



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.

Memorandum

Date: September 14, 2015
To: Buckman Direct Diversion Board
From: Randy Sugrue, Interim Operations Superintendent
Subject: Update on BDD Operations for the Month of August 2015

ITEM:

1. This memorandum is to update the Buckman Direct Diversion (BDD) Board on BDD operations during the month of August 2015. The BDD diversions and deliveries have averaged, in Million Gallons Daily (MGD) as follows:
 - a. Raw water diversions: 5.15 MGD Average
 - b. Finished Drinking water deliveries through Booster Station 4A: 2.70 MGD Average
 - c. Finished Drinking water deliveries through Booster Station 5A: 1.51 MGD Average
 - d. Raw water delivery to Las Campanas at BS2A: 24.97 MG Total.
2. The BDD is providing approximately 40 percent of the water supply to the City and County for the month. During this monsoon season BDD has made every effort to divert water on a regular basis. As we divert through this season the river will have high turbidities and LANL events that stop diversion. If diversion is not possible for a length of time that exhausts all storage for production BDD partners (City of Santa Fe, County of Santa Fe, and Las Campanas) will be notified.
3. Please see the following pages from the Monthly report to the Office of the State Engineer (OSE) for accurate information up to September 3, 2015.
4. Please note all prior years are also included for reference.



BACKGROUND AND SUMMARY:

Buckman Direct Diversion Monthly SJC and Native Diversions

Aug-15

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03638 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	312.687	66.122	0.000	246.565	246.565	0.000	2.400
FEB	328.880	49.882	6.848	272.150	272.150	0.000	2.358
MAR	358.212	169.870	8.149	180.193	180.193	0.000	1.602
APR	40.134	40.134	0.000	0.000	0.000	0.000	0.000
MAY	465.403	238.729	0.000	226.674	226.674	0.000	2.145
JUN	692.311	128.544	0.000	563.767	452.444	111.323	5.043
JUL	448.317	148.671	0.000	299.646	237.065	62.581	2.701
AUG	493.158	213.727	0.000	279.430	279.430	0.000	2.538
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	3,139.102	1,055.678	14.997	2,068.426	1,894.522	173.904	18.786

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC CITY	SJC Las Campanas	All Partners Diversions BDD
JAN	66.122	0.000	244.165	0.000	310.287
FEB	49.882	6.848	269.792	0.000	326.521
MAR	169.870	8.149	178.592	0.000	356.610
APR	40.134	0.000	0.000	0.000	40.134
MAY	238.729	0.000	224.529	0.000	463.258
JUN	128.544	0.000	448.397	110.327	687.268
JUL	148.671	0.000	234.928	62.017	445.616
AUG	213.727	0.000	276.893	0.000	490.620
SEP	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000
TOTAL	1,055.678	14.997	1,877.295	172.344	3,120.315

Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-14

Month	Total SJC Release (AF)	SJC Conveyance Losses (AF)	Total SJC Available at BDD (AF)	SJC Diversion, SP-2847-E (AF)	SJC Diversion, SP-2847-N-A (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion (all permits)	SJC from SP-2847-E used to offset Buckman Wells RG-20516 (AF)	SJC from SP-2847-N used to offset Buckman Wells RG-20516 (AF)
JAN	383.35	3.74	390.34	390.34	0.00	12.68	0	403.01	0	0
FEB	349.51	3.28	341.55	341.55	0.00	11.38	0	352.93	0	0
MAR	373.88	3.66	381.69	357.07	34.09	148.83	0	530.52	0	0
APR	178.75	1.70	176.78	92.46	84.47	227.22	0	404.00	0	0
MAY	491.46	4.61	480.35	389.13	91.22	374.86	0	855.21	0	0
JUN	427.50	3.96	412.65	295.07	117.58	292.84	0	705.49	0	0
JUL	425.22	4.14	431.96	399.51	32.46	72.32	0	504.28	0	0
AUG	496.68	4.60	479.66	479.66	0.00	96.07	0	575.74	0	0
SEP	552.71	5.40	562.83	562.83	0.00	84.85	0	647.68	0	0
OCT	381.93	3.63	378.30	378.30	0.00	142.46	0	520.76	0	0
NOV	441.14	4.09	426.17	426.17	0.00	11.59	0	437.76	0	0
DEC	423.99	4.13	430.74	430.74	0.00	19.56	0	450.30	0	0
TOTAL	4,926.12	46.93	4,893.03	4,542.84	359.82	1,494.66	0.00	6,387.69	0.00	0.00

Source of SJC releases in reporting month. Includes conveyance losses.

Month	Total Release (AF)	ABIQUIU		
		City of Santa Fe (AF)	Santa Fe County (AF)	Club at Las Campanas (AF)
JAN	383.35	383.35	0.00	0.00
FEB	349.51	349.51	0.00	0.00
MAR	373.88	346.37	0.00	27.37
APR	178.75	93.42	0.00	85.41
MAY	491.46	399.41	0.00	92.41
JUN	427.50	307.54	0.00	120.28
JUL	425.22	397.13	0.00	28.09
AUG	496.68	496.68	0.00	0.00
SEP	552.71	552.71	0.00	0.00
OCT	381.93	381.93	0.00	0.00
NOV	441.14	441.14	0.00	0.00
DEC	423.99	423.99	0.00	0.00
TOTAL	4,926.12	4,573.19	0.00	353.55

Buckman Direct Diversion Monthly SJC and Native Diversions

December 2013

Month	Total SJC Release (AF)	SJC Conveyance Losses (AF)	Total SJC Available at BDD (AF)	SJC Diversion, SP-2847-E (AF)	SJC Diversion, SP-2847-N-A (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion (all permits)	SJC from SP-2847-E used to offset Buckman Wells RG-20516 (AF)	SJC from SP-2847-N used to offset Buckman Wells RG-20516 (AF)
JAN	439.04	4.24	441.79	441.79	0	44.09	0	485.88	0	0
FEB	261.03	2.47	257.94	257.94	0	10.49	0	268.42	0	0
MAR	353.69	3.30	343.57	343.57	0	75.66	0	419.23	0	0
APR	680.73	6.34	661.33	661.33	0	89.47	0	750.80	0	0
MAY	1045.27	9.88	1030.46	1030.46	0	22.86	0	1053.32	0	0
JUN	817.91	7.85	818.00	734.56	83.44	260.03	0	1078.03	0	0
JUL	606.85	5.90	614.73	397.47	78.83	0.00	0	476.30	83.70	54.73
AUG	108.68	0.91	95.34	41.68	36.91	0.00	0	78.59	5.58	11.18
SEP	136.77	1.43	149.29	63.86	53.76	0.00	0	117.61	25.36	6.32
OCT	255.24	2.46	256.53	213.87	42.66	72.92	0	329.45	0	0
NOV	196.45	1.88	195.50	187.02	8.48	117.33	0	312.83	0	0
DEC	293.76	2.63	274.19	274.19	0.00	12.25	0	286.44	0	0
TOTAL	5195.42	49.29	5138.67	4647.73	304.07	705.09	0.00	5656.89	114.64	72.23

Source of SJC releases in reporting month. Includes conveyance losses.

Month	Total Release (AF)	ABIQUIU		
		City of Santa Fe (AF)	Santa Fe County (AF)	Club at Las Campanas (AF)
JAN	439.04	439.04	0	0
FEB	261.03	261.03	0	0
MAR	353.69	353.69	0	0
APR	680.73	680.73	0	0
MAY	1045.27	1045.27	0	0
JUN	817.91	729.30	0	88.60
JUL	606.85	473.27	0	133.58
AUG	108.68	65.21	0	43.47
SEP	136.77	83.87	0	52.90
OCT	255.24	211.15	0	44.09
NOV	196.45	186.31	0	10.15
DEC	293.76	293.76	0	0.00
TOTAL	5195.42	4822.62	0.00	372.79

Buckman Direct Diversion Monthly SJC and Native Diversions

December 2012

Month	Total SJC Release SP-2847-E (AF)	Conveyance Losses (AF)	Total SJC Available at BDD Diversion (AF)	Total SJC Diversion SP-2847-E (AF)	Total Native Rio Grande Diversion SP-4842 (AF)	Release of SJC in Elephant Butte (AF)	Total BDD Surface Diversion SP-2847-E plus SP-4842 (AF)	SJC used to offset Buckman Wells RG-20516 (AF)
JAN	448.09	4.06	447.00	411.56	5.02	0	416.59	35.44
FEB	210.29	1.97	216.94	208.13	32.21	0	240.34	8.81
MAR	335.75	2.94	323.61	312.85	59.21	0	372.06	10.76
APR	528.63	4.72	519.90	519.90	108.61	0	628.51	0.00
MAY	660.18	6.24	651.05	651.05	145.51	0	796.55	0.00
JUN	722.36	6.79	692.21	692.21	120.92	0	813.12	0.00
JUL	152.03	2.23	191.75	157.16	0.00	0	157.16	34.60
AUG	86.08	0.58	60.90	60.90	239.96	0	300.87	0.00
SEP	637.17	6.05	630.92	630.92	110.07	0	740.99	0.00
OCT	747.21	7.14	744.87	744.87	50.82	0	795.69	0.00
NOV	479.19	4.63	482.65	482.65	120.91	0	603.56	0.00
DEC	442.67	4.17	434.71	434.71	119.44	0	554.15	0.00
TOTALS	5449.67	51.53	5396.51	5306.90	1112.67	0.00	6419.57	89.61

Source of SJC Releases in reporting month. Includes conveyance losses.

Month	Total Release (AF)	HERON		EL VADO		ABIQUIU	
		CITY	COUNTY	CITY	COUNTY	CITY	COUNTY
JAN	448.09	0.00	0.00	0.00	0.00	448.09	0.00
FEB	210.29	0.00	0.00	0.00	0.00	210.29	0.00
MAR	335.75	0.00	0.00	0.00	0.00	335.75	0.00
APR	528.63	0.00	0.00	0.00	0.00	528.63	0.00
MAY	660.18	0.00	0.00	0.00	0.00	660.18	0.00
JUN	722.36	0.00	27.21	0.00	0.00	695.15	0.00
JUL	152.03	0.00	21.42	0.00	0.00	130.61	0.00
AUG	86.08	0.00	0.00	0.00	0.00	86.08	0.00
SEP	637.17	0.00	0.00	0.00	0.00	637.17	0.00
OCT	747.21	0.00	0.00	0.00	0.00	747.21	0.00
NOV	479.19	0.00	0.00	0.00	0.00	479.19	0.00
DEC	442.67	0.00	0.00	0.00	0.00	442.67	0.00
TOTALS	5449.67	0.00	48.63	0.00	0.00	5401.04	0.00

Note: Grey fields indicate revisions to previous monthly report

Drought, Monsoon/El Nino, and ESA Update

As the Committee/Board is aware, our region has suffered through a prolonged drought, lasting over four consecutive years of record drought, heat, and wildfires – albeit drought conditions have eased lately due to the reappearance of a strong El Nino. Recent model runs indicate the probability of a much wetter and cooler than normal fall and winter (95% chance of strong El Nino through early spring). However, the models also indicate the probable return of drought conditions by late spring or summer in 2016, which could present significant challenges to all water purveyors, water utilities, and irrigators going forward. Regional reservoir levels on the Rio Grande and Chama Rivers are still low but rising. Deliveries from the SJCP Project have been recently upgraded. The City has received about 93% of normal firm yield through August 1st of this year. If the active monsoonal precipitation continues it is possible that the City could receive 100% of normal firm yield. There are no water-related Endangered Species Act (ESA) updates. Updates on endangered species issues will be made as needed.

SJCP Reservoir Storage as of Sept 09, 2015:

Heron:

4,910 AF (2015 SJCP must be vacated by December 31, 2015 unless BoR waiver is approved to extend deadline to September 30, 2016)

600 AF 2014 SJCP (Jicarilla) must be vacated by September 30, 2015; release starts on 9/17/15.

El Vado:

3,971 AF (Temporary storage, will be moved to Abiquiu as part of environmental winter flow releases)

Abiquiu:

8,193 AF SJCP carry-over from previous years, no time limit to vacate due to storage agreement with ABCWUA (includes LA County pool)



Buckman Direct Diversion Project

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

MEMORANDUM

Date: September 14, 2015

To: Buckman Direct Diversion Board

From: Rick Carpenter, Water Resources and Conservation Manager RC

Subject: Contract Amendment in the Amount of \$37,112.11 (Exclusive of NMGRT) to the Legal Services Agreement Between the BDD Board and Long, Pound and Komer for Specialized Legal Environmental Permitting and Endangered Species Services

This contract amendment is to provide additional funds for an existing contract that the BDD Board has entered into with Long, Pound and Komer for specialized legal services relating to the on-going Middle Rio Grande Collaborative Program, associated Biological Opinions, and upcoming NEPA work on Pojoaque Basin Regional Water Project EIS (formerly referred to as the Aamodt Settlement Project). It is anticipated that these funds will cover work over the coming year unless unexpected legal/policy issues arise.

This work has become increasingly critical and complex due to the extraordinary drought conditions and historic low flows in the Rio Grande system, which has exacerbated already stressed Endangered Species Act imperatives and related inter-agency river management issues.

Funds for this contract exist in the BDD Board approved “Carve Out Budget.”

RECOMMENDATION

Staff recommends approval of this contract amendment.



**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 1 TO
LEGAL SERVICES AGREEMENT
ACTING IN THE CAPACITY OF LEGAL COUNSEL FOR THE BUCKMAN DIRECT
DIVERSION BOARD**

This Amendment No. 1 (the "Amendment") to the Legal Services Agreement, dated February 22, 2015, and as subsequently amendment (the "Agreement"), is made between the Buckman Direct Diversion Board (the "BDDDB") and Long, Pound & Komer, PA (the "Contractor"). The date of this Amendment shall be effective as of the date it is executed by the BDDDB.

RECITALS

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

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

1. SCOPE OF SERVICES:

Article 1 of the Agreement is amended to add the following paragraphs so that the contract includes the following services as subcontracted by the Contractor to Kyle Harwood.

B. Review, analysis and evaluation of the 2011 Rio Grande Silvery Minnow NEPA compliance documents as they relate to the Buckman Direct Diversion project and permit approvals. Assessment of regulatory and legal issues triggered by

these (2011) documents and related documents, including an assessment of BDD Project coverage under existing permits and possible scenarios for re-initiation.

C. Preparation of comments in response to federal agency deadlines regarding these documents;

D. Attendance with BDD Project staff at meetings with state and federal agency officials, preparation of presentation materials to City and County Staff, and the preparation of recommendations;

E. Other tasks as assigned, relating to the NEPA issues described above.

2. COMPENSATION.

Article 3 of the Agreement is amended to increase the amount of compensation by a total of thirty seven thousand one hundred twelve dollars and 11/100's (\$37,112.11) plus applicable New Mexico Gross Receipts Tax, so that Article 3, paragraph B reads in its entirety as follows:

A. The BDDDB shall pay to the Contractor in full payment for services rendered, a sum not to exceed one hundred forty dollars thousand one hundred twelve dollars and 10/100's (\$140,112.11), plus New Mexico Gross Receipts Tax as outlined in Exhibit "A" attached hereto.

3. AGREEMENT IN FULL FORCE.

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

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

Legal Services Agreement.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
BDD Chairperson

Date: _____

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

AKM 9/15/15

Kelley A. Brennan, City Attorney

APPROVED:

Oscar Rodriguez, City Finance Director

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____

728000

CONTRACTOR:

By: _____
Name: _____
Title: _____

Date: _____



BDD
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 Long Pound and Komer

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$103,000.00

Termination Date: June 30, 2016

Approved by BDDDB Date: February 22, 2015

or by Project Manager Date: _____

Contract is for: legal services bdd

Amendment # 1 to the Original Contract# 15-0153

Increase/(Decrease) Amount \$ 37,112.11

Extend Termination Date to: _____

Approved by BDDDB Date: Pending

or by Facilities Manager Date: _____

Amendment is for: Increase to scope and comp harwood

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

Amount \$ 103,000.00 of original Contract# 15-0153 Termination Date: 06/30/2016

Reason: _____

Amount \$ 37,112.11 amendment # 1 Termination Date: na

Reason: increase scope and comp

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 140,112



BDD
Summary of Contracts, Agreements, & Amendments

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

RFP# 15/13/P Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other _____

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

7 **Funding Source:** BDD **BU/Line Item:** 72410

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

Phone # 955-4233

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:

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 Long, Komer & Associates, P.A. (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 Contractor shall perform the following under the legal 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 one hundred and three thousand dollars and no100/s (\$103,000) plus New Mexico Gross Receipts Tax as outlined in Exhibit A attached hereto.

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Board's Chair and terminate on June 30, 2016. 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 without the prior written approval of the Board or the BDDDB Facility Manager.

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 BDDDB 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 BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do 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:
Nancy Long
Long, Komer & Associates, P.A.
2200 Brothers Road
Santa Fe, NM 87502-5098

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. Maurer
Chairperson
Date: 2-22-15

ATTEST:

County Clerk

APPROVED AS TO FORM:

ADM 1/23/15
Kelley A. Brennan, City Attorney

APPROVED:

[Signature]
Oscar Rodriguez, City Finance Director

724800
Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil AM
Yolanda Y. Vigil, City Clerk
File Date: 3-11-15

CONTRACTOR:

By: Nancy R. Long
Name: Nancy R. Long
Title: President
Date: 3-5-15

NM Taxation & Revenue
CRS # 08-0058116

City of Santa Fe Business
Registration # 07-58116

Exhibit A
Fee Schedule

1. The Board shall pay compensation to the Contractor based upon hourly rates for provision of legal and administrative services. Such services shall be tracked and billed in one-tenth (0.01) hour increment to be paid as follows:

- The following attorneys shall be paid an hourly rate as stated:

- Nancy R. Long, Partner \$170
- Mark E. Komer, Partner \$170
- Justin W. Miller, Associate \$155
- Little V. West, Associate \$155
- Vicki R. Marco, Paralegal \$75
- Kyle Harwood, Of Counsel \$170

2. All charges are subject to NM gross receipts tax which will be added to the billing invoices.

3. Invoices shall be submitted to BDD Financial Manager, 341 Caja del Rio, Santa Fe, NM 87507, and should include the following detailed information:

- i. Dates
- ii. Attorney
- iii. Description of billed service
- iv. # of billed hours
- v. Hourly rate
- vi. Total fees



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

Memorandum

Date: For September 23, 2015 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: Appointment of Citizen Member to the Board/Possible Amendment to the JPA

ITEM AND ISSUE:

Discussion of appointment of Citizen Member to the Board as well as possible amendment to the Joint Powers Agreement ("JPA")

BACKGROUND AND SUMMARY:

The JPA establishing the BDDB, provides that a citizen member to the Board shall be appointed by a majority vote of the four other members for a two year term. The citizen member may be re-appointed without limit. Conci Bokum's term, as the citizen member, expires on January 7, 2016. That term extends for an additional sixty (60) days after expiration if a re-appointment or new appointment has not been made. Additionally, the Board has previously raised the issue of possibly amending the JPA to provide for an alternate citizen member. We seek direction from the Board as to both issues.

RECOMMENDATION:

It is timely to consider the process the Board may wish to follow to recruit qualified citizen members and advise whether an amendment to the JPA should be pursued to allow for an alternate citizen member.

