexpended Budget (budget less net expenditures)	\$ 3.1	3.1	0.7	0.4	0.1	0.1	(0.1)	(0.2)	(0.2)	
***GDP PRICE INDEX: Sources The World Bank										

(CHART B)

5 Year Cost Trend for BDD Operating Fund

