



Buckman Direct Diversion

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

Memo

Date: September 17, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager 

ITEM AND ISSUE:

Request approval of Amendment #1 to PSA # 14-0842 with Alpha Southwest, Inc in the amount of \$50,000 plus NMGR.

BACKGROUND AND SUMMARY:

On June 17, 2014 the City of Santa Fe's Water Division solicited and received seal bids (RFB # '14/42/B) for on-call services for mechanical and electrical repair. The intent of this contract is strictly an as-needed, on-call contract, with no guaranteed minimum. Alpha Southwest was the selected bidder and was awarded the contract. On July 30, 2014 the City of Santa Fe City Council approved this contract including the term of the contract through June 30, 2015.

On August 7, 2014, the BDDDB approved PSA # 14-0842 with Alpha Southwest, Inc in the amount of \$50,000 plus NMGR. Since August 7, 2014 BDD staff has issued eight (8) work orders to Alpha for work scheduled through February 2015.

Scheduled Work

WO 1	Design Build Box for isolating individual Diversion Structure Cells	\$ 5,581.00
WO 2	Replace Impeller and re-install Raw Water Lift Station Pump #3	\$ 13,222.50
WO 3	Replace Head Shaft on BS1A Pump #2	\$ 3,737.18
WO 4	Replace Head Shaft on BS1A Pump #3	\$ 3,737.18
WO 5	Replace Head Shaft on BS1A Pump #4	\$ 3,737.18
WO 6	Pull and Repair BS1A pump 1	\$ 14,632.50
WO 7	Replace Head Shaft on BS2A Pump #4	\$ 4,095.75
WO 8	Replace Head Shaft on BS2A Pump #1	\$ 4,095.75



Evaluation

Staff projects that the following additional work will be need to be completed by Alpha Southwest in FY 14/15.

Project	Total Cost
Pull and Repair BS2A pump 3	\$16,000.00
Install seal water system at BS1A	\$14,000.00
Replace Head Shaft on BS2A Pump #1	\$5,000.00
Replace Head Shaft on BS2A Pump #2	\$5,000.00
Pull and Repair BS2A seal water system	\$10,000.00
TOTAL	\$50,000.00

ACTION REQUESTED:

Staff recommends approval of Amendment #1 to PSA # 14-0842 with Alpha Southwest, Inc in the amount of \$50,000 plus NMGR. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit # 7280000.510300.930020

**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No.1 TO
PROFESSIONAL SERVICES AGREEMENT
WITH ALPHA SOUTHWEST INC.,**

This AMENDMENT No.1 (the "Amendment") is made to the PROFESSIONAL SERVICES AGREEMENT, dated August 7, 2014, (the "Agreement"), between the Buckman Direct Diversion Board (the "BDDDB") and Alpha Southwest, Inc. ("Contractor"). The date of this Amendment shall be the date when it is executed by the BDDDB Chair.

RECITALS

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

B. Pursuant to Article 16 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and the Contractor agree as follows:

1. COMPENSATION

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of fifty thousand dollars (\$50,000.00) plus applicable gross receipts tax, so that Article 3, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to the Contractor in full payment for services rendered a sum up to and not to exceed one hundred thousand dollars (\$100,000.00), plus applicable gross receipts taxes.

2. AGREEMENT IN FULL FORCE

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Professional Services Agreement as of the dates set forth below.

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


BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, BDDDB Chair
Date: _____

CONTRACTOR:

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel

NM Taxation & Revenue
CRS # 03-185297-00-1
City of Santa Fe Business
Registration #

APPROVED:

Teresita Garcia, Interim City Finance Director

72410.510300
Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____



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 Alpha Southwest

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GR1

Original Contract Amount: \$50,000.00

Termination Date: June 30, 2015

☒ Approved by BDDDB Date: Pending

☐ or by Project Manager Date: _____

Contract is for:

Amendment # 1 to the Original Contract# 14-0842

Increase/(Decrease) Amount \$ 50000

Extend Termination Date to: na

☒ Approved by BDDDB Date: Pending

☐ or by Project Manager Date: _____

Amendment is for:

Increase comp

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

☐ Inclusive of GR1

Amount \$ 50,000.00 of original Contract# 14-0842 Termination Date: 6/30/2015

Reason: emergency repair

Amount \$ 50,000.00 amendment # 1 Termination Date: _____

Reason: increase comp

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 100,000



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

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

RFP# Piggy back of City's RFP Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

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

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

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez
Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract) ☐

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

m



Buckman Direct Diversion

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

Memo

DATE: September 17, 2014

TO: Buckman Direct Diversion Board

FROM: Shannon Jones, BDD Interim Facility Manager *sf*

ITEM AND ISSUE:

Request approval of PSA # XX-XXXX with Environmental Engineering & Technology, Inc in the amount of \$39,945.00 exclusive of NMGR to perform a Buckman Direct Division Rio Grande Water Quality Assessment.

BACKGROUND AND SUMMARY:

On August 7, 2014, the Buckman Direct Diversion Board approved the release of RFP '15/07/P seeking environmental consulting services to assess water quality data collect since 2011 under the Memorandum of Understanding between the Buckman Direct Diversion Board and the US Department of Energy. On September 16, 2014, a selection committee finalized the review and selected Environmental Engineering & Technology, Inc to provide the environmental consulting services in the development of the Buckman Direct Diversion's Rio Grande Water Quality Assessment.

EVAULATION:

Water quality monitoring is to determine a baseline level of contaminates in the Rio Grande and sampling of storm events that create flow from Los Alamos Canyon with enough velocity to transport sediment into the Rio Grande. These storm events are sampled in the canyons as well as at the diversion structure. Samples in the canyon provides measurement of contaminates as they move down Los Alamos Canyon. Samples at the diversion structure provide measurement of how contaminate levels dilute with existing flow in the Rio Grande from up gradient. Over the last four (4) years, samples were successfully collected, prepared, and sent to the analytical laboratories for analyses. Results from the analyses are posted on the INTELLUS web site. BDD staff requires assistance in processing this data to develop a summary of all events and



interpret the data in the context of the MOU's intent.

ACTION REQUESTED:

Staff recommends approval of PSA # XX-XXXX with Environmental Engineering & Technology, Inc (EE&T, Inc) in the amount of \$39,945.00 exclusive of NMGR. Funding is available in the 2014/2015 budgeted fiscal year under Prof. Services BU/LI 7280000.510300.930020.

**BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT
WITH
ENVIRONMENTAL ENGINEERING AND TECHNOLOGIES, INC.**

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BOARD (the "BDDDB") and Environmental Engineering and Technologies Inc. ("Contractor"). The date of this Agreement shall be the date when it is executed by the BDDDB Chair.

1. SCOPE OF SERVICES

Contractor shall provide services for the BDDDB as outlined in the Detailed Work Plan submitted by Contractor in response to the RFP and Exhibit A attached hereto.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The BDDDB shall pay to Contractor in full payment for services rendered, a sum not to exceed thirty nine thousand nine hundred forty five dollars \$39,945.00, plus applicable gross receipts taxes.

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

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

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made by the BDDDB, this Agreement shall terminate upon written notice being given by the BDDDB to Contractor. The BDDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDDB and terminate on June 30, 2015, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

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

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

(2) If 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 subcontractors retained by Contractor in the performance of the services under 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 BDDDB, 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. Contractor agrees not to purport to bind the BDDDB to any obligation not assumed herein by the BDDDB 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: (a) obtained, and upon the BDDDB's request provided to the BDDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (b) obtained BDDDB approval of each company or companies as required below; and (c) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure

to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDDB.

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

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

(1) **Commercial General Liability.** Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (other than Products/Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence	\$2,000,000

(2) **Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$2,00,000 per accident. An insurance certificate shall be submitted to the BDDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, 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. 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 Contractors’ insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDDB within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated “A-” and “VII” or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDDB. The BDDDB will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of New Mexico.

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of Contractor.

G. **Specific Provisions Required.**

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

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

(3) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDDB's exposure to loss.

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

(5) The BDDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDDB. The BDDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

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

13. INDEMNIFICATION

A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDDB, 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 Contractors 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.

B. INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of Contractor or its employees, agents, representatives or Sub consultants, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

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

15. THIRD PARTY BENEFICIARIES

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

Any notices 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 Counsel
Long, Komer & Associates, P.A.
P. O. Box 5098
Santa Fe, NM 87502-5098

CONTRACTOR: EE&T
Attn: Project Manager
712 Gum Rock Court
Newport News, VA 23606

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, Chair
Date: _____

APPROVED AS TO FORM



Nancy R. Long, BDDDB Counsel

APPROVED

Teresita Garcia, Interim City Finance Director

72410.510300
Business Unit/Line Item

ATTEST

Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

EE&T, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

NM Taxation & Revenue
CRS #

City of Santa Fe Business
Registration #

Exhibit A

1. SCOPE OF WORK

The Consultant will be expected to conduct monthly review meetings with the BDD Facility Manager to go over progress of plans and each task listed below. All deliverables shall be made in the form of hard copy (5 copies unless noted otherwise) and working electronic files.

When developing the BDD Rio Grande Water Quality Assessment, the following Sub Tasks will be addressed and completed by the Proposer.

Table 1 Scope- Capital Asset Management Plan

Task	Number of Sub-Task	Sub-Task Description
1) Work Plan	1A 1B 1C	<ul style="list-style-type: none">▪ Draft Work Plan▪ Final Work Plan▪ Kick Off Meeting & SOW
2) Technical and Analytical Data	2A 2B 2C 2D	<ul style="list-style-type: none">▪ Compiling data and references▪ Data summary and presentation (narrative, tables, graphs, statistics)▪ Analyses and assessments (interpretations, trends, comparisons with regional or national data)▪ Gap analysis and recommendations
3) Development of Report	3A 3B 3C	<ul style="list-style-type: none">▪ First 50% Preliminary Draft Report▪ Second 90% Pre-Final Draft Report▪ Third 100% Final Report

Sub Task 1A Draft Work Plan: as described above.

Sub Task 1B Final Work Plan:

The Consultant will lead a design team comprised of the Consultant and its subcontractors and the Buckman Direct Diversion Facility Manager. The

Consultant shall prepare a detailed Final Work Plan to be utilized throughout project execution. The Work Plan will be developed based on the Contract Scope of Work. The Final Work Plan shall be prepared in collaboration with Buckman Direct Diversion Staff and will include the following components:

- a. Project description, summary of work and deliverables, project schedule;
- b. Anticipated BDDDB workload and schedule for interfacing with Consultant;
- c. Project team, organization, and responsibilities;
- d. Communication protocols, documentation, meetings and workshops;
- e. Approach to review of existing data, reports and other relevant information;
- f. Approach to establishment of detailed assessment with measurement matrix and methodology;
- g. Quality control and assessment process and activities; and
- h. Detailed description of and reasons for any differences in the Final Work Plan and the Contract Scope of Work.

The Consultant's application for these planning purposes shall comply with established industry and nationally recognized scientific analysis and practices environmental practices for water quality analysis including Environmental Protection Agency and New Mexico Environmental Department guidelines. The Consultant shall identify all such pertinent practices and guidelines in the draft Work Plan, and document the references used in its assessments.

The Final Work Plan will be prepared in draft form for Buckman Direct Diversion staff review and all comments will either be incorporated into the Final Work Plan or addressed otherwise. The draft Final Work Plan will be presented to the Buckman Direct Diversion during the kickoff meeting described below.

Sub Task 1C Kick-Off Meeting:

The Proposer shall contact the BDD Facility Manager within five (5) working days of the effective date of the agreement to schedule a kick-off meeting. The meeting will be held at the Buckman Direct Diversion Water Plant located at 341 Caja Del Rio Road Santa Fe, New Mexico. The meeting shall be held within ten (10) working days of the effective date of the agreement. The time and meeting specifics shall be coordinated with the BDD's Facility Manager. Minutes of the meeting shall be submitted to the BDD's PM for approval within three (3) working days of the meeting. The BDD will review and provide comments on the meeting minutes within three (3) working days of submission.

The Consultant shall prepare for and lead a project kickoff meeting. The meeting shall be held at the Buckman Direct Diversion offices and include the key Consultant staff, any sub Consultants and appropriate Buckman Direct Diversion staff and key stakeholders. The kickoff meeting shall introduce the project team, confirm the project objectives and discuss key issues and concerns. At the

meeting, the Consultant will also present the scope of work, key deliverables, budget, schedule and communications plan and other project plans as described in the draft Final Work Plan. The Consultant will provide the suggested meeting agenda and draft Final Work Plan to the Buckman Direct Diversion at least one (1) week prior to the Kickoff Meeting.

From time to time, other BDDDB representatives and other BDDDB-contracted Consultants may be involved in project meetings with the Consultant. Biweekly progress meetings or telephone conference calls are anticipated to provide proper coordination, review of progress and to finalize project decisions. Monthly progress reports shall be submitted to the BDDDB, at least one (1) week prior to every monthly progress meeting. Progress meeting shall be held at the Buckman Direct Diversion.

Deliverables:

1. Kickoff Meeting Agenda (via email);
2. Draft Final Work Plan and Kickoff Meeting Materials (5 copies);
3. Kickoff Meeting Minutes (via email);
4. Final Work Plan (5 copies);
5. Bi-Weekly Progress Meeting Minutes (via email); and
6. Monthly Progress Reports (5 copies).

Sub Task 2A Compiling Data and References:

The Consultant shall collect all available raw data (technical and analytical) and compile it in proper format. As part of this task, the Consultant shall describe the sampling and analysis plan(s) for the project, and document the historic design and sampling strategies. All technical information for each sampling event shall be summarized to include weather data, trigger times and gauges, discharges (at BDD, Otowi, LANL stations), length of events, and other pertinent information describing the event.

Sub Task 2B Data Summary and Presentation:

This sub task shall focus on the collected water quality analytical data. The Consultant shall summarize the data using narrative descriptions, tables, graphs and statistics. In addition, the Consultant shall summarize data from other sources that may be pertinent to the next step, the analysis and assessment, such as LANL gauge stations data and Rio Grande data, historic and current. The Proposer shall prepare and submit the data summary and presentation for review to the BDD's PM upon completion of the task. The BDD's Facility Manager will review and provide comments within five (5) working days of submission.

Sub Task 2C Analyses and Assessments:

The Proposer shall conduct data analyses by commonly used practices, domestic and/or abroad, when developing assessment. The Consultant shall look for time, locations, or constituents trends of the collected BDD data, including in reference to other river or LANL data. The Consultant shall evaluate the data in the context of the MOU intent, and in the light of regional or other water quality standards or occurrences. The Proposer shall prepare and submit the data summary and presentation for review to the BDD's Facility Manager upon completion of the task. The BDD's Facility Manager will review and provide comments within five (5) working days of submission.

Sub Task 2D Gap Analysis and Recommendations:

The Consultant shall provide a feedback on omissions in the collected data, which omissions appear important in the interpretation and analysis of the data. As part of this task, the Consultant shall list recommendations on future MOU tasks, sampling design, sampling strategies, equipment, data, or objectives, in order to successfully accomplish the intent of the MOU.

Sub Tasks 3A, 3B, 3C Development of the Report:

The Proposer shall prepare a Report of the work for the BDD's consideration and possible implementation within the tasks completion percentages. The Report contents shall outline at a minimum the following areas (A) to (H) below:

- (A) Summary of Findings;
- (B) Project Objectives and Methodology;
- (C) Sampling Events and Data;
- (D) Assessment of Data;
- (E) Performance Gap Identification;
- (F) Cost and Risk Management Analysis of Gaps;
- (G) Recommendations for Future Work; and
- (H) Conclusions and Summary for the BDD BDDB.

The Report shall clearly outline the achievements of the previously conducted work and recommend future steps required to accomplish the objective(s) of the MOU including the roles and responsibilities of the BDD.

The Report shall be submitted to the BDD Facility Manager for review and approval. The BDD will review and provide comments within five (5) working days of submission. The report shall include special Summary and Presentation to report be submitted to the Buckman Direct Diversion BDDB (BDDDB) as an informational item.

2. SUPPLEMENTAL WORK TASKS AND SUB TASKS

The Consultant may recommend modification to the work scope as outlined in the preceding section in order to improve the project value, to incorporate innovative technology or methods, or to add missing elements that are essential for successful project completion. The Consultant shall include any recommended modifications to the project in writing during the monthly review meetings and shall provide cost (or credit), consultant hours, and other necessary information.



Buckman Direct Diversion

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

Memo

Date: September 23, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager 

ITEM AND ISSUE:

Request approval to release a Request for Proposal (RFP) to acquire legal services for the Buckman Direct Diversion Board (BDDDB) in FY 2015/2016.

BACKGROUND AND SUMMARY:

In 2011, the Buckman Direct Diversion Board (BDDDB) released RFP '11/23/P requesting proposals for Buckman Direct Division Board Legal Services. This contract was awarded to Long Komer and this contract has remained in place to date. This is the fourth and final year of the contract and is set to expire June 30, 2015.

DISCUSSION

Over the last four years the contract has serviced the BDDDB providing legal advice under the following scope;

- Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- Represent the Board in litigation not covered by insurance and in administrative matters;
- Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in



required negotiations, assistance with solicitations, review and preparation of contracts;

- Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;
- Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;
- Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

ACTION REQUESTED

Staff recommends approval to release an RFP for legal services to provide the BDDB with legal counsel and representation.

ATTACHMENT

Draft Request for Proposal

BUCKMAN DIRECT DIVERSION

"REQUEST FOR PROPOSALS"

**PROFESSIONAL SERVICES FOR
THE BUCKMAN DIRECT DIVERSION BOARD**

LEGAL SERVICES

RFP #14//P

PROPOSAL DUE:

December 19, 2014

2:00 P.M.

PURCHASING OFFICE

CITY OF SANTA FE

2651 SIRINGO ROAD

BUILDING "H" SANTA FE,

NEW MEXICO 87505

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Attachments:

1. Instructions Relating to Local Preference Certification Form
2. Local Preference Certification Form
3. Resident Veterans Preference Form
4. Sample Contract
5. Minimum Wage Ordinance

**REQUEST FOR PROPOSALS
PROPOSAL NUMBER '14//P**

Proposals will be received by the City of Santa Fe as the BDDB Project Manager and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, December 19, 2014**. Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Legal Services For Buckman Direct Diversion Board

The Buckman Direct Diversion Board ("the Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("the City") and Santa Fe County ("the County"), dated March 7, 2005, requests proposals from qualified attorneys to serve as legal counsel for the Board on matters related to the Board's provision of regional water resources though the Buckman Direct Diversion ("BDD") Project. The required professional, legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.

Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: _____
To be published on: _____

Received by the Albuquerque Journal Newspaper on: _____
To be published on: _____

PROPOSAL SCHEDULE

RFP # '14//P

- | | | |
|----|---|--|
| 1. | Advertisement | November 14, 2014 |
| 2. | Issuance of RFP'S: | November 14, 2014 |
| 3. | Receipt of proposals: | December 19, 2014 at
2:00 p.m local prevailing time.
Purchasing Office 2651
Siringo Road Bldg., "H"
Santa Fe, New Mexico
87505 (505) 955-5711 |
| 4. | Evaluation of proposals: | January 9, 2015 |
| 5. | Interviews: | January 16, 2015 |
| 6. | Negotiation of Contract | January 23, 2015 |
| 7. | Recommendation of award
to Buckman Direct Diversion Board: | February 5, 2015 |

DATES OF CONSIDERATION BY BUCKMAN DIRECT DIVERSION BOARD ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The Buckman Direct Diversion Board (herein called "Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe and Santa Fe County, dated March 7, 2005, invites firms to submit eight (8) copies of the proposal. Proposals will be received by the Board, through its fiscal agent the Sangre de Cristo Water Division, at the City of Santa Fe Purchasing Office, until 2:00 p.m. local prevailing time December 19, 2014.

The packets shall be submitted and addressed to the Buckman Direct Diversion Board, C/O Sangre de Cristo Water Division as fiscal agent, City of Santa Fe Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '14//P

Title of the proposal: **Buckman Direct Diversion Board Legal Services**

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the Buckman Direct Diversion Board determines it is in the best interest of the BDDB.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given

consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The BDDB reserves the right not to comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the BDDB.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the Buckman Direct Diversion Board. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion, the BDDB reserves the right to alter the membership or size of the selection committee. The BDDB reserves the right to change the number of firms interviewed.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

1. RESIDENT, LOCAL OR VETERANS PREFERENCE

INTENT AND POLICY

The City recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The City also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978).

To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico Taxation and Revenue Department.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 5% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the City Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the City Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

New Mexico Resident Veteran Business Preference: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix E.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business preference.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposal are received from proponents in

the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The BDDDB at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the BDDDB's best interest to do so.

8. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days of the contract award. Requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. GENERAL

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created (where applicable).

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the BDDB or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The BDDB shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The BDDB is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

7. METHOD OF PAYMENT

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

8. DEFAULT

The BDDDB reserves the right to cancel all or any part of this order without cost to the BDDDB if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the BDDDB in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. NON-DISCRIMINATION

By signing this BDDDB bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. NON-COLLUSION

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

SCOPE OF SERVICES

'14//P

1. BACKGROUND, PROJECT PURPOSE & GENERAL SCOPE

The Buckman Direct Diversion Board ("the Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("the City") and Santa Fe County ("the County"), dated March 7, 2005, requests proposals from qualified attorneys to serve as legal counsel for the Board on matters related to the Board's provision of regional water resources through the Buckman Direct Diversion ("BDD") Project.

The required professional, legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

2. SCOPE OF WORK

The Contactor shall perform the following under the professional services agreement contemplated by this Request for Proposals ("RFP"):

- Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- Represent the Board in litigation not covered by insurance and in administrative matters,
- Providing legal advice on state and federal permitting such as, but not limited to; 1) the Environmental Impact Statement (EIS) for the BDD Project, 2) NEPA 3) the Biological Opinion covering the Project, and 4) NPDES permitting for the Project;
- Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;
- Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;

- Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;
- Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

3. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES:

The contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

SUBMITTAL REQUIREMENTS

I. HOURLY RATES AND PROFESSIONAL FEE PROPOSAL

II. ERRORS AND OMISSIONS INSURANCE

Proponents must provide evidence of Professional Errors & Omissions Insurance coverage in minimum limits of \$2,000,000 per occurrence. Insurance certificates shall be attached to Proposal. No additional direct or reimbursable expense is allowed under Professional Services Agreements for this standard coverage. Insurance certificates shall apply to prime consultants only and must be attached to the proposal.

III. STATEMENT OF QUALIFICATIONS

Proponents shall provide responses to the following items to describe its organization, capabilities, experience, expertise and local knowledge as it specifically relates to the types of services requested.

A. PROPONENT(S) FIRM DATA

- 1) Official or Corporate name of company
- 2) Types of professional services provided
- 3) Legal form of business
 - a. Date established in current form
 - b. Former corporate names, locations, dates
 - c. Names, titles, professional affiliation/expertise of principals
- 4) Categories in which firm is legally qualified to do business in New Mexico.
- 5) Firm size, particularly in office where work proposed to be performed
- 6) If Joint Venture or Teaming Agreement, please provide this information for each entity and references for similar previous projects performed as a Team or joint venture.

B. QUALIFICATIONS, CAPABILITY AND EXPERTISE

- 1) Discuss specialized legal and technical competence of firm or joint venture, regarding the type of services required.
- 2) Describe the capacity and capability of firm, joint venture or Teaming Agreement, including special consultants, to perform the work, including any specialized services.
- 3) Describe the continuity of the company, particularly its capability to sustain loss of key personnel, or owner directed substitution of key personnel, without adversely affecting a client or the company
- 4) Discuss past record of performance on contracts with public agencies or private sector clients with respect to such factors as control of time, costs,

value, and quality of work ability to achieve schedules. Provide reference contacts.

- 5) Discuss knowledge and familiarity with Standard Legal Practices, costs, and procurement requirements and so forth in the region where the clients are located.
- 6) Discuss employee qualifications and competence in field of water law, public government, contracts and administration, intergovernmental agreements, and other relevant skills and experience
- 7) Discuss the legal firm's existing workload and its capacity to handle the requirements of the Buckman Direct Diversion.

The Buckman Direct Diversion Board is seeking a firm that can clearly demonstrate they currently have the requisite staff and necessary expertise for this project. The BDDDB fully anticipates the consultant to immediately start work on this project with the notice to proceed.

C. WORKLOAD

Describe the firm's current workload (particularly in the office that will provide this service). Provide names, locations, and clients for the firm. List those in your firm who are assigned to perform these services and the firm's capacity to perform these services.

D. KNOWLEDGE OF LOCAL CONDITIONS

Demonstrate recent knowledge and experience with City/County Public Works Department, City/County Public Utilities Department, neighborhoods, local boards and commissions, community awareness, historic sensitivity, and cost estimating in the general project area, i.e., Santa Fe Regional Area.

E. EXPERIENCE

Discuss recent experience of firm to provide services similar to this situation and list particular clients and references (including telephone numbers). Describe your firm's expertise and familiarity with procedural and regulatory requirements on these kinds of legal services.

F. LEGAL TEAM AND RELATED EXPERIENCE

- 1) Present the organizational chart for the legal firm for public involvement. List the names of the specific team members; with their assigned tasks; qualifications and percent of time they will be assigned to provide service.
- 2) Describe the client and consultant relationship the firm will establish for board meetings, document review, decision-making, and legal proceedings.
- 3) Should the firm be invited for personal interview, the BDDDB requires the principal and key design personnel, who will be assigned to the client, be

present, be introduced, make comment to the selection committee, and preferably be a participant in the interview.

G. RESUMES

For sake of uniformity, submit the resumes of key members, including subcontractors, using the following format:

- Name and Title
- Specialized Professional Competence
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background, Education

IV. PROPOSAL FORMAT

For uniformity of review and evaluation of proposals, please use the following format in preparing a response to this RFP:

- A. Table of Contents
- B. Statement of Qualifications and Team Description and identification
- C. Schedule of Hourly Rates & Costs
- D. Professional Fee Proposal
- E. Resumes of proposed project team
- F. Professional Errors & Omissions Insurance Certificate
- G. Any additional pertinent information

The proposal is limited to 35 pages for items “A” through “G”. The smallest acceptable pitch is 12 point, with nominal 1” margins. Pages for resumes and additional pertinent information are not limited. As a practical matter, however, there is a limit as to how much material the Selection Committee members are able to read and absorb. Please clearly identify each proposal item.

EVALUATION CRITERIA & WEIGHTED VALUES

Method of Award - The contract will be awarded based upon the following criteria:

1. Ranking of qualified proposals by the Selection Committee as per the enclosed rating system.
2. Interviews
 - The scores from the Evaluation Criteria Form shall be utilized to determine the top ranked firm to be selected for the project.
 - Interviews will be conducted with the top ranked firms based on the score from the Evaluation Criteria Form if needed.
 - Only the scores from the Interview Evaluation Form will be utilized to select the top ranked firm. It is noted that the Proposed Fee score will carry over from Evaluation Criteria Form to the Interview Evaluation Form.
3. Consideration and approval of the Buckman Direct Diversion Board. The Board will make the final decisions as to award of contract.

Selection Committee - The selection committee may consist of representatives from the following departments:

- City Purchasing Officer or Representative
- City Public Utilities Department Director or Representative
- County Public Utilities Department Director or Representative
- The City Attorney Designee or Representative
- The County Attorney or Representative

The Buckman Direct Diversion Board reserves the right to alter the size and membership of the Selection Committee.

Interviews - interviews will be scheduled by the Buckman Direct Diversion Board. They will consist of a 1-hr. presentation by the Proponents, including a question and answer period. At the Interview, firms are expected to introduce and involve the professionals who will be assigned to the project and make them available for questions by the Selection Committee.

EVALUATION CRITERIA FORM

RFP: '14/xx/x

PROJECT: Buckman Direct Diversion Legal Services

NAME OF FIRM: _____

The consultant selection, or short listing for interviews, will be based upon evaluation of the proposal and the Firm's qualifications, relative to the evaluation criteria.

Proposal Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Offeror's Direct Legal Experience in New Mexico, in administrative law and in municipal/local law	10			100
Prior experience as counsel for joint powers agencies, local government or government entities.	10			100
Knowledge of relevant issues, laws and regulations pertaining to the Buckman Direct Diversion.	10			100
Familiarity with state and local government entities	10			100
Qualifications and capabilities, licensures, area of law of legal certification specialization, level of experience and references.	10			100
Clarity of proposal concerning the firms approach for providing and managing the proposed services.	10			100
Ability to accomplish associated tasks on short notice, on a cost effective and timely basis.	10			100
Proposed Fees: <i>Offeror's proposed rates, fees and charges.</i>	30			300
Total Score	100			1000

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

Local Preference Score, if applicable: Total Score x 1.08 = _____

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

RFP 'xx/xx/x

Buckman Direct Diversion Legal Services

CONSULTANT FIRM: _____

INTERVIEW EVALUATION CRITERIA

Criteria	Weighted Value	(1=low, 10=high)	Total Score	Max Score
1. Grasp of requirements and Presentation of Management Approach /Methodology: evaluation of firm's discussion and analysis of local issues; evaluation of discussion of its control systems.	10			100
2. Overall technical skills presentation skills: evaluation of discussion of firm's capability to organize and present concepts and technical information with clarity, and credibility, supported by visual, aids. How well do you think the team will represent the BDDDB in areas of legal service?	10			100
3. Firm Management: evaluation of firm's & specific team members' style & efficacy; evaluation of firm's intent to interact with and mentor to BDD professional staff; evaluation of firm's relevant experience & creativity; does this discussion tend to support firm's stated qualifications, experience and expertise?	10			100
4. Responses to other relevant issues: raised by Selection Committee evaluation of firm's responses to committee 's questions and issues.	10			100
5. Proposed Fees: Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope, missing scope or a reduced amount of qualified engineer time. A very High fee may reflect us paying firm's learning curve, higher than normal area pay rates or higher effort than is required.	20	Carry over Score from Evaluation Criteria Form _____	_____	600
Total Score	100			1000

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

Local Preference Score, if applicable: Total Score x 1.08 = _____

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. **DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.**
4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition:** The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents.

A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

Additional Documentation: If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: _____

Business Name: _____

Principal Office: _____
Street Address City State Zip Code

City of Santa Fe Business License # _____ (Attach Copy to this Form)

Date Principal Office was established: _____ (Established date must be six months before date of Publication of this RFP or RFB).

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____ Date: _____

Subscribed and sworn before me by _____ this _____, day of _____

My commission expires _____
Notary Public

SEAL

YOU MUST RETURN THIS FORM WITH YOU OFFER

BUCKMAN DIRECT DIVERSION BOARD

LEGAL SERVICES AGREEMENT WITH

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

1. SCOPE OF SERVICES

The Board seeks to use an independent contractor, qualified attorney to service as legal counsel for the Board on matters related to the Board's provision of regional water resources through the Buckman Direct Diversion ("BDD") Project. The required legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

A. The Contactor shall perform the following under the professional services agreement contemplated by this Request for Proposals ("RFP"):

- Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- Represent the Board in litigation not covered by insurance and in administrative matters,
- Providing legal advice on state and federal permitting such as, but not limited to; 1) the Environmental Impact Statement (EIS) for the BDD Project, 2) NEPA 3) the Biological Opinion covering the Project, and 4) NPDES permitting for the Project;
- Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;
- Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;
- Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;

- Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

2. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES:

A. The contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

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

3. COMPENSATION

A. The total compensation to be paid under this Agreement for the first year of the term shall be _____ plus New Mexico Gross Receipts Tax.

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

C. Detailed invoices for services will be made on a monthly basis.

D. Payment to the Contractor will be made within thirty (30) days after the date of billing.

E. No Travel or per diem shall be paid by the Board under this Agreement. All costs of travel or per diem for the Contractor or the Contractor's staff are the sole responsibility of the Contractor.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDDB to the Contractor. The BDDDB's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Board's Chair and terminate on June 30, 2012. This Agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years from the date of last signatory to this initial agreement.

6. TERMINATION

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

- i. The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Board original copies of all work product, research or papers prepared under this Agreement.
- ii. If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

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

A. The Contractor and its subcontractors, agents and employees are independent contractors performing professional services for the Board and are not employees of the Board. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Board vehicles, or any other benefits afforded to employees of the Board as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the Board. The Contractor shall not further subcontract any portion of the services to be performed under this Agreement (other than as contained in the Contractor's proposal for services) without the prior written approval of the Board.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Board, the City of Santa Fe, The County of Santa Fe and Las Campanas, L.P., their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, the Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. The Contractor agrees not to purport to bind the Board to any obligation not assumed herein by the Board unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the Board's request provided to the Board, insurance certificates reflecting evidence of all insurance required herein; however, the Board reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by the Board; (ii) obtained Board approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under

this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the Board.

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

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

- i. **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

- ii. **Automobile Liability.** For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].
- iii. **Professional Liability.** For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. The Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to

environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

- iv. **Workers' Compensation.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, City of Santa Fe, County of Santa Fe, Las Campanas LLC and their respective elected officials, officers, employees, agents, volunteers and representatives.

D. Cancellation.

Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the Board is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event the Contractor's insurance carriers will not agree to this notice requirement, the Contractor will provide written notice to the BDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. Insurer Requirements.

All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the Board. The Board will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. Deductibles.

All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

G. Specific Provisions Required.

- i. Each policy shall expressly provide, and an endorsement shall be submitted to the Board, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives.
- ii. All policies required herein are primary and non-contributory to any insurance that may be carried by the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the Board.
 1. The Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Board's exposure to loss.
 2. Before performing any Professional Services, the Contractor shall provide the Board with all Certificates of Insurance accompanied with all endorsements.
 3. The Board reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Board. The Board will reimburse the Contractor for the cost of the additional premium for any coverage requested by the Board in excess of that required by this Agreement without overhead, profit, or any other markup.
 4. The Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

General Indemnification. To the greatest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LLC and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from the Contractor's performance or non-performance under this Agreement as well as the performance or non-performance of the Contractor's employees, agents, representatives and subcontractors or any tier.

Indemnification for Professional Acts, Errors or Omissions. Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of the Contractor, or its employees, agents, representatives or sub-consultants, the

General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the 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 Board and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

- A. The Contractor shall conform with and participate in the Document Control policies of the Board or the City of Santa Fe. The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.
- B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The Board and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the Board or the City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Board. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

BOARD: Facility Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

CONTRACTOR:

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**

CONTRACTOR:

By: _____

Chairperson

Date: _____

ATTEST:

County Clerk

APPROVED AS TO FORM:

City Attorney

APPROVED:

City Finance Director

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____

By: _____
Name: _____
Title: _____
Date: _____

NM Taxation & Revenue
CRS #

City of Santa Fe Business
Registration #



Buckman Direct Diversion

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

Memo

Date: September 16, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager *sl*

ITEM AND ISSUE:

Discussion and possible action in the selection of the Buckman Direct Diversion Support Entity.

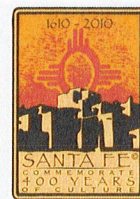
BACKGROUND AND SUMMARY:

On July 11, 2013, the BDDDB directed the BDD Facility Manager to create a Staff Advisory Group to recommend a process for selecting the Project Manager in accordance with paragraph 13 of the Joint Powers Agreement (JPA). This Staff Advisory Group was charged with creating a process for selecting the BDD Project Manager as defined within the JPA between the City of Santa Fe and the County of Santa Fe. This process was to include at a minimum; identification and description of the three (3) potential Project Manager Entities, Selection Criteria including a measurement matrix or scoring system, and timeline for this process including but not limited to; benchmarking process, critical path items, and deadline for completion.

On August 8, 2013 a Staff Advisory Group consisting of Santa Fe County Staff, City of Santa Fe Staff, and Buckman Direct Diversion Staff was presented to the Board and approved as follows;

BDD Project Manager Selection Advisory Group

Santa Fe County	City of Santa Fe	Buckman Direct Diversion
Public Works Director	Public Utilities Director	Facility Manager
Public Utilities Director	Water Resource and Conservation Manager	Financial Manger
Financial Manger	Financial Manager	Administrative Coordinator



On February 6, 2014 the Staff Advisory Group presented to the Buckman Direct Diversion Board a process for selecting the Buckman Direct Division Project Manager. On April 3, 2014, the Staff Advisory Group again presented to the Buckman Direct Diversion Board and received approval of the following;

1. The “Process for Selecting the BDD Project Manager”
2. The appointment of the Project Manager Selection Process Implementation Committee.
3. Recommendations to change the term “Project Manager” to “Support Entity”.
4. Transition from one Project Manager to another should occur at the end of the fiscal year.
5. BDDDB should develop an independent Personnel Policy Manual
6. Assign selection committee to identify structural discrepancies within the existing agreement.

Since April 3, 2014, the Staff Advisory Group has progressed through the “Process for Selecting the BDD Project Manager” The group has completed the following three (3) step process;

Step 1: Identify and prioritize the tasks that the “Support Entity” performs per the JPA and the PMFS.

Step 2: Identify the ability of each of the possible successor “Support Entity” agencies to perform each of the tasks found in Step 1.

Step 3: Combine the results of Step 1 and Step 2 to produce a ranked list of successor agencies.

Once Steps 1 and 2 were completed, the results were combined to produce a ranking of the four agencies that are possible successors as “Support Entity” (Sangre de Cristo Water Division, County Water Utility, Modified Status Quo and SWMA Like). Please note that the ease of actually implementing a transition to a new support entity (if one would be required), nor any financial implications associated with a transition was included as an evaluation factor. The Final Evaluation Matrix is contained in “**Appendix “A”**” of this memo.

FINANCIAL IMPLICATIONS

While the financial implication was not considered as part of the evaluation, the Advisory Group did complete a “Cost of Service Analysis” for both the City of Santa Fe and Santa Fe County. The intent of this study was to determine the actual amount of services required to serve as the BDD’s support entity as well as the cost associated with serving as a partner in the BDD. A summary and outcome of this study is contained in “**Appendix “B”**” of this memo.

ACTION REQUESTED

Discussion and possible action in the selection of the Buckman Direct Diversion Support Entity.

ATTACHMENTS

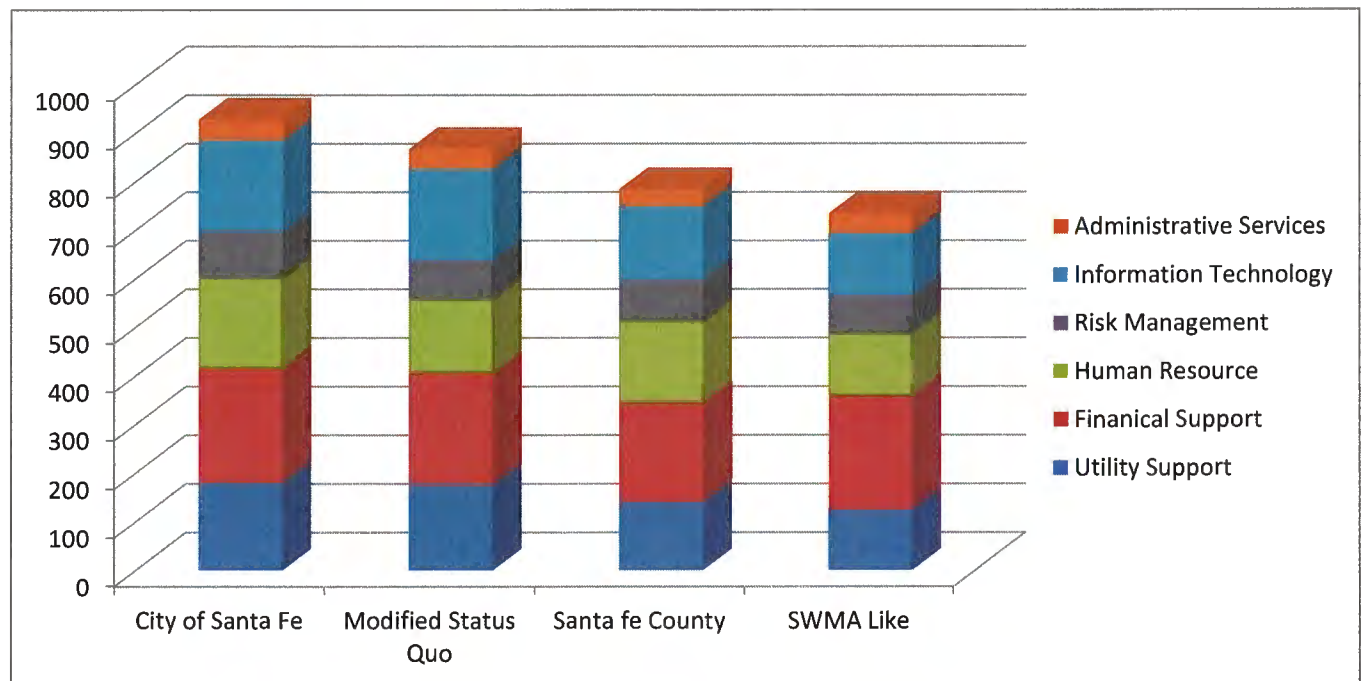
Appendix "A"- Evaluation Matrix and Summary

Appendix "B" - Cost of Service Analysis

Appendix "C"- Project Manager Selection Process Committee Recommendations.

EVALUATION MATRIX OF POTENTIAL SUPPORT ENTITIES

	UTILITY SUPPORT	FINANCIAL SUPPORT	HUMAN RESOURCES	RISK MANAGEMENT	INFORMATION TECHNOLOGY	ADMINISTRATION SERVICES	TOTAL
Maximum Score Possible	200	250	200	100	200	50	1000
CITY OF SANTA FE	180	235	188	94	188	43	928
MODIFIED STATUS QUO	176	230	152	80	188	41	867
SANTA FE COUNTY	140	205	168	84	152	35	784
SWMA LIKE	124	235	128	78	128	41	734



EVALUATION SUMMARY

City of Santa Fe

The City of Santa Fe has done an excellent job in managing the Buckman Direct Diversion both through construction and through operational startup. Over the past four years of operation, the facility has delivered close to seven (7) billion gallons of water to the partners. Historically this has been accomplished within the Operating Budget and includes a budget reduction of over two (2) million dollars per year from the original operating cost projections. Areas of needed improvement to be noted are the delay in the financial audit requirements as well as the ability to acquire and maintain adequate staffing levels.

Modified Status Quo

In this scenario the City of Santa Fe would remain as the Support Agency but the Facility Manager would become a contract employee of the Buckman Direct Diversion Board. This allowed the scoring to remain somewhat consistent with the scoring for the "City of Santa Fe". This evaluation was considered with the differing factor being that the Facility Manager becoming an "at will" position reporting directly to the Buckman Direct Diversion Board. The scoring for Human Resources and Risk Management decreasing slightly due to the challenges of the Facility Manager not having control of staff selection, as well as the challenge of the Facility Manager not having direct authority over staff regarding disciplinary actions.

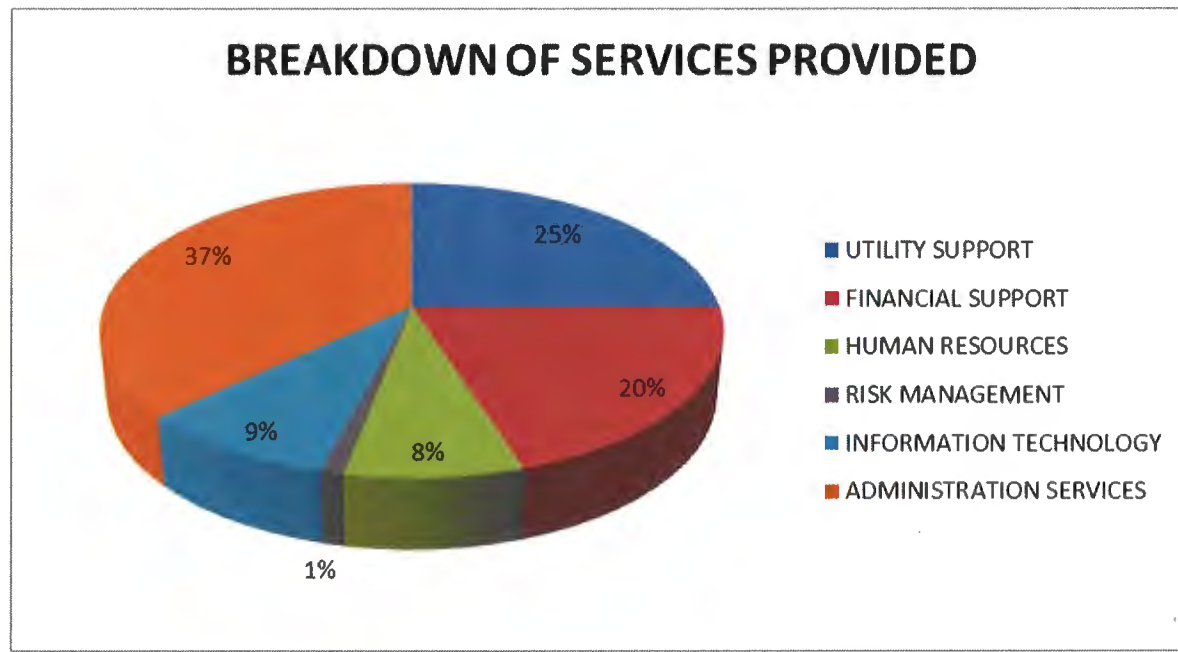
Santa Fe County

Santa Fe County has an excellent structure for providing the services required as the "Support Agency" Santa Fe County's scores reflected low due to the current level of staff the County maintains and the work load they currently manage.

SWMA Like

The notion of a separate agency, similar to the structure of the Santa Fe Solid Waste Management Agency, operating and maintaining the facility, scored the lowest based upon current resources available. The Buckman Direct Diversion is not currently structured to assume the roles and responsibilities needed for the facility to continue to operate at a level of excellence.

COST OF SERVICE ANALYSIS



Direct Cost		Indirect Cost	
Resource	Total Annual Cost	Resource	Total Annual Cost
Human Resources	\$8,874.24	Human Resources	\$3,725.00
Finance Department	\$69,505.00	Finance Department	-
Water Division	\$70,432.51	Water Division	\$49,020.70
Fleet Maintenance	\$11,835.11	Fleet Maintenance	\$127.50
Information Technology	\$9,760.00	Information Technology	\$53,200.00
Risk and Safety	\$1,116.17	Risk and Safety	\$17,130.17

Total Annual Cost	\$ 294,726.40
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Baseline as a Partner	Total Annual Cost
Public Utilities	\$ 7,873.00
Financial	\$ 3,171.85
Total	\$ 11,044.85

Total Service Cost	\$ 283,681.55
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RECOMMENDATIONS

The Project Manager Selection Committee agrees and recommends;

1. That the Buckman Direct Diversion Board consider entering into a new agreement with the City of Santa Fe to serve as the “Support Agency” for the Buckman Direct Diversion. The committee recommends that this agreement supersede the approval to amend the current Project Manager and Fiscal Service Agreement (PMFSA) through June 30, 2016.
2. That the Buckman Direct Diversion Board consider the term of the new agreement for support services to remain in effect until June 30, 2020.
3. That the Buckman Direct Diversion Board considers an Annual Support Service Fee of 4% of the BDD Annual Operating Budget.
4. That the Buckman Direct Diversion Board considers the creation of a working group to develop and implement, upon BDDDB approval, a transition plan to structure the Buckman Direct Diversion to have the ability to function as a standalone entity exclusive of a fiscal agent. At a minimum, this would decrease the level of “Support Services” required and better position the BDD to assume additional responsibilities in the future.