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:	February 28, 2013
To:	Buckman Direct Diversion Board
Via:	Brian Snyder, Water Division and Public Utility Director BKS
Via:	Rick Carpenter, Water Resources and Conservation Group Manager
From:	Dale Lyons, Water Resource Coordinator
Subject:	Request for approval of a professional services agreement with Smith Engineering Company, to serve as the Owner's Agent and oversee development of the new solar facility at BDD Booster Station 2A, funded by the EPA Drinking Water State Revolving Fund program.

BACKGROUND

The City of Santa Fe, as Fiscal Agent for the Buckman Direct Diversion, has concluded procurement #13/24/P to select a construction management firm to serve as the BDD Board's representative and oversee development of the BDD Booster Station 2A Solar Project and recommends to the Buckman Direct Diversion Board that the project development contract be awarded to Smith Engineering Company in the amount of $177,000 plus applicable gross receipts tax.

Project Funding

On March 14th of 2011, Water Division staff submitted a project interest form to the New Mexico Finance Authority (NMFA) requesting up to $5 million in Drinking Water Revolving Fund (DSRF) funding to build a large solar photovoltaic (PV) project within the BDD system at the Booster Station 2A facility, which relays water from the Rio Grande diversion site to the BDD water treatment plant. After analysis of the current energy consumption at this facility, it has been determined that constructing a net-metered 1-2mW solar plant at this site would provide a significant benefit to the BDD by reducing energy costs, generating REC revenue and reducing reliance on conventional, carbon intensive energy sources. On February 24th, 2012, the NMFA Board approved the City's funding request, contingent providing necessary documentation and funding

requirements. In addition to the project development costs, the loan agreement will also cover costs associated with project construction management services.

Procurement

The Request for Proposals (RFP) #13/24/P for construction management services was advertised on February 11th, 2013, and proposals were received on February 28th, 2013. The Evaluation Committee ranked the proposals based on Proposed Fee (30%), Qualifications (30%), Experience (30%), and Knowledge of Local Conditions (10%). Proposals were received from the following firms:

- Smith Engineering Company, Albuquerque, NM.
- Weaver Construction Management, Littleton, CO.

After review of the proposals to verify submission of required licensing documentation and required funding agency forms, both proposals were deemed to qualify for consideration under the procurement.

Based on the Evaluation Committee's ranking, Smith Engineering Company was selected as the top ranked proponent.

RECOMMENDATION

Based on the results of procurement #13/24/P, Staff recommends award of the professional services agreement for construction management services to oversee development of the BDD Booster Station 2A Solar Project to the top ranked proponent: Smith Engineering Company, in the amount of $177,000 plus applicable gross receipts tax.

The NMFA subsidized loan agreement (DW-2696) for this project is before the City's Public Utility and Finance Committees and the City's Governing Body for review and approval in March, 2013. In addition to the project development costs, the loan agreement will also cover costs associated with this professional services agreement for construction management services.

City of Santa Fe, New Mexico

memo

To: Robert Rodarte, Purchasing Department Director

Via: Brian Snyder, Water Division and Public Utility Director

Via: Rick Carpenter, Water Resources and Conservation Group Manager

From: Dale Lyons, Water Resource Coordinator

Date: February 28, 2013

Re: Conclusion of competitive procurement RFP 13/24/P for construction management services and recommendation to award a professional services agreement to Smith Engineering Company, in support of the BDD Booster Station 2A Solar Project.

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☑ Approved

☐ Disapproved

2/28/13

Robert Rodarte, Purchasing Director — Date

CC:
Shirley Rodriguez, Purchasing Department
Ryan Helton, NMFA

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Weaver Construction -

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	5	150
Qualifications, Capability & Expertise	30	9	270
Experience	30	9	270
Knowledge of Local Conditions	10	8	80
Total Score			770

SELECTION COMMITTEE
EVALUATOR SIGNATURE: _____ DATE: 2/28/13

Robert Romero
Purchasing Officer

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Smith Engineering Company

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	8	240
Qualifications, Capability & Expertise	30	8	240
Experience	30	8	240
Knowledge of Local Conditions	10	7	70
Total Score			790

SELECTION COMMITTEE
EVALUATOR SIGNATURE: _____ DATE: 2/28/13

Robert Rednote
Purchasing Officer

Dale Lyons
2/28/13

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Smith Engineering

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	9	2.7
Qualifications, Capability & Expertise	30	5	1.5
Experience	30	7	2.1
Knowledge of Local Conditions	10	8	.8
Total Score			7.1

SELECTION COMMITTEE
EVALUATOR SIGNATURE: _____ DATE: 2/28/13

Dale Cyoup

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Weaver Const. Mgt.

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	5	1.5
Qualifications, Capability & Expertise	30	6	1.8
Experience	30	7	2.1
Knowledge of Local Conditions	10	8	0.8
Total Score			6.2

SELECTION COMMITTEE
EVALUATOR SIGNATURE: _____ DATE: 2/28/13

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Smith

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	9	270
Qualifications, Capability & Expertise	30	8	240
Experience	30	8	240
Knowledge of Local Conditions	10	8	80
Total Score			830

SELECTION COMMITTEE EVALUATOR SIGNATURE: _____ DATE: 2/28/13

EVALUATION CRITERIA FORM

RFP: '13/24/P

PROJECT: Construction Management Services for Buckman Direct Diversion Booster Station 2A PV Project

NAME OF FIRM: Weaver

Proposal Component	Weighted Value(%)	(1=low, 10=high)	Total Score
Proposed Fee	30	5	150
Qualifications, Capability & Expertise	30	9	270
Experience	30	8	240
Knowledge of Local Conditions	10	10	100
Total Score			760

SELECTION COMMITTEE EVALUATOR SIGNATURE: _____ DATE: 2/28/13

BUCKMAN DIRECT DIVERSION BOARD

PROFESSIONAL SERVICES AGREEMENT
WITH
SMITH ENGINEERING COMPANY

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

1. SCOPE OF SERVICES

The Contractor shall provide construction management services for the Buckman Direct Diversion Booster Station 2A Solar PV Project described in the Scope of Services attached as Exhibit A and included herein by reference.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.

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

3. COMPENSATION

A. The BDDB shall pay to the Contractor for services rendered, a sum not to exceed $177,000.00, plus applicable gross receipts tax.

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

C. Invoices for services will be made on a monthly basis. Payment to the Contractor will be made within thirty (30) days after the date of billing. Billing will be made in accordance with the tasks described in the attached Scope of Services and shall be paid only for services actually performed.

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB Chair and terminate when the Scope of Services has been completed, but no later than December 31, 2013.

6. TERMINATION

A. This Agreement may be terminated by the Board upon 30 days written notice to the Contractor. In the event of such termination:

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

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

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

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

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services

required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the Board. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Board.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Board, the City of Santa Fe and Santa Fe County and 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

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

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

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.

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

(1) 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 bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (other than Products/Completed Operation)	$5,000,000
Products/Completed Operations Aggregate Limit	$5,000,000
Personal Injury Limit	$5,000,000
Each Occurrence	$5,000.000

(2) Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and

effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than $5 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

(3) Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than $5,000,000 per claim and $5,000,000 annual aggregate. The Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

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

Employers Liability Limits as follows:

Bodily Injury by Accident	$5,000,000	Each Accident
Bodily Injury by Disease	$5,000,000	Each Employee

Bodily Injury by Disease $5,000,000 Policy Limit

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

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

C. 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.

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

E. Specific Provisions Required. 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, Santa Fe County, and their respective elected officials, officers, employees, agents, volunteers and representatives.

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

G. 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.

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

I. 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.

J. 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 and Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from the Contractors performance or non-performance under this Agreement as well as the performance or non-performance of the Contractor's employees, agents, representatives and subcontractors or any tier.

Indemnification for Professional Acts, Errors or Omissions. Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of the Contractor, or its employees, agents, representatives or sub-consultants, the General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do no waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico 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 and 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:
Erika B. Schwender
Interim Facilities Manager
Sangre de Cristo Water Division
801 San Mateo
Santa Fe, NM 87504

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

CONTRACTOR:
Smith Engineering Company
2201 San Pedro Drive, NE
Building 4, Suite 200
Albuquerque, NM 87110

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to

the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

23. FUNDING AGENCY REQUIREMENTS/SUPPLEMENTAL CONDITIONS

Because this project is contingent on funding from the New Mexico Finance Authority (NMFA) Drinking Water State Revolving Loan Fund Program, the attached Supplemental Conditions applicable to contracts for services, apply to and are incorporated into, this Agreement. The attached federal and NMFA forms are required to be completed by the Contractor prior to execution of this Agreement.

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: _____
Kathy Holian, Chair

Date: _____

ATTEST:

_____
Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

_____
Nancy R. Long, BDDB Counsel

APPROVED:

_____
Dr. Melville Morgan
City Finance Director

_____
Business Unit/Line Item

ATTEST:

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

CONTRACTOR:
Smith Engineering Company
2201 San Pedro Drive, NE
Building 4, Suite 200
Albuquerque, NM 87110

By: _____
Name:
Title: _____
Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration#_____

EXHIBIT A

SCOPE OF SERVICES & PROJECT REQUIREMENTS

CONSTRUCTION MANAGEMENT SERVICES
FOR
BUCKMAN DIRECT DIVERSION BOOSTER STATION 2A PV PROJECT

RFP 13/24/P

PROJECT BACKGROUND, PURPOSE, SCOPE

Background
In February of 2012, the City of Santa Fe was approved for the award of a subsidized loan by the New Mexico Finance Authority in the amount of $5 million to construct a 1-2 megawatt solar photovoltaic system that will provide electricity to Buckman Direct Diversion Booster Station 2A. Booster Station 2A is a primary pumping facility which relays untreated water from the Rio Grande to the Buckman Direct Diversion Treatment Plant, where a 1 mW solar PV facility was completed in 2011. The project site is on lands administered by the Bureau of Land Management (BLM), and it is expected that a Right-Of-Way agreement with the agency will be finalized after appraisal of the property and the Solar Developer providing project documentation to BLM. The Booster Station 2A PV project will be designed and built by a professional solar development firm, which is the subject of a separate, design-build procurement.

Purpose of Project & General Scope
Construction management services are required to oversee the development of a 2 MW photovoltaic (PV) project that will be owned by the Buckman Direct Diversion Board (BDDB) and the City of Santa Fe (City). The PV project will be located at Booster Station 2A within the Buckman Direct Diversion facility, and will provide solar electricity for water pumping purposes.

As the Owner's Agent, the Construction Manager shall be tasked with overseeing the development of the solar (PV) project through permitting, construction, testing, utility interconnection, commissioning and training phases. Specifically, the Construction Manager will be responsible for ensuring the project meets design, schedule, quality, and regulatory requirements, according to the Developer's Contract Document requirements. In general, the tasks will include, but will not be limited to:

- Serve as the primary liaison between the Developer (including sub-contractors) and Owner (City of Santa Fe),
- Coordinate all communications between the Developer (including sub-contractors) and Owner, ensuring that all Requests for Information (RFI's) are answered in a timely manner;
- Review engineering and construction documents, plans and specifications;

- Ensure Developer secures necessary regulatory permits and adheres to permit conditions during project development;
- Monitor the Developer's progress in meeting PNM's interconnection requirements, including submittal of a completed interconnection application, payment of required fees, and facilitation of utility review and approval;
- Conduct Pre-Construction Conference with Project Team Members;
- Furnish a Site Representative for a period of up to five (5) months duration, five (5) days a week to monitor, document, and verify that the Developer's activities and work is compliant with the Contract Document requirements, and serve as on-site liaison between the Developer and Owner;
- Conduct a weekly Project Progress Meeting with the Developer and the Owner for coordination and quality assurance purposes;
- Monitor the Developer's project scheduling of all necessary construction and permitting activities to ensure that the project is developed according to the Contract Document requirements;
- Review the Developer's monthly Progress Pay Applications and verify the requested payment amount is equal to the amount and value of the actual work completed, and make recommendation of the respective payment amount to Owner;
- Review and administer the processing (if any) of Contract Change Orders;
- Conduct the Final Inspection with the Developer and Owner, to develop the Final Punch List and verify the Developer's correction of any noted deficient items, in accordance with the provisions in the Contract Documents and Close-out requirements.
- Assemble all operation and maintenance manuals;
- Oversee the Developer's training of Owner's representatives regarding operation and maintenance of the new PV system; and
- Provide regular reports to the Owner on work progress, financial accounting and substantive matters.

The solar developer hired by the BDDB through a separate procurement is responsible for developing the Booster Station 2A PV project, including but not be limited to, the following tasks:

- Completion of the Preliminary Engineering Report, recommending the optimum system components, size, layout, schedule and development plan;
- Assisting the BDDB with completion of the Environmental Information Document, as required by the State Environmental Review Process (SERP);
- Develop a Storm Water Pollution Prevention Plan (SWPPP) to facilitate ultimate BLM acceptance and right-of-way modification.
- Design and specification of the PV project, including modification of electrical components at Booster Station 2A, as necessary;
- Completion of design and specification of post-construction site security requirements and operational power monitoring;
- Completion of the interconnection application and submittal to PNM;
- Assisting the BDDB in securing a Bureau of Land Management (BLM) right-of-way for the project, including the necessary surveying;

- Securing all necessary environmental permitting;
- Constructing the PV system and modification of electrical components at Booster Station 2A, as necessary;
- Testing and commissioning the PV system;
- Facilitating PNM interconnection of the PV system; and
- Training City of Santa Fe and BDDB staff for operation and maintenance of the solar facility.

(9-12)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

Supplemental conditions
for
Federally Assisted Drinking Water
Infrastructures under the
Drinking Water State Revolving Loan Fund
Revised September 2012

REPRODUCTION OF THIS GUIDANCE
SHOULD BE ON COLORED PAPER,
PREFERABLY PINK

REFERENCES

- Copeland Anti-Kickback, 29 CFR Part 3
  http://www.dol.gov/compliance/laws/comp-copeland.htm

- Suspension and Debarment, Subpart C of 2 CFR 180 and 1532
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl
  http://edocket.access.gpo.gov/cfr_2009/janqtr/pdf/2cfr1532.332.pdf

- Disadvantaged Business Enterprise, 40 CFR Part 33
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=40:1.0.1.2.30&idno=40

- Equal Employment Opportunity, 41 CFR Part 60
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=41:1.2.3.1.1&idno=41

- Labor Standards, 29 CFR Parts 4 & 6
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr4_main_02.tpl
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=99c9a20e960f56be66f17ae91b52c888&rgn=div5&view=text&node=29:1.1.1.1.7&idno=29

- Nondiscrimination, 40 CFR Part 7
  http://www.epa.gov/ocr/docs/40p0007.pdf

- OMB Circular A-133
  http://www.whitehouse.gov/omb/assets/a133_compliance/app_7.pdf

- Reissuance of NPDES General Permits for Storm Water Discharges from Construction Sites in Region 6- Federal Register
  http://www.epa.gov/region6/6en/w/sw/swcon98.pdf

Model Contract Clauses—Attached

NPDES Bypass Policy—Attached

Federal Cross-Cutters—Attached

XP-211

BIDDER'S CERTIFICATION*

In Compliance with Equal Employment Opportunity and Nonsegregated Facilities

Project Name Project Number
Contract For _____ _____

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

( ) I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.

( ) I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375.** I have filed all reports due under the requirements contained in 41 CFR 60-1.7.

( ) I have not participated in previous contract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375.**

( ) I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

( ) I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding $10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Bidder's Authorized Representative _____

Signature of Bidder's Authorized Representative _____ Date _____

_____

_____
Name & Address of Bidder

XP-215 **MBE/WBE/SBRA UTILIZATION INFORMATION SHEET**

NOTE: The bidder shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub contract construction work and/or services and purchase of equipment and supplies for the project in order to provide the fair share of the total dollar amount of the contract for

MBE: Construction 41.03 %, Equipment 36.69 %, Supplies 25.51 %, Services 38.78 %
WBE: Construction 6.47 %, Equipment 30.65 %, Supplies 35.30 %, Services 40.00 %
SBRA: Construction _____, Equipment _____, Supplies _____, Services _____

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes___ No___

   If yes, when did you update your MBE/WBE/SBRA solicitation lists? _____

2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRAs? Yes___ No___

   If yes, name the publications: _____

3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes___ No___

4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposed bid for this project? Yes___ No___

5. Do you analyze the bid package or contract documents to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRAs including the bonding range? Yes___ No___

   If yes, please attach a brief description of portions of work you have identified for subcontracting.

6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes___ No___

7. Do you send a letter of solicitation to MBE/WBE/SBRA for this project? Yes___ No___

   If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.

8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the subcontracting opportunities on your proposed bid for this project? Yes___ No___

If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.

9. Do you conduct pre-bid, pre-solicitation, and post award conferences, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes___ No___

   If yes, please list person who attended conference as representative of MBE/WBE/SBRA

   Name & Title of Person: _____

   Name of MBE/WBE/SBRA: _____

   Address: _____ Phone: _____

   Date and Place of Conference: _____

_____

   Name & Title of Person: _____

   Name of MBE/WBE/SBRA: _____

   Address: _____ Phone: _____

   Date and Place of Conference: _____

_____

   Name & Title of Person: _____

   Name of MBE/WBE/SBRA: _____

   Address: _____ Phone: _____

   Date and Place of Conference: _____

10. Total dollar amount of the contract:

    $

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction ($)	____%, Equipment ($)	____%, Supplies ($)	____%, Services ($)	____%
WBE:	Construction ($)	____%, Equipment ($)	____%, Supplies ($)	____%, Services ($)	____%
SBRA:	Construction ($)	____%, Equipment ($)	____%, Supplies ($)	____%, Services ($)	____%

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Subcontractor:	**WBE Subcontractor:**	**SBRA Subcontractor:**
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: $	Amount: $	Amount: $

MBE Subcontractor:	**WBE Subcontractor:**	**SBRA Subcontractor:**
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: $	Amount: $	Amount: $

MBE Subcontractor:	**WBE Subcontractor:**	**SBRA Subcontractor:**
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: $	Amount: $	Amount: $

MBE Subcontractor:	**WBE Subcontractor:**	**SBRA Subcontractor:**
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:

Type of Work:	Type of Work:	Type of Work:
Amount: $	Amount: $	Amount: $
MBE Subcontractor:	**WBE Subcontractor:**	**SBRA Subcontractor:**
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: $	Amount: $	Amount: $

I understand that a false statement on the above information may be grounds for rejection of this bid proposal or termination of the contract award.

_____

Typed Name & Title of Authorized Representative

_____

Signature of Bidder's Authorized Representative Date

United States
Environmental Protection Agency

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded fro m covered transactions b y any Federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment t rendered against them for com mission o f fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record s, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any o f the offenses enumerated in paragraph (1) (b) o f this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transaction s (Federal, State, or local) terminated or cause o r default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 U SC Sec. 10 01, a false statement ma y result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

_____
Typed Name & Title of Authorized Representative

_____
Signature of Bidder's Authorized Representative Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49

FORM 6100-2
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form

A Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE[1] subcontractor[2] the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name	Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact
Address		
Telephone No.	Email Address	
Prime Contractor Name	Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

Please use the space below to report any concerns regarding the above EPA-funded project:

_____

_____

_____

_____

Subcontractor Signature	Title/ date

[1] A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. [2] Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

FORM 6100-3
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form

This form is intended to capture the DBE[1] subcontractor's[2] description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact
Address		
Telephone No.		Email Address
Prime Contractor Name		Issuing/Funding Entity:

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___DOT ___SBA ___Other: _____ ___Not certified	Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown	

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date
Subcontractor Signature	**Title/ date**

[1] A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. [2] Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

FORM 6100-4
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE[1] subcontractors[2] and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Subcontractor Name		Project Name
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact
Address		
Telephone No.		Email Address
Prime Contractor Name		Issuing/Funding Entity:

I have identified potential DBE certified subcontractors	___ YES	___ NO
If yes, please complete the table below. If no, please explain:		

Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date

[1] A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. [2] Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6

MODEL CONTRACT CLAUSE

Recipients must ensure that, when appropriate, the following clauses or their equivalent are included in each contract.

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

(a) The following clause applies only to contracts for construction.

1. The recipient may at any time, without notice to any surety, by written order, make any change in the work within the general scope of the contract, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the time, method or manner of performance of the work;

(iii) In the recipient-furnished facilities, equipment, materials, services or site, or

(iv) Directing acceleration in the performance of the work.

2. A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.

3. Except as provided in this clause, no order, statement or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

4. If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify the contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost the contractor reasonably incurred in attempting to comply with those defective specifications.

5. If the contractor intends to assert a claim for an equitable adjustment under this clause, the contractor must, within 30 days after receipt of a written change order under paragraph (a)(1) or the furnishing of a written notice under paragraph (a)(2), submit a written statement to the recipient setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this changes clause.

6. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

b. The following clause applies only to contracts for services.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this contract in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

2. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

c. the following clause applies only to contracts for supplies.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in any one or more of the following:

(i) Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;

(ii) Method of shipment or packing; and

(iii) Place of delivery.

2. If any changes cause an increase or decrease in the cost or time required to perform any part of the work under this contract, whether or not changed by such order, the recipient shall make an equitable adjustment in the contract price or delivery schedule, or both, and modify the contract in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

3. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

3. DIFFERING SITE CONDITIONS

The following clause applies only to construction contracts.

a. The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

1. Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or

2. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

b. The recipient shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed as a result of such conditions, the recipient shall make an equitable adjustment and modify the contract in writing.

c. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

d. No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

4. SUSPENSION OF WORK

The following clause applies only to construction contracts.

a. The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

b. If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this contract, or by the recipient's failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the sub-agreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

c. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the contract.

5. TERMINATION

The following clause applies only to contracts over $10,000.

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If the contractor effects termination for default, or if the recipient effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

6. REMEDIES

This clause applies only to contracts over $25,000.

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the recipient is located.

7. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

NOTE- The following clause applies to (1) any contract negotiated between the recipient and its contractor in excess of $100,000; (2) negotiated contract amendments or change orders in excess of $100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract, or (3) any lower tier contract or purchase order in excess of $100,000 under a contract other than a formally advertised, competitively awarded, fixed price contract. This clause does not apply to contracts awarded on the basis of effective price competition.

a. The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated contracts, lower tier contracts and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this contract, lower tier contract or amendment there under was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the contract in writing to reflect such action.

b. Failure to agree on a reduction shall be subject to the remedies clause of this contract.

NOTE - Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier contracts, the contractor may wish to include a clause in each lower tier contract requiring the lower tier contractor to appropriately indemnify the contractor. It is expected that any lower tier contractor subject to such indemnification will generally require substantially similar indemnification for defective cost and pricing data submitted by lower tier contractors.

8. AUDIT; ACCESS TO RECORDS

a. The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The contractor shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to make paragraphs (a) through (g) applicable to all contract awards in excess of $10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;

2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

3. If the sub-agreement is terminated for default or for convenience.

9. COVENANT AGAINST CONTINGENT FEES

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

10. GRATUITIES

a. If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the recipient may, by written notice to the contractor, terminate this contract. The recipient may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

11. BUY AMERICAN

This clause applies only to construction contracts award under 40 CFR Part 35, Subparts E and I.

In accordance with Section 215 of the Clean Water Act (33 U.S.C. 1251 et. seq.) the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, material-men and supplies in the performance of this contract.

12. RESPONSIBILITY OF THE CONTRACTOR

(a) The following clause applies only to sub-agreements for services.

1. The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

2. The contractor shall perform the professional services necessary to accomplish the work specified in this contract in accordance with this contract and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

3. The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this contract.

4. The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this contract, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

5. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

b. The following clause applies only to contracts for construction.

1. The contractor agrees to perform all work under this contract in accordance with this agreement's designs, drawings and specifications.

2. The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

3. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

13. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the owner's claims against the contractor or his sureties under this contract or applicable performance and payment bonds.

CROSS-CUTTING FEDERAL AUTHORITIES

Environmental Authorities

- Archeological and Historic Preservation Act of 1974, Pub. L 86-523, as amended
- Clean Air Act, Pub. L 84-159, as amended
- Coastal Barrier Resources Act, Pub. L 97-348
- Coastal Zone Management Act, Pub. L 92-583, as amended
- Endangered Species Act, Pub. L 93-205, as amended
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act, PL 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended
- Wilderness Act, Pub. L. 88-577, as amended

Economic and Miscellaneous Authorities

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 as amended
- Debarment and Suspension, Executive Order 12549
- New Restriction on Lobbying, Section 319 of Pub. L. 101-121

Social Policy Authorities

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

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 Smith Engineering

3 Complete information requested

☑ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: $177,000.00

Termination Date: December 31, 2013

☐ Approved by BDDB Date: Pending

☑ or by Project Manager Date: _____

Contract is for: Solar Facility BDD Booster Station 2A

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: na

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for:

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

☐ Plus GRT

☐ Inclusive of GRT

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

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ 177,000

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

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

RFP# 13/24/P Date: February 28, 2013

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

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

7 **Funding Source:** BDD **BU/Line Item:** 72140

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 for Dale Lyons.

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