

Buckman Direct Diversion Project

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

DATE: January 8, 2014

TO: Buckman Direct Diversion Board

FROM: Stephanie Lopez, Office Manager

ITEM AND ISSUE:

2014 Fiscal Services and Audit Committee Schedule

BACKGROUND AND SUMMARY:

Currently, the FSAC meetings are generally held on the Tuesday before the Buckman Direct Diversion Board meetings. The FSAC meetings are held in the Legal Conference Room at the Santa Fe County Administration Building at 102 Grant on the 2nd floor. The following is the proposed 2014 schedule for the Fiscal Services and Audit Committee meetings:

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

This schedule was drafted so as not to conflict with Santa Fe County Commission meetings and miscellaneous City of Santa Fe committee meetings and City Council meetings. The dates marked with an asterisk are the days that do not fall on the Tuesday before BDDDB.

RECOMMENDED ACTION:

For your information.



Notice of Santa Fe County Meetings 2014

Regular Board Of County Commissioners Meetings will be held on the following dates in the Commission Chambers, 102 Grant Ave. Santa Fe, NM

Tuesday, January 14, 2014 at 2pm

Tuesday, January 28, 2014 at 1pm

Tuesday, February 11, 2014 at 2pm

Tuesday, February 25, 2014 at 1pm

Tuesday, March 11, 2014 at 2pm

Tuesday, March 25, 2014 at 1pm

Tuesday, April 8, 2014 at 2pm

Tuesday, April 29, 2014 at 1pm

Tuesday, May 13, 2014 at 2pm

Tuesday, May 27, 2014 at 1pm

Tuesday, June 10, 2014 at 2pm

Tuesday, June 24, 2014 at 1pm

Tuesday, July 8, 2014 at 2pm

Tuesday, July 29, 2014 at 1pm

Tuesday, August 12, 2014 at 2pm

Tuesday, August 26, 2014 at 1pm

Tuesday, September 9, 2014 at 2pm

Tuesday, September 30, 2014 at 1pm

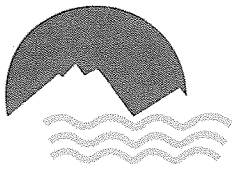
Tuesday, October 14, 2014 at 2pm

Tuesday, October 28, 2014 at 1pm

Tuesday, November 25, 2014 at 1pm

Tuesday, December 9, 2014 at 2pm

For more information, copies of the agenda, or auxiliary aids or services, contact (505) 986-6200



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.

Memo

Date: January 27, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager 

ITEM AND ISSUE:

Update on the Early Notification System and progress with Memorandum of Understanding amendments.

BACKGROUND AND SUMMARY:

In 2007, the Buckman Direct Diversion Board (BDDB) requested a written agreement with Los Alamos National Laboratory (LANL). On May 13, 2010, the Buckman Direct Diversion Board (BDDB) and the United States Department of Energy (DOE) entered into a Memorandum of Understanding (MOU) regarding Water Quality Monitoring. The purpose of the MOU was "to establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory (LANL) and the Department of Energy (DOE) in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project (BDD Project)."

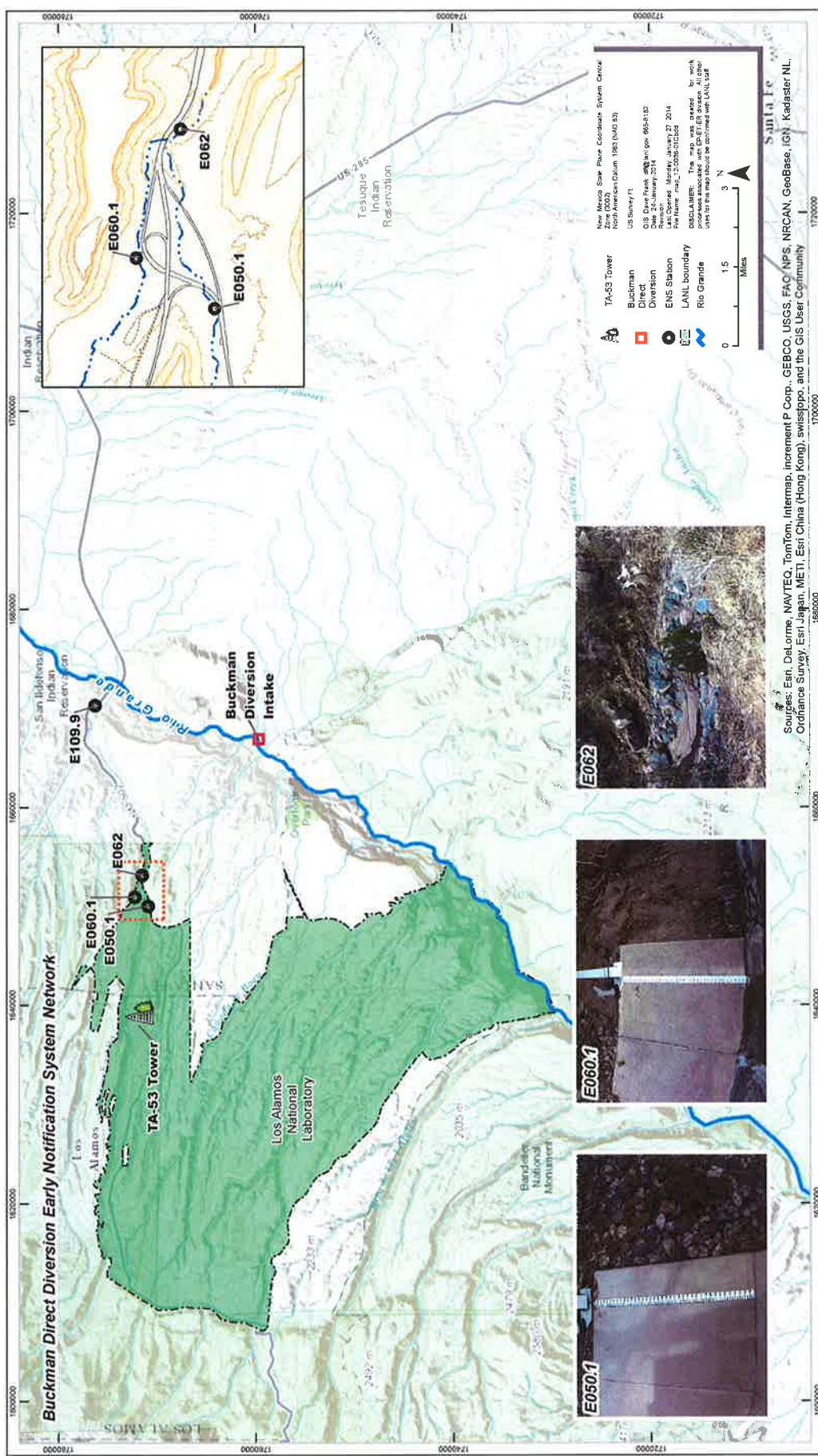
On November 7, 2013, the BDDB addressed Peter Maggiore, Assistant Manager Environmental Project Office, of the US Department of Energy concerning an extension to the existing May 13, 2010 Memorandum of Understanding (MOU) between the U.S. Department of Energy and the Buckman Direct Diversion Board. The BDDB directed staff to present a resolution to the BDDB for approval in the December meeting.

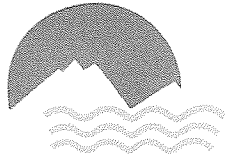
On December 12, 2013 Resolution 2013-3 was presented and passed by the BDDB requesting that Los Alamos National Laboratory (LANL) and Los Alamos Site Office/National Nuclear Security Administration (LASO/NNSA) staff meet and confer with BDD Board staff on amendments to the May 13, 2010 MOU to reflect both the changed circumstances in LA/Pueblo Canyon as a result of the September, 2013 storm flow and to extend the MOU for additional years into the future.

Verbal Update from LASO/NNSA:

1. General status of the ENS including current operational status of gaging stations,
2. Amendments to the MOU regarding changes to the ENS and extension of the MOU
3. Invitation to the BDDB to attend a Tour of the ENS sites
4. Update on New Area Office Manager
5. Approval of New Federal Budget
6. Schedule for Staff Technical Meeting in February.







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.

Memo

Date: January 27 2014
To: Buckman Direct Diversion Board
From: Kyle Harwood via Shannon Jones & Rick Carpenter *RC H*

ITEM AND ISSUE:

Since the new year, Wild Earth Guardians has filed two Notices of Intent to Sue regarding ESA compliance within the middle Rio Grande and listed species. Staff and counsel are monitoring the development of these issues as they might relate to the BDD Project permitting.

The first NOI is directed at the Army Corps of Engineers concerning their withdrawal from the consultation process for a new Biological Opinion for the Rio Grande Silvery Minnow. The second NOI is directed at the State of Colorado concerning their use of Rio Grande water and the resulting impact on the Silvery Minnow.

The purpose of the NOI is to provide 60 days notice to the federal agencies that Wild Earth Guardians intends to sue those agencies under the citizen suit provision of the Endangered Species Act. No suit may be filed before the end of the 60 day period, and no suit is required following the end of the notice period.

ATTACHMENTS

2014 01 09 BDD ESA WEG NOI USACOE Pursuant to the ESA regarding Ongoing Reservoir Operations and Management Activities in the MRG.pdf

2014 01 21 BDD ESA WEG NOI to Colorado re ESA and RGSM and Exhibit.pdf
2014 01 22 BDD ESA WEG Press Release re Colorado NOI.pdf





January 21, 2014

Via Certified Mail Return Receipt Requested

Mike King, Executive Director
Colorado Department of Natural Resources
Executive Director's Office
1313 Sherman Street, Room 718
Denver, CO 80203

Dick Wolfe, State Engineer and Director
Colorado Division of Water Resources
1313 Sherman Street, Suite 821
Denver, CO 80203

Craig Cotten, Division Engineer
Colorado Division of Water Resources
Division 3 Main Office
301 Murphy Drive
Alamosa, CO 81101

Sally Jewell, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Daniel M. Ashe, Director
U.S. Fish and Wildlife Service
1849 C Street N.W.
Washington, D.C. 20240

Dr. Benjamin Tuggle, Regional Director
Southwest Regional Office
U.S. Fish and Wildlife Service
500 Gold Avenue SW
Albuquerque, NM 87102

RE: Notice of Intent to Sue the State of Colorado for Violations of the Endangered Species Act Related to its Administration, Distribution, and Regulation of Water in the Rio Grande Basin in Colorado

Dear Executive Director King, State Engineer Wolfe, Division Engineer Cotten, Secretary Jewell, Director Ashe and Regional Director Tuggle:

In accordance with the 60-day notice requirement of Section 11(g) of the Endangered Species Act ("ESA" or "Act"), 16 U.S.C. § 1540(g), you are hereby notified that WildEarth Guardians ("Guardians") intends to bring a civil action against the State of Colorado, through the above-named officials¹ (hereinafter "State of Colorado" or "Colorado") for violating section 9 of the ESA, 16 U.S.C. § 1538 and its implementing regulations by causing ongoing and imminent future "take" without a permit authorized by law of the endangered Rio Grande silvery minnow

¹ Under C.R.S. § 37-92-301(1) (2013), the state engineer is "responsible for the administration and distribution of the waters of the state, and, in each division, such administration and distribution shall be accomplished through the offices of the division engineer as specified in this article."

(*Hybognathus amarus*) and/or Southwestern willow flycatcher (*Empidonax traillii extimus*) located in the middle Rio Grande² as the result of Colorado's administration, distribution, and regulation of the waters in the Rio Grande basin from its headwaters to the Colorado-New Mexico state line. The same activity also causes ongoing and imminent future "take" without a permit authorized by law of the endangered silvery minnow and/or willow flycatcher by destroying or adversely modifying their designated critical habitat as defined in 50 C.F.R. § 402.02. *See* 16 U.S.C. § 1538(g).

I. ESA Requirements

In 1973, Congress enacted the Endangered Species Act to provide "a program for the conservation of . . . endangered species and threatened species" and "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). In enacting the statute, the plain intent of Congress was "to halt and reverse the trend towards species extinction, whatever the cost." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184, 98 S.Ct. 2279 (1978).

Under the mandates of the Act, the Secretary of the Interior is responsible for promulgating regulations listing "endangered" and "threatened" species of animals and plants based on specific criteria listed in section 4(a)(1), and to designate "critical habitat" for the listed species. 16 U.S.C. § 1533. Section 9 of the ESA prohibits the "take" of all listed endangered species. 16 U.S.C. § 1538(a)(1)(B). The term "take" means "to harass, harm, . . . wound, kill, trap, [or] capture" an endangered species. *Id.* § 1532(19).

The terms "harass" and "harm" are further defined in the ESA's implementing regulations. "Harass" means "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering." 50 C.F.R. § 17.3. "Harm" means "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." *Id.* "Congress intended to define 'take' in the 'broadest possible manner to include every conceivable way' in which any person could harm or kill wildlife." *See Aransas Project v. Shaw*, 930 F.Supp.2d 716, 726 (2013).

It is also unlawful for any "person" to "cause [an ESA violation] to be committed," and thus the ESA prohibits a governmental agency from authorizing any activity resulting in take. *See* 16 U.S.C. § 1538(g); *see also, e.g., Strahan v. Cox*, 127 F.3d 155, 163 (1st Cir. 1997). "The ESA's prohibition against 'takes' governs both the actions, and failure to act, by all 'persons,'"

² The "middle Rio Grande" is the region between Cochiti Dam in northern New Mexico and Elephant Butte Reservoir located in south central New Mexico.

including any “officer, employee, agent, department, or instrumentality of . . . any State.” *Aransas Project*, 930 F.Supp.2d at 726; 16 U.S.C. § 1532(13). Without a biological opinion and an incidental take statement from the U.S. Fish and Wildlife Service (“Service”) covering the activity’s take of an endangered species, an action agency is not authorized to “take” or jeopardize *any* members of that species.

The ESA provides for citizen enforcement of the provisions of the Act. To enforce the “take” prohibition of section 9, 16 U.S.C. § 1538(g), “any person may commence a civil suit on his own behalf . . . to enjoin any person, including the United States and any other governmental instrumentality or agency, who is alleged to be in violation of any provision of the this chapter.” 16 U.S.C. §1540(g)(1)(A). An injunction under section 9 of the ESA can be warranted upon a showing of “a reasonably certain threat of imminent harm” to a listed species. See *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 784 (9th Cir. 1995).

II. Factual Background

A. Listed Species Negatively Impacted by the State of Colorado’s Administration, Distribution and Regulation of Water in the Rio Grande Basin

i. Rio Grande Silvery Minnow (*Hybognathus amarus*)

The Rio Grande silvery minnow is a “small, relatively heavy-bodied minnow, round to ovate in cross-section, with moderately small eyes and a small, slightly oblique mouth.” See *Rio Grande Silvery Minnow Recovery Plan*, First Revision 2010 (Originally Approved on July 8, 1999) at 5. Adults reach about 4 inches in length and exhibit a light greenish-yellow color. *Id.* The silvery minnow is a “pelagic spawner that produces thousands of semibuoyant, non-adhesive eggs that passively drift while developing.” *Id.* at 6. Reproduction in the silvery minnow is triggered by and corresponds with high or peak spring flows that historically occurred in May or June as a result of snowmelt runoff. *Id.* at 7.

The silvery minnow was historically one of the most abundant and widespread species in the entire Rio Grande, occurring from Espanola, New Mexico to the Gulf of Mexico and in much of the Pecos River. *Id.* at 15. The silvery minnow has been extirpated from more than 95% of its historical range and today only occupies a 174-mile stretch of the river in the middle Rio Grande from Cochiti Dam and Elephant Butte Reservoir.³ *Id.* at 2.

The Service listed the Rio Grande silvery minnow as “endangered” under the ESA in 1994 and designated critical habitat for the entire reach of the middle Rio Grande in 1999. See 59

³ The silvery minnow was reintroduced into the Rio Grande near Big Bend, Texas in 2008. This population is considered “a nonessential, experimental population under section 10(j) of the ESA (73 FR 74357).” 2010 Recovery Plan at 16.

Fed. Reg. 36988 (7/20/94); 64 Fed. Reg. 36,274 (7/6/99). Pursuant to section 4(f) of the ESA, the Secretary of the Interior developed a recovery plan for the silvery minnow in 1999 and revised it in 2010. *See* 75 Fed. Reg. 7625 (2/22/10). The decline of the Rio Grande silvery minnow is attributable to the “destruction and modification of its habitat due to dewatering and diversion of water, water impoundment, and modification of the river (channelization)” among other factors. 2010 *Recovery Plan* at 2.

On May 6, 2013, the Service issued a draft “recommendation for water needed to support a wild silvery minnow population in the Middle Rio Grande” whereby a self-sustaining population could be achieved (“Hydrologic Objective”). *See U.S. Fish and Wildlife Service’s Hydrologic Objective* dated May 6, 2013 at 1. The Service’s recommendations are based on “the relationship between average density of silvery minnows measured over 20 years and associated hydrologic variables measured during those same years.” *Id.* Although the Hydrologic Objective focuses on the relationship between success of the silvery minnows and flow conditions, implementing the recommended flows in the Rio Grande would also benefit the flycatcher and help support flycatcher habitat and breeding territories.

The Service’s Hydrologic Objective focuses on two life stages of the silvery minnow reproduction (Age 0 Strategy) and survival (Age 1+ Strategy). The Service reports that 95% of the silvery minnow population in the middle Rio Grande is of the Age 0 class. *Id.* Reproduction of the silvery minnow is directly tied to the peak discharge including timing of flow, flow duration and flow magnitude. *Id.* The Service reached the following conclusions:

1. “Higher magnitude flow in spring results in more silvery minnows in fall.” *Id.* at 2.
2. The following table shows the average densities of silvery minnow found in the fall based on the magnitude of flow in the spring:

Rate of Flow (cubic feet per second)	Average Density in Fall (silvery minnow/100m ²)
2500	~ 1.0
3300	~ 1.5
5400	~ 5.0

2. “Duration of overbank flooding (i.e., days of peak discharge > 2,500 cfs at Central gage) results in more silvery minnows.”⁴ *Id.* at 3.

⁴ The “Central gage” is more formally known as USGS Station No. 08330000, Rio Grande at Albuquerque, New Mexico and is located at Latitude 35°05'21", Longitude 106°40'50.5" in Bernalillo County, New Mexico.

Duration of Overbank Flooding (in excess of 2500 cfs at the Central gauge in NM)	Average Density in Fall (silvery minnow/100m ²)
15 days	~ 1.0
28 days	~ 1.5
68 days	~ 5.0

3. “Successful spawning, percent hatch, and rate of development is optimal in early to late May.” *Id.*

These correlations found by the Service indicate that for silvery minnows to successfully reproduce, the species needs high magnitude flows, for a longer duration that occur in the spring (ideally in May).

The Service also recommends that in years when no spring peak flow is generated “measures should be taken to reduce the extent and duration of drying.” *Id.* The Service found that similar to the relationship between peak flow and successful reproduction in the minnow “there is a significant relationship between the magnitude of flow measured at San Acacia Gage and the abundance of silvery minnows surveyed in fall.”⁵ *Id.* The following table shows the relationship between duration of low flow and number of silvery minnow:

Duration of Low Flow Days (i.e. <150 cfs at San Acacia gage in summer or <300 cf in winter)	Average Density in Fall (silvery minnow/100m ²)
98 days	~ 1.5
63 days	~ 3.0

Likewise, a correlation can be found between magnitude of river drying (i.e. miles of river drying or days <150 cfs at San Acacia gauge in summer or <300 cfs in winter) results in less silvery minnows:

Magnitude of River Drying	Average Density in Fall (silvery minnow/100m ²)
42 miles	~ 1.5
30 miles	~ 3.0

⁵ The “San Acacia gage” is also know as USGS Station No. 08354900, Rio Grande Floodway at San Acacia, New Mexico and is located at Latitude 34°15'23", Longitude 106°53'27" in Socorro County, New Mexico.

Id.

The Service's Hydrologic Object emphasizes that peak flows in May, of a certain magnitude and duration, and base flows in the river for the remainder of the summer are crucial to prevent significant habitat modification actually killing the minnow by impairing essential behavior patterns such as breeding, feeding or sheltering. The State of Colorado administers, distributes, and regulates water in a manner that is directly contrary to the needs of the endangered silvery minnow in the middle Rio Grande.

ii. Southwestern willow flycatcher (*Empidonax traillii extimus*)

The Southwestern willow flycatcher is a small migratory bird approximately six inches long, weighing about half an ounce. *See 2002 Southwestern Willow Flycatcher Final Recovery Plan* dated August 30, 2002 at 4. "It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly." *Id.* The willow flycatcher inhabits the streamside and wetland thickets of New Mexico, Arizona, west Texas, and southern portions of Nevada, Utah, California, and Colorado. *Id.* at 7. The willow flycatcher's breeding habitat includes "patchy to dense riparian habitats along streams or other wetlands, near or adjacent to surface water or underlain by saturated soil." *Id.* at 11.

On February 27, 1995, the Service listed the Southwestern willow flycatcher as endangered pursuant to section 4 of the ESA and designated critical habitat on July 22, 1997. *See 60 Fed. Reg. 10694 (2/27/95); 62 Fed. Reg. 39129 (7/22/97).* At the time of listing, the known flycatcher population was estimated between 300 and 500 pairs. *Id.* In its listing rule, the Service found that the Southwestern willow flycatcher is endangered by loss of habitat and population declines resulting in substantial part from human impacts on the species and its critical habitat. *Id.* These include adverse modifications of riparian habitat necessary for the breeding and successful reproduction of the flycatcher as a result of human development, channelization, changes in surface water hydrologic regimes, introduction of alien species, and other activities. *Id.* In 2002, the Secretary of the Interior released a recovery plan setting forth the measures necessary to recover the species. *See 2002 Southwestern Willow Flycatcher Final Recovery Plan.* The recovery plan indicates that the most severe loss of flycatchers and their habitat occurred in the Rio Grande valley. *Id.* at 31.

Flycatchers arrive on their breeding grounds in late April and May and the peak flows that benefit the minnow also promote flycatcher nesting habitat and breeding territories. Spring peak flows and base flows in the Rio Grande during the irrigation season are key factors for protecting and restoring habitat for the Southwestern willow flycatcher. The State of Colorado administers, distributes and regulates water in a manner that is directly contrary to the needs of the endangered Southwestern willow flycatcher in the middle Rio Grande.

B. Colorado's Administration, Distribution, and Regulation of Water in the Rio Grande Basin of Colorado Significantly Reduces the Magnitude and Duration of any Peak Flow in the Rio Grande in Central New Mexico

The Rio Grande exhibits a dynamic flow regime that historically would vary from year to year by an order-of-magnitude. U.S. Bureau of Reclamation, *West-Wide Climate Risk Assessment: Upper Rio Grande Impact Assessment*, dated December 2013 at 15. The unregulated annual flows at the Rio Grande gauge near Del Norte, Colorado⁶ ("Del Norte Gauge")—the gauge that measures the flows entering the basin from the southern Rocky Mountains—can fluctuate from fewer than 100,000 acre-feet to over 1,000,000 acre-feet. *Id.* at 16.

Sixty-five percent of the native flows in the Rio Grande originate from snowmelt and runoff from the headwaters of the San Juan Mountains of Colorado. *Id.* at 11. Prior to the modification of the natural hydrograph by the construction of dams, storage of water, and diversions for irrigated agriculture in the San Luis Valley, a significant spring peak flood flow occurred each year. Many of the native species that inhabit the Rio Grande evolved with and rely on the dynamic nature of the river for their survival, including the Rio Grande silvery minnow and Southwestern willow flycatcher.

The alteration and elimination of such a peak-flow in the Rio Grande threatens the survival and recovery of the silvery minnow and willow flycatcher in the middle Rio Grande. The State of Colorado's administration, distribution, and regulation of water in the southern Colorado plays a critical role in limiting the amount of water that is available to create a peak-flow in the spring of each year. A simple comparison of the flows measured at the Del Norte Gauge (upstream of the San Luis Valley) to the flows measured at the Rio Grande near Lobatos, Colorado gauge⁷ ("Lobatos Gauge") near the Colorado-New Mexico state line (downstream of the San Luis Valley) demonstrates the impact of irrigation in the San Luis Valley on spring peak flows on Rio Grande.

A table showing this comparison—including the daily average flows at each gauge (in cubic feet per second) from April 1 to May 31 for a five-year period from 2009 to 2013—is attached as **Exhibit A**. In addition to this gauge data, the table calculates the rate of flow consumed in the San Luis Valley, the percent of the total flows at the Del Norte Gauge that reach the Colorado-New Mexico state line (as measured at the Lobatos Gauge) on a daily basis, and the average delivery by Colorado during the months of April and May.⁸ As shown in the table,

⁶ USGS Station No. 08220000, Rio Grande near Del Norte, Colorado is located at Latitude 37°41'19.0", Longitude 106°27'35.5" in Rio Grande County, Colorado.

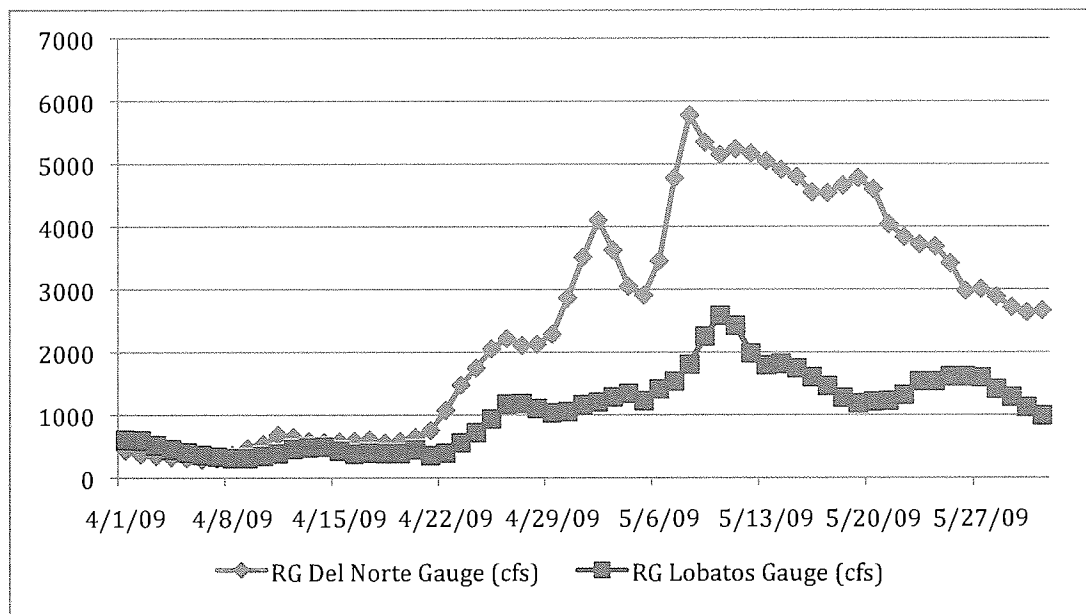
⁷ USGS Station No. 08251500, Rio Grande near Lobatos, Colorado is located at Latitude 37°04'43", Longitude 105°45'23" in Conejos County, Colorado.

⁸ Data from April 1 to May 31 was isolated because the natural peak flow in the hydrograph is developed and reached during that period. Any peak flow that occurs naturally or that is generated by modified

Colorado's administration, distribution, and regulation of water in the basin is responsible for the depletion of a significant (at times up to 98 percent of the flows measured at the Del Norte Gauge failed to reach the Colorado-New Mexico state line) portion of the flows in the Rio Grande.

For example, in 2009, runoff in the Rio Grande basin was forecast as of April 1 to be 91 percent of average at the Del Norte Gauge, which is close to an average year. During the months of April and May in 2009, roughly 40 percent of the flows at the Del Norte Gauge were depleted before reaching the Lobatos Gauge near the state line. However, on certain days within the months of April and May, Colorado consumed nearly 75 percent of the flows measured at the Del Norte Gauge leaving only 25 percent of the headwaters' flows at the state line. See May 19, 2009 data, showing measurement of 4,770 cfs at the Del Norte Gauge and 1190 cfs at the Lobatos Gauge (3,580 cfs was consumed in the San Luis Valley). A graphical representation of this 2009 data is included in **Figure 1**.

**Figure 1. Comparison of Rio Grande Flows at Del Norte and Lobatos Gauges
From April-May 2009**



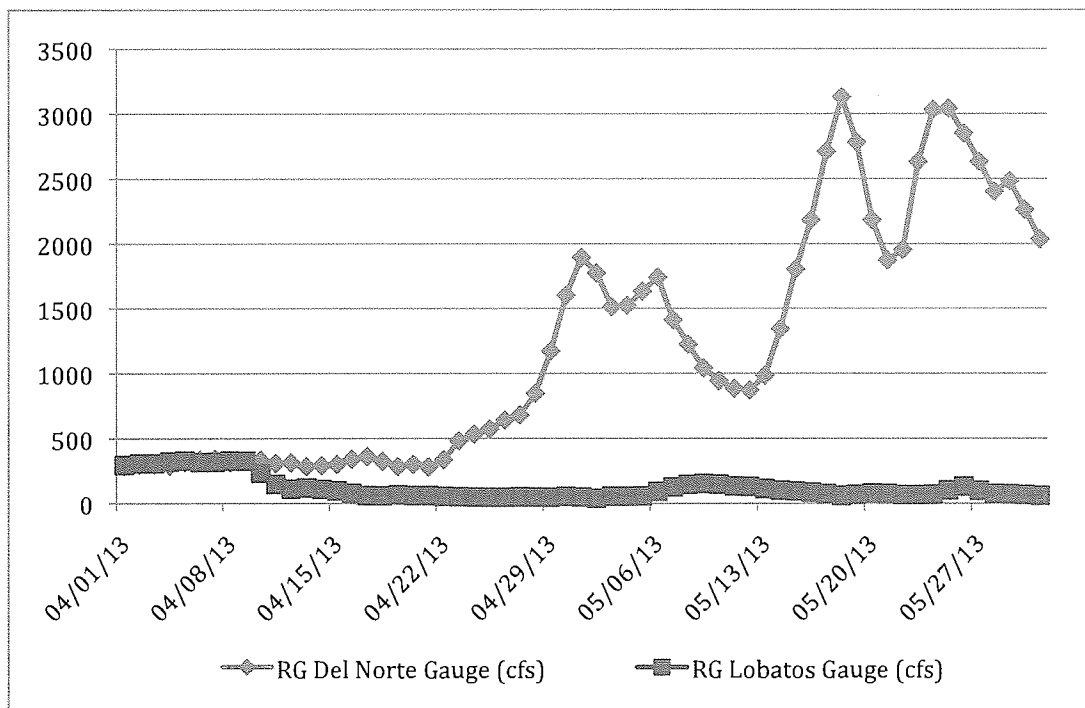
The impacts of irrigation in the San Luis Valley are even more pronounced in dry years on the Rio Grande. In 2013, the April 1 forecast at the Del Norte Gauge was 51 percent of

operations at Cochiti reservoir occurs during this period. Further, as discussed above, the silvery minnow and flycatcher rely on such a peak-flow in May to reproduce.

average. During the months of April and May of that year, on average 75 percent of the flows at the Del Norte Gauge were consumed by the San Luis Valley before reaching the Lobatos Gauge. However, the average numbers do not tell the whole story.

On May 18, 2013, the peak in the hydrograph at the Del Norte Gauge reached 3,130 cfs. The San Luis Valley consumed 98 percent of the flows (3,069 cfs) leaving only 2 percent (60 cfs)⁹ at the Lobatos Gauge. A graphical representation of this data is included in **Figure 2**. When 65 percent of native flows in the Rio Grande result from snowmelt runoff from the southern Rockies and 98 percent of that is consumed by irrigation in Colorado, no peak flow can occur naturally in the critical habitat of the minnow and flycatcher; nor could a peak flow be manufactured by modification of reservoir operations to store and release a peak flow because sufficient base flows in the river do not exist to either store water for later release or to carry water released from storage. Thus, in years of low flows—when endangered species in the basin need the water the most—Colorado is consuming nearly all of the water in the system.

**Figure 2. Comparison of Rio Grande Flows at Del Norte and Lobatos Gauges
From April-May 2013**



⁹ The flow rate of 60 cubic feet per second for the entire day is equivalent to 120 acre-feet. As compared to the flow rate of 3,069 cubic feet per second consumed in the San Luis Valley that is equivalent to 6,087 acre-feet per day.

The administration of water rights by the State of Colorado under the priority system to maximize beneficial use is causing a severe depletion to the Rio Grande system. The only reason the San Luis Valley does not consume all of the water measured at the Del Norte Gauge is the State of Colorado's obligation to deliver a certain percentage of that water to the Colorado-New Mexico state line under the Rio Grande Compact of 1939 ("Compact").¹⁰ However, even considering the State of Colorado's obligations under the Compact, the State of Colorado's obligation to not "take" listed endangered species is a completely separate obligation above and beyond any agreement between the states of New Mexico, Texas and Colorado. Therefore, the State of Colorado cannot hide behind its compliance with the Compact as an excuse for not meeting its obligation to comply with the mandates of the ESA.

III. Violations of Section 9 of the ESA

Guardians hereby puts the State of Colorado on notice that it will promptly seek judicial relief if the State fails to remedy the ongoing and imminent future violations of the ESA. 16 U.S.C. §§ 1538(g).

Guardians hereby provides notice that the State of Colorado is violating section 9 of the ESA, 16 U.S.C. § 1538(g), and its implementing regulations by causing ongoing and imminent future "take" without a permit authorized by law of the endangered Rio Grande silvery minnow and/or Southwestern willow flycatcher as the result of Colorado's administration, distribution, and regulation of water in the Rio Grande basin in Colorado.

Guardians hereby provides notice that the State of Colorado is violating section 9 of the ESA, 16 U.S.C. § 1538(g), and its implementing regulations by causing ongoing and imminent future "take" without a permit authorized by law of the endangered Rio Grande silvery minnow and/or Southwestern willow flycatcher by destroying or adversely modifying critical habitat of the listed species as defined in 50 C.F.R. § 402.02.

¹⁰ On March 18, 1938, the states of Colorado, New Mexico and Texas entered into the Rio Grande Compact in an effort to remove controversy among the states and allocate waters of the Rio Grande located above Ft. Quitman, Texas. Congress approved the Compact in 1939. Article III of the Rio Grande Compact establishes Colorado's annual "obligation to deliver water in the Rio Grande to the Colorado-New Mexico State line." The Compact provides a process for calculating Colorado's delivery obligation in each calendar year based on a sliding scale. Colorado's delivery obligation is very small under the Compact when flows are low, but its delivery obligation increases exponentially as the flows into the system increase. The State of Colorado, however, does not have an obligation to deliver its annual obligation in a way that represents the historic flow regime. Thus, even under the Compact, Colorado attempts to deliver as much of its annual obligation as possible during the non-irrigation season, thus diminishing any chance for a peak flow as would have occurred historically.

IV. Noticing Party

WildEarth Guardians is a non-profit, public interest, environmental advocacy, and conservation organization. Guardians' mission is to protect and restore wildlife, wild rivers, and wild places in the American West. Guardians has over 43,000 members and activists, many of whom live, work, and recreate in areas affected by the ESA violations described herein. Guardians and its members have a substantial interest in the conservation and recovery of the Rio Grande silvery minnow, Southwestern willow flycatcher, and other listed species in the middle Rio Grande and are adversely affected by the State of Colorado's failure to protect the listed species and their habitat in compliance with the ESA.

The name, address and telephone number of the party giving this notice is as follows:

WildEarth Guardians
516 Alto Street
Santa Fe, New Mexico 87501
(303) 884-2702
jpelz@wildearthguardians.org

V. Conclusion

One of the purposes of the ESA citizen suit provision, 16 U.S.C. § 1540(g), is to encourage discussions among parties in order to avoid potential litigation. We encourage the State of Colorado to seriously consider the concerns detailed in this notice and ask that you discuss the steps the State may taken going forward to remedy these legal violations. However, if the aforementioned violations of the ESA are not remedied within 60 days of the date of this letter, we intend to file a citizen's suit in federal court seeking preliminary and permanent injunctive relief, declaratory relief, and attorneys' fees and costs concerning these violations. If you believe any of the above information is incorrect, have any additional information that might help avoid litigation, or wish to discuss this matter further, please feel free to contact me at the phone or email address listed below.

Sincerely,

Jen Pelz
Wild Rivers Program Director
jpelz@wildearthguardians.org
303-884-2702

EXHIBIT A
2009-2013 Comparison of Daily Average Flows in Rio Grande
From April 1 to May 31

DATE	RG DEL NORTE (Daily Average)	RG LOBATOS (Daily Average)	(Del Norte - Lobatos)	% Remaining @ CO-NM State Line	AVG % Remaining/ Annual Peak
4/1/09 0:00	434	618	-184	142.40%	58.87%
4/2/09 0:00	365	604	-239	165.48%	
4/3/09 0:00	344	529	-185	153.78%	
4/4/09 0:00	321	463	-142	144.24%	
4/5/09 0:00	307	412	-105	134.20%	
4/6/09 0:00	288	373	-85	129.51%	
4/7/09 0:00	308	340	-32	110.39%	
4/8/09 0:00	359	315	44	87.74%	
4/9/09 0:00	461	314	147	68.11%	
4/10/09 0:00	527	353	174	66.98%	
4/11/09 0:00	678	390	288	57.52%	
4/12/09 0:00	641	464	177	72.39%	
4/13/09 0:00	573	489	84	85.34%	
4/14/09 0:00	560	500	60	89.29%	
4/15/09 0:00	572	435	137	76.05%	
4/16/09 0:00	582	389	193	66.84%	
4/17/09 0:00	599	402	197	67.11%	
4/18/09 0:00	550	393	157	71.45%	
4/19/09 0:00	576	391	185	67.88%	
4/20/09 0:00	634	453	181	71.45%	
4/21/09 0:00	748	364	384	48.66%	
4/22/09 0:00	1070	401	669	37.48%	
4/23/09 0:00	1470	564	906	38.37%	
4/24/09 0:00	1740	729	1011	41.90%	
4/25/09 0:00	2050	942	1108	45.95%	
4/26/09 0:00	2210	1180	1030	53.39%	
4/27/09 0:00	2100	1190	910	56.67%	
4/28/09 0:00	2120	1110	1010	52.36%	
4/29/09 0:00	2280	1040	1240	45.61%	
4/30/09 0:00	2860	1060	1800	37.06%	
5/1/09 0:00	3510	1170	2340	33.33%	
5/2/09 0:00	4100	1210	2890	29.51%	
5/3/09 0:00	3620	1290	2330	35.64%	
5/4/09 0:00	3040	1350	1690	44.41%	

5/5/09 0:00	2900	1230	1670	42.41%	
5/6/09 0:00	3450	1420	2030	41.16%	
5/7/09 0:00	4770	1540	3230	32.29%	
5/8/09 0:00	5770	1810	3960	31.37%	PEAK
5/9/09 0:00	5340	2260	3080	42.32%	
5/10/09 0:00	5140	2590	2550	50.39%	
5/11/09 0:00	5230	2430	2800	46.46%	
5/12/09 0:00	5160	1990	3170	38.57%	
5/13/09 0:00	5040	1800	3240	35.71%	
5/14/09 0:00	4900	1820	3080	37.14%	
5/15/09 0:00	4790	1750	3040	36.53%	
5/16/09 0:00	4540	1610	2930	35.46%	
5/17/09 0:00	4530	1470	3060	32.45%	
5/18/09 0:00	4650	1280	3370	27.53%	
5/19/09 0:00	4770	1190	3580	24.95%	
5/20/09 0:00	4590	1220	3370	26.58%	
5/21/09 0:00	4030	1230	2800	30.52%	
5/22/09 0:00	3830	1330	2500	34.73%	
5/23/09 0:00	3710	1540	2170	41.51%	
5/24/09 0:00	3680	1540	2140	41.85%	
5/25/09 0:00	3410	1620	1790	47.51%	
5/26/09 0:00	2970	1620	1350	54.55%	
5/27/09 0:00	3000	1600	1400	53.33%	
5/28/09 0:00	2880	1420	1460	49.31%	
5/29/09 0:00	2710	1290	1420	47.60%	
5/30/09 0:00	2630	1130	1500	42.97%	
5/31/09 0:00	2660	998	1662	37.52%	
4/1/10 0:00	623	718	-95	115.25%	56.93%
4/2/10 0:00	514	826	-312	160.70%	
4/3/10 0:00	427	852	-425	199.53%	
4/4/10 0:00	316	766	-450	242.41%	
4/5/10 0:00	353	695	-342	196.88%	
4/6/10 0:00	381	609	-228	159.84%	
4/7/10 0:00	336	498	-162	148.21%	
4/8/10 0:00	471	446	25	94.69%	
4/9/10 0:00	564	403	161	71.45%	
4/10/10 0:00	725	411	314	56.69%	
4/11/10 0:00	905	522	383	57.68%	
4/12/10 0:00	1120	649	471	57.95%	
4/13/10 0:00	1200	777	423	64.75%	
4/14/10 0:00	1030	1100	-70	106.80%	
4/15/10 0:00	1140	827	313	72.54%	

4/16/10 0:00	1430	691	739	48.32%	
4/17/10 0:00	1800	758	1042	42.11%	
4/18/10 0:00	1870	850	1020	45.45%	
4/19/10 0:00	1880	1110	770	59.04%	
4/20/10 0:00	1840	1070	770	58.15%	
4/21/10 0:00	2190	970	1220	44.29%	
4/22/10 0:00	2690	1110	1580	41.26%	
4/23/10 0:00	2430	1340	1090	55.14%	
4/24/10 0:00	1670	1300	370	77.84%	
4/25/10 0:00	1360	894	466	65.74%	
4/26/10 0:00	1300	768	532	59.08%	
4/27/10 0:00	1460	783	677	53.63%	
4/28/10 0:00	1760	817	943	46.42%	
4/29/10 0:00	1990	868	1122	43.62%	
4/30/10 0:00	1590	969	621	60.94%	
5/1/10 0:00	1320	828	492	62.73%	
5/2/10 0:00	1170	657	513	56.15%	
5/3/10 0:00	1040	596	444	57.31%	
5/4/10 0:00	1130	555	575	49.12%	
5/5/10 0:00	1590	500	1090	31.45%	
5/6/10 0:00	2480	476	2004	19.19%	
5/7/10 0:00	2400	565	1835	23.54%	
5/8/10 0:00	2500	670	1830	26.80%	
5/9/10 0:00	2600	641	1959	24.65%	
5/10/10 0:00	3150	654	2496	20.76%	
5/11/10 0:00	2970	772	2198	25.99%	
5/12/10 0:00	2910	728	2182	25.02%	
5/13/10 0:00	2520	623	1897	24.72%	
5/14/10 0:00	2040	547	1493	26.81%	
5/15/10 0:00	1890	487	1403	25.77%	
5/16/10 0:00	1960	470	1490	23.98%	
5/17/10 0:00	2530	462	2068	18.26%	
5/18/10 0:00	3410	503	2907	14.75%	
5/19/10 0:00	3150	554	2596	17.59%	
5/20/10 0:00	2680	521	2159	19.44%	
5/21/10 0:00	3130	459	2671	14.66%	
5/22/10 0:00	4100	450	3650	10.98%	
5/23/10 0:00	4280	517	3763	12.08%	
5/24/10 0:00	3890	849	3041	21.83%	
5/25/10 0:00	2950	1050	1900	35.59%	
5/26/10 0:00	2520	904	1616	35.87%	
5/27/10 0:00	2960	698	2262	23.58%	

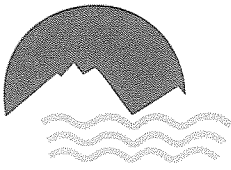
5/28/10 0:00	4090	673	3417	16.45%	
5/29/10 0:00	4980	1150	3830	23.09%	PEAK
5/30/10 0:00	4720	1600	3120	33.90%	
5/31/10 0:00	4090	1820	2270	44.50%	
4/1/11 0:00	362	146	216	40.33%	18.49%
4/2/11 0:00	467	113	354	24.20%	
4/3/11 0:00	578	99.8	478.2	17.27%	
4/4/11 0:00	516	97.2	418.8	18.84%	
4/5/11 0:00	476	154	322	32.35%	
4/6/11 0:00	528	101	427	19.13%	
4/7/11 0:00	588	83.1	504.9	14.13%	
4/8/11 0:00	549	67.8	481.2	12.35%	
4/9/11 0:00	501	77.5	423.5	15.47%	
4/10/11 0:00	455	79.5	375.5	17.47%	
4/11/11 0:00	416	62.6	353.4	15.05%	
4/12/11 0:00	418	65.5	352.5	15.67%	
4/13/11 0:00	388	73.5	314.5	18.94%	
4/14/11 0:00	404	70.2	333.8	17.38%	
4/15/11 0:00	402	59.6	342.4	14.83%	
4/16/11 0:00	402	56.4	345.6	14.03%	
4/17/11 0:00	480	58	422	12.08%	
4/18/11 0:00	672	58.4	613.6	8.69%	
4/19/11 0:00	908	63.2	844.8	6.96%	
4/20/11 0:00	948	149	799	15.72%	
4/21/11 0:00	973	262	711	26.93%	
4/22/11 0:00	969	193	776	19.92%	
4/23/11 0:00	932	174	758	18.67%	
4/24/11 0:00	932	179	753	19.21%	
4/25/11 0:00	845	168	677	19.88%	
4/26/11 0:00	801	150	651	18.73%	
4/27/11 0:00	724	129	595	17.82%	
4/28/11 0:00	665	126	539	18.95%	
4/29/11 0:00	666	125	541	18.77%	
4/30/11 0:00	634	112	522	17.67%	
5/1/11 0:00	614	124	490	20.20%	
5/2/11 0:00	560	158	402	28.21%	
5/3/11 0:00	540	182	358	33.70%	
5/4/11 0:00	521	202	319	38.77%	
5/5/11 0:00	539	193	346	35.81%	
5/6/11 0:00	618	178	440	28.80%	
5/7/11 0:00	769	190	579	24.71%	
5/8/11 0:00	1130	213	917	18.85%	

5/9/11 0:00	1480	295	1185	19.93%	
5/10/11 0:00	1390	327	1063	23.53%	
5/11/11 0:00	1320	272	1048	20.61%	
5/12/11 0:00	1110	284	826	25.59%	
5/13/11 0:00	1040	239	801	22.98%	
5/14/11 0:00	1280	221	1059	17.27%	
5/15/11 0:00	1620	232	1388	14.32%	
5/16/11 0:00	2220	248	1972	11.17%	
5/17/11 0:00	2520	272	2248	10.79%	
5/18/11 0:00	2190	285	1905	13.01%	
5/19/11 0:00	1830	295	1535	16.12%	
5/20/11 0:00	1480	245	1235	16.55%	
5/21/11 0:00	1290	222	1068	17.21%	
5/22/11 0:00	1230	202	1028	16.42%	
5/23/11 0:00	1300	196	1104	15.08%	
5/24/11 0:00	1410	195	1215	13.83%	
5/25/11 0:00	1400	233	1167	16.64%	
5/26/11 0:00	1600	230	1370	14.38%	
5/27/11 0:00	2060	220	1840	10.68%	
5/28/11 0:00	2790	222	2568	7.96%	
5/29/11 0:00	3780	250	3530	6.61%	
5/30/11 0:00	4110	358	3752	8.71%	PEAK
5/31/11 0:00	3520	421	3099	11.96%	
4/1/12 0:00	1630	895	735	54.91%	14.43%
4/2/12 0:00	1570	876	694	55.80%	
4/3/12 0:00	1270	814	456	64.09%	
4/4/12 0:00	1040	431	609	41.44%	
4/5/12 0:00	998	272	726	27.25%	
4/6/12 0:00	1090	208	882	19.08%	
4/7/12 0:00	1100	168	932	15.27%	
4/8/12 0:00	1120	145	975	12.95%	
4/9/12 0:00	1210	123	1087	10.17%	
4/10/12 0:00	1380	166	1214	12.03%	
4/11/12 0:00	1720	187	1533	10.87%	
4/12/12 0:00	1870	209	1661	11.18%	
4/13/12 0:00	1520	240	1280	15.79%	
4/14/12 0:00	1260	227	1033	18.02%	
4/15/12 0:00	1080	207	873	19.17%	
4/16/12 0:00	975	174	801	17.85%	
4/17/12 0:00	870	192	678	22.07%	
4/18/12 0:00	794	214	580	26.95%	
4/19/12 0:00	795	170	625	21.38%	

4/20/12 0:00	802	172	630	21.45%	
4/21/12 0:00	927	176	751	18.99%	
4/22/12 0:00	1110	176	934	15.86%	
4/23/12 0:00	1460	194	1266	13.29%	
4/24/12 0:00	1870	227	1643	12.14%	
4/25/12 0:00	2240	237	2003	10.58%	
4/26/12 0:00	2470	224	2246	9.07%	
4/27/12 0:00	2650	256	2394	9.66%	
4/28/12 0:00	2350	285	2065	12.13%	
4/29/12 0:00	2000	314	1686	15.70%	
4/30/12 0:00	1700	303	1397	17.82%	
5/1/12 0:00	1730	238	1492	13.76%	
5/2/12 0:00	1780	171	1609	9.61%	
5/3/12 0:00	1970	175	1795	8.88%	
5/4/12 0:00	2250	170	2080	7.56%	
5/5/12 0:00	2590	178	2412	6.87%	
5/6/12 0:00	2850	194	2656	6.81%	
5/7/12 0:00	2890	197	2693	6.82%	PEAK
5/8/12 0:00	2590	214	2376	8.26%	
5/9/12 0:00	2440	249	2191	10.20%	
5/10/12 0:00	2280	224	2056	9.82%	
5/11/12 0:00	2350	173	2177	7.36%	
5/12/12 0:00	2430	170	2260	7.00%	
5/13/12 0:00	2420	196	2224	8.10%	
5/14/12 0:00	2300	218	2082	9.48%	
5/15/12 0:00	2220	203	2017	9.14%	
5/16/12 0:00	2250	184	2066	8.18%	
5/17/12 0:00	2450	151	2299	6.16%	
5/18/12 0:00	2550	150	2400	5.88%	
5/19/12 0:00	2490	186	2304	7.47%	
5/20/12 0:00	2440	170	2270	6.97%	
5/21/12 0:00	2500	147	2353	5.88%	
5/22/12 0:00	2650	130	2520	4.91%	
5/23/12 0:00	2850	124	2726	4.35%	
5/24/12 0:00	2740	143	2597	5.22%	
5/25/12 0:00	2350	156	2194	6.64%	
5/26/12 0:00	2130	150	1980	7.04%	
5/27/12 0:00	1970	138	1832	7.01%	
5/28/12 0:00	1670	122	1548	7.31%	
5/29/12 0:00	1360	136	1224	10.00%	
5/30/12 0:00	1260	162	1098	12.86%	
5/31/12 0:00	1370	157	1213	11.46%	

4/1/13 0:00	291	296	-5	101.72%	25.56%
4/2/13 0:00	298	308	-10	103.36%	
4/3/13 0:00	297	307	-10	103.37%	
4/4/13 0:00	291	323	-32	111.00%	
4/5/13 0:00	316	329	-13	104.11%	
4/6/13 0:00	333	318	15	95.50%	
4/7/13 0:00	338	320	18	94.67%	
4/8/13 0:00	312	329	-17	105.45%	
4/9/13 0:00	325	327	-2	100.62%	
4/10/13 0:00	332	233	99	70.18%	
4/11/13 0:00	307	147	160	47.88%	
4/12/13 0:00	312	111	201	35.58%	
4/13/13 0:00	282	120	162	42.55%	
4/14/13 0:00	291	108	183	37.11%	
4/15/13 0:00	299	97.3	201.7	32.54%	
4/16/13 0:00	339	78.1	260.9	23.04%	
4/17/13 0:00	359	61.6	297.4	17.16%	
4/18/13 0:00	321	58.6	262.4	18.26%	
4/19/13 0:00	282	66.7	215.3	23.65%	
4/20/13 0:00	300	60.7	239.3	20.23%	
4/21/13 0:00	280	62.4	217.6	22.29%	
4/22/13 0:00	334	54.5	279.5	16.32%	
4/23/13 0:00	479	51.8	427.2	10.81%	
4/24/13 0:00	531	49.1	481.9	9.25%	
4/25/13 0:00	570	47.5	522.5	8.33%	
4/26/13 0:00	638	46.3	591.7	7.26%	
4/27/13 0:00	679	50.6	628.4	7.45%	
4/28/13 0:00	845	49	796	5.80%	
4/29/13 0:00	1170	46.8	1123.2	4.00%	
4/30/13 0:00	1600	53.4	1546.6	3.34%	
5/1/13 0:00	1890	48.8	1841.2	2.58%	
5/2/13 0:00	1770	38.5	1731.5	2.18%	
5/3/13 0:00	1510	53.7	1456.3	3.56%	
5/4/13 0:00	1520	54.2	1465.8	3.57%	
5/5/13 0:00	1630	57.8	1572.2	3.55%	
5/6/13 0:00	1740	90	1650	5.17%	
5/7/13 0:00	1410	126	1284	8.94%	
5/8/13 0:00	1220	145	1075	11.89%	
5/9/13 0:00	1040	152	888	14.62%	
5/10/13 0:00	940	147	793	15.64%	
5/11/13 0:00	883	133	750	15.06%	
5/12/13 0:00	870	131	739	15.06%	

5/13/13 0:00	983	113	870	11.50%	
5/14/13 0:00	1340	99.8	1240.2	7.45%	
5/15/13 0:00	1800	93.5	1706.5	5.19%	
5/16/13 0:00	2180	86.9	2093.1	3.99%	
5/17/13 0:00	2710	72.9	2637.1	2.69%	
5/18/13 0:00	3130	60.4	3069.6	1.93%	PEAK
5/19/13 0:00	2780	68.6	2711.4	2.47%	
5/20/13 0:00	2180	78.5	2101.5	3.60%	
5/21/13 0:00	1870	77	1793	4.12%	
5/22/13 0:00	1950	66	1884	3.38%	
5/23/13 0:00	2630	65.9	2564.1	2.51%	
5/24/13 0:00	3030	70.1	2959.9	2.31%	
5/25/13 0:00	3040	102	2938	3.36%	
5/26/13 0:00	2850	131	2719	4.60%	
5/27/13 0:00	2630	98.5	2531.5	3.75%	
5/28/13 0:00	2400	74.9	2325.1	3.12%	
5/29/13 0:00	2480	72.2	2407.8	2.91%	
5/30/13 0:00	2260	67.2	2192.8	2.97%	
5/31/13 0:00	2030	58.2	1971.8	2.87%	




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.

Memo

Date: January 15, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager 

INFORMATIONAL ITEM:

Buckman Direct Diversion was awarded the 2013 Max N. Summerlot Award and the 2013 Good Housekeeping Award for Surface Water Treatment System.

BACKGROUND AND SUMMARY:

On January 29, 2014, the Buckman Direct Diversion was presented with 2013 Max N. Summerlot Award and 2013 Good Housekeeping Award for Surface Water Treatment System by the New Mexico Water and Wastewater Association. The Max N. Summerlot Award is presented to a system that demonstrates excellence in the operations, maintenance, management, and professionalism of the system. This award alternates between water and wastewater systems each year. The Good Housekeeping Awards are presented in nine (9) categories; Surface Water Treatment System (old and new), Ground Water Treatment System (old and new), Lagoon Wastewater Treatment system, Mechanical Wastewater Treatment System (old and new), and Activated Sludge Wastewater System (old and new).

While these awards are a reflection of the Buckman Direct Diversion's commitment to maintain a high level of expectation and excel in the field of Surface Water Treatment, they are also a direct reflection on the staff, partners, and Buckman Direct Diversion Board who have dedicated themselves to serving their community with excellence and determination. Congratulations to the Buckman Direct Diversion and to those who make it possible.





Memo

DATE: February 6, 2014
TO: Buckman Direct Diversion Board
FROM: Mackie Romero, BDD Financial Manager *MR*
SUBJECT: 2nd Quarter Financial Statement

PURPOSE:

This memo is intended to update the BDD Board and its partners on our 2nd Quarter financial position as of December 31, 2013.

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

- Beginning Budget – FY13/14 Adopted Budget.
- Expended – Expenses per quarter for services and/or goods received as of 12/31/2013.
- Encumbrances – Executed purchase orders for goods and services.
- Projected – Projected salary and benefits as currently staffed, pending requisitions and or contracts to be executed within the fiscal year.
- Available Balance – Represents vacancy savings and uncommitted budget balance as of 12/31/2013.

90 Day Cash – Represents the cash target for the FY13/14 adopted budget year as per BDD Working Capital and Billing Policy.

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

Pre-Bills – As per the BDD Working Capital and Billing Policy, each partner is billed 1/12 of their share of the adopted budget.

Actual Expenses - Expenses for services and/or goods received as of December 31, 2013.

Outstanding Accounts Receivables - Represents the dollar amount owed by each partner as of December 31, 2013 for the monthly pre-bills.

Other Funds - Major Repair and Emergency Reserve funds continue to be billed monthly as part of the pre-bill process until the target balance has been reached.

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

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





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

2nd Quarter Financial Statement – Operations (Cumulative)

(Unaudited 07/01/2013-12/31/2013)*

Budget Overview

CATEGORY	BEGINNING BUDGET	EXPENDED 1st Quarter	EXPENDED 2nd Quarter	ENCUMB 1st Quarter	PROJECTED EXPENDITURES	TOTAL	BALANCE AVAILABLE
Salaries & Benefits	3,141,851	651,376	699,224	-	1,162,821	2,513,421	628,430
Electricity	1,233,755	269,013	246,339	755,387	-	1,270,740	(36,985)
Chemicals	374,783	36,089	48,702	-	312,712	397,503	(22,720)
Solids	77,800	20,006	50,316	-	-	70,322	7,478
Materials & Supplies	578,919	54,414	96,806	200,384	12,867	364,471	214,448
Other Operating Costs	1,526,999	208,053	182,494	519,565	189,498	1,099,610	427,389
Fiscal Agent Fees	103,496	25,874	25,874	-	51,748	103,496	(0)
TOTAL	7,037,603	1,264,825	1,349,755	1,685,502	1,729,646	5,819,562	1,218,041

90-Day Cash Target

	Total
City of Santa Fe	1,285,334
Santa Fe County	365,466
Las Campanas	84,499
	1,735,299

Cash Balance*

	Balance
Cash at 12/31/2013	259,984

Pre-Bills - Operations

	Total	1st Quarter	October	November	December
City of Santa Fe	2,671,774	1,386,125	389,386	429,681	466,581
Santa Fe County	803,824	435,120	127,167	121,336	120,201
Las Campanas	125,701	77,142	19,442	15,297	13,821
	3,601,300	1,898,387	535,995	566,314	600,603

Actual Expenses – Operations

	Total	1st Quarter	October	November	December
1st Quarter Expenses	2,614,580	1,264,825	434,325	398,126	517,303

*Outstanding Accounts Receivable

	Balance
City of Santa Fe	466,581
Santa Fe County	120,201
Las Campanas	14,869
	601,651

*Note: FY12/13 Ending balances have not been included in presentation of statement, except for cash.



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.

2nd Quarter Financial Statement – Other Funds (Cumulative)

(Unaudited 07/01/2013-12/31/2013)

Pre-Bills – Major Repair & Emergency Reserve Funds

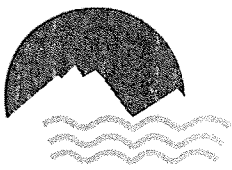
	Total	1st Quarter	City of Santa Fe	Santa Fe County	Las Campanas
Major Repair Fund	205,902	102,951	72,960	25,939	4,052
Emergency Reserve Fund	500,004	250,002	163,293	63,653	23,057
	705,906	352,953	236,253	89,592	27,108

Financial Position

	Emergency Reserve	Major Repair
Balance at 06/30/2013	1,416,678	583,389
1st Quarter Billing	250,002	102,951
2nd Quarter Billing*	250,002	102,951
Total	1,916,682	789,291
Target Balance Feb 2014	2,000,000	823,624
Remaining Balance	83,318	34,333

*Outstanding Accounts Receivable

	Balance
City of Santa Fe	78,751
Santa Fe County	29,864
Las Campanas	9,036
	117,651

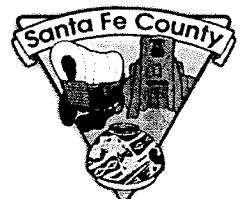


Buckman Direct Diversion Project

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

Date: January 27, 2014
To: Buckman Direct Diversion Board
From: Gary C. Durrant, Chief Operator BDD *GED*
Re: Update on BDD Operations for the month of January 2013

1. This memo is intended to update the BDD Board on BDD operations during the month of January. BDD diversions and deliveries have averaged, in Million Gallons Daily (MGD) as follows:
 - a) Raw water diversions: 4.321 MGD Average
 - b) Finished Drinking water deliveries through Booster Station 4A: 2.983 MGD Average
 - c) Finished Drinking water deliveries through Booster Station 5A: 1.109 MGD Average
 - d) Raw water delivery to Las Campanas at BS2A: 1.407 MG Total.
2. The BDD is currently providing approximately 60 percent of the water supply to the City and County for the month.
3. On Peak Pumping: The BDD has been pumping an average of 5.04 hours of each day on peak to deliver the requested volume of water, and because of freezing conditions at the river.
4. Please see the following pages from the Monthly report to the Office of the State Engineer (OSE) for the month of December 2013 for accurate information about totals for December and year to date.



**Monthly Diversions under SP-2847-E, SP-4842, and SP-2847-N-A
December 2013**

BDD Diversion of San Juan-Chama Water	af	mg
Total SJC water arrived at the BDD diversion site	274.19	89.34
Total SJC diverted at BDD	274.19	89.34
Total SJC available for offsetting depletions under RG-20516.	0	0.00

Total BDD water diverted from all water rights	af	mg
BDD Current Monthly Total	286.44	93.34
<i>SJC Diversion under Permit SP-2847-E</i>	<i>274.12</i>	<i>89.32</i>
<i>City of Santa Fe</i>	<i>274.12</i>	<i>89.32</i>
<i>Santa Fe County</i>	<i>0.00</i>	<i>0.00</i>
<i>SJC Diversion under SP-2847-N-A (CLCI)</i>	<i>0.06</i>	<i>0.02</i>
<i>Rio Grande native water rights (SP-4842;SFCountry)</i>	<i>12.25</i>	<i>3.99</i>

Metered Diversions under Permit SP-2847-E and SP-4842					
Meter Serial Number	OSE Meter Number	Current Month Meter Reading	Previous Month Meter Reading	Diversion by Meter	
				ac-ft	mg
CC004816000-Diversion	14113	1874.369	1845.7965	87.69	28.57
CC004916000-Diversion	14114	1908.122	1876.2871	97.70	31.83
CC004A16000-Diversion	14115	1885.104	1843.8202	126.70	41.28
CC000A16000-Return	14255	184.5315	176.1759	25.64	8.36
Total Metered Diversions				286.44	93.34

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

Buckman Direct Diversion End of Month Report

December 2011

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	247.17	4.94	242.23	221.46	37.55	0.00	259.98	20.77
FEB	320.95	6.42	314.53	269.13	36.61	0.00	305.74	45.86
MAR	352.04	7.04	345.00	335.37	46.09	0.00	381.46	9.62
APR	585.11	11.70	573.40	573.40	56.64	0.00	630.04	0.00
MAY	568.22	11.36	556.86	440.02	49.23	0.00	488.87	116.84
JUN	765.87	15.32	750.55	655.89	80.66	0.00	736.55	94.67
JUL	641.81	12.84	628.97	407.40	49.86	0.00	457.26	221.58
AUG	182.98	2.07	168.97	86.23	0.00	0.00	86.23	82.75
SEP	568.78	6.83	537.05	515.86	0.00	0.00	515.86	21.19
OCT	555.90	4.85	570.81	555.66	0.00	0.00	555.66	15.16
NOV	431.29	3.93	433.26	433.26	14.60	0.00	447.86	0.00
DEC	437.57	3.90	429.46	450.42	0.00	0.00	450.42	-20.96
TOTALS	5657.68	91.21	5551.11	4944.10	371.25	0.00	5315.94	607.47

January 1, 2011: 1050.8 acre-feet of native Rio Grande water rights in SP-4842; not all are available for diversion- some transfers include leaseback provisions.

As of May 30, 2011: 330 ac-ft under SP-4842 A

Correction to Oct Total of SJC Available at BDD. The incorrect value used calculated the SJC released from upstream reservoirs, not that amount that arrived at BDD for diversion.

Source of SJC Releases for BDD diversion in reporting month. Includes conveyance losses.

Month	Total Release (AF)	Conveyance Losses (AF)	HERON		EL VADO		ABIQUIU	
			CITY	COUNTY	CITY	COUNTY	CITY	COUNTY
JAN	247.17	4.94	247.17	0.00	0.00	0.00	0.00	0.00
FEB	320.95	6.42	320.95	0.00	0.00	0.00	0.00	0.00
MAR	352.04	7.04	352.04	0.00	0.00	0.00	0.00	0.00
APR	585.11	11.70	585.11	0.00	0.00	0.00	0.00	0.00
MAY	568.22	11.36	568.22	0.00	0.00	0.00	0.00	0.00
JUN	765.87	15.32	765.87	0.00	0.00	0.00	0.00	0.00
JUL	641.81	12.84	641.81	0.00	0.00	0.00	0.00	0.00
AUG	182.98	2.07	0.00	43.56	0.00	0.00	133.47	5.95
SEP	568.78	6.83	0.00	150.50	0.00	0.00	418.28	0.00
OCT	555.90	4.85	0.00	0.00	0.00	0.00	555.90	0.00
NOV	431.29	3.93	0.00	0.00	0.00	0.00	431.29	0.00
DEC	437.57	3.90	0.00	0.00	0.00	0.00	437.57	0.00
TOTALS	5657.68	91.21	3481.16	194.06	0.00	0.00	1976.51	5.95

MEMORANDUM

TO: City of Santa Fe Public Utilities Committee
City of Santa Fe Water Conservation Committee
Buckman Direct Diversion Board

FROM: Rick Carpenter, Water Resources and Conservation Manager *RC*

VIA: Nick Schiavo, Acting Public Utilities Department and Water Division *NSA*
Director

DATE: January 06, 2014

SUBJECT: Update on Drought, Monsoon, and Water Resource Management

CURRENT UPDATE – GENERAL WATER RESOURCE MANGEMENT

As the Committee/Board is aware, our region is still suffering through a severe drought. Our region has gone through three consecutive years of record drought and heat. It is now apparent that we are probably heading into a fourth consecutive year of severe drought and abnormal heat which will present significant challenges to all water purveyors, utilities, and irrigators going forward into next year. Even though much of the State and our region have received moderate monsoonal rains overall in July and August, and with much of the state receiving record high monsoonal rains in September, most of the state of New Mexico remains in “severe to extreme” drought conditions. New Mexico appears to be the epicenter of the western U.S. drought. Weather prediction models indicate that, at least through the early part of this winter, if not longer, drought conditions in the southwest (especially Arizona and New Mexico) should be neutral to below average precipitation (snow) and above average temperatures, therefore, overall drought conditions will likely still persist at least through the early part of next year. Runoff into regional river basins and reservoirs is expected to be normal to below normal.

This current drought is extreme, but what sets it apart from previous extreme droughts is that, absent significant winter snow the rest of this year, the region will enter into next spring and summer without very much carry-over water in regional reservoirs – they are at low levels (except for the local McClure reservoir in Santa Fe). For example, Heron reservoir (San Juan-Chama Project water) is currently at 35% of capacity. This condition could make this year much more challenging than the last year has been. However, the City of Santa Fe has invested in a robust and diverse portfolio of four distinct water supply sources that allows for flexibility in meeting demand: Buckman well field, City well field, Canyon Road Water Treatment Plant on the Upper Santa Fe River, and the Buckman Direct Diversion on the Rio Grande.

LOCAL CONDITIONS

Source of Supply Utilization Summary

November 2013

City Wells	7.47mg	22.91af
Buckman Wells	39.94mg	122.57af
CRWTP	50.30mg	154.36af
BRWTP	91.12mg	279.64af
<i>Other Wells (Osage, MRC, etc)</i>	<i>0.00mg</i>	<i>0.00af</i>

Upper Santa Fe River/CRWTP

	Total Combined Reservoir Level	Santa Fe Snow Gage	Reservoir Inflow
January 04, 2014	64.3%	25.0 inches	1.74 MGD
5-Year Average This Date (2009 – 2013)	47.9%	22.3 inches	0.44 MGD

Heading into September, water resource managers for the City were expecting the Canyon Road Water Treatment Plant to experience significant supply shortfalls later this year and into next year – due in part to severely reduced inflows resulting from the drought, but also due to the planned construction projects inside of the reservoir footprints. However, as of January 4th, and due to the recent heavy rains in mid-September and some early snow storms, total combined storage in Nichols and McClure reservoirs is up to 64.3% (or about 2,572 acre-feet of storage). Flows into Nichols are being by-passed due to construction on the new intake facility. Inflows are expected to continue for the near future and so McClure has been releasing a small amount of water to approximate inflows.

Buckman Regional Water Treatment Plant

Flows in the Rio Grande are relatively low but the BDD Project is able to divert water. Turbidity and suspended solids are very low and raw water quality is good. Demand in the system has been low, requiring only 3 to 4 mgd from the BDD Project.

REGIONAL CONDITIONS

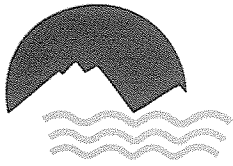
Rio Grande Basin

Surface flows in the Rio Grande and its tributaries have been well below normal, storage levels in regional reservoirs are very low currently. The recent rains have helped river flows (at least normal, temporarily) and regional reservoirs are receiving needed inflow, but normal to above normal to above normal snow pack is still needed this coming winter or reservoir levels will still

be critically low heading into next irrigation season. Recent weather forecast models seem to be suggesting that snow pack for the rest of this winter may be disappointing. Native flows in the Rio Grande will likely be low to very low.

San Juan Basin

It should be stressed that, conditions could significantly worsen for San Juan Chama Project deliveries next year if the drought persists (i.e., low snow pack this coming winter in the San Juan Basin), due to a lack of carry-over storage in Heron Reservoir and other reservoirs in the system. Heron Reservoir is currently at a historic low level of 35% of capacity for this time of year. Deliveries to SJCP contractors could be significantly curtailed next year. It is still too early in the year to say with much confidence, but the Bureau of Reclamation has called a meeting of San Juan-Chama contractors for January 15th wherein early forecasts for runoff and SJCP water deliveries are expected.



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 23, 2013

To: Buckman Direct Diversion Board

Via: Nick Schiavo, Acting Water Division and PUD Director

From: Rick Carpenter, BDD Project Manager 

Subject: **Request Approval of Contract Amendment No.1 with Padilla Industries in the Amount of \$87,424 (including NMGR) for Required Habitat Restoration Efforts for the BDD Project**

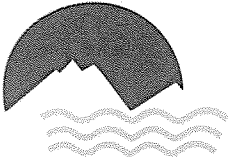
BACKGROUND

The BDD Project is required to perform certain environmental mitigation measures pursuant to the Project's NEPA Environmental Impact Statement. Generally, the BDD is required to remove certain non-native vegetation, re-vegetate the areas with native riparian and upland species, and maintain the newly restored habitat until it becomes naturally self-sufficient. The BDD Project is required to restore approximately 7 acres of habitat adjacent to the Rio Grande and the existing BDD intake/raw water lift station at the terminus of Buckman Road. This work is closely dependent upon the seasons of the year and must be completed in Fall-Winter.

The restoration efforts will consist of implementing forestry treatments to approximately a total of 7 acres of non-native forest dominated by saltcedar, Russian olive and Siberian elm. The purpose of this work is to prepare the site for follow-up seeding and revegetation with native plants. Forestry treatments will be implemented in a manner that minimizes soil disturbance, minimizes damage to existing native plants within the project area, and minimizes the need for follow-up herbicide applications to non-native tree root-sprouts. In addition to the forestry work, the project involves excavating a small backwater channel and floodplain depression that will eventually be planted with native willows and cottonwoods.

The Buckman Direct Diversion habitat mitigation project will require additional fence construction to protect the restoration project from damage by unauthorized vehicle access and trespass livestock. Damage from vandalism, flooding, and other sources has been a larger issue than what was originally anticipated. Currently both street vehicles





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.

be planted during winter/spring 2014. The purpose of this project is two-fold:

1. Erect new heavy duty pipe fencing to confine street vehicles to a designated parking area, and;
2. Use heavy duty pipe fence to replace segments of livestock enclosure fence that were damaged by vandals and flooding.

The scope of work involves purchasing material and constructing pipe fence.

RECOMMENDATION

Staff recommends approval of the contract amendment. Funds for this contact exist in the approved BDD Carve-out Budget, environmental line item.



**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No.1 TO
PROFESSIONAL SERVICES AGREEMENT
WITH PADILLA INDUSTRIES INC.**

This AMENDMENT No.1 (the "Amendment") is made to the PROFESSIONAL SERVICES AGREEMENT, dated 11/7/13 (the "Agreement"), between the Buckman Direct Diversion Board (the "BDDDB") and Padilla Industries Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDDB.

RECITALS

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

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

1. THE WORK:

Article 1 of the Agreement is amended so that the Agreement includes the additional work as outlined in the Exhibit "B" attached hereto.

2. CONTRACT SUM.

Article 3, of the Agreement is amended to increase the contract sum by a total of eighty thousand eight hundred and seven dollars and 86/100's (\$80,807.86), plus applicable gross receipts tax, (described in Table "1" attached hereto) so that Article 3, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to the Contractor in full payment for services rendered, a sum not to exceed two hundred eighty seven thousand one hundred eighty seven and 86/100's dollars (\$287,187.86), plus applicable gross receipts tax.

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 Professional Services Agreement as of the dates set forth below.

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

BUCKMAN DIRECT DIVERSION BOARD

By: _____

Title: _____

Date: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

NM Taxation & Revenue No. 02336846002

City of Santa Fe Business

Registration No. 13-00112287

APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel

APPROVED:

Marcos A. Tapia, City Finance Director

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____

EXHIBIT B

SCOPE OF WORK

PARKING AND LIVESTOCK FENCING FOR PROTECTION OF BUCKMAN HABITAT MITIGATION PROJECT

The Buckman Direct Diversion habitat mitigation project requires fence construction to protect the restoration project from damage by unauthorized vehicle access and trespass livestock. Currently both street vehicles and livestock have uncontrolled access to the mitigation area where thousands of native riparian trees and shrubs will be planted during winter/spring 2014. The purpose of this project is two-fold:

1. Erect new heavy duty pipe fencing to confine street vehicles to a designated parking area, and;
2. Use heavy duty pipe fence to replace segments of livestock exclosure fence that were damaged by vandals and flooding.

The scope of work involves purchasing material and constructing pipe fence in four locations shown in Figure 1. Fence segments shown in **black** in Figure 1 will create a defined parking area and prevent vehicles from accessing closed spur roads that meander through the habitat mitigation area. The spur roads will be converted to hiking trails and adjacent areas will be revegetated with native plants. Fence segments shown in **red** in Figure 1 will replace existing small gage "sucker rod" fence that was destroyed by vandals (north segment) and during the September 2013 flood (south segment across Canada Ancha).

All fence segments will be constructed using thick-wall (1/4 inch) steel pipe to minimize potential for vandalism or flood damage. Vertical posts will be constructed using 3-inch diameter steel (parking fence and north livestock fence) or 6-inch diameter steel (livestock fence that crosses Canada Ancha). Vertical posts will be spaced approximately 10 feet apart and anchored in concrete. Horizontal strands (3 strands) will be made of 2-inch diameter pipe and will be welded to vertical posts.

Three "ram-proof" heavy duty gates will be installed to allow authorized vehicles (City of Santa Fe, U.S. Forest Service, BLM) access to service areas. Gate locations are shown in **green** in Figure 1. Pedestrian passage ways (i.e., walk arounds) will be constructed adjacent to gate support posts. Pedestrian passage ways will be wide enough to enable hiker access to trails, but narrow enough to restrict motorized vehicles (street vehicles and ORV's).

OVERVIEW MAP



Legend

-  New Gate
-  Parking Area
-  Parking Area Fence
-  Replace Livestock Fence

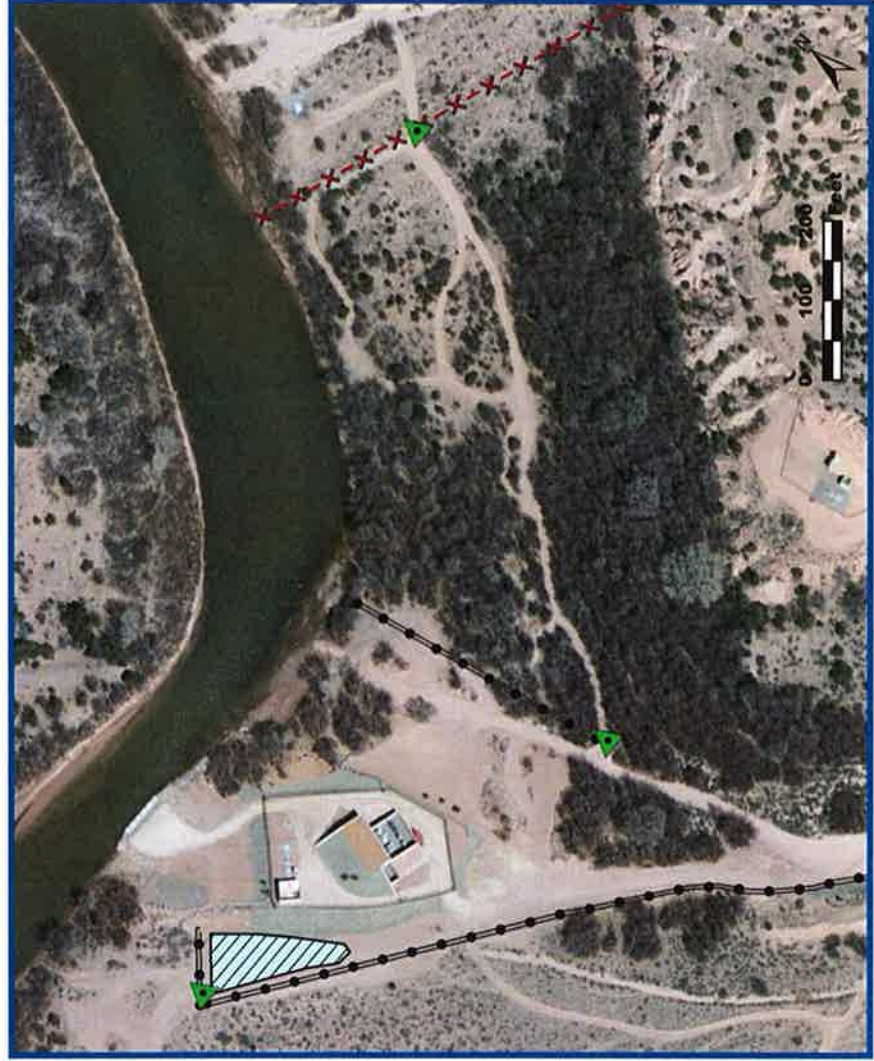
Map created on 12/13/2013
 Designed by GeoSystems Analysis, Inc.
 Albuquerque, NM

Base photography:
 Served via ESRI online
 Courtesy of Bing Imagery

Map projection = UTM, NAD 1983,
 Zone 13N, meters



PARKING AREA AND GATES DETAIL MAP



[illegible]



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 Padilla Industries

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: \$206,375.00

Termination Date: December 31, 2014

☒ Approved by BDDDB Date: Pending

☐ or by Project Manager Date: _____

Contract is for: Habitat Restoration

Amendment # 1 to the Original Contract# 13-1117

Increase/(Decrease) Amount \$ 80807.86

Extend Termination Date to: na

☒ Approved by BDDDB Date: Pending

☐ or by Facilities Manager Date: _____

Amendment is for: additional fencing

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

☐ Inclusive of GRT

Amount \$ 206,375.00 of original Contract# 131117 Termination Date: 12/31/2014

Reason: habitat

Amount \$ 80,807.86 amendment # 1 Termination Date: na

Reason: increase comp and scope

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 287,183



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

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

RFP# _____ Date: _____

RFQ ☒ 14/12/B _____ Date: September 26, 2013

Sole Source ☐ _____ Date: _____

Other _____

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

7 Funding Source: _____ **BU/Line Item:** BDD Carve Out

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

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

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

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

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

To be recorded by City Clerk:

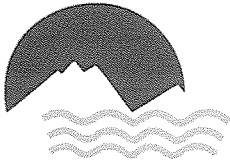
Contract # _____

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

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

Comments:

m




Buckman Direct Diversion 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: January 06, 2014

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Project Manager 

Via: Shannon Jones, Acting BDD Facility Manager 

Subject: Contract Amendment in the Amount of \$60,000 (Exclusive of NMGR) to the Professional Services Agreement Between the BDD Board and Harwood Consulting, LLP for Specialized Legal, Environmental and Permitting Services

This contract amendment is to provide additional funds for an existing contract that the BDD Board has entered into with Harwood Consulting, LLP for specialized 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). The contract amendment would be in the amount of \$60,000 plus NMGR. 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. Both San Juan-Chama and native Rio Grande flows in the river this coming year are expected to be diminished/curtailed which will almost certainly exacerbate issues related to river management, compact compliance, Endangered Species Act, and associated issues.

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

RECOMMENDATION

Staff recommends approval of this contract amendment in the amount of \$60,000 (excluding NMGR).



**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 5 TO
PROFESSIONAL SERVICES AGREEMENT WITH
HARWOOD CONSULTING, PC**

This AMENDMENT No. 5 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated August 29, 2011 (the "Agreement"), is entered into between the Buckman Direct Diversion Board (the "BDDDB") and Harwood Consulting, PC. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDDB.

RECITALS

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

B. Pursuant to Article 17 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and the Contractor agree as follows:

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of sixty thousand dollars (\$60,000) plus gross receipts tax, so that Article 3, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to the Contractor in full payment for services rendered a sum up to and not to exceed two hundred sixteen thousand dollars (\$216,000.00), plus applicable gross receipts taxes. Payment shall be made for services actually rendered at an hourly rate of one hundred seventy five dollars (\$175.00) per hour.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No.5 to the Professional Services Agreement as of the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

CONTRACTOR:
HARWOOD CONSULTING, PC

By: _____
Title: _____
Date: _____

By: _____
Name: Kyle Harwood
Title: _____
Date: _____

APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel

APPROVED:

Marcos A. Tapia, City Finance Director

728000
Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____



Buckman Direct Diversion Board

Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☐ or CONTRACT AMENDMENT ☒

2 Name of Contractor Harwood Consulting PC

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: \$20,000.00

Termination Date: December 31, 2012

☐ Approved by BDDB Date: _____

☒ or by Project Manager Date: 8/29/11

Contract is for: Prof. Srv

Amendment # 5 to the Original Contract# 11-0940

Increase/(Decrease) Amount \$ 60000

Extend Termination Date to: na

☒ Approved by BDDB Date: pending

☐ or by Project Manager Date: _____

Amendment is for: increase comp

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

☐ Inclusive of GRT

Amount \$ 20,000.00 of original Contract# 11-0940 Termination Date: 12/31/2012

Reason: professional services

Amount \$ 27,000.00 amendment # 1 Termination Date: na

Reason: comp increase

Amount \$ 24,000.00 amendment # 2 Termination Date: 6/30/2013

Reason: _____

Amount \$ 25,000.00 amendment # 3 Termination Date: 12/31/2013

Reason: comp and term increase

Amount \$ 60,000.00 amendment # 4 Termination Date: 6/30/2014

Reason: comp and term

Total of Original Contract plus all amendments: \$ 216,000



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

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

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☒ _____ Date: August 22, 2011

Other _____

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

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

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

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

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

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

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

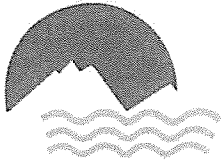
To be recorded by City Clerk:

Contract # _____

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

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

Comments:




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.

Memo

Date: January 6, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager and Maintenance Superintendent 

ITEM AND ISSUE:

Request approval of Amendment 3 to PSA # 12-0944 with Alpha Southwest, Inc to increase the contract amount from \$50,000 plus NMGR to \$100,000 plus NMGR.

BACKGROUND AND SUMMARY:

On February 7, 2011, the City of Santa Fe's Water Division solicited and received seal bids (RFB # '11/22/B) for this type of on-call services. The intent of this contract is strictly an as-needed, on-call contract, with no guaranteed minimum. Alpha Southwest was the only bidder and was awarded the contract. On November 11, 2012 the Buckman Direct Diversion Board approved PSA #12-0944 with Alpha Southwest in the amount of \$50,000 plus NMGR, the terms of the contract were through June 30, 2013. In July of 2013, this contract was amended and executed in the amount of \$50,000 plus GRT and the terms of the contract were through June 30, 2013.

Discussion

The Buckman Direct Diversion requires services from a licensed firm to provide on-call repair, replacement, fabrication, and modification services for mechanical and electrical equipment, piping, valves, instrumentation, pumps, and motors. This service would be utilized to supplement current BDD maintenance resources in the repair and maintenance of the Buckman Direct Diversion's facilities and equipment. The Scope of Services includes, but is not limited to, providing licensed technicians for both mechanical and electrical work, with the ability to;

- Perform repairs on booster stations including; site security, sanitary protection and disinfection.
- Providing specialized equipment such as crane services.
- Provide repairs, parts, materials and replacement of equipment



Evaluation and Projection for FY 2013/2014

Project	Trade	Hrs	Cost/ Hour	Total Labor Cost	Material Cost	Equipment Cost	Total Cost
Replace line shaft on BS1A Pump #3	Electrician	12	\$78.00	\$9,815.00	\$2,900.00	\$1,750.00	\$15,465.00
	Field Labor	142	\$62.50				
Replace Mechanical Seal on RWLS Pump #3	Electrician	12	\$78.00	\$9,311.00	\$29,264.00	\$1,500.00	\$41,075.00
	Field Labor	134	\$62.50				
Replace line shaft on BS1A Pump #4	Electrician	12	\$78.00	\$9,815.00	\$2,900.00	\$1,750.00	\$15,465.00
	Field Labor	142	\$62.50				
Replace Mechanical Seal on RWLS Pump #2	Electrician	12	\$78.00	\$9,311.00	\$4,264.00	\$1,500.00	\$16,075.00
	Field Labor	134	\$62.50				
Replace line shaft on BS1A Pump #1	Electrician	12	\$78.00	\$9,815.00	\$2,900.00	\$1,750.00	\$15,465.00
	Field Labor	142	\$62.50				
Construct Diversion Cell Isolation Box	Electrician	0	\$78.00	\$5,250.00	\$1,264.00	NA	\$6,514.00
	Field Labor	84	\$62.50				
						Total	\$105,000.00

ACTION REQUESTED:

Staff recommends approval of amendment #3 to Professional Services Agreement with Alpha Southwest, Inc. in the amount not to exceed \$100,000.00 plus NMGR.T.

Financial Implications

Cost: \$54,093.75
Savings: Cost avoidance related to issuing a new RFP
Long Term Cost: N/A

<u>Fund Source</u>	<u>Business Unit/Line Item</u>	<u>Amount</u>
FY 2012/2013	Prof. Services/#7280000.510300.930020	\$54,093.75

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

This AMENDMENT No.1 (the "Amendment") is made to the PROFESSIONAL SERVICES AGREEMENT, dated 7/11/13 (the "Agreement"), between the Buckman Direct Diversion Board (the "BDDDB") and Alpha Southwest, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDDB.

RECITALS

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

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

1. CONTRACT SUM.

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

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

2. AGREEMENT IN FULL FORCE.

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

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

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

BUCKMAN DIRECT DIVERSION BOARD

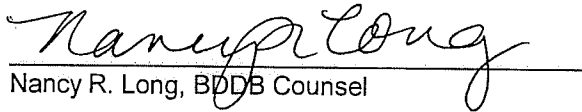
By: _____

Title: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:


Nancy R. Long, BDDB Counsel

APPROVED:

Marcos A. Tapia, City Finance Director

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration # _____



Buckman Direct Diversion Board

Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☒ or CONTRACT AMENDMENT ☐

2 Name of Contractor Alpha Southwest

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: \$50,000.00

Termination Date: June 30, 2014

☐ Approved by BDDB Date: _____

☒ or by Project Manager Date: July 11, 2013

Contract is for: installation and repair of BDD Equipment.

Amendment # 1 to the Original Contract# 13-0754

Increase/(Decrease) Amount \$ 50000

Extend Termination Date to: na

☒ Approved by BDDB Date: pending

☐ or by Project Manager Date: _____

Amendment is for: increase comp

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

☐ Inclusive of GRT

Amount \$ 50,000.00 of original Contract# 13-0754 Termination Date: 6/30/2014

Reason: _____

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

Reason: increase comp

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

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



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

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

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☒ _____ Date: _____

Other _____

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

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

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

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

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

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

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

To be recorded by City Clerk:

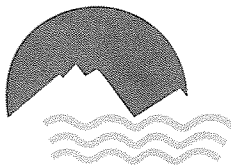
Contract # _____

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

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

Comments:

m



Buckman Direct Diversion Project

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

Memo

DATE: December 19, 2013
TO: Buckman Direct Diversion Board
FROM: Shannon Jones, BDD Interim Facility Manager

ITEM AND ISSUE:

Request approval to release a Request for Proposal (RFP) seeking a qualified engineering firm to develop a Capital Asset Management Plan, Capital Improvement Plan, and Asset integration into a Geographic Information System (GIS).

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion faces many challenges in developing and implementing a Capital Asset Management Program, including the collection and dissemination of asset information and history, development of new asset management policies and procedures, implementation and documentation of a formal risk based decision making process, and implementation of new performance measurement criteria. A comprehensive asset management program will aid staff in dealing with the demands of an increasingly complex system, an aging infrastructure, increasing costs and competing demands for limited resources. The benefits of an effective asset management program include: increased efficiency by utilizing predictive maintenance to reduced overall cost by achieving maximum life cycles, timely replacement that will reduce equipment downtime, improved planning and risk-based decision making.

The Buckman Direct Diversion requires services from a qualified firm to develop a Capital Asset Management Plan. The Buckman Direct Diversion intended to release a Request for Proposal (RFP) and enter into an agreement with a qualified engineering firm in FY 2012/2013. Unfortunately the process of developing the Scope of Services required for this project and discussions with the Buckman Direct Diversion Partners have taken longer than anticipated. While the process has taken longer, the time and effort invested by BDD Staff and Partners has proven to be most valuable. These discussions have help identify clear goals and objectives for the project.

Evaluation

While no local cost information could be obtained comparing this RFP to recently completed asset management plan for utilities, staff was able to identify two projects similar in scope (view table 1.). In addition, staff reviewed data from CDMSmith (BDDDB Engineering Firm for Project)



on projects similar in scope completed across the nation to develop cost estimates for deliverables (see Table 2).

TABLE 1.

Project	Project Date	Total Amount
City of Santa Fe Master Plan	2009	\$800,000.00
Eldorado Water System Master Plan	2012	\$200,000.00

TABLE 2.

Deliverables	CDMsmith Cost Analysis	Estimated Amount
Capital Asset Management Plan	\$400,000	\$145,000
Capital Improvement Plan	\$200,000	\$75,000
GIS and Geo Database of Assets	\$40,000	\$30,000

Estimated cost for completion of the project is \$250,000. In the event that selected proposal is in excess of the estimated amount, and funding cannot be allocated to fund the complete project, the project will be distributed into phases and funded through multiple years.

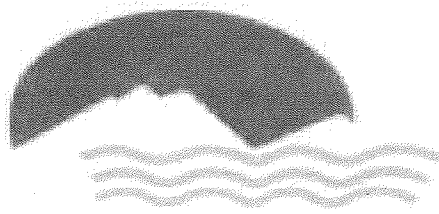
ACTION REQUESTED:

Staff recommends approval to issuance of Request for Proposal (RFP) seeking a qualified engineering firm to develop a Capital Asset Management Plan, Capital Improvement Plan, and Asset integration into a Geographic Information System (GIS).

Financial Implications

Cost:	\$250,000
Savings:	NA
Long Term Cost:	\$1,000 annually for GIS Licensing/Update and Support

Funding is available in 2013/2014 Prof. Services BU/LI 7280000.510300.930020.



Buckman Direct Diversion Project

"REQUEST FOR PROPOSALS"
ENGINEERING SERVICES
FOR
BUCKMAN DIRECT DIVERSION
CAPITAL ASSET MANAGMENT PLAN

RFP 'xx/xx/x

PROPOSAL DUE:

March 22, 2014
2:00 P.M.
PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD
BUILDING "H" SANTA FE,
NEW MEXICO 87505

TABLE OF CONTENTS

Advertisement for proposals.....	ADV-1 thru ADV-2
Proposal schedule.....	PS-1
Information to Proponents.....	IP-1 thru IP-5
Special Conditions.....	SC-1 thru SC-2
Scope of Services and Project Requirements.....	SR-1 thru SR-11
Master Plan Study Area	MPSA-1
Final evaluation for written proposals and interviews.....	EVAL-1 thru EVAL-4
Attachments:	
1. Minimum Wage Ordinance	Attachment A (2 Pages)
2. Fee Schedule	Attachment B (3 Pages)
3. Instructions Relating to Local Preference Certification Form...	Attachment C (1 Page)
4. Local Preference Certification Form.....	Attachment D (1 Page)
5. Sample Contract	Attachment E (15 Pages)

REQUEST FOR PROPOSALS
PROPOSAL NUMBER 'xx/xx/x

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, March 22, 2014**. Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Engineering Services
For
Buckman Direct Diversion Capital Asset Management Plan

The Buckman Direct Diversion requires services consisting of all equipment, materials, labor, quality control, overhead, management, and all other elements necessary for creation of the Capital Asset Management Plan (AMP). The AMP will be utilized by the Buckman Direct Diversion for decision making concerning the repair or replacement of existing assets as well as continuous improvement to the Buckman Direct Diversion Project through a Capital Improve Program. The services also consist of providing meetings, literature review, and preliminary and final AMPs. The services include a provision to create portions of the Scope of Work (SOW) under the lead of the Buckman Direct Diversion Project Manager.

The Buckman Direct Diversion Board invites Request for Proposals from qualified Consulting Engineers to develop a Capital Asset Management Plan, with individual Capital Improvement Projects as identified with Buckman Direct Diversion Staff issued as Preliminary Engineering Reports (PERs), and GIS mapping of infrastructure for the Buckman Direct Diversion Project.

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

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

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

Robert Rodarte, Purchasing Officer

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

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

PROPOSAL SCHEDULE

RFP# 'xx/xx/x

- | | | |
|----|--|--|
| 1. | Advertisement | February 15, 2014 |
| 2. | Issuance of RFP'S: | February 15, 2014 |
| 4. | Receipt of proposals: | March 22, 2014 at 2:00 p.m.
(local prevailing time)
Purchasing Office
2651 Siringo Road Bldg., "H"
Santa Fe, New Mexico 87505
(505) 955-5711 |
| 5. | Evaluation of proposals: | March 29, 2014 |
| 6. | Interviews: | April 5, 2014 |
| 7. | Negotiation of Contract: | April 12, 2014 |
| 8. | Recommendation of award
to Buckman Direct Diversion
Board: | May 2, 2014 |

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

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The Buckman Direct Diversion Board (herein called "BDDDB"), invites firms to submit one original and six (6) copies of the proposal. Proposals will be received by the City of Santa Fe's Purchasing Office, until **2:00 p.m.** local prevailing time, **March 22, 2014**.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: **RFP 'xx/xx/x**
Title of the proposal: **Buckman Direct Diversion Capital Asset**
Management Plan
Proponent's name and address:

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

2. PREPARATION OF PROPOSAL

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

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

3. ADDENDA AND INTERPRETATIONS

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

Every request for such interpretations should be in writing addressed to, Mr. Shannon Jones, BDD Interim Facility Manager @ 341 Caja Del Rio Road Santa Fe, New Mexico 87506 or swjones@santafenm.gov and to be given consideration must be received at least (5) days prior to the date set for the receiving of proposals.

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

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

4. LAWS AND REGULATIONS

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

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the BDDB. The selection committee will interview the top three rated proponents. At its discretion the BDDB reserves the right to alter the membership or size of the selection committee. The BDDB reserves the right to change the number of firms interviewed.

The project will be awarded based on:

- a. Ranking of qualified proposals by the selection committee as per the enclosed rating system.
- b. Interviews of the top three ranked proposing firms by the Selection Committee as deemed necessary.
- c. The consideration and approval of the BDDB.

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

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

7. RESIDENT and LOCAL PREFERENCE

INTENT AND POLICY

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

APPLICATION-IN-STATE AND OUT OF STATE BIDDERS

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

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

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

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico General Services Department-Purchasing Office (Joseph Montoya Building-1100 S. St. Francis Drive 87505, 827-0472).

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

NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 8% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the City Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the City's Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

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

APPLICATION FOR LOCAL PREFERENCE

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

The principal place of business of the enterprise is physically located within the Santa Fe County geographic boundaries. The business must have a "fixed office", as defined by this title, located within Santa Fe County. Principal place of business must have been established no less than six months preceding application for certification. Post office box numbers shall not suffice to establish an enterprise as a local business.

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

Bids for Goods and Services. When bids for the purchase of goods or services, pursuant to Section 22 of the City of Santa Fe Purchasing Manual, are received, the lowest responsive bid received from those bidders in the first category listed below shall be multiplied by the Preference Factor. If the resulting price of that bid receiving the preference is lower than or equal to the lowest bid of all bids received, the contract shall be awarded to that bidder receiving the preference. If no bids are received from bidders in the first category, or if the bid receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of bidders listed to determine if the bid qualifies for award. The priority of categories of bidders is:

- (1) Local business.
- (2) Resident business.

Proposals for Goods and Services. When proposals for the purchase of goods or services, pursuant to Section 23 of the City of Santa Fe Purchasing Manual, are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Resident Preference. No resident business or manufacturer, as defined, shall be given any preference in the awarding of contracts for furnishing goods or services to the BDDDB, unless it shall have qualified with the State Purchasing Agent as a resident business or manufacturer and obtained a certification number as provided in Section 13-1-22 NMSA 1978. The certification number must be submitted with its bid for an offeror to qualify for this preference. The Central Purchasing Office shall determine if a resident preference is applicable to a particular offer on a case by case basis.

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

Limitation. No offeror shall receive more than a 5% for resident and 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

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

New Mexico Resident Preference Number (if applicable)_____

8. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with procurement may protest to the Purchasing Officer. The protest must be in writing and submitted pursuant to Section 26 of the City of Santa Fe Purchasing Manual. Requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. GENERAL

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

2. ASSIGNMENT

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

3. VARIATION IN SCOPE OF WORK

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

4. DISCOUNTS

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

5. TAXES

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

6. INVOICING

The consultant's invoice will be submitted in duplicate, and duly certified. It will contain the following information: invoice number, invoice date, beginning and ending dates of services rendered, description of the supplies or services, quantities, unit prices and extended totals. A separate invoice will be submitted for each complete order. The invoice will include all applicable taxes.

Invoices will be submitted to the Facilities Manager for the Buckman Direct Diversion Project. Do not send invoices to the Purchasing Office.

7. METHOD OF PAYMENT

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

8. DEFAULT

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

9. NON-DISCRIMINATION

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

10. NON-COLLUSION

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

SCOPE OF SERVICES & PROJECT REQUIREMENTS

ENGINEERING SERVICES FOR THE BUCKMAN DIRECT DIVERSION CAPITAL ASSET MANAGEMENT PLAN

I. BACKGROUND, PROJECT PURPOSE, & OBJECTIVES

Purpose of Project & General Scope

Professional services are required consisting of all equipment, materials, labor, quality control, overhead, management, and all other elements necessary for creation of a Capital Asset Management Plan (AMP). The services also consist of providing meetings, literature review, and preliminary and final AMPs. The services include a provision to create portions of the Scope of Work (SOW) under the lead of the Buckman Direct Diversion Project Manager. The Consulting Engineers will develop a Capital Asset Management Plan, with individual Capital Improvement Projects as identified with Buckman Direct Diversion Staff issued as Preliminary Engineering Reports (PERs), and GIS mapping of infrastructure assets for the Buckman Direct Diversion Project. The Buckman Direct Diversion Project is located within Santa Fe County, New Mexico.

The Buckman Direct Division Board (BDDDB) a Joint Powers Agency, comprised of the City of Santa Fe and Santa Fe County which operates and maintains the Buckman Direct Diversion Project (BDD Project). The BDD Project diverts imported water contracted to the City and County through the San Juan - Chama Project and native water rights from the Rio Grande. The BDD Project is a major addition to the region's water supply portfolio with purposes that include improved groundwater sustainability and drought protection. The BDD Project includes a raw water diversion and pump station, grit removal, raw water conveyance, a 15 mgd water treatment plant, 4 million gallons of treated water storage and two treated water pump stations and transmission lines that supply the City and County distribution systems. The BDD Project began operations in Spring 2011. It also provides up to 3.25 mgd of raw water to Las Campanas, a residential community.

The BDDDB will review proposals from qualified Consulting Engineers to develop a Capital Asset Management Plan, with individual Capital Improvement Projects as identified in the Capital Asset Management Plan issued as Preliminary Engineering Reports (PERs) for the Buckman Direct Diversion Project.

2. Scope of Work

When developing the Capital Asset Management Plan (AMP), the following Sub Tasks 1-6 will be addressed and completed by the Proposer.

Table 1- Scope- Capital Asset Management Plan

Task	Number of Sub-Task	Sub-Task Descriptions
a) Gathering Data	1	Kick-Off Meeting
a) Gathering Data	2	Literature Review
b) Development of AMP	3A	First 50% Preliminary Draft
b) Development of AMP	3B	Second 75% Pre-Final Draft
b) Development of AMP	3C	Third 100% Final Draft
c) Development of GIS	4	Integration into GIS
d) Development of CIP	5	Capital Improvement Plan

Sub Task 1 Kick-Off Meeting. The Proposer shall contact the BDD Project Manager (PM) within ten (10) working days of the effective date of the agreement to schedule a kick-off meeting. The meeting will be held at the Buckman Direct Diversion Water Plant located at 341 Caja Del Rio Road Santa Fe, New Mexico. The meeting shall be held within twenty (20) working days of the effective date of the agreement. The time and meeting specifics shall be coordinated with the BDD's PM. Minutes of the meeting shall be submitted to the BDD's PM for approval within five (5) working days of the meeting. The BDD will review and provide comments within five (5) working days of submission.

The Consultant shall submit a draft Work Plan as a part of the proposal, expanding detail on the work tasks listed below, describing its approach to the project, along with a schedule, to indicate how the work will be accomplished. This Work Plan should be prepared such that it can be incorporated, with only minor modifications, as Exhibit 'A', Further Description of Basic Services (a.k.a Contract Scope of Work), in any eventual professional services agreement. The Consultant will be expected to conduct monthly design review meetings to go over progress of plans in addition to those at each task

listed below. All deliverables shall be made in the form of hard copy (5 copies unless noted otherwise) and working electronic files.

The basic tasks that the Consultant will be expected to accomplish for the project are listed, but not limited to, the following items:

1. Final Work Plan & Project Kickoff

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

- a. Project description, summary of work and deliverables, project schedule
- b. Anticipated BDDDB workload and schedule for interfacing with Consultant
- c. Project team, organization, and responsibilities
- d. Communication protocols, documentation, meetings and workshops
- e. Approach to review of existing data, reports, construction drawings, billing data, hydraulic models, annual minimum, and peak capacity of facilities, GIS mapping, SCADA system data, planning reports, land use data, stakeholder interviews, and other relevant information
- f. Approach to establishment of detailed Life Cycle Analysis with measurement matrix, and methodology
- g. Quality control and assessment process and activities
- h. Detailed description of and reasons for any differences in the Final Work Plan and the Contract Scope of Work.

The Consultant's application for these planning purposes shall comply with established industry and engineering practices for water system Capital Asset Management criteria including AWWA and New Mexico Environmental Department guidelines. The Consultant shall identify all such pertinent practices and guidelines in the draft Work Plan. This topic should also be addressed in proposals responding to this RFP.

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

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

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

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

Deliverables:

1. Kickoff Meeting Agenda (via email)
2. Draft Final Work Plan and Kickoff Meeting Materials (10 copies)
3. Kickoff Meeting Minutes (via email)
4. Final Work Plan (10 copies)
5. Bi-Weekly Progress Meeting Minutes (via email)
6. Monthly Progress Reports (10 copies)

Sub Task 2 Literature Review. The AMP will focus on the Buckman Direct Diversion Project physical assets. The Proposer shall conduct a literature review of commonly used practices, domestic and/or abroad, when developing the Capital Asset Management Plan (AMP) The Proposer shall prepare and submit a summary of the literature review to the BDD's PM upon completion of the literature review. This summary will represent abstracts and useful information to guide the development of the AMP; it should not exceed 40 pages. The BDD's PM will review and provide comments within ten (10) working days of submission.

Sub Tasks 3A, 3B, 3C Development of the Asset Management Plan (AMP). The Proposer shall prepare the AMP for the BDD's consideration and possible implementation.

The AMP shall be prepared in accordance with the New Mexico State Environmental Department, Asset Management Guide see Attachment C - Specifications, References paragraph.

The AMP contents will outline at a minimum the following areas (A) to (F) below:

- (A) A summary listing of Buckman Direct Diversion assets, including a description of the condition of those assets;
- (B) Asset management objectives and measures;
- (C) Performance gap identification;
- (D) Lifecycle cost and risk management analysis;

- (E) A financial plan; and
- (F) Investment strategies.

The AMP shall address the asset management plan requirements, and explain in detail all the steps required to accomplish the objective of this agreement including the roles and responsibilities of the BDD.

The AMP shall be submitted to the BDD PM for review and approval. The BDD will review and provide comments within fifteen (15) working days of submission.

The AMP shall provide Tasks, Sub Tasks, Deliverables, and Schedule. The AMP shall be submitted to the Buckman Direct Diversion Board (Board) for review and approval.

The Consultant shall work with Buckman Direct Diversion staff and other appropriate stakeholders to prepare: utilization criteria including operation efficiency and system reliability criteria; and a Preliminary Engineering Report for each CIP project needed to remedy existing deficiencies to analyze specific projects or issues identified by the Buckman Direct Diversion; to prepare a capital improvement plan; and to document the overall AMP.

Sub Task 4 Integrate system information into GIS Database

- Meeting with BDD Staff to establish the project specific goals and requirements prior to starting field data collection.
- Prepare and maintain updated project schedules.
- Become familiar with BDD facilities, maps, and construction drawings
- Provide all equipment, software, hardware, labor, transportation, and coordination services necessary to perform the required scope.
- GIS data creation (mapping, database, imaging, data collection and document scanning).
- Develop proposed list of layering conventions, names, and colors.
- Asset Management program data integration
- Staff training for GIS Services
- GIS/GPS data field collection
- Field imaging
- Update the existing CAD files to reflect the most current status for the facilities and water transmission and distribution system.
- The existing CAD files shall be modified to create separate layers for all major infrastructures including but not limited to electrical, water, storm drainage, chemical feed, telecommunications, security and control systems, and solids handling. Include all valves, fire hydrants, different sized lines (i.e., 6" 8" etc.), air relief valves, pressure reducing stations, water meters, culverts, lift stations, and leach fields.

Sub Task 5 Capital Improvement Plan

Consultant shall complete a new recommended 20 year Capital Improvement Plan and include a detailed description of recommended water system improvements with cost estimates, priority, and schedule, allocated through the planning period. The Capital Improvement Plan shall be documented initially in a draft Technical Memorandum and shall be included in its final form into the Capital Asset Management Plan. A workshop shall be held with the BDDDB to discuss the BDDDB's review comments.

Deliverables:

1. Draft and final Technical Memorandum No. 3 – Capital Improvement Plan
2. Consultant presentation of the Capital Improvement Plan to Buckman Direct Diversion staff.
3. Workshop agenda and minutes

CONSULTANT RECOMMENDED SUPPLEMENTAL WORK SCOPE

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

SUBMITTAL REQUIREMENTS

I. PROJECT SCHEDULE

Complimentary with a specific scope of services and a not-to-exceed fee for each task, the engineering consultant will develop a performance schedule for its services, which will become part of the contract.

It is estimated that it will take 30 to 60 days to solicit RFP's, select an engineering consultant and negotiate a professional services agreement. **The Buckman Direct Diversion desires a final draft for review to be submitted no later than six (6) months after notice to proceed.** Proponents may also identify realistic opportunity for more aggressively controlling project time.

II. HOURLY RATES AND PROFESSIONAL FEE PROPOSAL

A fee proposal shall be submitted as part of the technical proposal for each of the following tasks, each with an individual fee:

Task 1 – Final Work Plan and Project Kickoff
Task 2 – Literature Review
Task 3 – Capital Asset Management Plan
Task 4 – GIS Integration
Task 5 - Capital Improvement Plan
Consultant Recommended Supplemental Work Scope

The detailed fee proposal, along with the work plan and scope of work and qualifications statements will be the basis for selection. The estimated fees for each task shall be compiled on City of Santa Fe Engineering Cost Summary Forms. A summary cost sheet for all Tasks 1 – 5 with hours, costs, and fees shall be provided. The fee estimate shall be lump sum paid by percentage of completion and will be based upon detailed consultant hours, direct and indirect costs and profit.

Proponents shall also provide a schedule of other direct or reimbursable costs to provide the services requested in the RFP. Cost Summary forms must be completed and submitted for sub-agreements.

The final fee and the scope of work of the top ranked consultant will be negotiated after that firm has been selected. If agreement on final scope of services and fee cannot be reached with the top ranked consultant, the second-ranked consultant, and the third-ranked consultant will be considered in that order.

III. ERRORS AND OMISSIONS INSURANCE

Proponents must provide evidence of Professional Errors & Omissions Insurance coverage in minimum limits of \$1,000,000 per occurrence. Insurance certificates shall be attached to Proposal. No additional direct or reimbursable expense is allowed under Professional Services Agreements for this standard coverage. Insurance certificates shall apply to prime consultants only and must be attached to the proposal.

IV. STATEMENT OF QUALIFICATIONS

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

A. PROPONENT(S) FIRM DATA

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

B. QUALIFICATIONS, CAPABILITY AND EXPERTISE

- 1) Discuss specialized design, technical and construction competence of firm or joint venture, regarding the type of services required.
- 2) Describe the capacity and capability of firm, joint venture or Teaming Agreement, including special consultants, to perform the work, including any specialized services, within the time frames to expedite projects.
- 3) Describe the continuity of the company, particularly its capability to sustain loss of key personnel, or owner directed substitution of key personnel, without adversely affecting a project or the company
- 4) Discuss past record of performance on contracts with public agencies or private sector clients with respect to such factors as control of time, costs, value, quality of work, claims handling and ability to achieve schedules. Provide reference contacts.
- 5) Discuss knowledge and familiarity with Industry Standard Practices, costs, labor and trades, general contractors and bonding limits, seasonal construction constraints, and procurement requirements and so forth in the region where the projects are located.
- 6) Discuss employee qualifications and competence in field of water transmission and distribution systems regarding master planning and system design, system operation, hydraulic modeling and model calibration, water demand analysis, and other relevant skills and experience
- 7) Discuss the engineering firm's existing workload and its capacity to handle the requirements of the Water Division projects.

The Buckman Direct Diversion is seeking a firm that can clearly demonstrate they currently have the requisite staff and necessary engineering expertise for this project. All work must be done by or under the direct supervision of engineers registered to practice in New Mexico. The BDDDB fully anticipates the consultant to immediately start work on this project with the notice to proceed.

To propose on this project, the consultant team shall have prepared a minimum of three (3) water system capital asset management plans that are similar in scope and complexity. Project references are requested. The Proponent shall demonstrate that all professional consultant(s) that will be utilized to perform the work currently have the qualified professional staff and expertise to perform the work. Proponent's must present a past record of performance on selected tasks and ability to comply with critical schedules and budgets.

C. WORKLOAD

Describe the firm's current workload (particularly in the office that will manage this project). Provide names, locations, and clients for each project. List those in your firm who are assigned to these projects that will also be assigned to the proposed project and the firm's capacity in these projects (i.e. subcontractor for structural design, landscape design, etc.).

D. KNOWLEDGE OF LOCAL CONDITIONS

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

E. EXPERIENCE

Discuss recent experience of firm and project team on projects similar to this project. List particular projects, their completion dates, costs, owner / client, and references (including telephone numbers). Include photographs of completed projects. Describe your firm's expertise and familiarity with procedural and regulatory requirements on these kinds of projects.

F. PROJECT TEAM AND RELATED EXPERIENCE

- 1) Present the organizational chart for the project team for public involvement, design and construction; the names of the specific team members; with their assigned tasks; qualifications and percent of time they will be assigned to the project. Include construction inspector if deemed necessary for verification of compliance of design specifications.

- 2) Describe the management plan for coordinating schedules and resources to complete this project on schedule and within budget.
- 3) Describe the client and consultant relationship the firm will establish for progress meetings, design, review, decision-making, and budget containment.
- 4) Should the firm be invited for personal interview, the City requires the principal and key design personnel, who will be assigned to the project, be present, be introduced, make comment to the selection committee, and preferably be a participant in the interview.

G. RESUMES

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

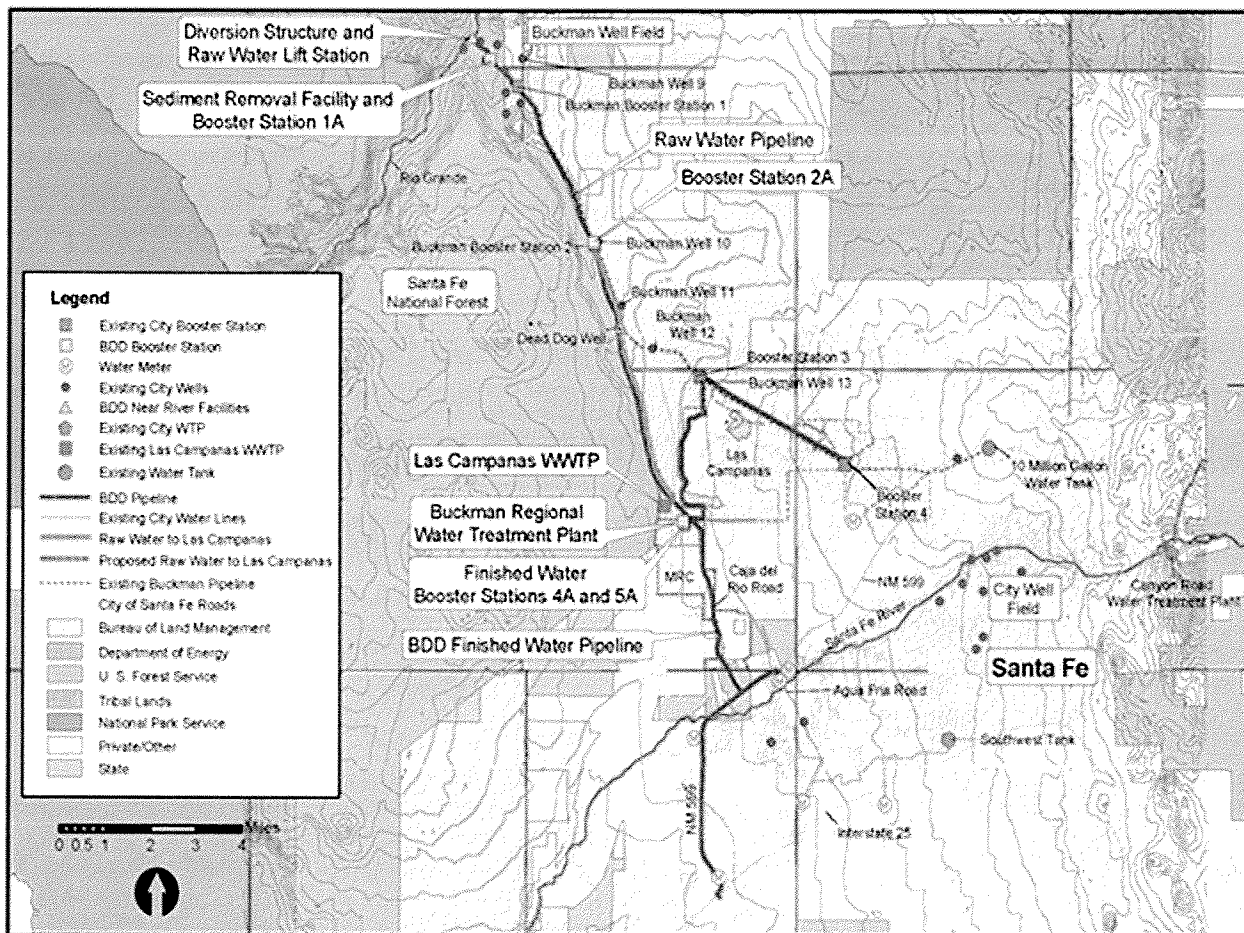
- Name and Title
- Specialized Professional Competence
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background, Education

V. PROPOSAL FORMAT

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

- A. Table of Contents
- B. Statement of Qualifications and Project Team Description and identification
- C. Detailed Work Plan, based upon the RFP requirements and Scope of Work
- D. Project Schedule
- E. Schedule of Hourly Rates & Costs
- F. Professional Fee Proposal
- G. Resumes of proposed project team
- H. Professional Errors & Omissions Insurance Certificate
- I. Any additional pertinent information

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



BDD Capital Asset Management Plan Study Area

**EVALUATION CRITERIA
&
WEIGHTED VALUES
EVALUATION COMMITTEE MEMBERS**

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

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

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

- City Finance Department
Purchasing Officer or Designee
- City Public Utilities Department
Designee
- County Public Utilities Department
Designee
- Buckman Direct Diversion
 - BDD Facility Manager
 - BDD Maintenance Superintendent
 - BDD Chief Operator
 - BDD Security and Automation Manager

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

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

EVALUATION CRITERIA, SUBMITTALS AND QUALIFICATIONS

Evaluation Criteria

Evaluation will be based upon the attached "Evaluation Criteria Form"

Submittals:

The Request for Proposal must include each of the following evaluation criteria. Each proposal submitted must address the required evaluation criteria. Based on the complexity of the project, the owner may add additional items of concern. The Owner must include a weight factor with each of the evaluation criteria to communicate to the Offerors the relative importance of each.

1. Specialized Design and Technical Competence*

Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

2. Capacity and Capability*

Capacity and capability of the business to perform the work, including any specialized services, within the time frame

3. Past Record of Performance*

Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.

4. Familiarity with the Contracting Agency*

Proximity to or familiarity with the area in which the project is located.

5. Work to be Done in New Mexico*

The amount of design work that will be produced by a New Mexico business within this state.

6. References*

3 to 5 references for completed projects similar in scope and size

7. Staff Qualifications*

Documentation of employee qualifications

8. Firm Qualifications*

Experience and competency of the firm

9. Fee Schedule*

"Fee Schedule" in a separate sealed envelope within the packet, marked "Fee Schedule"

EVALUATION CRITERIA FORM

RFP: 'xx/xx/x

PROJECT: Buckman Direct Diversion Asset Management Plan

NAME OF FIRM: _____

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

Proposal Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Design Approach/ Methodology; Grasp of project requirements	25			250
Relevant experience of firm and specific qualifications & experience of project team, demonstrated by previous projects	15			150
Past Performance; <i>The quality and timeliness of previous work; the demonstrated ability to mobilize quickly, control costs, provide competent designs and accurate plans; the ability to meet schedules.</i>	15			150
Knowledge of Local Conditions; <i>Industry Std. Construction practice; Labor & Trades, bonding, seasonal construction limitations, project site, environmental, regulatory and procurement requirements.</i>	5			50
Work Plan & Project Schedule; discussion of work elements and time frames	15			150
Work Load: <i>Consultant's staff size related to current uncompleted work and the amount of work proposed under this project.</i>	5			50
Proposed Fees: <i>Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope or missing scope. A very High fee may reflect us paying firm's learning curve.</i>	20			200
Total Score	100			1000

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

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

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

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

INTERVIEW EVALUATION FORM

RFP 'xx/xx/x

Buckman Direct Diversion Asset Management Plan

CONSULTANT FIRM: _____

INTERVIEW EVALUATION CRITERIA

Criteria	Weighted Value	(1=low, 10=high)	Total Score	Max Score
1. Grasp of project requirements and Presentation of Management Approach /Methodology: evaluation of firm's discussion and analysis of project and local issues; evaluation of discussion of its project & construction control systems; evaluation of work plan discussion and relationship to fee. Does firm grasp lead times for official actions and do they manage that within their schedule?	20			200
2. Overall technical skills presentation skills: evaluation of discussion of firm's capability to organize and present concepts and technical information with clarity, and credibility, supported by visual, aids. How well do you think engineering team will represent the BDD in areas of cost & time control, claim management & prevention, dispute and change order negotiations.	20			200
3. Project Management: evaluation of firm's & specific project team members' style & efficacy; evaluation of firm's intent to interact with and mentor BDD professional staff; evaluation of project team's relevant experience & creativity; does this discussion tend to support firm's stated qualifications, experience and expertise?	20			200
4. Responses to other relevant issues: raised by Selection Committee evaluation of firm's responses to committee's questions and issues.	20			200
5. Proposed Fees: Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope, missing scope or a reduced amount of qualified engineer time. A very High fee may reflect us paying firm's learning curve, higher than normal area pay rates or higher effort than is required.	20	Carry over Score from Evaluation Criteria Form _____ _____	_____ _____	200
Total Score	100			1000

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

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

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

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

Living Wage Ordinance

Ordinance Number 2003-8

Purpose:

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wage rates.

Who it affects:

- All profit and non-profit businesses with a business license or business registration issued by the City of Santa Fe and employee 25 or more employees.
- Contractors for the City who employ more than 25 workers.
-

Compliance:

- Affected businesses are required to pay employees a hourly wage of \$8.50 effective January 1, 2004.
- On January 1, 2006, the minimum wage shall be increased to an hourly rate of \$9.50.
- On January 1, 2008, the minimum wage shall be increased to an hourly rate of \$10.50.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the consumer price index for the western region for urban wage earners and clerical workers. For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- Non-profit organizations whose primary source of funds is from Medicaid are *exempt*.
-

Prohibitions against Retaliation and circumvention:

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation.
- Taking adverse action against an individual within sixty days of the individual's assertion of or communication of information.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance.
-

Enforcement; Remedies:

- **Administrative Enforcement**—The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- **Criminal Penalty**—A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SPCC 1987.
- **Other remedies**—The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction restrain, correct, abate or remedy any violation of this ordinance.

Nonexclusive Remedies and Penalties—The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

Severability:

- The requirements and provisions of this ordinance and their parts, subpart and clauses are severable.

Posting and Publication:

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a city of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provision of this ordinance.
-

Living Wage Review:

- The city will conduct a review of this ordinance on or before July 1, 2005.

For further information, please contact: Carlos Martinez @ 955-6949 Email: cbmartinez@ci.santa-fe.nm.us

Living Wage Ordinance

Ordinance Number 2003-8

Propósito:

La Ciudad de Santa Fe Ha adoptado esta Ordenanza de sueldo y vivencia para establecer una tarifa de salario mínimo por hora.

Quien es afectado:

- Todos los oficios sean de ganancia O sin ganancia, oficios que atienden una licencia de oficio O han obtenido una registración de oficio de la Ciudad de Santa Fe, Y emplean 25 O mas trabajadores.
Contratistas por medio de la Ciudad de Santa Fe que emplean más de 25 trabajadores.

Obediencia:

- Oficios afectados están requeridos de pagar a sus empleados un salario mínimo de \$8.50 por hora efectivo Enero 1, 2004.
- En Enero 1, 2006 el salario mínimo será aumentado a una tarifa de \$9.50 por hora.
- En enero 1, 2008 el salario mínimo será aumentado a una tarifa de \$10.50 por hora.
- Empezando en Enero 1, 2009 y cada año siguiente el salario mínimo por hora será ajustado por cantidad correspondiente al aumento de el año anterior, si hay alguno, en el índice de precios del consumidor por la región del oeste para ganadores urbanos Y trabajadores que de costumbre reciben mas de \$100.00 mensual en propinas O comisiones, cualquiera propina O comisiones recibidas Y retenidas por el trabajador debe ser contando como salario Y acreditado hacia satisfacción de salario mínimo con tal de que, para trabajadores que aceptan propinas, todas propinas recibidas Y retenidas excepto a que sea capital común de propinas entre trabajadores será permitido.
Organizaciones sin ganancia cuales los orígenes primarios de fondos son atraídos de parte de documento de renuncia CIA de Medicaid serán exento.

Probaciones a contra de Represalias Y Circundación:

- Será contra la ley para cualquier oficio, empleador O agente del empleador O representante tomar acción a contra del individuo de represalias.
- Tomar acción adversa a contra del individuo entre 60 días de la aserción O de comunicación de información.
Será contra la ley para el oficio O empleador que intencionalmente evite los requisitos de esta ordenanza.

Aplicación Y Remedios:

- **Ejecución Administrativa** - El gerente de la Ciudad de Santa Fe O su designado será autorizado como el apropiado, Y con recursorio permitir Y aplicar esta ordenanza.
- **Pena Criminal** - La persona que viola esta ordenanza será culpable de (Fechoría) delito menor Y acabó de convicción para cada ofensa será subjetivo multas Y encarcelamiento sea en la sección 1-3 SFCC 1987.
Otros Remedios - La Ciudad, cualquier individuo agraviado por la violación de esta ordenanza, O cualquier ser en cual los miembros han sido agraviados por la violación de esta ordenanza podrán atraer una acción civil en una corte de jurisdicción competente restringido, corregir, disminuir Y remediar cualquier violación de esta ordenanza.

Remedios in exclusivos Y Penas - Los remedios con tal que en esta sección no sean exclusivos Y nada en esta ordenanza excluye a ninguna persona de encontrar cualquier otro remedio, pena, O relajo suministrado por la ley.

Severidad:

Los requisitos Y provisiones de esta ordenanza Y sus indicaciones, aportaciones Y cláusulas serán severos.

Anuncio Y Publicación:

Cualquier oficio expuesto a las provisiones de esta ordenanza debe como condición, obtener Y mantener una licencia O registracion de la Ciudad De Santa Fe, anunciada en una locación prominente a lado de al vivencia a registracion del oficio como notificación en Ingles Y en Español que el oficio esta en obediencia con la provisión de esta ordenanza.

Examinacion de sueldo de vivencia:

La Ciudad de Santa Fe va a conducir una examinación de esta ordenanza en O antes del 1 de Julio, 2005.

Para más información, favor de comunicarse con Carlos Martínez @ 955-6949, Email: cbmartinez@ci.santa-fe.nm.us

BUCKMAN DIRECT DIVERSION

1. NAME OF PROJECT:		2. CIP #:		
3. NAME OF CONTRACTOR:		4. DATE OF PROPOSAL:		
5. ADDRESS OF CONTRACTOR:	6. TYPE OF SERVICE TO BE FURNISHED:			
A. WORK ELEMENT:				
PART 2 – COST SUMMARY				
BASIC SERVICES				
7. DIRECT LABOR (specify categories)	ESTIMATE D HOURS	HOURLY RATE	ESTIMATE D COST	TOTALS
DIRECT LABOR TOTAL:				
8. OVERHEAD (specify cost pool)	RATE	X BASE	ESTIMATE D COST	
OVERHEAD TOTAL:				
9. FEE OR PROFIT (show rate and base)				
SUPPLEMENTAL SERVICES				
10. SUBCONTRACTS (Identify & purpose)			ESTIMATE D COST	
SUBCONTRACTOR TOTAL:				
11. SPECIAL EQUIPMENT	RATE	ESTIMATE D HOURS	ESTIMATE D COST	
EQUIPMENT TOTAL:				
12. TRAVEL			ESTIMATE D COST	
A. transportation:				
B. per diem:				

TRAVEL TOTAL:			
13. OTHER REIMBURSABLE COST		ESTIMATE D COST	
OTHER REIMBURSABLE TOTAL:			
SUBTOTAL ITEMS 7-12:			
14. GROSS RECEIPTS			
15. TOTAL PRICE			
16. SIGNATURE OF PREPARER	BDD REVIEW BY	WATER DIVISION	
		COST SUMMARY PAGE ____ OF ____.	

PROJECTED FISCAL YEAR _____ OVERHEAD INFORMATION
 PAYROLL BURDEN AND GENERAL ADMINISTRATIVE COSTS
 (AS PER AUDIT INFORMATION)

	Amount	Percent
Base Productive Salaries		100%
Payroll Burden		
Holidays and Excused Time		
Vacations and Pay in Lieu There of		
Sick Leave		
Social Security Tax		
Federal Unemployment		
State Unemployment		
Workmen's Compensation Insurance		
Group Life Insurance		
Group Health Insurance		
Retirement		
Subtotal – Payroll Burden		
General and Administrative Costs		
General and Administrative Salaries		
Accounting, stenographic & clerical salaries		
Nonproductive Technical Salaries		
Salaries – Proposal Preparation Costs		
Employee Incentive Salaries		
Reproduction Costs, Materials & Supplies		
Office and Storage Rentals		
Light, Heat, Power		
Telephone & Telegraph		
Postage & Expenses		
Legal, Auditing and Professional		
Insurance – General		
Errors and Omissions Insurance		
Repairs and Maintenance – Office Building		
Repairs and Maintenance – Office and Engineering Equipment		
Office, Engineering, Drafting Supplies		
Personnel, Recruiting, and Education		
Miscellaneous Expense		
Pre-contract and Proposal Costs		
Employee Expense		
Depreciation of Office & Engineering Equipment		
Computer Services and Programs		
State Income Taxes		
State Franchise & Personal Property Taxes		
Real Estate, Sales Taxes, and Other Taxes		
Interest Expense		
Contributions		
Uncollectible Accounts		
Key Personnel Life Insurance		
Prof. Registrations, Memberships, & Subscriptions		
Entertainment		
Subtotal – General Administrative		
Total		

INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

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

Fixed Office: shall mean a fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertaining to the business being certified. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as an office.

Additional Documentation. If requested a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law, must be able to show that it is a business entity in good standing if so requested.

LOCAL PREFERENCE CERTIFICATION FORM
BID/PROPOSAL NUMBER: RFP NUMBER
IF APPLICABLE YOU MUST RETURN THIS FORM WITH YOUR BID OR PROPOSAL

Business Name: _____

Business License Number: _____ (Attach copy of business license.)

Business Location (In Santa Fe County:)

Address: _____

City: _____

Zip Code: _____

County: _____

Business Type:

- ☐ Corporation – Indicate state of incorporation _____
- ☐ Partnership – Indicate “general” or “limited” _____
- ☐ Sole proprietorship _____

CERTIFICATION: I hereby certify under penalty of perjury that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the BDDDB will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

By: _____ Authorized Representative: _____

Print Name

Title: _____ Date: _____

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

My commission expires: _____

Notary Public

SEAL

BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BOARD (the "BDDDB" or "Board") and Name of awarded firm, (the "Contractor"). The date of this Agreement shall be the date when it is executed by the BDDDB.

1. SCOPE OF SERVICES

1. The Contractor shall provide the following professional services are required consisting of all equipment, materials, labor, quality control, overhead, management, and all other elements necessary for creation of a Capital Asset Management Plan (AMP). The services also consist of providing meetings, literature review, and preliminary and final AMPs. The services include a provision to create portions of the Scope of Work (SOW) under the lead of the Buckman Direct Diversion Project Manager. The Consulting Engineers will develop an Asset Management Plan, with individual Capital Improvement Projects as identified with Buckman Direct Diversion Staff issued as Preliminary Engineering Reports (PERs), and GIS mapping of infrastructure assets for the Buckman Direct Diversion Project.

2. **STANDARD OF PERFORMANCE; LICENSES**

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

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 BDDDB shall pay to the Contractor in full payment for services

rendered, a sum not to exceed Contract Amount, plus applicable gross receipts taxes in accordance with the Fee Schedule provided in Exhibit "B" attached hereto.

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 shall be made upon receipt and approval by the BDDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDDB and terminate on June 30, 2014, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the BDDDB upon 10 days written notice to 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 BDDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the BDDDB shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

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

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

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

8. CONFIDENTIALITY

Any confidential information provided to or developed by 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 BDDDB.

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

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, the City of Santa Fe, Santa Fe County and, their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the BDDDB to any obligation not assumed herein by the BDDDB 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: (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.

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

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

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

General Annual Aggregate	\$1,000,000
--------------------------	-------------

(other than Products/Completed
Operation)

Products/Completed Operations	\$1,000,000
-------------------------------	-------------

Aggregate Limit

Personal Injury Limit	\$1,000,000
-----------------------	-------------

Each Occurrence	\$1,000.000
-----------------	-------------

(2) Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

(3) Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. The Contractor shall ensure both that: (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 Contractor's 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	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Each Employee
Bodily Injury by Disease	\$1,000,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, City of Santa Fe, County of Santa Fe 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. 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.

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

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

G. Specific Provisions Required.

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

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

(3) 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.

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

(5) 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

(6) the Board in excess of that required by this Agreement without overhead, profit, or any other markup.

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

13. INDEMNIFICATION

A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Board, City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from 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.

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

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The BDDDB and its "public employees" as defined in the New Mexico

Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDDB and 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 BDDDB 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 BDDDB 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 BDDDB or the City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

BUCKMAN DIRECT DIVERSION BOARD:

Buckman Direct Diversion Project
341 Caja del Rio,
Santa Fe, New Mexico 87507
Attn: Shannon Jones
BDD Interim Facility Manager

Contractor:

Name of Awarded Firm
Attn: Firm Representative
Firm Mailing Address
City State and Zip Code

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Insert Name,
Chair

Date: _____

APPROVED AS TO FORM:

Nancy R. Long, BDDDB Counsel

APPROVED:

Marcos Tapia, City Finance Director

728000

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

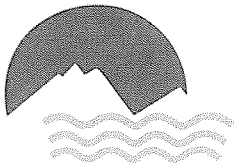
Date: _____

NM Taxation & Revenue

CRS #03-185297-00-1

City of Santa Fe Business

Registration #



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.

Memo

Date: January 27, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager 

ITEM AND ISSUE:

Request approval to purchase parts and supplies from Boyer and Seeley Pumps to repair Raw Water Pump Stations 1A and 2A in the amount of \$135,600.00.

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion currently utilizes five (5) pump stations to divert water from the Rio Grande River and delivery treated drinking water into the water system. These pump stations are equipped with a total of twenty-one (21) high flow pumps. The five (5) Raw Water Lift Station Pumps are designed and constructed by Morris Pumps. Boyer and Seeley, located in Greenwood, Colorado, is the authorized representative for Morris Pumps in New Mexico. The sixteen (16) pumps located in Booster Stations 1A, 2A, 4A, and 5A are designed and constructed by Weir Floway, Inc. Boyer and Seeley is the manufacture's Local Representative. In order to operate and maintain these twenty-one (21) pumps, the Buckman Direct Diversion has received a procurement exemption to purchase parts for Morris Pumps and Weir Floway, Inc pumps from Boyer and Seeley.

DISCUSSION

Work will be performed in conjunction with contract with Alpha Southwest. To avoid paying markup on parts thought the repair contractor, the Buckman Direct Diversion will purchase part directly from manufacturer's representative and provide to the project for installation.



In FY 2013/2014 the Buckman Direct Diversion will complete the following work.

Project	Material Cost
Rebuild Pump #3 @ RWLS	\$45,679.00
Rebuild Pump #2 @ 1A	\$5,596.00
Rebuild Pump #4 @ 2A	\$5,596.00
Rebuild Pump #1 @ 1A	\$5,596.00
Rebuild Pump #2 @ 2A	\$5,596.00
Rebuild Pump #2 @ RWLS	\$45,679.00
Replenish spare parts to BDD Inventory	\$19,858.00

Total amount for parts purchased from Boyer and Seeley is \$133,600 plus \$2000.00 shipping

ACTION REQUESTED:

Staff recommends approval to purchase parts and supplies from Boyer and Seeley Pumps to repair Raw Water Pump Stations 1A and 2A in the amount of \$135,600.00. Funding for these purchases is available in FY 2013/2014 in business unit #7280000.520150.930020.

FINANCIAL IMPLICATIONS

Cost: \$135,600
Savings: \$20,340 (15% Mark-up)
Long Term Cost: N/A

<u>Fund Source</u>	<u>Business Unit/Line Item</u>	<u>Amount</u>
FY2013/2014	Rep and Replace System Equip #7280000.520150	\$135,600.00



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.

Memo

Date: January 9, 2014

To: Robert Rodarte, Purchasing Director *rw*

From: Shannon Jones, BDD Interim Facility Manager and Maintenance Superintendent *sj*

Re: Section 18 Procurement Exemptions for Boyer and Seeley

Background

The Buckman Direct Diversion currently utilizes five (5) pump stations used to divert water from the Rio Grande River and delivery treated drinking water into the water system. These pump stations are equipped with a total of twenty-one (21) high flow pumps. The five (5) Raw Water Lift Station Pumps are designed and constructed by Morris Pumps. Boyer and Seeley, located in Greenwood, Colorado, is the authorized representative for Morris Pumps in New Mexico. The sixteen (16) pumps located in Booster Stations 1A, 2A, 4A, and 5A are designed and constructed by Weir Floway, Inc. Boyer and Seeley is the manufacture's Local Representative. In order to operate and maintain these twenty-one (21) pumps, the Buckman Direct Diversion must periodically purchase parts including but not limited to, shafts, seals, impellers, excreta. In order to keep consistency between the pumps and remain within design specification, I am requesting this procurement exemption to purchase parts for Morris Pumps and Weir Floway, Inc pumps from Boyer and Seeley.

Recommended Action

Please approve Section 18 Procurement Exemptions Acquisition of parts for Morris Pumps and Weir Floway, Inc from Boyer and Seeley.

Attachments: Letters from Morris Pump and Weir Floway, Inc identifying Boyer and Seeley as locate pump distributor.

☒ Approved
☐ Disapproved

[Signature]
Robert Rodarte, Purchasing Director



Nancy R. Long
Mark E. Komer

Little V. West
Justin W. Miller

Long, Komer & Associates

(Attorneys and
Counselors at Law

To: Buckman Direct Division Board

From: Nancy R. Long *NRL*

Date: For February 6, 2014 Board Meeting

RE: Election of Chair and Vice Chair

The Joint Powers Agreement between the City and the County establishing the Buckman Direct Diversion Board provides that the Board shall annually elect a Chairperson and a Chairperson Pro-Tempore.

The Rules of Order for the Board provide further that: "[d]uring the first meeting of each calendar year, or sooner if required, a Chair and Chair Pro-Tempore of the Board shall be elected. The Chair position shall rotate between a City and County member each year. The Chair Pro-Tempore shall be elected from the opposite entity." The Board did not meet in January of this year so this meeting is the first meeting of the calendar year for the Board.

Since the Chair in 2013 was a County Commission member, the Chair in 2014 shall be a member of the City Council and the Vice-Chair shall be a County Commission member.

Nancy R. Long
Mark E. Komer

Little V. West
Justin W. Miller

Long, Komer & Associates

(Attorneys and
Counselors at Law)

MEMORANDUM

To: Buckman Direct Diversion Board

From: Nancy R. Long *nrl*

Date: For February 6, 2014 Board Meeting

RE: Adoption of Annual Open Meetings Act Resolution

As the Board is aware, public bodies are required by the New Mexico Open Meetings Act to annually address the issue of what determines reasonable notice for its public meetings in compliance with the Act. Last year, the Board passed two Open Meetings Act ("Act") resolutions; the second in May 2013 to address amendments to the Act enacted during the 2013 legislative session and which became effective June 14, 2013. As a reminder, those amendments reflecting the legislative enactments increased the time period for the notice of and the posting of an agenda from 24 hours to 72 hours before the meeting and required a public body to report to the attorney general's office regarding matters acted upon in an emergency meeting.

Also, the Board last year, imposed an additional requirement not required by the Act that in order for a Board member to attend a board meeting telephonically, that board member must be needed to meet Board quorum requirements.

RECOMMENDATION

Independent counsel recommends adoption by the Board of the Resolution Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board; Rescinding Resolution No. 2014-1, subject to revisions the Board may wish to make, if any.

1 **THE BUCKMAN DIRECT DIVERSION BOARD**

2 **RESOLUTION NO. 2014-1**

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3
4
5 **A RESOLUTION DETERMINING REASONABLE NOTICE FOR**
6 **PUBLIC MEETINGS OF THE BUCKMAN DIRECT DIVERSION BOARD;**
7 **RESCINDING RESOLUTION NO. 2013-2**

8
9
10 **WHEREAS**, Section 10-15-1 (B), NMSA 1978 of the “Open Meetings Act” (hereinafter
11 referred to as “the Act”) provides that “... meetings of a quorum of members of any board,
12 commission ... or other policymaking body ... held for the purpose of formulating public policy,
13 including the development of personnel policy, rules, regulations or ordinances, discussing
14 public business or taking any action within the authority of or the delegated authority of any
15 board, commission or other policymaking body are declared to be public meetings open to the
16 public at all times, except as otherwise provided in the Constitution of New Mexico or the Open
17 Meetings Act.”; and

18 **WHEREAS**, Section 10-15-1 (D) of the Act further provides that “(a)ny meetings at
19 which the discussion or adoption of any proposed resolution, rule, regulation or formal action
20 occurs and at which a majority or quorum of the body is in attendance, and any closed meetings,
21 shall be held only after reasonable notice to the public.”; and

22 **WHEREAS**, the Act further requires a public body to determine in a public meeting at
23 least annually what notice is reasonable when applied to that body; and

DRAFT

1 **WHEREAS**, Santa Fe County and the City of Santa Fe are parties to that certain Joint
2 Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the
3 Buckman Direct Diversion Project, dated March 7, 2005; and

4 **WHEREAS**, the Buckman Direct Diversion Board (the "Board") desires to determine
5 herein what constitutes reasonable notice to the public of its meetings as required by the Act, and
6 to otherwise specify important elements of its continuing compliance with the Act.

7
8 **NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BUCKMAN**
9 **DIRECT DIVERSION BOARD, AS FOLLOWS:**

10 1. **Regular Meetings.** Unless otherwise specified, regular meetings of the Board
11 shall be held each month on the first Thursday of the month. Notice of any regular meeting shall
12 be provided to those broadcast stations licensed by the Federal Communications Commission
13 and newspapers of general circulation that have made written request for such notice ten (10)
14 days before such meeting.

15 2. **Special Meetings.** A special meeting of the Board may be called by the Chair or
16 by any two members of the Board upon three (3) days' notice at such time and place as the Chair
17 or the two members deem appropriate. Notice of special meetings shall be met by posting notice
18 of the date, time and place in a conspicuous and appropriate place at the Santa Fe County
19 Administrative building, at Santa Fe City Hall and on the Board's, Santa Fe County's and City's
20 internet websites (www.bddproject.org, www.santafecounty.org and www.santafenm.gov) at
21 least seventy-two (72) hours prior to a special meeting. Notice of a special meeting shall also be
22 provided to those broadcast stations licensed by the Federal Communications Commission and
23 newspapers of general circulation that have made written request for such notice.

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1 3. **Emergency Meetings.** An emergency meeting of the Board may be called by the
2 Chair or by any two members of the Board to consider unforeseen circumstances that, if not
3 addressed immediately, will likely result in injury or damage to persons or property or
4 substantial financial loss. An emergency meeting may be conducted at a time and place as the
5 Chair or the two members deem appropriate. If possible, given the emergency circumstances,
6 notice of an emergency meeting shall be posted in a conspicuous and appropriate place at the
7 Santa Fe County Administrative Building and at Santa Fe City Hall at least twenty-four (24)
8 hours prior to the meeting. If twenty-four (24) hours advance notice cannot be given, notice
9 shall be posted as soon as possible under the emergency circumstances in existence. Notice of
10 an emergency meeting shall also be provided to broadcast stations licensed by the Federal
11 Communications Commission and newspapers of general circulation that have made written
12 request for such notice. Within ten (10) days of taking action on an emergency matter, the Board
13 shall report to the attorney general's office the action taken and the circumstances creating the
14 emergency.

15 4. **Agendas.** Any notice for meetings of the Board shall include an agenda
16 containing a list of specific items of business to be discussed or transacted at the meeting, or
17 information on how the public may obtain a copy of an agenda. At least seventy-two (72) hours
18 prior to a regular or special meeting, the final agenda shall be posted in a conspicuous and
19 appropriate place at the Santa Fe County Administrative Building, at Santa Fe City Hall, and on
20 the Board's, Santa Fe County's and the City's internet web sites (www.bddproject.org,
21 www.santafecounty.org and www.santafenm.gov).

22 5. **Recessed Meetings.** The Board may recess and reconvene a meeting to a later
23 day, if, prior to recessing, the Board specifies the date, time and place for continuation of the

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meeting, and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting unless notice of the reconvened meeting is provided as otherwise set forth herein.

6. **Participation by Conference Telephone.** A member of the Board may participate in a meeting of the Board by means of conference telephone or other similar communications equipment when it is difficult or impossible for the member to attend the meeting in person and only when necessary to meet the quorum requirements for the meeting.

7. **Closed Meetings.** A meeting may be closed in the following manner:

a. If the Board is in an open meeting when a closed meeting is desired and authorized by the Open Meetings Act, then the closed meeting shall be approved on motion by a majority of a quorum of the Board and the authority for the closure shall be stated in the motion. The votes of the members on the motion shall be recorded in the minutes.

b. If the Board is not in a public meeting and a closed meeting is desired and authorized, public notice of the closed meeting, appropriate under the circumstances, shall be given stating the authority for the closure.

c. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

8. **Definition: "Meeting."** For purposes of this Resolution, the term "meeting" shall be defined as a meeting of a quorum of the members of the Board held for the purpose of

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1 formulating public policy, including the development of personnel policy, rules, regulations or
2 ordinances, discussing public business, or taking any action within the authority of or the
3 delegated authority of the Board.

4 9. Resolution No. 2013-2 is hereby rescinded.

5 **PASSED, APPROVED AND ADOPTED** this ____ day of February 2014.
6
7

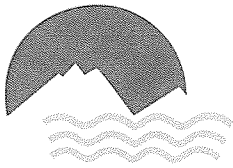
8 **BUCKMAN DIRECT DIVERSION BOARD:**
9
10
11
12

13 _____
14
15 **ATTEST:**
16
17
18
19

20 _____
21 County Clerk

22 **APPROVED AS TO FORM:**
23
24
25
26

27 _____
NANCY R. LONG, Board Counsel



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.

Memo

Date: January 24, 2013

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager *SH*
Adam Leigland, Santa Fe County Public Works Director *ALL*

ITEM AND ISSUE:

Project Manager Selection Process

BACKGROUND AND SUMMARY:

The *Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project* (JPA), dated January 2005, establishes the general governance and management of the BDD during construction and operations and creates the role of the BDD Project Manager. The *Project Management and Fiscal Services Agreement* (PMFS), dated December 2007 and expiring on December 1, 2015, addresses the delegation of authority and the general responsibilities of the BDD Project Manager. Paragraph 13 of the JPA states that upon termination of the current PMFS agreement in December 2015, the BDD Board shall have the authority to enter into a new PFMS Contract with “any of the following: (1) Sangre De Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.”

To prepare for this selection, at the July 11, 2013 meeting, the BDD Board directed BDD staff to create a Project Manager Selection Process Committee, with the task of developing a recommendation for an open and objective process by which the BDD Board can make a thoughtful and reasoned selection of the next BDD Project Manager. Note that the Committee was not charged with actually implementing the selection process.

The Committee, as approved by the BDD Board at its August 8, 2013, meeting, comprises the following members:

- BDD Facility Manager (chair)
- BDD Financial Manager
- City of Santa Fe Public Utilities Director



- City of Santa Fe Water Resources Manager
- City of Santa Fe Finance Director
- County of Santa Fe Public Works Director
- County of Santa Fe Finance Director
- County of Santa Fe Budget Manager

The Committee met for the first time on August 12, 2013, and every month thereafter.

DISCUSSION

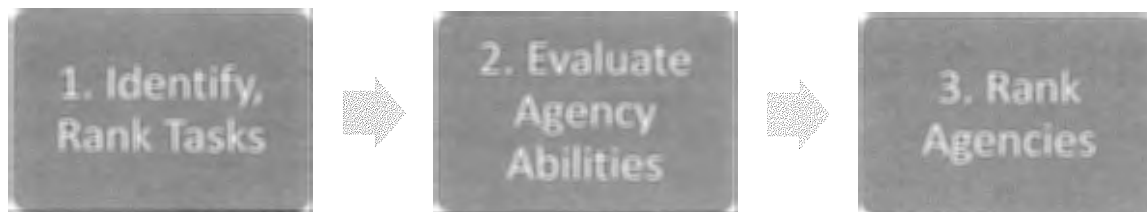
The Committee has drafted a 3-step process. The process is briefly described below. The attachment, entitled “Process For Selecting The BDD Project Manager,” contains a much more detailed and robust description.

Step 1: Identify and prioritize the tasks that the Project Manager performs per the JPA and the PMFS.

Step 2: Identify the ability of each of the possible successor Project Manager agencies to perform each of the tasks found in Step 1.

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

These steps are graphically displayed below and described in greater detail further on.



Step 1. The Committee reviewed the JPA and PMFS and pulled from them all duties that the PM is required to perform. This resulted in a task list of 51 specific items. To ease evaluation, the Committee grouped these tasks into six categories: Utility Support Structure, Financial Support, Human Resources, Risk Management, Information Technology, and Administration Services. The first step in the selection process is to rank the relative importance of these task categories. The task and task category lists are contained in the attachment.

Step 2. Each of the three possible successor agencies will be able to perform the tasks identified in Step 1 with varying degrees of ability. The second step in the selection process is to determine these abilities. The Committee recognized that the “Regional Entity” as listed in the JPA as a possible Project Manager was too vague and ill-defined to meaningfully evaluate. The Committee felt that the development of two regional entities as strawmen for evaluation purposes would overcome this. The Committee examined existing regional entities in the area as well as across the state, including the BDD as it is today and the Santa Fe Solid Waste

Management Authority (SWMA). Based on this, the Committee crafted two notional regional entities, listed below:

- A. Level 1 Modified Status Quo;
- B. Level 2 SWMA model;

Evaluation forms and fuller descriptions of the notional regional entities are contained in the attachment.

Step 3: Once Steps 1 and 2 are completed, the results can be combined to produce a ranking of the four agencies that are possible successor project managers (Sangre de Cristo Water Division, County Water Utility, and notional Regional Entities A and B). Note that the ease of actually implementing a transition to a new project manager (if one would be required) is not included as an evaluation factor. Evaluation forms are contained in the attachment.

A list of Committee recommendations are attached

FINANCIAL IMPLICATIONS

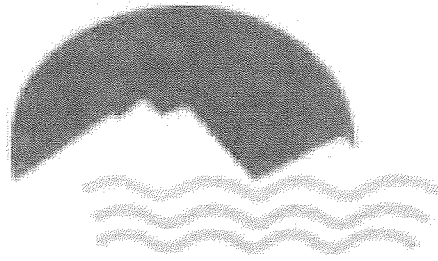
There are no financial implications associated with approving the selection process. However, the Committee feels that financial resources may be required to properly execute the process. Further, if a successor agency is ultimately chosen to be Project Manager that will require a transition, the transition itself will likely require financial resources.

ACTION REQUESTED

Approve the selection process and Committee recommendations, and direct BDD staff on next steps

ATTACHMENTS

1. Process For Selecting The BDD Project Manager
2. Project Manager Selection Process Committee Recommendations.



Buckman Direct Diversion Project



"PROCESS FOR SELECTING THE BDD PROJECT MANAGER"

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Transition Plan	PMS11
Attachments:	
1. 2004 JPA.....	Attachment A (13 Pages)
2. 2005 WRA	Attachment B (14 Pages)
3. 2006 FOIPA	Attachment C (18 Pages)
4. 2007 PMFSA	Attachment D (8 Pages)
5. Recommendations	Attachment E (1 Page)

Executive Summary

The Buckman Direct Division's Process for Selecting a Project Manager is a guide for the Buckman Direct Diversion Board to systemically evaluate potential entities seeking to fill the role of BDD Project Manager. This document defines roles and responsibilities of the PM and identifies necessary organizational structures needed to fulfill these roles and responsibilities. This document has developed a measurement matrix allowing the individual entities to be weighed and score establishing a rating system to further assist the BDDDB in their decision. This document has established a Process Timeline including the identification of critical path items and benchmarking. The Buckman Direct Diversion will face many challenges during transition to a new PM, so in addition this document has created an Outline Transition Plan to be utilized once a PM has been selected including identification critical transfer items between the existing PM and newly selected PM.

Background

The City and the County entered into a **Joint Powers Agreement** (hereinafter referred to as JPA) on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015 (**see attachment A below**). In preparation for creating the Project, the City and the County entered into the **Water Resources Agreement** (hereinafter referred to as WRA) on January 11, 2005 (**see attachment B below**), which provides that the City Independent Water System shall provide up to 500 afy in perpetuity to the 3 points of delivery of the County Independent Water System. The City, the County, and Las Campanas entered into the **Facilities Operations and Procedures Agreement** (hereinafter referred to as FOPA) on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project (**see attachment C below**). **Project Management and Fiscal Service Agreement** (hereinafter referred to as PMFSA) was entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager"). The City and the County, through the BDD Board, designed, constructed, operated and maintained the Buckman Direct Diversion Project (**see attachment D below**). The purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms.

ARTICLE 1. DEFINITIONS.

Capitalized words or phrases used in the foregoing recitals of this Document shall have the meanings assigned therein. In addition, the words and phrases defined in this Article 1 shall have the meanings assigned in this section.

A. "The Agreement," "this Agreement," or "PMFSA" as used herein refers to this Project Management and Fiscal Services Agreement.

B. "Annual Operating Budget" means the annual budget for all activities of the Project, including Operation Maintenance Repair & Replacement (OMR&R).

C. "Annual Operating Plan and Delivery Schedule" means the annual operating plan and water delivery schedule prepared by the Project Manager with input from the City, the County and Las Campanas, described in Section 27 of the FOPA and herein.

D. "The Authority" means the controlling entity that

- (1) Shall set policy and regulate, supervise and administer the water utility of City of Santa Fe and Santa Fe County, including the determination and imposition of rates for services;
- (2) is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules; and
- (3) is authorized to use city or county procurement and fiscal process, or contract with City or County, to administer its public and corporate duties.

E. "The City" means the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico, and a signatory of the Project Agreements.

F. "The County" means Santa Fe County, New Mexico and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico, and a signatory of the Project Agreements.

G. "Fiscal Year" means a year beginning on July 1 and ending on June 30.

H. "The FOPA" means the Facility Operations and Procedures Agreements for the Buckman Direct Diversion Project between the City of Santa Fe, Santa Fe County and Las Campanas LP.

I. "The JPA" means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, effective March 7, 2005.

J. "Las Campanas" means the Las Campanas Limited Partnership, a Delaware Limited Partnership, and a signatory of the FOPA.

K. "OMR&R" means operation, maintenance, replacement and repair.

L. "The Project" means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande as described in the final Environmental Impact Statement for the Buckman Direct Diversion Project, and includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and the County.

M. The phrase "the Project Agreements" means the WRA, JPA, the FOPA and the PFMSA.

N. "Project Expenses" means those expenditures of the Project approved by the BDD Board and included in a budget approved by the BDD Board, the City and the County, and reimbursement expenses retroactive to the execution date of the JPA.

O. "Project Manager" means the entity recognized by the BDDB, responsible for the OMR&R duties for the project and receiving compensation for services.

P. "The Regional Entity" means an "authority" that is a public body politic and corporation, separate and apart from the City of Santa Fe and Santa Fe County.

Q. "WRA" shall mean the Water Resources Agreement by and between the City of Santa Fe and Santa Fe County and dated on or about January 11, 2005.

POTENTIAL ENTITIES

Background - Project Management and Fiscal Services.

The City and the County delegate to the BDD Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the design and construction of the BDD Project; (3) the operation and management the BDD Project after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for the Owners' Consultant Contract, and all other fiscal services related to the design, procurement, construction, operation and maintenance of the BDD Project, including managing all revenues, maintaining all accounts, procuring necessary property, goods and services, and receiving and disbursing all funds. The Project Manager will report directly to the BDD Board, and the BDD Board shall have authority to supervise the performance of the Project Manager. The PMFS Contract shall contain the fee schedule for the fiscal agent services to be provided under the PMFS Contract. It shall at a minimum, specify that funds of the BDD Project shall be held in one or more separate accounts and shall not be commingled with the Funds of any of the parties to this Agreement, and shall specify that the Project Manager may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds. The PMFS Contract shall specify the types and threshold amounts of expenditures that require approval of the BDD Board in advance. The City and County agreed that the Sangre de Cristo Water Division would be the initial project Manager and the BDD Board entered into the PMFS with the City. Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board shall have authority to enter into a new PMFS Contract with any one of the following:

- (1) the Sangre de Cristo Water Division
- (2) the Santa Fe County Water Utility or
- (3) a Regional Entity.

After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the functions performed under the PMFS Contract may continue to be combined in a single new PMFS Contract or may be separated into two or more replacement PMFS Contracts.

LEVELS OF REGIONAL ENTITY

Level One Regionalization - Modified Status Quo

- Change name of Project Manager to Support Entity
- BDDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDDB to have authority to set policy
- Extent FOPA agreement
- Restructure Organization Chart so Facility Manager reports directly to the BDDDB

Level Two Regionalization – SWMA Model

- Change name of Project Manager to Support Entity
- BDDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDDB to have authority to set policy
- Facility Manager reports directly to the BDDDB
- Facility Manager would have operational control of assets within service area (figure 1)
- BDD would provide bulk water deliveries to City, County, and Las Campanas
- All staff would be BDDDB employees

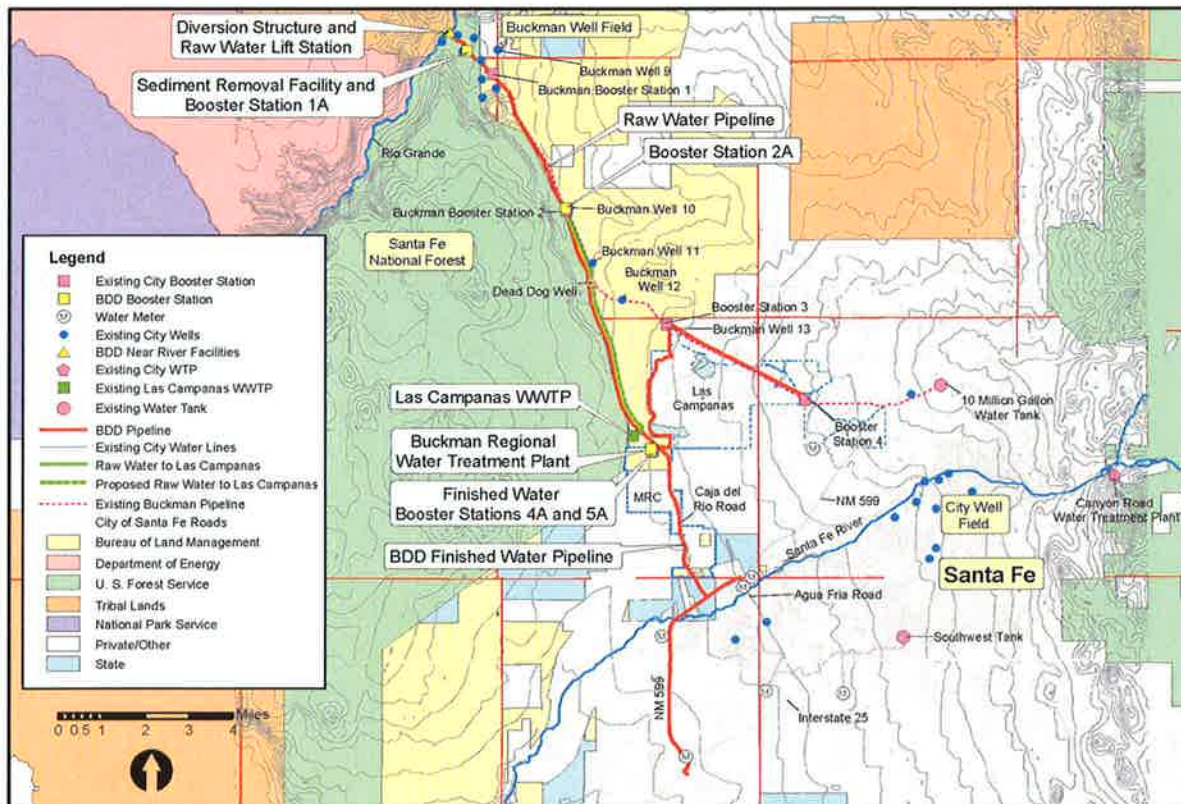


Figure 1: Buckman Direct Diversion Project and Associated Infrastructure

PROCEDURE FOR NAVIGATING THIS DOCUMENT

The following sections of this document are provided to assist in the selection of the Buckman Direct Diversion Project Manager.

Step One: Development of a Selection Advisory Group

The Buckman Direct Diversion Board (BDDDB) will appoint individuals to seat upon the selection advisory group.

Step Two: Evaluation of Roles and Responsibilities of Project Manager.

Once a selection advisory group is developed, group members will review the listing of Roles and Responsibilities. These roles and responsibilities will be evaluated on the “Roles and Responsibilities Evaluation Form. Each advisory group member will complete this form indicating concurrences with the assigned roles and responsibilities and assigning a priority value to the service to be provided. This form will be utilized in the development of a Scope of Service in the development of a new PMFSA. The selection advisory group will present a finalized listing of Roles and Responsibilities to the BDDDB for approval.

Step Three: Evaluation of Potential Entities for Project Manager.

Once Roles and Responsibilities have been finalized and approved by the BDDDB, the advisory group will evaluate all potential entities based upon their ability to provide the services needed fulfil the Roles and Responsibilities. Each Entity Evaluation Criteria Form will be completed by the advisory group to determine a consistent “Weighted Value” for each of the “Evaluation Components”. Once a “Weighted Value” has been assigned, the “Weighted Value” will be multiplied by 10 to determine the “Max Score”. Then each advisory group member will independently evaluate the potential entity by scoring the potential entity’s ability to perform the “Evaluation Component” on a scale of 1 to 10 with 1 being low and 10 being high. Upon completion the “Weighted Value” will be multiplied by the assessed score and value placed into the “Total Score”.

Step Four: Development of Evaluation Matrix

Upon completion of the evaluation of potential entities, the selection advisory group will present a compiled evaluation matrix to the BDDDB for review and possible action.

PM Roles and Responsibilities



Item numbers 1 -17 are Responsibilities taken for 2007 PMFSA Article 4.



Item numbers 18 – 37 are responsibilities taken for 2007 PMFSA Article 6.



Item numbers 37 – 52 are Responsibilities taken from 2007 PMSFA Article 7.

Responsibility of Project Manger	
1.	Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support staff for BDD Board meetings, contract with independent legal counsel selected by the BDD Board, contract with specialized legal counsel as needed to support design, construction, operation and maintenance of the Project, and, as directed by the BDD Board, implement the Project during design and construction and, following completion of construction, manage, operate, and maintain the Project;
2.	Seek and apply for funding (except for funding to be provided by the City and the County pursuant to the Project Agreements) in the form of grants, loans or loan guarantees, or other funding sources as may be deemed appropriate by the BDD Board, for the Project as directed by the BDD Board and manage any such grants, loans or loan guarantees;
3.	Administer all funds loaned, granted or contributed by the City, the County or Las Campanas in connection with the Project, and respond to related audits as may be necessary;
4.	Prepare and submit to the BDD Board, the City, the County and Las Campanas no later than December 15 of each Fiscal Year, an Annual Operating Budget, which shall include annual and 5 year projected OMR&R costs, including a 5 year schedule with the Project Manager's proposed facilities and equipment major maintenance and replacement costs, proposed allocation of costs among the City, the County and Las Campanas as provided in the FOPA, a facilities and equipment major repair and replacement fund, and an emergency reserve fund;
5.	Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;
6.	Develop a document retention and protection policy for adoption by the BDD Board;
7.	Act as fiscal agent for the Project
8.	Once an Annual Operating Budget is approved by the BDD Board, implement the budget, adhere strictly to the budget, and make recommendations for necessary budget adjustments throughout the Fiscal Year, and contract for an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, <i>et seq.</i> , and 2.2.2. NMAC, <i>et seq.</i> , as amended, and report the results of the audit to the BDD Board.
9.	Prepare and submit to the BDD Board for approval all documentation to be used for procurement in the Project including, but not limited to, documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications and contracts in amounts greater than \$50,000.
10.	Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board.

11. Consult with staff of the City, the County, and Las Campanas regarding the planning and design and OMR&R of the Project.
12. In consultation with the BDD Board, apply for, manage and maintain, including the preparation and submittal of all required compliance reports, all necessary permits for the operation of the Project, including, without limitation, those permits, easements, and rights-of-way held in the name of the BDD Board, and those permits required to be obtained by the BDD Board pursuant to Section 6 of the FOPA.
13. Maintain communication with the BDD Board, the City, the County and Las Campanas, primarily via monthly BDD Board meetings, and keep these entities informed of important matters as may be necessary in the interim between monthly BDD Board meetings.
14. As directed by the BDD Board, act as liaison for the BDD Board and represent the BDD Board in Project matters involving tribal governments, state and federal government agencies, and non-governmental agencies.
15. As directed by the BDD Board, and with the consent and approval of the City and the County, and in consultation with Las Campanas, coordinate the Project with regional water supply planning efforts.
16. Perform other duties as assigned by the BDD Board consistent with funding and the Project Agreements.
17. Make commercially reasonable efforts to enforce the terms of all agreements that the BDD Board approves. In the event that the Project Manager's administrative efforts to enforce a specific contract's terms are not successful, the Project Manager shall so inform the BDD Board and shall make specific recommendations for the BDD Board's consideration regarding the BDD Board's contract enforcement steps or procedures, including litigation.
18. Operate the Project within its design limitations to deliver treated water in sufficient pressure and volume to meet the actual demand of the City and the County, subject to the capacity allocations set forth in the FOPA §7, and of a quality that meets or exceeds all applicable State and federal regulations and standards.
19. Provide the treated water referred to the previous paragraph at a point or points of delivery at the BDD Project specified by the City or the County, provided, however, that the Project Manager is not obligated to deliver to points of delivery not constructed during the initial construction of the Project unless the City or the County first construct a new point of delivery at the BDD Project and provide the Project Manager and the BDD Board with thirty (30) days advance written notice of the need for water at the newly constructed point of delivery.
20. Deliver raw water to Las Campanas, at pump station 2A subject to the capacity allocation set forth in the FOPA §7, and manage the common facilities at pump station 2A.
21. Maintain water measurement devices that are part of the Project to account for the actual volume, rate, and time-of-day of all water deliveries to the City, the County and Las Campanas.
22. Use data provided from the metering facilities and monitors referred to in the preceding paragraph to analyze whether deliveries comply with Annual Operating Plan and the Project Agreements, and report to the BDD Board monthly.
23. Prepare the Annual Operating Plan and Delivery Schedule described in Section 27 of the FOPA, submit the report to the BDD Board, and make appropriate recommendations.
24. As soon as practicable after the end of each Fiscal Year, the Project Manager shall calculate the actual costs experienced by the Project in the previous Fiscal Year and the amounts paid by the City, the County and Las Campanas for the Project and make appropriate recommendations to the BDD Board for adjustments needed in the current Fiscal Year's budget.
25. Invoice the City, the County and Las Campanas for Project costs according to the cost sharing principles specified in the FOPA no less frequently than quarterly, and collect all sums so invoiced.

26. Schedule and coordinate reservoir release and Project diversion of San Juan-Chama Project water in accordance with the procedures of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers and the conditions of City and County diversion permit No. 4842 issued by the State Engineer and future permits for diversion at the BDD of San Juan-Chama Project water and as directed by the designated representatives of the City, the County, and Las Campanas, each of whom has the responsibility to make water available at the reservoir from which it will be released.
27. Track raw water diversions by the Project for the City, the County, and Las Campanas, and provide to the BDD Board, with copies to the City, the County, and Las Campanas, a monthly accounting of actual raw and potable deliveries, daily water orders, and other statistical information as the BDD Board may require.
28. Monitor the relationship between the quantity of water actually delivered by the Project to the City, the County and Las Campanas and the permitted capacity of the Project's production facilities and make periodic reports of this analysis to the BDD Board, the City, the County and Las Campanas.
29. Reduce deliveries as provided in the FOPA §9 in the event of a reduced total capacity of the BDD Project caused by facility failure.
30. Provide all necessary staff, materials and supplies necessary to operate and maintain the Project consistent with BDD Board funding.
31. Recruit, hire and train staff for the Project according to the BDD Board's approved staffing plan as it may be amended from time to time and arrange for state drinking water certification for such staff in advance of operation of the Project, so that certified staff is available to operate the Project when the Project becomes operational, and set forth in each proposed budget the costs of the staff apportioned according to the respective benefit to the City and the Project.
32. Perform OMR&R duties for the Project at all relevant times in accordance with water utility practices.
33. Report to the BDD Board quarterly and as otherwise required by the BDD Board regarding the OMR&R of the Project and all other relevant matters related to the Project.
34. In consultation with the City, the County and Las Campanas and pursuant to FOPA §27, prepare and present to the BDD Board for approval a comprehensive operations manual for the Project, and updates as needed, which shall include details of all aspects of Project operation including, but not limited to, process control, maintenance, scheduled maintenance outages, rehabilitation and replacement, contingency plans for unscheduled outages, and residuals management; distribute the comprehensive operations manual to the BDD Board, the City, the County and Las Campanas. The Project Manager may delegate, as appropriate, the preparation of the comprehensive operations manual to the Owner's Consultant, the Design-Build Contractor, or another.
35. Provide for appropriate security at all Project facilities.
36. Identify and report to the County the need for Buckman Road maintenance and reimburse the County for the apportioned cost according to the respective benefit to the County and the Project.
37. The Project Manager shall maintain records of all transactions related to the Project, including third party transactions, in accordance with generally accepted accounting principles ("GAAP"), and standards established by the government accounting standards bureau ("GASB"),
38. Establish a uniform system of accounts

39. Maintain segregated books and records consistent with GAAP to account for all separate funding sources, including, without limitation, funds provided by the City, the County, or Las Campanas in support of construction or subsequent OMR&R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.
40. Maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies
41. Provide access at any time to the City, the County and Las Campanas , or each of them, and to the State Auditor, and members of the public, within 90 days following the end of each fiscal year and at any other time as may be reasonably requested, full and complete books and records relating to the Project;
42. Provide to the City, the County and Las Campanas, or each of them, any additional financial information or documentation relating to the Project as may from time to time be reasonably requested;
43. Within 90 days after the end of each fiscal year, provide copies of financial statements to the City, the County and Las Campanas, showing the assets, liabilities, revenues, expenses, equity balances and budget comparisons for the Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report but may recommend that its auditors produce the financial statements, dependent on staff available and the complexity of the reporting requirements
44. Account for the separate financial contributions from, and reimbursements to, the City, the County and Las Campanas, including crediting the County for the contribution of revenues from the County Capital Outlay Gross Receipts Tax imposed by the Board of County Commissioners in Santa Fe County Ordinance No. 2002-5, subject to the terms of that Ordinance;
45. Procure, contract, and pay for as budgeted an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, <i>et seq.</i> , and 2.2.2. NMAC, <i>et seq.</i> , as amended, and report the results of the audit to the BDD Board.
46. Receive and record deposits in connection with the Project in compliance with applicable state and federal statutes, all applicable requirements of grant and loan funding and requirements otherwise imposed by or on the sources of funding;
47. Make and account for all approved disbursements for the Project, ensuring that disbursements are valid and comply with all applicable State investment statutes, and policies and procedures adopted by the BDD Board;
48. In consultation with the BDD Board, invest excess funds not required for current operations or capital expenditures in accordance with applicable statutes, City and County policies and applicable requirements of grant or loan funding, assuring that investment earnings are credited to Project funds;
49. Carry over any unencumbered monies that are present at the end of a Fiscal Year, and budget those funds to the succeeding Fiscal Year, to be utilized for purposes consistent with the Project Agreements in the succeeding Fiscal Year
50. Obtain all necessary approvals for expenditure of funds, I including, without limitation, approvals by the BDD Board and the New Mexico Department of Finance and Administration.
51. Determine and record capital assets inventory for appropriate general ledger amounts, run and record depreciation, and submit year-end capital asset inventory for the annual physical inventory.

ROLES AND RESPONSIBILITIES EVALUATION FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

Role and Responsibilities required of Project Manager to provide through the necessary support structures for the Buckman Direct Diversion to operate, maintain, repair, and replace assets enabling the BDD to provide an adequate supply of safe drinking water to all points of delivery.

Evaluation Component	Concur this service should be provided	Do Not concur that this service should be provided	Priority of service. 1-10 (1=low, 10=high)
Utility Support Structure (for example, items # 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 34, and 36 listed above).			
Financial Support (for example, items #3, 7, 8, 10, 16, 24, 24, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 listed above).			
Human Resources (for example, items # 30 and 31 listed above).			
Risk Management (for example, item # 35 listed above).			
Information Technology (for example, item # 5 listed above).			
Administration Services (for example, items #1, 2, 4, 6, 9, and 13 listed above).			

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: City of Santa Fe

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Utility Support Structure (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
Financial Support (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
Human Resources (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
Risk Management (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
Information Technology (for example, E-mail Service, Networking, Software Compatibility, Telephone Service,)				
Administration Services (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
Total Score	100			1000

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: Santa Fe County

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Utility Support Structure (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
Financial Support (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
Human Resources (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
Risk Management (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
Information Technology (for example, E-mail Service, Networking, Software Compatibility, Telephone Service,)				
Administration Services (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
Total Score	100			1000

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

ENTITY

ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: Regional Entity Level 1

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Utility Support Structure (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
Financial Support (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
Human Resources (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
Risk Management (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
Information Technology (for example, E-mail Service, Networking, Software Compatibility, Telephone Service,)				
Administration Services (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
Total Score	100			1000

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

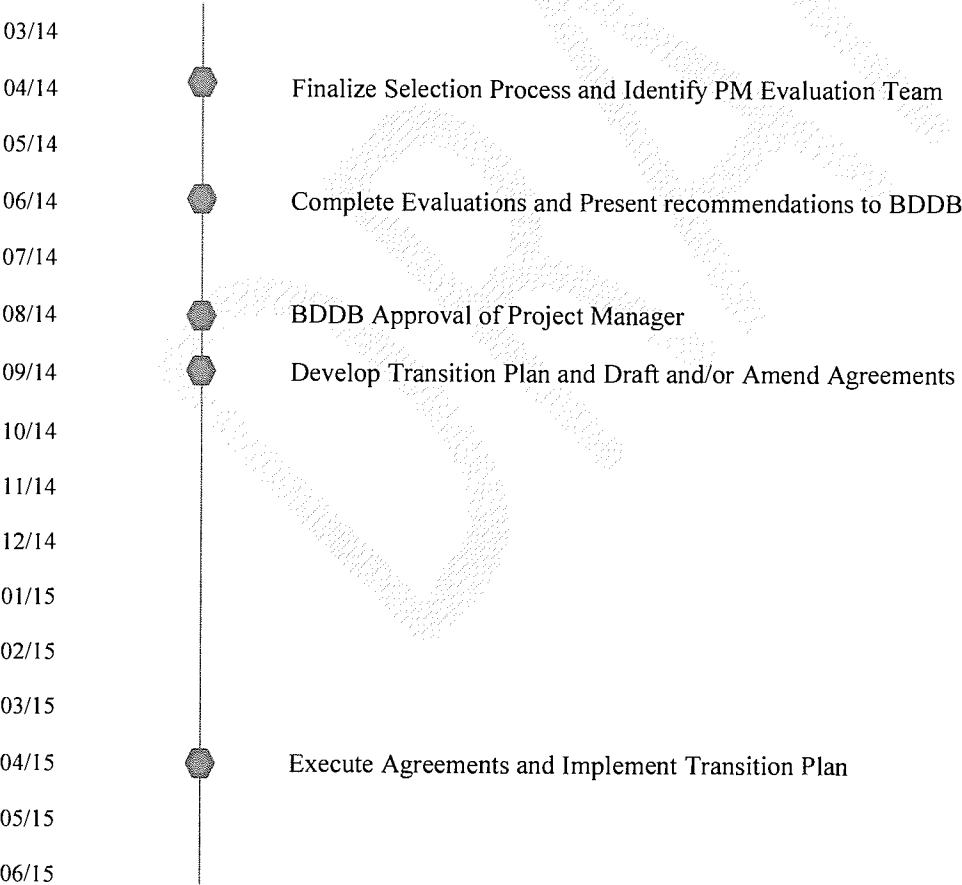
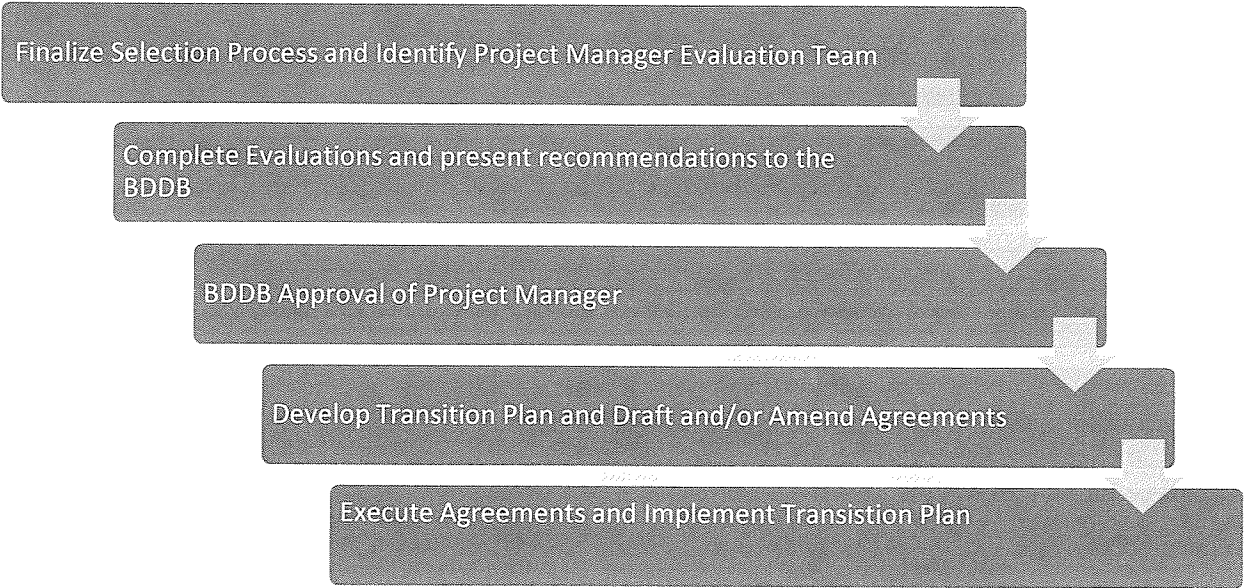
NAME OF ENTITY: Regional Entity Level 2

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Utility Support Structure (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
Financial Support (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
Human Resources (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
Risk Management (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
Information Technology (for example, E-mail Service, Networking, Software Compatibility, Telephone Service,)				
Administration Services (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
Total Score	100			1000

SELECTION COMMITTEE

EVALUATOR SIGNATURE: _____ DATE: _____

Project Manager Selection Process Timeline



Transition Plan

FINANCIAL

- Install and Train on Accounting Software
- Create Payroll
- Create and Train on Accounts Payable
- Implement Cost Accounting System
- Transfer of Credit Accounts with Vendors
- Transfer of Account Balances
- Execute Priority 1 Annual Contracts
 - Board Attorney
 - Security
 - Laboratory
 - Point Repair
 - Calligrapher
 - SCADA Contractor
 - Chemical Supplier
 - Membrane Service
 - Solids Disposal
 - Insurance Provider
 - Solar
 - Instrumentation Service
- Execute Open Purchase Orders
 - Plumbing
 - Electrical
 - Sample Transport
 - Oil and Fuel
 - HVAC
 - Electronics
 - Lab Supplies
 - Waste Disposal

UTILITY SUPPORT

- Engineering
 - Line location
 - Raw Water Transmission
 - Fiber Optic
 - Electrical
 - Finished Water Transmission
 - Plan and Specification Review
 - Field Inspections
- Leak Repair
- Regulatory Compliance
 - Signatory Authorization
 - Permitting
- Water Resource
 - Water Rights Accounting
 - Strategic Planning
 - Water Demand Projections

HUMAN RESOURCES

- Transfer Employee Benefit Packages
- Create Job Classifications
- Transfer Employee Development Program
- Transfer Grant Administration
- Post Vacant Positions
- Conduct Employee Orientation

RISK MANAGEMENT

- Transfer Workers Compensation
- Transfer Insurance Coverage
- Conduct Required Safety Trainings
- Transfer DOT Drug Testing Requirements

INFORMATION TECHNOLOGY

- Transfer Telephone System Service
- Transfer Email Service
- Transfer Licensing and update/support
- Transfer Radio Communications

ADMINISTRATION SERVICES

- Transfer Fleet Maintenance
 - Service and Repairs
 - Fueling Location
- Transfer BDDB Meeting Coordination
- Transfer Contract Administration

Attachment A

2004 Joint Powers Agreement

1 **Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe**
2 **Governing the Buckman Direct Diversion Project**

3
4 This Joint Powers Agreement ("Agreement") is entered into pursuant to the Joint Powers
5 Agreement Act, NMSA 1978, Section 11-1-1 through 11-1-7 by and is entered into by and
6 between the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico and
7 the County of Santa Fe ("County"), a political subdivision of the State of New Mexico, as of the
8 effective date defined below.
9

10 **Recitals**

11
12 **WHEREAS**, the County and City will continue to cooperate on the funding, permitting and
13 construction of the proposed BDD Project to provide regional water resources; and
14

15 **WHEREAS**, the City and County recognize that the use of SJCP water will be directly available
16 to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the
17 future; and
18

19 **WHEREAS**, in a joint meeting of the City of Santa Fe Council and County of Santa Fe Board of
20 Count Commissioners held on October 7, 2004, the respective governing bodies approved the
21 Regional Water Resource and Buckman Direct Diversion Principles of Agreement; and
22

23 **WHEREAS**, this Joint Powers Agreement is intended to begin implementation of those
24 provisions of the October 7, 2004 Agreement concerning the Buckman Direct Diversion Project;
25 and,
26

27 **WHEREAS**, it is in the best interest of the citizens of the City and the County that the City and
28 the County jointly undertake to plan, fund, construct, operate, manage and own the Buckman
29 Direct Diversion Project.
30

31 **NOW**, therefore, upon the mutual consideration described by this Agreement, including the
32 covenants and promises contained herein, the adequacy of which is acknowledged by the parties,
33 the County and City agree as follows:
34

35 **Definitions.** Capitalized words or phrases used in this Agreement, as defined below, shall have
36 the following meanings:
37

38 **afy** means acre feet per year.
39

40 **Agreement** means this "Joint Powers Agreement between the City of Santa Fe and the County of
41 Santa Fe Governing the Buckman Direct Diversion Project".
42

43 **BDD Board** means the governing board of directors of the BDD Project as established by the
44 this Agreement.
45

1 **BDD Project** means the planned Buckman Direct Diversion Project which will divert surface
2 water from the Rio Grande at Buckman, as described in the draft Environmental Impact
3 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity
4 of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works
5 used to deliver water to the respective Independent Water Systems of the City and County.
6
7 **BOR** means the United States Bureau of Reclamation.
8
9 **Design Build Contract** means a contract entered into between the BDD Board and the Design
10 Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.
11
12 **Design Build Contractor** means the contractor hired pursuant to the Design Build Contract to
13 design and build the BDD Project.
14
15 **Facility Operations and Procedures Agreement (FOPA)** means the agreement between the City,
16 the County and Las Campanas governing the operations and procedures of the BDD Project.
17
18 **Independent Water System** means the respective water works of the City and the County, as
19 such works exist now and as such works may change or expand in the future.
20
21 **ISC** means the New Mexico Interstate Stream Commission.
22
23 **Owners' Consultant** means a consultant specializing in providing professional services to the
24 Project Owners to manage and oversee the design build process on a public water project on
25 behalf of the Project Owners, including, but not limited to, providing all professional services for
26 the Project Owners that are necessary to fully develop, procure, design, construct and initially
27 operate the BDD Project.
28
29 **Owners' Consultant Contract** means the contract between the City and the County as Project
30 Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.
31
32 **OSE** means the New Mexico Office of the State Engineer.
33
34 **Project Management and Fiscal Services (PMFS) Contract** means a contract between the
35 BDD Board and the Project Manager for the provision of the management and fiscal services as
36 described in Section 12 of this Agreement.
37
38 **Project Manager** means the designated entity that provides the management and fiscal services
39 as required by the PMFS Contract
40
41 **Project Owners** means the City and County.
42
43 **Regional Entity** means an entity which includes both the City and County that seeks to

1 cooperatively manage water supply and delivery from the BDD Project on a regional basis.

2
3 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605 acre-feet
4 per year acquired by the City and the County under contract with the U.S. Bureau of
5 Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or
6 replaced.

7
8 **Sangre de Cristo Water Division** means the operating water utility division of the City's
9 Independent Water System.

10
11 **Water Resources Agreement** means the "Water Resources Agreement between the City of
12 Santa Fe and the County of Santa Fe", executed contemporaneously with this Agreement.

13 14 **Agreement**

15
16 **1. Purpose.** The purpose of this Agreement includes the formation of the BDD Board to oversee
17 the BDD Project and the establishment of the terms and conditions governing the ownership,
18 planning, procurement, financing, permitting, design, construction, operations, allocation of
19 capacity and management of the BDD Project.

20
21 **2. Ownership.** The City and the County shall each own fifty percent (50%) of the BDD Project,
22 subject to Section 15 of this Agreement.

23
24 **3. Establishment of the BDD Board.** The City and the County hereby establish the BDD Board
25 and delegate to it all powers, necessary or implied, to oversee the planning, procurement,
26 financing, permitting, design, construction, operations and management of the BDD Project. The
27 BDD Board's responsibilities for operations and management include the duty and authority to
28 maintain, repair, replace and obtain approvals for the BDD Project.

29
30 **4. Responsibilities and Duties of the BDD Board.** It shall be the duty of the BDD Board to
31 divert, treat, transmit and deliver Rio Grande surface water by means of the BDD Project to the
32 City and the County Independent Water Systems in accordance with their respective diversion
33 allocations and delivery demands. Such powers and duties are subject to the limits and
34 conditions provided in this Agreement.

35
36 The BDD Board shall manage the Owners' Consultant Contract and supervise the performance
37 of the Owners' Consultant, as provided in Section 10 of this Agreement.

38
39 The BDD Board shall enter into the Design Build Contract and supervise performance of the
40 Design Build Contractor, as provided in Section 11 of this Agreement.

41
42 The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract
43 and supervise the performance of the Project Manager, as provided in Section 12 of this

1 Agreement.

2

3 The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with
4 Las Campanas, as provided in Section 15 of this Agreement.

5

6 **5. Appointment of BDD Board Members and Chairperson.** The BDD Board shall be
7 managed by a board of directors organized and comprised as follows:

8

9 Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's
10 Mayor with the approval of the Governing Body. The members shall serve for such a period as
11 may be determined from time to time by the Mayor with the approval of the Governing Body.
12 The Mayor may appoint, with the approval of the Governing Body, a third member of the
13 Governing Body to serve as an alternate in the event one of the two regular members is unable to
14 attend a BDD Board meeting.

15

16 Two members of the Board of Santa Fe County Commissioners shall be appointed and approved
17 by the Board of Santa Fe County Commissioners. The members shall serve for such period as
18 may be determined from time to time by the Board of Santa Fe County Commissioners. The
19 Board of Santa Fe County Commissioners may appoint a third member of the Board of Santa Fe
20 County Commissioners to serve as an alternate in the event one of the two regular members is
21 unable to attend a BDD Board meeting.

22

23 One citizen member at large shall be appointed by a majority vote of the four other members for
24 a two-year term and who may be re-appointed without limit. Prior to the end of any term, the
25 citizen member may only be removed by unanimous action of the four other members. In the
26 event that the citizen member's term expires but a citizen member has not been appointed for the
27 following term, the citizen member shall continue to serve as a member of the BDD Board for an
28 additional sixty (60) days. After the expiration of the citizen member's term and if the BDD
29 Board has not appointed a citizen member within the sixty-day period, the Chief Judge of the
30 First Judicial District Court shall appoint that member.

31

32 Upon the expiration of a term of office or on account of death, illness, resignation, or three
33 consecutive absences from duly called meetings, the entity that appointed the director shall
34 thereupon appoint a director to the new term or to complete the term vacated. The BDD Board
35 shall be duly constituted and established upon appointment of the citizen member and election of
36 the chairperson and chairperson pro-tempore. The BDD Board shall annually elect a chairperson
37 and a chairperson pro-tempore for the purposes of holding meetings, doing business and
38 executing documents as required and consistent with the terms of this Agreement.

39

40 Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-
41 Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this
42 Agreement.

43

1 **6. Meetings of the BDD Board.** The BDD Board shall have at least one regularly scheduled
2 meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A
3 quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board
4 members is present. A simple majority of BDD Board members who are present at a duly called
5 meeting of the BDD Board at which a quorum is present shall act for the BDD Board with
6 respect to all matters brought before the BDD Board at that meeting.

7
8 **7. BDD Board Annual Budget.** Each year the BDD Board shall prepare and recommend an
9 annual budget, which shall be finalized for recommendation after a public hearing and shall not
10 be formally adopted or implemented unless and until it is approved by each of the governing
11 bodies of the City and the County. If, for any reason, the BDD Board fails to have an approved
12 annual budget for a fiscal year as of the first day of that year, the annual budget for the prior
13 fiscal year shall be effective for the subsequent fiscal year until such time as an annual budget is
14 adopted and approved for the subsequent fiscal year.

15
16 **8. BDD Project Financing.** The BDD Board may apply for grants, loans, financial guarantees,
17 and other financial assistance from private or public sources. The BDD Board shall not obligate
18 itself by loan or encumber the BDD Project or any other real property or assets held or owned by
19 it, unless and until each of the governing bodies of the City and the County approves such loan or
20 encumbrance.

21
22 **9. Limits of BDD Board Authority.** The BDD Board's authority and duties do not encompass
23 the distribution of water to customers, the assessment or collection of water charges, the
24 regulation of water use by customers or the ownership, acquisition or permitting of use of water
25 rights or contract water rights. Those functions, and any others not delegated by this Agreement,
26 are reserved to the City and County in the supervision and operation of their respective
27 Independent Water Systems.

28
29 **10. Owners' Consultant.** The City and the County agree to execute the Owners' Consultant
30 Contract as expeditiously as possible. Once the BDD Board is established, the City and the
31 County shall assign to the BDD Board the authority to approve any necessary changes in the
32 Owners' Consultant Contract. The Owners' Consultant shall thereafter report to the BDD Board.
33 The day-to-day oversight of the Owners' Consultant will be performed by the Project Manager,
34 Section 12, of this Agreement.

35
36 **11. Design Build Contractor.** The City and the County delegate to the BDD Board the authority
37 to enter into the Design Build Contract. The BDD Board shall have the authority to approve any
38 necessary changes in the Design Build Contract. The Design Build Contractor shall report to the
39 BDD Board. The day-to-day oversight of the Design Build Contractor shall be performed by the
40 Project Manager, Section 12 of this Agreement.

41
42 **12. Project Management and Fiscal Services.** The City and the County delegate to the BDD
43 Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible

1 for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the
2 design and construction of the BDD Project; (3) the operation and management the BDD Project
3 after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the
4 provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for
5 the Owners' Consultant Contract, Design Build Contract, and all other fiscal services related to
6 the design, procurement, construction, operation and maintenance of the BDD Project, including
7 managing all revenues, maintaining all accounts, procuring necessary property, goods and services,
8 and receiving and disbursing all funds. The Project Manager will report directly to the BDD
9 Board, and the BDD Board shall have authority to supervise the performance of the Project
10 Manager.

11
12 The PMFS Contract shall contain a fee schedule for the fiscal agent services to be provided under
13 the PMFS Contract. It shall, at a minimum, specify that funds of the BDD Project shall be held in
14 one or more separate accounts and shall not be commingled with the funds of any of the parties to
15 this Agreement, and shall specify that the Project Manager may invest its funds only in accordance
16 with any applicable laws of the State of New Mexico governing the investment of public funds.
17 The PFMS Contract shall specify the types and threshold amounts of expenditures that require
18 approval of the BDD Board in advance.

19
20 **13. Designation of Project Manager.** The City and County agree that the Sangre de Cristo
21 Water Division will be the initial Project Manager and that the BDD Board shall enter into the
22 PMFS with the City.

23
24 Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de
25 Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board
26 shall have authority to enter into a new PMFS Contract with any one of the following: (1) Sangre
27 de Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.

28
29 After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term
30 of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the
31 functions performed under the PMFS Contract may continue to be combined in a single new
32 PMFS Contract or may be separated into two or more replacement PMFS Contracts.

33
34 **14. BDD Project Capacity Allocation.** In accordance with the Environmental Impact Statement
35 for the BDD Project the 8,730 afy of diversion capacity of the BDD Project shall be allocated as
36 follows: 5,230 afy to the City, 1,700 afy to the County, and 1,800 afy to Las Campanas. Each
37 entity's diversions shall be based upon its own water right or contract right and each entity is
38 responsible for acquisition and maintenance of its own water rights.

39
40 **15. Inclusion of Las Campanas.** The 1,800 afy allocation of BDD Project capacity reserved for
41 Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures
42 Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as
43 part of the Facility Operations and Procedures Agreement.

1
2 **16. Cost Sharing for Design and Construction Costs for the BDD Project.** The City and
3 County agree to contribute \$30 million each to design and construct the BDD Project. The City
4 and the County shall disburse funds in accordance with the annual budget duly approved by
5 them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the
6 BDD Board, and contributions to support the budget shall be incorporated in each of the parties'
7 annual budgets.
8

9 The City and the County agree to seek additional State and Federal assistance to help pay for the
10 costs of the Project. As part of the Facility Operations and Procedures Agreement, the City and
11 County intend that Las Campanas will pay for its proportionate share of that part of the system
12 allocated to its use (the diversion structure, sediment pond and related infrastructure). After
13 applying the City's and County's combined \$60 million contribution, all state and federal
14 financial assistance, the contribution of Las Campanas and any other funding, the City and
15 County agree to contribute equally to pay the balance of design and construction costs.
16

17 An accounting of the City and County contributions already made towards Project costs that shall
18 be credited towards the City and County's respective contribution requirements shall be made a
19 part of the PMFS Contract.
20

21 **17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable
22 and necessary costs and expenses attributable to the operation and maintenance of the BDD
23 Project shall be included by the BDD Board in its annual budget and shall be apportioned among
24 the parties and Las Campanas. The BDD Board shall determine periodically which costs are
25 fixed and which are variable or proportionate.
26

27 The costs of operating, maintaining and repairing the BDD Project that can be attributable to
28 each party's variable or proportionate share of water deliveries (such as electrical costs) shall be
29 shared according to each party's proportionate share of water deliveries.
30

31 The costs of operating, maintaining and repairing the Project that are fixed or capital costs and
32 that are attributable to the facility as a whole shall be shared equally by the City and County after
33 applying any contribution by others, including Las Campanas.
34

35 **18. Term.** The date on which this Agreement shall be effective shall be the date on which this
36 Agreement is approved. This Agreement shall become effective upon approval of the
37 Department of Finance and Administration, State of New Mexico. This Agreement shall be in
38 effect from the effective date through the date of termination, as provided in Section 19 of this
39 Agreement.
40

41 **19. Termination.** The parties may terminate this Agreement only by the formal action of the
42 Governing Body of the City of Santa Fe and the Board of County Commissioners.
43

1 If upon termination of this Agreement, a successor public entity is authorized to carry on the
2 activities of the BDD Board and assume its rights, obligations and responsibilities, then such
3 rights, obligations and responsibilities shall be transferred to the successor public entity in
4 accordance with law. If upon termination of this Agreement and a successor public entity is not
5 authorized to carry on the activities of the BDD Board, then any property, rights and assets of the
6 BDD Board (other than the BDD Project) shall be divided among the parties according to the
7 respective contributions (ownership interests) of the parties.
8

9 **20. Strict Accountability, Records, Audits, Reports.** As provided in NMSA 1978 Section 11-
10 1-4 (as amended), the BDD Board and the parties hereto shall be strictly accountable for all
11 receipts and disbursements, and shall maintain adequate, complete and correct records and
12 statements pertaining to receipts, disbursements, and other financial matters pertaining to the
13 Project. Each year, the Project Manager shall cause an annual audit of the BDD Project to be
14 performed by an independent certified public accountant; the audit shall be provided to each of
15 the City and the County and shall be made available to the public. The records and statements
16 prepared by the BDD Board pursuant to this paragraph shall be open to inspection at any
17 reasonable time by the parties hereto, their accountants and agents. Within ninety (90) days after
18 the end of each fiscal year, the BDD Board shall prepare and present to the parties a comprehensive
19 annual report of the BDD Board's activities and finances during the preceding year. The BDD
20 Board shall prepare and present such reports as may be required by law, regulation or contract to
21 any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such
22 reports and accounting as the parties hereto may from time to time request.
23

24 **21. Amendment.** This Agreement may not be modified, amended, supplemented or rescinded
25 except by a written agreement executed by each of the City and the County in the manner in
26 which this Agreement was executed by the City and the County.
27

28 **22. Severability.** The provisions of this Agreement shall be interpreted and construed so as to be
29 consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void,
30 voidable or otherwise unenforceable the remainder of this Agreement shall continue in full force
31 and effect and only so much of this Agreement as is necessary shall be separated herefrom and
32 made unenforceable.
33

34 **23. Insurance.** The BDD Board shall obtain and carry public liability insurance coverage
35 (including directors and officers coverage) consistent with its responsibilities as a public entity
36 under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* and with combined
37 single limits of no less than \$1,000,000. The BDD Board shall carry and maintain fire and
38 extended insurance coverage on all of the BDD Project buildings, structures and improvements,
39 and upon all of the contents and other personal property. The Public Liability insurance policy
40 shall provide occurrence-based coverage against losses arising out of all operations conducted
41 on the premises, contractual liability coverage, crime, automobile, directors' and officers'
42 coverage, and other appropriate coverages. The BDD Board shall also carry and maintain
43 workers' compensation insurance (or create and administer a program of self insurance approved

1 by the Director of the Workers' Compensation Administration) that complies with the
2 requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et
3 seq., if applicable. The expense of obtaining and maintaining the required insurance shall be
4 included in the annual budget of the BDD Board. The insurance provided for under this Section
5 shall be maintained in full force and effect throughout the duration of this Agreement. A copy of
6 any insurance policy shall be provided to any party at the party's request.
7

8 **24. Liability.** No party hereto shall be responsible for liability incurred as a result of one of the
9 other party's acts or omissions in connection with this Agreement. Any liability incurred in
10 connection with this Agreement shall be subject to the privileges and immunities of the New
11 Mexico Tort Claims Act (as amended).
12

13 **25. Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create
14 in the public, any member thereof, or any person, any rights whatsoever such as, but not limited
15 to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to
16 maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.
17

18 **26. Dispute Resolution.** The City and County agree to use any and all methods of dispute
19 resolution, up to and including binding arbitration, to resolve any conflicts arising under this
20 Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall
21 be first discussed by representatives of each party having the authority, if necessary, to bind the
22 party that they represent. Such representatives shall use their best efforts to amicably and
23 promptly resolve the dispute. If the parties are unable to resolve the dispute through informal
24 mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving
25 rise to the dispute, either party may give notice to the other party that the dispute is to be
26 submitted to binding arbitration. Any dispute requiring notice shall be reported to the
27 next meeting of the respective City and County governing bodies. Such notice shall contain the
28 name of a proposed arbitrator, and in the event the other party does not agree with the proposed
29 arbitrator, the model guidelines of the American Arbitration Association shall be used to select
30 an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of
31 the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be
32 appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's
33 award shall be binding on the parties.
34

35 **27. Entire Agreement.** This Agreement contains the Entire Agreement between the City and
36 County with regard to the matters set forth herein.
37

38 **28. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the
39 parties and their respective representatives, successors, and assigns.
40

41 **29. Counsel.** The City and County acknowledge that they have freely entered into this
42 Agreement with the advice of their respective legal counsel.
43

3
4 **30. Other Documents.** The parties agree to execute such further and other agreements as
5 reasonably may be required from time to time to carry out the provisions of this Agreement.

6 **31. Law.** The laws of the State of New Mexico shall govern this Agreement.

7 **32. Notices.** Any notice, demand, request, or information authorized or related to this
8 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
9 delivered or faxed as follows:

10 **To the City:** Director of the Sangre de Cristo Water Division
11 City of Santa Fe
12 PO Box 909
13 Santa Fe, NM 87501
14 Phone: 955-4200
15 Fax: 955-4352
16

17 **With a copy to:** City Manager
18 City of Santa Fe
19 PO Box 909
20 Santa Fe, NM 87501
21 Phone: 955-6509
22 Fax: 955-6683
23

24 City Attorney
25 City of Santa Fe
26 PO Box 909
27 Santa Fe, NM 87501
28 Phone: 955-6511
29 Fax: 955-6748
30

31 **To the County:** Santa Fe County Utilities Director
32 Santa Fe County
33 205 Montezuma
34 Santa Fe, N.M. 87505
35 Phone: 986-6210
36 Fax: 992-8421
37

38 **With a copy to:** County Manager
39 Santa Fe County
40 P.O. Box 276
41 Santa Fe, N.M. 87504
42 Phone: 986-6200
43 Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

1-11-05
Date

Approved as to form
Santa Fe County Attorney

1-11-05
Date

Valerie Espinoza
Santa Fe County Clerk

1/11/05
Date

Larry G. Delgado
Mayor
City of Santa Fe Council

1-15-05
Date

Approved as to form
City of Santa Fe Attorney

1/14/05
Date

Yolanda H. H. D.
City of Santa Fe Clerk

1-18-05
Date

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration

By: *Dannotti K. Bush*
Date: 3/7/05
3/7/05



DFA Office of the Secretary
Bataan Memorial Bldg., Suite 180
Santa Fe, New Mexico 87501
(505) 827-4985

DEPARTMENT of FINANCE and ADMINISTRATION (DFA)
JOINT POWERS AGREEMENT (JPA) BRIEF

JPA 1 - 10/96

Agencies must complete and transmit this form along with all backup documentation to the DFA.

PRIMARY PARTY: Santa Fe County

SECONDARY PARTY: The City of Santa Fe

OTHER PARTY: _____

CONTACT NAME: Stephen C. Ross

PHONE: 986-6279

CONTACT ADDRESS: _____

DOCUMENTS ENCLOSED:

AMOUNT:

<input checked="" type="checkbox"/>	JPA	Federal Funds	\$ <u>0</u>
<input type="checkbox"/>	JPA Amendment	General Funds	\$ <u>0</u>
<input type="checkbox"/>	Purchase Document	Other State Funds	\$ <u>0</u>
<input type="checkbox"/>	Written Justification	Local Gov. Funds	\$ <u>60,000*</u>
<input type="checkbox"/>	Other _____	Total	\$ <u>60,000*</u>

*or 50/50 share on construction costs after federal, state, and other assistance.

PURPOSE: To establish the Buckman Direct Diversion Board, and to plan, finance, design, construct, operate and manage the Buckman Direct Diversion Project

TERM: From: date of DFA approval To: date of termination (presumptively perpetual)
FOR AN AMENDMENT, LIST THE ORIGINAL JPA EXPIRATION DATE: N/A

Statutory Requirements - Agencies must check each blank certifying to DFA that JPA

yes jointly exercises a power common to the parties (Transferring funds from one agency to another does not constitute the joint exercise of power.);
clearly specifies its purpose:
yes establishes the manner in which the joint power will be exercised;
yes provides for strict accountability of all receipts and disbursements;
yes addresses disposition, division, distribution and ownership of any property acquired as the result of the joint exercise of power; and
yes specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements - Agencies must enter Y (Yes), N (No), or N/A (Not Applicable) to each of the following:

yes Does the JPA or amendment have original signatures executed by authorized officers, employees or other representatives empowered to bind their respective entities?
yes Are all exhibits referred to in the JPA attached?
N/a Does the JPA provide for the expenditure or transfer of public funds by a state agency? (All public money must be budgeted.)
no Does the JPA provide for the transfer of local, state or federal funds to a state agency? If the answer is yes, cite or attach the legislative authority permitting the receiving state agency to increase its budget from such a transfer.
no If the JPA or amendment start date is prior to the date submitted to DFA or, if the original JPA has expired, is a justification letter requesting retroactive approval attached? (Letter must be signed by one of the parties.)
yes Has the JPA or amendment been reviewed by legal counsel? If yes, state who _____

[Signature]
AGENCY HEAD SIGNATURE

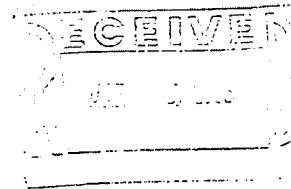
County Attorney
TITLE



Secretary Jimenez
Department of Finance and Administration
Bataan Memorial Building
Santa Fe, NM 87503



Re: City of Santa Fe - Santa Fe County
Joint Powers Agreement for the Buckman Direct Diversion



Dear Mr. Jimenez,

Judy Amer of your office suggested I write and explain the references to Las Campanas in above-referenced Agreement.

The proposed Joint Powers Agreement implements a project of the City of Santa Fe and Santa Fe County to jointly construct, operate and maintain the Buckman Direct Diversion. The \$120 million project will divert water from the Rio Grande River through a diversion structure and settling facility, through pipelines to the Caja del Rio to a water treatment plant, and then to City and County residents. The water to be diverted is either native water or San Juan-Chama Project water under lease to the City of Santa Fe, Santa Fe County, and Las Campanas pursuant to State Engineer approval.

The Buckman Direct Diversion project is incredibly important to our community, and its importance is underscored by the recent drought that has plagued the area. Local groundwater resources are over committed and may not be able to meet needs on a sustainable basis. The agreement that was reached by the City and County brings Rio Grande water to our residents, and it is hoped that this will relieve the burden on local resources in times of drought. The project has obvious implications for the public health, safety and welfare. The Agreement before you represents the culmination of a 17 year effort to find a means to address our community's water needs in a holistic, sensible manner.

The project will be a government project, and will have a private partner. That private partner, Las Campanas LLC, is not a signatory to the JPA. Las Campanas is a limited liability corporation and developer of the Las Campanas subdivision on the City's west side. Las Campanas will make an investment in the facilities to be constructed and will receive water deliveries pursuant to a Facility Operations and Procedures Agreement that is being developed. The parties have already developed principles to guide the drafting of the agreement, and the agreement is expected to be completed soon. Las Campanas will construct, at its own expense, a pipeline to transport raw water to its facilities, and will be responsible for any necessary treatment.

The JPA fundamentally establishes the BDD Board to oversee the construction and implementation of the Buckman Direct Diversion in accordance with § 11-1-1 NMSA, the Joint Powers Act. It is essential to the local governmental entities that a JPA-created Board oversee the crucial work of constructing this water resource facility. The federal government, on whose property the proposed diversion structure will be placed, will only issue a single permit for river diversions. That means that if the City and County did not partner to some extent with Las Campanas, the entire project could be put in jeopardy if multiple applications for diversion structures were filed. That partnership will be represented in the Facility Operations and Procedures Agreement. In conclusion, the JPA is an essential step in providing a governance structure for the local government entities and the operating agreement to follow will detail the expenditures and water deliveries to the private partner.

I hope this is helpful in your review of the Agreement. If you have any questions, please call Stephen Ross, County Attorney, at 986-6279 or Kyle Harwood, Assistant City Attorney at 955-6502.

Sincerely,

Michael D. Anaya
Chairman
The Board of County Commissioners of Santa Fe County

Larry A. Delgado
Mayor
City of Santa Fe

Attachment B

2005 Water Resource Agreement

**Water Resources Agreement between the City of Santa Fe
and Santa Fe County**

This Water Resources Agreement ("Agreement") is entered into by and between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico, this 17th day of January, 2005.

Recitals

WHEREAS, the City and County entered into the Agreement to Deliver Water (the "1994 City/County Agreement", and commonly referred to as the City/County Wheeling Agreement) on August 10, 1994, which agreement allows the County to take delivery of and pay for up to 500 acre feet of water per year (afy) at enumerated points of delivery and which incorporates by reference the City and County Negotiating Committee Report and Recommendations for Extension of Water Service and Water Delivery dated December 15, 1993; and

WHEREAS, the 1994 City/County Agreement expires July 3, 2005; and

WHEREAS, the City and County desire to supersede the 1994 City-County Agreement with a new agreement; and

WHEREAS, the City and County are parties to a San Juan-Chama Project (SJCP) Contract in the amount of 5,605 afy with the United States of America, Department of the Interior, Bureau of Reclamation, for the furnishing of a municipal water supply for the County and City dated November 23, 1976; and

WHEREAS, the City and County recognize that the use of SJCP water will be directly available to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the future; and

WHEREAS, the City and County have filed a joint application with the Office of the State Engineer to divert the SJCP Contract water using the proposed BDD Project; and

WHEREAS, the SJCP Contract grants to the County and City an exclusive right to allocate, consumptively use and dispose of 5,605 afy and there exists a dispute between the County and City concerning the allocation of water between the parties; and

WHEREAS, the County and City desire to resolve the allocation of the SJCP Contract water; and

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and

1 **WHEREAS**, the County and City will cooperate on the purchase of future water rights
2 for use in the BDD Project.
3

4 **NOW**, therefore, upon the mutual consideration described by this Agreement, including
5 the covenants and promises contained herein, the adequacy of which are acknowledged
6 by the parties, the County and City agree as follows:
7

8 **Definitions.** Capitalized words or phrases used in this Agreement, as defined below,
9 shall have the following meanings:
10

11 **afy** means acre feet per year.
12

13 **Agreement** means this "Water Resources Agreement between the City of Santa Fe
14 and Santa Fe County".
15

16 **BDD Board** means the governing board of directors of the BDD Project as established by
17 the BDD Joint Powers Agreement.
18

19 **BDD Joint Powers Agreement** means the "Joint Powers Agreement between the City of
20 Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project" which
21 is executed contemporaneously with this Agreement.
22

23 **BDD Project** means the planned Buckman Direct Diversion Project which will divert
24 surface water from the Rio Grande at Buckman, as described in the draft Environmental
25 Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a
26 diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment,
27 transmission and related works used to deliver water to the respective Independent Water
28 Systems of the City and County.
29

30 **BOR** means the federal United States Bureau of Reclamation.
31

32 **Independent Water System** means the respective water works of the City and the
33 County, as such works exist now and as such works may change or expand in the future.
34

35 **ISC** means the New Mexico Interstate Stream Commission.
36

37 **OSE** means the New Mexico Office of the State Engineer.
38

39 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605
40 acre-feet per year acquired by the City and the County under contract with the U.S.
41 Bureau of Reclamation, dated November 23, 1976, and as it may be amended, renewed,
42 converted or replaced.
43
44

1 **Agreement**

2
3 **1. Term.** The term of this Agreement shall be perpetual and shall commence as of the
4 effective date of approval by the respective governing bodies of the City and the County.

5
6 **2. Quantity. Wholesale Water Delivery to the County Independent Water System.**
7 From the effective date of this Agreement until deliveries of water from the BDD Project
8 begin, the City Independent Water System shall provide up to 875 afy to the 3 points of
9 delivery currently serving the County Independent Water System. After deliveries of
10 water from the BDD Project begin, the City Independent Water System shall provide up
11 to 500 afy in perpetuity to the 3 points of delivery of the County Independent Water
12 System. Wholesale Water Delivery shall be subject to Shortage Sharing, Section 9, of
13 this Agreement.

14
15 **3. Quantity. Delivery to City customers outside the City limits using the City**
16 **Independent Water System.** The Wholesale Water Delivery provided to the County
17 Independent Water System shall not include the quantity necessary to supply City
18 customers outside the City limits using City Independent Water System infrastructure.

19
20 **4. Quantity. Re-delivery to City customers using County Independent Water**
21 **System.** The Wholesale Water Delivery provided to the County Independent Water
22 System shall not include the quantity necessary to supply City customers on the County
23 Independent Water System. The City shall supply the County Independent Water System
24 sufficient water supply to serve the City's customers on the County Independent Water
25 System. The City and County shall jointly prepare a report of 'Re-delivery to City
26 customers using County Independent Water System infrastructure' within 6 months of
27 the effective date of this Agreement and present it to respective governing bodies of the
28 City and County.

29
30 **5. Quantity. Allocation of the City and County jointly owned San Juan Chama**
31 **Project (SJCP) Contract.** The City and County shall cooperate on the amendment,
32 renewal, conversion or replacement of the jointly owned San Juan Chama Project (SJCP)
33 Contract. The City and the County agree that the jointly owned SJCP Contract for 5,605
34 afy shall be allocated as follows; the County's allocation of the SJCP Contract shall be
35 375 afy and the City's allocation of the SJCP Contract shall be 5,230 afy. The City and
36 County shall cooperate and provide notification to the other party of any agreements
37 affecting the jointly owned SJCP Contract which require the signature of the other party.
38 The City and the County agree that this allocation is a complete and full resolution of the
39 SJCP Contract allocation issue. Beginning on January 1, 2005, the County will be
40 responsible for its 2005 SJCP Contract allocation and all future year allocations,
41 including payments to the BOR, storage, permitting and use. The SJCP Contract
42 allocation is separate from the Wholesale Water Delivery, Section 2, of this Agreement.

43
44 **6. Cooperative Water Right Transfers of County Water Rights into the City's**
45 **Buckman Groundwater System for Offset Purposes.** The County may transfer, for
46 offsetting purposes only, up to 1325 afy (1700 afy County BDD Project capacity – 375

1 afy County SJCP Contract water) into the City's Buckman well permit, RG-20516;
2 provided, that the City is a co-applicant on all such transfers and that the County takes
3 responsibility for such transfers, including all costs associated with protested
4 applications. The City shall be advised of all settlement discussions and proposed
5 conditions of approval regarding such applications and shall cooperate with the County
6 on all such transfers provided that such transfers do not adversely affect the City's water
7 rights. The County acknowledges that it shall not obtain water deliveries from the City's
8 Buckman well permit, RG-20516, as a result of such transfers, unless the parties
9 otherwise agree in writing. The County may, at a time in the future, transfer the rights
10 that have been moved to the City's Buckman well permit, RG-20516, to the BDD Project.
11 This paragraph replaces and supersedes the "Water Right Transfer Agreement between
12 the City of Santa Fe and Santa Fe County", dated June 30, 2004.
13

14 **7. Drought Protection for the County Independent Water System.** Under drought /
15 catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions,
16 OSE/ISC restrictions), the City shall provide the County Independent Water System an
17 amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity
18 from the BDD Project. After the deliveries of water from the BDD Project begin and
19 when the County's diversion of surface water from the BDD Project drops below 850 afy
20 (50% of 1,700 afy), the City Independent Water System shall provide the County
21 Independent Water System the necessary water to maintain deliveries of no less than 850
22 afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section
23 9, of this Agreement. The City and County shall be separately responsible for the
24 acquisition and maintenance of their own water right portfolios and any applicable limits
25 placed on water rights contained in their own water right portfolios. The Drought
26 Protection provision is separate from the Wholesale Water Delivery, Section 2, of this
27 Agreement and the SJCP Allocation, Section 5, of this Agreement.
28

29 **8. Conjunctive Use and Sustainability.** The City and County agree to implement
30 conjunctive use management by relying on surface water when it is available and using
31 groundwater only as necessary. The City and County shall prioritize the allocation of
32 water from the BDD Project for affordable housing using the Regional Planning
33 Authority (RPA) Plan and the Affordable Housing Task Force report.
34

35 The City and the County will develop a 'Comprehensive Joint Conjunctive Use and
36 Sustainability Water Resource Strategy' that places the use of surface water as a higher
37 priority than the use of groundwater and which manages the regional aquifer on a
38 sustainable basis. The Strategy shall include a shortage sharing agreement that will help
39 guide management decisions made by the BDD Board and the Regional Planning
40 Authority. The Strategy shall incorporate the principle that the County and the City will
41 consult prior to the drilling of new wells in the area around the City and County
42 Independent Water Systems, as they exist at the time of signing of this Agreement, so as
43 to encourage cooperation, avoid conflict and avoid the impairment of City or County
44 water rights.
45

1 The County reserves the right to drill in-Basin groundwater wells and commence the
2 permitting of additional groundwater wells. The County shall consult with the City on
3 the location of any proposed groundwater wells.
4

5 **9. Shortage Sharing for Wholesale Water Delivery.** The County agrees to a pro rata
6 reduction in the daily Wholesale Water Delivery in the event of a shortage of water
7 supply to the City Independent Water System. The pro rata reduction in the daily
8 delivery to the County Independent Water System shall be computed from actual use and
9 shall be based on the reduction to other City customers from the City Independent Water
10 System under the City's Water Emergency Management Plan Ordinance, currently in
11 effect or as may be amended in the future. The pro rata reduction in the daily Wholesale
12 Water Delivery shall be implemented at the points of delivery currently serving the
13 County Independent Water System.
14

15 **10. Treated Wastewater Effluent Return Flow.** The City shall gain all interest, right
16 or title to return flow received at the City's wastewater treatment plant. The County shall
17 gain no interest, right or title to any return flow received at the City's wastewater
18 treatment plant. The County shall gain the interest, right or title to water delivered to the
19 County Independent Water System which is not received at the City's wastewater
20 treatment plant.
21

22 **11. Points of Delivery.** The Wholesale Water Delivery shall be delivered to the County
23 Independent Water System at any one (1) or all three (3) points of delivery currently
24 serving the County Independent Water System. Additional points of delivery may be
25 requested by the County with the consent of the City, which consent shall not be
26 unreasonably withheld.
27

28 **12. Rates.** The County shall pay to the City a Monthly Meter charge (\$435.21 / 10 inch
29 meter / month) and a Wholesale Water Delivery rate (\$3.50 / 1000 gallons) as determined
30 by the 2004 Cost of Service Study prepared for the City Independent Water System.
31

32 **13. Adjustment of Rates.** The City may adjust the Monthly Meter charge and
33 Wholesale Water Delivery rate over the term of this Agreement. The City shall provide
34 the County at least one hundred eighty (180) days written notice of its intent to adjust the
35 Monthly Meter charge or the Wholesale Water Delivery rate. The City and County
36 acknowledge that the appropriate methodology for computing the Monthly Meter charge
37 and Wholesale Water Delivery rate shall be based on an embedded cost of service study.
38 The Directors of the City and County Independent Water Systems shall resolve any
39 dispute regarding the adjustment of rates in a manner as set forth in Dispute Resolution,
40 Section 16, of this Agreement.
41

42 **14. Metering.** The City shall maintain the meters and related equipment for measuring
43 the quantity of water delivered to the County Independent Water System at the points of
44 delivery. The City shall read the meters and report the readings in monthly billings to the
45 County. Meter reading reports shall include the meter readings for re-delivery to those
46 City customers connected to the County Independent Water System pursuant to Quantity.

1 Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at
2 the request of either the City or the County, not more than once during each twelve (12)
3 month period, and the City and the County shall share the expense of calibration equally.
4 The Directors of the City and County Independent Water Systems shall resolve any
5 inconsistency in billing, metering or calibration in a manner as set forth in Dispute
6 Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60
7 days shall initiate the notice provision and related procedures described in Dispute
8 Resolution, Section 16, of this Agreement.
9

10 **15. Conditions of Delivery.** The City Independent Water System shall furnish water to
11 the County Independent Water System at a reasonably consistent supply and pressure at
12 the points of delivery. The City Independent Water System shall at all times operate and
13 maintain the system in a manner and shall take such action as may be necessary to furnish
14 the County Independent Water System with the quality and quantity of water required by
15 this Agreement. Emergency failures of pressure or water supply shall excuse the City
16 Independent Water System from this provision for such reasonable time as may be
17 necessary to restore service. The City Independent Water System shall furnish water to
18 the County Independent Water System of such quality as is required for a residential and
19 a commercial customer under applicable water quality regulations. The County shall
20 bear those costs where unusual and / or special conditions exist (such as elevation,
21 terrain, or other conditions) and which result in increased costs to the City Independent
22 Water System.
23

24 **16. Dispute Resolution.** The City and County agree to use any and all methods of
25 dispute resolution, up to and including binding arbitration, to resolve any conflicts arising
26 under this Agreement, the expenses of which shall be shared equally by the City and
27 County. Disputes shall be first discussed by representatives of each party having the
28 authority, if necessary, to bind the party that they represent. Such representatives shall
29 use their best efforts to amicably and promptly resolve the dispute. If the parties are
30 unable to resolve the dispute through informal mechanisms or mediation within 30 days
31 of the occurrence of the event or circumstances giving rise to the dispute, either party
32 may give notice to the other party that the dispute is to be submitted to binding
33 arbitration. Any dispute requiring notice shall be reported to the next meeting of the
34 respective City and County governing bodies. Such notice shall contain the name of a
35 proposed arbitrator, and in the event the other party does not agree with the proposed
36 arbitrator, the model guidelines of the American Arbitration Association shall be used to
37 select an arbitrator and govern the conduct of the arbitration, rendering of an award and
38 enforcement of the award consistent with New Mexico state law. Within 60 days of
39 notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall
40 prepare an award. The arbitrator's award shall be binding on the parties.
41


42 **17. Entire Agreement.** This Agreement contains the Entire Agreement between the
43 City and County with regard to the matters set forth herein.
44

45 **18. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of
46 the parties and their respective representatives, successors, and assigns.

1
2 **19. Counsel.** The City and County acknowledge that they have freely entered into this
3 Agreement with the advice of their respective legal counsel.
4
5 **20. Other Documents.** The parties agree to execute such further and other agreements
6 as reasonably may be required from time to time to carry out the provisions of this
7 Agreement.
8
9 **21. Law.** The laws of the State of New Mexico shall govern this Agreement.
10
11 **22. Notices.** Any notice, demand, request, or information authorized or related to this
12 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
13 delivered or faxed as follows:
14
15 **To the City:** Director of the Sangre de Cristo Water Division
16 City of Santa Fe
17 PO Box 909
18 Santa Fe, NM 87501
19 Phone: 955-4200
20 Fax: 955-4352
21
22 **With a copy to:** City Manager
23 City of Santa Fe
24 PO Box 909
25 Santa Fe, NM 87501
26 Phone: 955-6509
27 Fax: 955-6683
28
29 City Attorney
30 City of Santa Fe
31 PO Box 909
32 Santa Fe, NM 87501
33 Phone: 955-6511
34 Fax: 955-6748
35
36 **To the County:** Santa Fe County Utilities Director
37 Santa Fe County
38 205 Montezuma
39 Santa Fe, N.M. 87505
40 Phone: 986-6210
41 Fax: 992-8421
42
43 **With a copy to:** County Manager
44 Santa Fe County
45 P.O. Box 276
46 Santa Fe, N.M. 87504

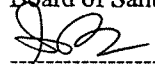
1 Phone: 986-6200
2 Fax: 986-6362
3
4 County Attorney
5 Santa Fe County
6 P.O. Box 276
7 Santa Fe, N.M. 87504
8 Phone: 986-6279
9 Fax: 986-6362
10
11

12 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of
13 Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its
14 duly authorized representatives as of the date specified below.

15 
16 _____
17 Chairman,
18 Board of Santa Fe County Commissioners

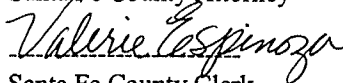
1-12-05

Date

19 
20 _____
21 Approved as to form
22 Santa Fe County Attorney

1-11-05

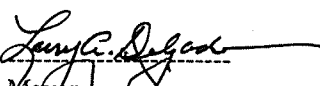
Date

23 
24 _____
25 Santa Fe County Clerk

1/11/05

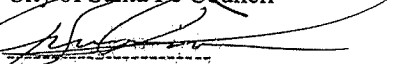
Date



26
27
28
29
30 
31 _____
32 Mayor
33 City of Santa Fe Council

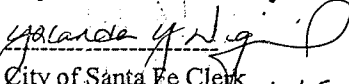
1-25-05

Date

34 
35 _____
36 Approved as to form
37 City of Santa Fe Attorney

1/24/05

Date

38 
39 _____
40 City of Santa Fe Clerk
41 *comg 1/24/05*

1-18-05

Date

Attachment C

2006 Facility Operations and Procedures Agreement

**Facility Operations and Procedures Agreement for the
Buckman Direct Diversion Project between the City of Santa Fe,
Santa Fe County and Las Campanas LP**

This Facility Operations and Procedures Agreement (hereinafter referred to as "the FOPA") is entered into by and between the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, the City of Santa Fe (City), a municipal corporation of the State of New Mexico, and Las Campanas Limited Partnership, a Delaware Limited Partnership (hereinafter referred to as "Las Campanas"), effective as of the date of the last signature below.

Recitals

WHEREAS, the City, the County and Las Campanas are partners in the Buckman Direct Diversion project (hereinafter referred to as "the BDD Project" or "BDD") and desire to execute a Facility Operations and Procedures Agreement (hereinafter referred to as "the FOPA", "the Agreement" or "this Agreement") to facilitate the construction of the BDD Project;

WHEREAS, the City and County executed a Water Resources Agreement (hereinafter referred to as "WRA") on January 11, 2005 to address utility-to-utility issues between the City and County water utilities, and a Joint Powers Agreement (hereinafter referred to as "the JPA") on March 7, 2005 to establish the Buckman Direct Diversion Board (hereinafter referred to as "BDD Board");

WHEREAS, the JPA contemplates execution of the FOPA in order to address facility operations;

WHEREAS, on February 2, 2006 the BDD Board voted unanimously to recommend the Principles of Agreement for the FOPA and directed staff to prepare this Agreement; and

WHEREAS, the BDD Board considered this Agreement on September 7, 2006 and recommended that the City, the County and Las Campanas LP execute this Agreement expeditiously.

NOW, THEREFORE, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the adequacy of which is acknowledged by the parties, the County, the City and Las Campanas agree as follows:

1 **Definitions.** Capitalized words or phrases used in this Agreement, if defined below, shall
2 have the following meanings:

3
4 **1. AFY or afy** means acre feet per year.

5
6 **2. Agreement** means this Facility Operations and Procedures Agreement, also referred to
7 as "FOPA" or "the FOPA."

8
9 **3. BDD Board** means the Buckman Direct Diversion Board, created as set forth in the
10 JPA.

11
12 **4. BDD Partners** means the City, the County, and Las Campanas.

13
14 **5. BDD Project** means the Buckman Direct Diversion Project, a project to divert surface
15 water from the Rio Grande at Buckman as described in the draft Environmental Impact
16 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion
17 capacity of 8,730 afy. The BDD Project includes diversion, treatment, transmission and
18 related works.

19
20 **6. BDD Project EIS** means the environmental impact statement prepared by the US
21 Forest Service and the Bureau of Land Management for the BDD Project.

22
23 **7. City/County Separate Facilities** means those portions of the BDD Project including
24 pumping equipment in booster station 2A, the raw water pipeline extending from pump
25 station 2A to the City/County Water Treatment Plant, and the finished water pipelines to
26 the points of interconnection, as shown on Exhibit A of this Agreement.

27
28 **8. City-Las Campanas Settlement Agreement** means that certain agreement executed
29 on September 30, 2003 in order to compromise and settle all issues associated with Case
30 No. D-0101-CV-01878, First Judicial District, State of New Mexico.

31
32 **9. Construction Costs** means all of the costs to implement the BDD Project paid to the
33 Owners' Consultant, the DB Contractor, and professional and legal services contractors
34 contracted by the Project Manager for services directly related to delivery of the BDD
35 Project as recommended by the BDD Board. Construction Costs do not include BDD
36 EIS Costs, Project Management Costs as defined in the PMFSA, and Permitting Costs.

37
38 **10. DB Contractor** means the design-build contractor procured by the BDD Board.

39
40 **11. JPA** means that certain Joint Powers Agreement entered into on March 7, 2005 by
41 and between the City of Santa Fe and Santa Fe County.

42
43 **12. Las Campanas Separate Facilities** means those portions of the BDD Project,
44 including pumping equipment in booster station 2A and the raw water pipeline extending
45 from booster station 2A to Las Campanas that provide water only to Las Campanas, as
46 shown on Exhibit A of this Agreement.

1
2 **13. MGD** means million gallons per day.
3

4 **14. Owners' Consultant** means the consulting engineer contracted by the BDD Board to
5 create the delivery of the BDD Project.
6

7 **15. Permitting Costs** means the costs to acquire permits necessary for construction and
8 operation of the BDD Project.
9

10 **16. PMFSA** means the Project Management and Fiscal Services Agreement.
11

12 **17. Project Manager** means the Project Manager of the BDD Project as specified in *JPA*
13 *Section 13. Designation of Project Manager*.
14

15 **18. Project Management Costs** means the costs of the Project Manager to implement
16 and operate the BDD Project as defined in the PMFSA.
17

18 **19. Shared Facilities** means that portion of the BDD Project that provides raw water to
19 all BDD Partners, as shown on Exhibit A of this Agreement, including all portions of
20 booster station 2A except for the pumping equipment in booster station 2A that is part of
21 the Las Campanas Separate Facilities or the City/County Separate Facilities.
22

23 **20. WRA** means that certain Water Resources Agreement between the City of Santa Fe
24 and Santa Fe County with an effective date of January 11, 2005.
25
26
27

28 **Agreement**

29
30 **1. Description of the BDD Project.** The BDD Project is a mix of shared and separate
31 facilities. See Exhibit A to this Agreement for a schematic/map of the BDD Project
32 showing Shared Facilities, Las Campanas Separate Facilities and City/County Separate
33 Facilities.
34

35 **2. Ownership of the Project.** The City and County each own an undivided equal
36 interest in the Shared Facilities. The City and County each own an undivided equal
37 interest in the City/County Separate Facilities. Las Campanas owns the Las Campanas
38 Separate Facilities.
39

40 **3. Use of the Shared Facilities.** Use of the Shared Facilities shall be apportioned to each
41 BDD Partner based on the peak day capacity allocated in *FOPA Section 7. BDD Project*
42 *Facility Capacity Allocation*.
43

44 **4. Relationship of the Parties.** Except as provided in this Agreement, the City and
45 County shall be allocated the rights and responsibilities of a general partner in a
46 business/corporate model under New Mexico law. Las Campanas shall have the rights

1 and responsibilities of a limited partner in a business/corporate model under New Mexico
2 law.

3
4 **5. Management of the Shared Facilities and the City/County Separate Facilities.**
5 Management of the Shared Facilities and the City/County Separate Facilities shall be
6 accomplished through the BDD Board, consistent with the provisions of this Agreement,
7 the JPA, the WRA, and the PMFSA.

8
9 **6. Permits.** The BDD Board shall be the permittee of the permits, rights of ways, and
10 authorizations pursuant to the Record of Decision on the BDD Project EIS. Other
11 permitting requirements will be identified by the Owners' Consultant and will be
12 acquired, managed and maintained by the Project Manager except for the water rights
13 permits described in *FOPA Section 11. Water Rights Transfers*. The BDD Partners agree
14 to cooperate and coordinate to the greatest extent possible on the acquisition,
15 management and maintenance of all BDD Project permits.

16
17 **7. BDD Project Facility Capacity Allocation.** The peak day diversion capacities are:

18
19 City: 62.09% (11.3 mgd allocation of 18.2 mgd total capacity)
20 County: 20.33% (3.7 mgd allocation of 18.2 mgd total capacity)
21 Las Campanas 17.58% (3.2 mgd allocation of 18.2 mgd total capacity)

22
23 A BDD Partner may use another BDD Partner's unused peak day diversion capacity.
24 Consent for one BDD Partner to utilize another BDD Partner's unused peak day
25 diversion capacity shall not be unreasonably withheld and the cost to use that capacity
26 shall be calculated as set forth in a separate agreement.

27
28 **8. Water Rights and Divertable Water Supply.** Each BDD Partner shall divert only
29 that amount of water in the system for which water rights are in good standing with the
30 New Mexico State Engineer, subject to the limitations on diversions at low flow set as
31 forth in the BDD Project EIS or other applicable permits. The BDD Partners each
32 recognize an individual responsibility to maintain their own water rights portfolio and to
33 manage any water rights shortage within that portfolio. No BDD Partner shall make any
34 claim or attempt to use another BDD Partner's water rights without the express written
35 consent of that BDD Partner.

36
37 **9. Sharing of Shortages. Facility Failure.** In the event of reduced total capacity of the
38 BDD Project caused by facility failure, the BDD Partners shall receive deliveries on a
39 reduced basis that are computed from a pro-rata percentage of peak day (mgd) diversion
40 capacity as described by *FOPA Section 7. BDD Project Facility Capacity Allocation*.
41 Facility failure does not include the occurrence of low flow on the Rio Grande, any
42 restrictions on diversions pursuant to the BDD Project EIS, or limitations on the use of
43 specific water rights. Facility failure does include damage caused by floods, upstream
44 spills of pollutants or toxic materials, failure or damage to the BDD Project, and
45 scheduled or unscheduled shut downs required for maintenance, repair, or replacement.

1 **10. BDD Project Operations. Actual Water Deliveries.** Each BDD Partner shall use its
2 best efforts to conform the actual water demand it places on the BDD Project to its
3 demand schedules prepared in conformance with *FOPA Section 26. BDD Project*
4 *Requested Delivery Schedule*. No BDD Partner shall exert an actual demand on the BDD
5 Project at a rate that exceeds the capacity allocation set forth in *FOPA Section 7. BDD*
6 *Project Facility Capacity Allocation* adjusted for the sharing of shortages as set forth in
7 *FOPA Section 8. Water Rights and Divertable Water Supply* and *FOPA Section 9.*
8 *Sharing of Shortages. Facility Failure*. The Project Manager shall operate the facility to
9 meet the BDD Partners' actual demand, subject to the capacity allocation set forth in
10 *FOPA Section 7. BDD Project Facility Capacity Allocation* adjusted for the sharing of
11 shortages as set forth in *FOPA Section 8. Water Rights and Divertable Water Supply* and
12 *FOPA Section 9. Sharing of Shortages. Facility Failure*. The BDD Project shall
13 include water measurement devices to account for the actual volume, rate, and time-of-
14 day of all water deliveries to each BDD Partner. The BDD Project, in conjunction with
15 operations procedures, shall include controls to limit each BDD Partner's water demand
16 to its peak day and annual volume allocations.
17

18 **11. Water Rights Transfers.** The BDD Partners shall cooperate to transfer the water
19 rights described in the BDD Project EIS and shall take actions that are consistent with the
20 BDD Project EIS. The BDD Partners shall coordinate in development of strategies for
21 compliance with the Conditions of Approval contained in New Mexico State Engineer
22 diversion permits.
23

24 In accordance with the WRA, the County shall identify a schedule for the transfer of such
25 water rights and the City shall cooperate in the transfers.
26

27 In accordance with the City-Las Campanas Settlement Agreement, Las Campanas shall
28 identify a schedule for the transfer of such water rights and the City shall cooperate in the
29 transfers.
30

31 **12. Cost Sharing. Use of Funding from County Ordinance No. 2002-05.** The
32 PMFSA shall reflect that the County may use the proceeds from County Ordinance No.
33 2002-05, subject to the terms of that Ordinance.
34

35 **13. Cost Sharing. BDD Project EIS Costs.** Costs related to the preparation of the BDD
36 Project EIS are addressed in the MOU per FS No. 02-MU-11031000-013 dated January
37 16, 2002 and are based on the percentage of annual diversion amounts listed in the BDD
38 Project EIS.
39

40 **14. Cost Sharing. Construction Costs of Shared Facilities.** Las Campanas shall pay a
41 proportionate share of the Construction Costs of the Shared Facilities as measured by
42 peak day (mgd) capacity in the BDD Project EIS (17.58%). The City and County shall
43 share in the costs of the BDD Project as set forth in the *JPA Section 16. Cost Sharing for*
44 *Design and Construction for the BDD Project*.
45

- 1 **15. Cost Sharing. Construction Costs of the Las Campanas Separate Facilities.** Las
2 Campanas shall pay all of the costs of design and construction of the Las Campanas
3 Separate Facilities, including those costs of the Owner's Consulting Engineer and the
4 BDD Project design-build contractor to implement that portion of the Las Campanas
5 Separate Facilities located within booster station 2A and the Las Campanas pipeline
6 extending from booster station 2A to the location near Dead Dog Well where the Las
7 Campanas Separate Facilities physically diverge from the City/County Separate
8 Facilities.
9
- 10 **16. Cost Sharing. Construction Costs of the City/County Separate Facilities.** The
11 City and County shall share in the Construction Costs of the BDD Project as set forth in
12 *JPA Section 16. Cost Sharing for Design and Construction for the BDD Project.*
13
- 14 **17. Cost Sharing. Permitting Costs of the Shared Facilities.** The City, the County,
15 and Las Campanas shall pay the Permitting Costs for the Shared Facilities in the same
16 proportions described in *FOPA Section 14. Cost Sharing. Construction Costs of Shared*
17 *Facilities.*
18
- 19 **18. Cost Sharing. Permitting Costs of the Las Campanas Separate Facilities.** Las
20 Campanas shall pay the full amount of the Permitting Costs of the Las Campanas
21 Separate Facilities.
22
- 23 **19. Cost Sharing. Permitting Costs of the City/County Separate Facilities.** The City
24 and County shall share in the Permitting Costs of the City/County Separate Facilities
25 pursuant to *JPA Section 16. Cost Sharing for Design and Construction for the BDD*
26 *Project.*
27
- 28 **20. Cost Sharing. Fixed OMR&R Costs for the Shared Facilities.** Fixed OMR&R
29 Costs of the Shared Facilities shall be apportioned between the County, the City and Las
30 Campanas using the capacity allocation shown in *FOPA Section 7. BDD Project Facility*
31 *Capacity Allocation.*
32
- 33 **21. Cost Sharing. Variable OMR&R Costs of the Shared Facilities.** Variable
34 OMR&R costs of the Shared Facilities shall be apportioned between the County, the City
35 and Las Campanas based on the actual delivery of water to each BDD Partner in
36 accordance with *FOPA Section 27. Annual Operating Plan.*
37
- 38 **22. Cost Sharing. Fixed and Variable OMR&R Costs of the Las Campanas Separate**
39 **Facilities.** Las Campanas shall pay the full amount of the Fixed and Variable OMR&R
40 costs of the Las Campanas Separate Facilities.
41
- 42 **23. Cost Sharing. Fixed and Variable OMR&R Costs of the City/County Separate**
43 **Facilities.** Fixed OMR&R costs of the City/County Separate Facilities shall be
44 apportioned between the County and the City using the capacity allocation of the
45 City/County Separate Facilities [County 24.6%, 3.7 mgd of 15 mgd, City 75.3%, 11.3
46 mgd of 15 mgd]. Variable OMR&R costs of the City/County Separate Facilities shall be

1 apportioned between the County and City based on the actual delivery of water to each
2 BDD Partner in accordance with *FOPA Section 27. Annual Operating Plan*. Each year
3 following commencement of operations of the BDD Project and in connection with its
4 approval of the budget pursuant to *JPA Section 17. Cost Sharing for Operation and*
5 *Maintenance Costs for the BDD Project*, the BDD Board shall review the proposed
6 allocation of costs between the fixed and variable categories and either approve, reject or
7 modify same. At the same time, the BDD Board shall review the allocation methodology
8 of fixed and variable costs as between the City and the County set forth in this section to
9 determine whether the allocation is reasonable and appropriate, and shall explore
10 alternative methodologies.

11
12 **24. Emergency Reserve Fund.** The Project Manager, in consultation with the BDD
13 Partners, shall submit to the BDD Board an analysis of the funds required for an
14 emergency reserve and suggested procedures for creation and management of the
15 emergency reserve fund.

16
17 **25. The BDD Partners and the BDD Board.** The appointment of City Councilors and
18 County Commissioners by their governing bodies provides representation of the City and
19 the County on the BDD Board, as described in the JPA. The selection of a citizen
20 member by the BDD Board provides representation of the public at large on the BDD
21 Board.

22
23 Las Campanas has an interest in the decisions of the BDD Board that impact the delivery
24 of water from the Shared Facilities to the Las Campanas Separate Facilities. Las
25 Campanas shall be able to request a BDD Board agenda item through coordination with
26 the Project Manager. Las Campanas is entitled to notice of BDD Board decisions that
27 relate to Las Campanas deliveries of water from the Shared Facilities to the Las
28 Campanas Separate Facilities. Las Campanas is entitled to the opportunity to prepare
29 materials and present those materials to the BDD Board.

30
31 With respect to the BDD Board role in governance and oversight of operations, the
32 Shared Facilities shall not be operated to adversely impact the Las Campanas annual
33 and/or peak day capacity during normal operations.

34
35 The BDD Board and Las Campanas shall coordinate to develop the annual BDD
36 operational plan, notice procedures for planned shutdowns, annual OMR&R accounting
37 practices, emergency and facility failure plans, water right and water resource
38 management processes and procedures in accordance with applicable regulations, and the
39 environmental compliance management in accordance with applicable regulations.

40
41 **26. BDD Project Requested Delivery Schedule.** The BDD Partners acknowledge that
42 management of minimum and low flows in the shared diversion and conveyance system
43 is important because of sediment and OMR&R concerns and because each BDD Partner
44 has different needs in the Shared Facilities. The Project Manager shall require that the
45 design of the BDD Project shall be capable of accommodating each of the BDD Partners'
46 expected minimum deliveries.

1
2 **27. Annual Operating Plan.** The BDD Partners shall submit to the Project Manager the
3 daily, weekly and monthly requested deliveries for each upcoming year no later than
4 October 1 of each year. The Project Manager, in consultation with the BDD Partners.
5 shall schedule the anticipated demand for the upcoming year for each BDD Partner in a
6 Draft Delivery Schedule, which will be finalized among the BDD Partners by December
7 1 of that year. The Project Manager, with input from and in consultation with the BDD
8 Partners, shall prepare a manual for project operations, which will be distributed among
9 the BDD Partners.

10
11 **28. Early Start.** Any BDD Partner may begin an early start of facility construction in
12 accordance with all applicable permits, agreements and construction requirements.
13

14 **29. Data & Information Sharing.** Each BDD Partner shall designate an engineering
15 and a legal representative to coordinate, facilitate, and implement information sharing,
16 including the SCADA telemetry.
17

18 **30. Operations, Maintenance and Security.** Operations, maintenance and security
19 responsibilities shall be performed by the City of Santa Fe as Project Manager until
20 December 1, 2015, as set forth in the JPA, except that Buckman Road shall be maintained
21 by the County as required for access to the BDD Project facilities. All expected and
22 planned operations and maintenance shall be presented to the BDD Board for approval
23 and budget purposes.
24

25 **31. Dispute Resolution.** The Project Manager shall be responsible for resolving
26 disputes arising in this agreement. If the Project Manager cannot satisfactorily resolve a
27 dispute, then any BDD Partner may petition the BDD Board for a resolution. In the event
28 these steps do not resolve the dispute, then the BDD Partners agree to use any and all
29 methods of dispute resolution, up to and including binding arbitration, to resolve any
30 conflicts arising under this Agreement, the expenses of which shall be shared equally by
31 the BDD Partners. Disputes shall be first discussed by representatives of each party
32 having the authority, if necessary, to bind the party that they represent. Such
33 representatives shall use their best efforts to amicably and promptly resolve the dispute.
34 If the parties are unable to resolve the dispute through informal mechanisms or mediation
35 within 30 days of the occurrence of the event or circumstances giving rise to the dispute,
36 either party may give notice to the other party that the dispute is to be submitted to
37 binding arbitration. Any dispute requiring notice shall be reported to the next
38 meeting of the respective City and County governing bodies. Such notice shall contain
39 the name of a proposed arbitrator, and in the event the other party does not agree with the
40 proposed arbitrator, the model guidelines of the American Arbitration Association shall
41 be used to select an arbitrator and govern the conduct of the arbitration, rendering of an
42 award and enforcement of the award consistent with New Mexico state law. Within 60
43 days of notice an arbitrator shall be appointed and within 120 days of notice the arbitrator
44 shall prepare an award. The arbitrator's award shall be binding on the parties.
45

1 **32. Entire Agreement.** This Agreement contains the Entire Agreement between the
2 BDD Partners with regard to the matters set forth herein.

3
4 **33. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of
5 the parties and their respective representatives, successors, and assigns.

6
7 **34. Counsel.** The BDD Partners acknowledge that they have freely entered into this
8 Agreement with the advice of their respective legal counsel.

9
10 **35. Other Documents.** The BDD Partners agree to execute such further and other
11 agreements as reasonably may be required from time to time to carry out the provisions
12 of this Agreement.

13
14 **36. Law.** The laws of the State of New Mexico shall govern this Agreement.

15
16 **37. Execution in Counterparts.** This Agreement may be executed in counterparts with
17 separate signature pages in the format shown below.

18
19 **38. Notices.** Any notice, demand, request, or information authorized or related to this
20 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
21 delivered or faxed as follows:

22
23
24 **To the City:** Director of the Sangre de Cristo Water Division
25 City of Santa Fe
26 PO Box 909
27 Santa Fe, NM 87501
28 Phone: 955-4200
29 Fax: 955-4352

30
31 **With a copy to:** City Manager
32 City of Santa Fe
33 PO Box 909
34 Santa Fe, NM 87501
35 Phone: 955-6509
36 Fax: 955-6683

37
38 City Attorney
39 City of Santa Fe
40 PO Box 909
41 Santa Fe, NM 87501
42 Phone: 955-6511
43 Fax: 955-6748

44
45 **To the County:** Santa Fe County Utilities Director
46 Santa Fe County

1 205 Montezuma
2 Santa Fe, N.M. 87505
3 Phone: 986-6210
4 Fax: 992-8421
5
6 **With a copy to:** County Manager
7 Santa Fe County
8 P.O. Box 276
9 Santa Fe, N.M. 87504
10 Phone: 986-6200
11 Fax: 986-6362
12
13 County Attorney
14 Santa Fe County
15 P.O. Box 276
16 Santa Fe, N.M. 87504
17 Phone: 986-6279
18 Fax: 986-6362
19
20 **To Las Campanas:** Las Campanas Engineering
21 218 Camino La Tierra
22 Santa Fe, NM 87506
23 Phone: 986-8090
24 Fax: 986-6076
25
26 **With a copy to:** Counsel for Las Campanas
27 Law and Resource Planning Associates
28 201 Third Street NW, Suite 1750
29 Albuquerque, NM 87102
30 Phone: 346-0998
31 Fax: 346-0997
32
33
34 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, the County of
35 Santa Fe, New Mexico, and Las Campanas LP has caused this Agreement to be executed
36 and delivered by its duly authorized representatives as of the date specified below.

1 THE BOARD OF COUNTY COMMISSIONERS
2 OF SANTA FE COUNTY
3
4

5 By: _____

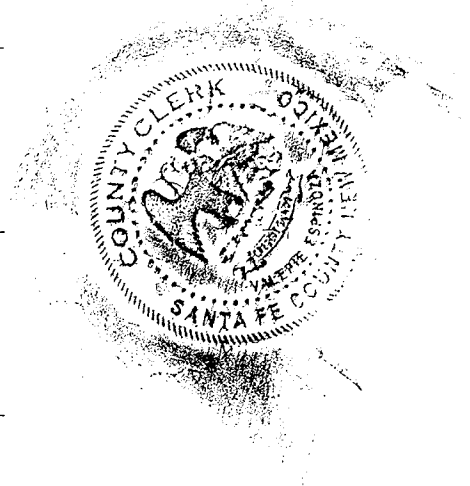
6 Harry B. Montoya, Chair
7

8 ATTEST:
9

10 _____
11 Valerie Espinoza, County Clerk
12
13

14 Approved as to form:
15

16 _____
17 Stephen C. Ross, County Attorney
18
19
20



1 Approved by the City of Santa Fe

2

3

4

5

6 David Cas
Mayor, City of Santa Fe Council / Date

7

8

9 Approved as to form

10

11

12

13 Kyle G. Hall, City, 10.16.06
City of Santa Fe Attorney / Date

14

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16

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28

Reviewed

Yolanda G. Nig
City of Santa Fe Clerk / Date

ccmtg 9/27/06

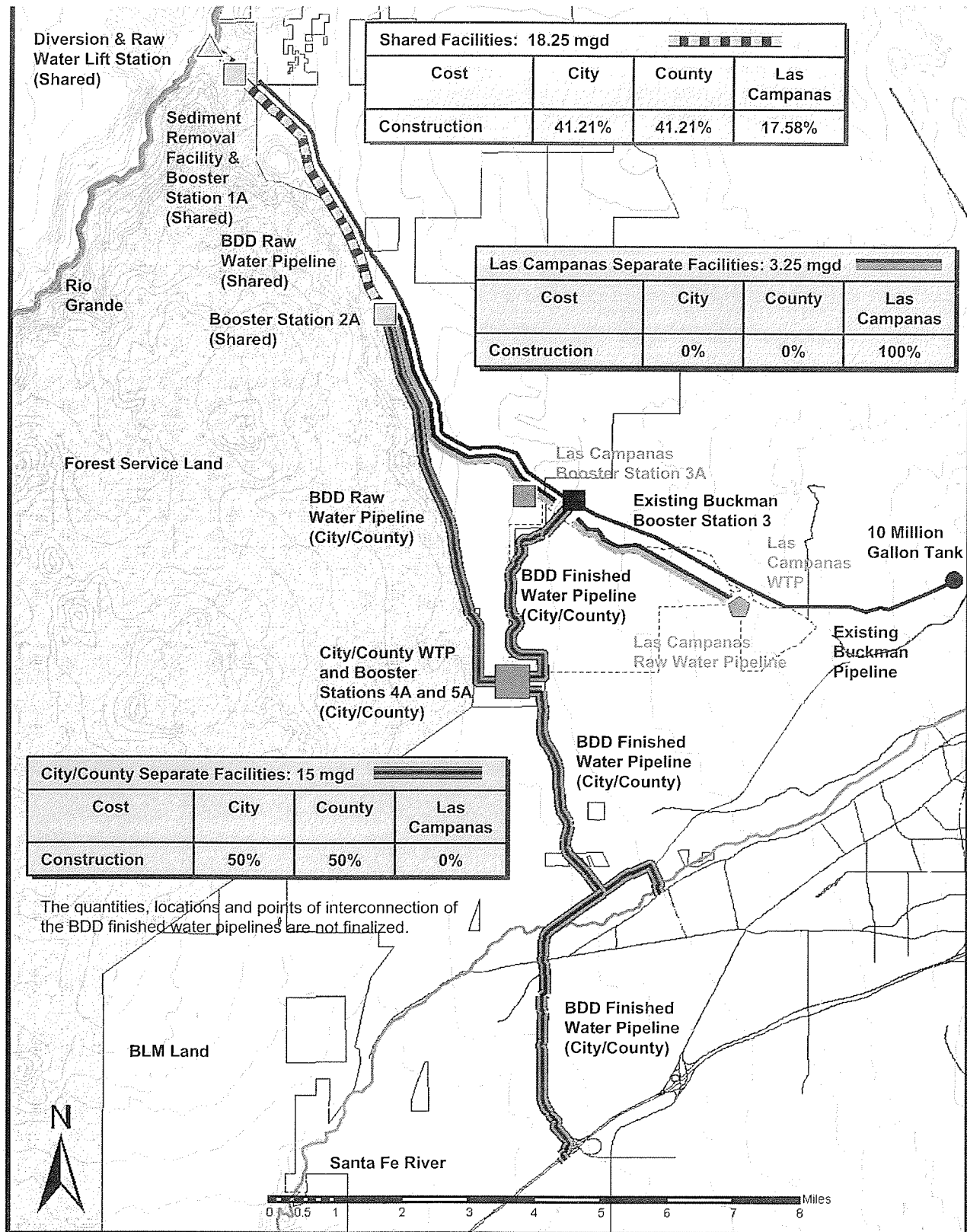
Kathryn Pauline
City of Santa Fe Finance / Date

10/16/06

1 Las Campanas Limited Partnership
2 By: Las Campanas Corporation, Its General Partner
3
4
5
6
7
8
9 
10
11

10-16-06

Date



City of Santa Fe
Santa Fe County
Las Campanas LP

**Facility Operations and Procedures
Agreement Exhibit A
Buckman Direct Diversion Project**

2006

Attachment D

2007 Project Management and Fiscal Service Agreement

**PROJECT MANAGEMENT AND
FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

THIS PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT (hereinafter referred to as "the Agreement" or "PMFSA") is entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the City and the County, through the BDD Board, are designing, constructing, operating and maintaining the Buckman Direct Diversion Project;

WHEREAS, in preparation for creating the Project, the City and the County entered into the Water Resources Agreement on January 11, 2005;

WHEREAS, the City and the County entered into a Joint Powers Agreement on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015;

WHEREAS, the City, the County, and Las Campanas entered into the Facilities Operations and Procedures Agreement on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project;

WHEREAS, the purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms; and

WHEREAS, the BDD Board and the Project Manager desire to enter into the agreement to address the items noted in the foregoing paragraph.

NOW, THEREFORE, for the covenants, promises and consideration described herein, the BDD Board and the Project Manager agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS.

Capitalized words or phrases used in the foregoing recitals of this Agreement shall have the meanings assigned therein. In addition, the words and phrases defined in this Article 1 shall have the meanings assigned in this section.

- A. "The Agreement," "this Agreement," or "PMFSA" as used herein refers to this Project Management and Fiscal Services Agreement.
- B. "Annual Operating Budget" means the annual budget for all activities of the Project, including OMR&R, but excluding the budget for the design and construction.
- C. "Annual Operating Plan and Delivery Schedule" means the annual operating plan and water delivery schedule prepared by the Project Manager with input from the City, the County and Las Campanas, described in Section 27 of the FOPA and herein.
- D. "The "City" means the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico, and a signatory of the Project Agreements.
- E. "The County" means Santa Fe County, New Mexico and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico, and a signatory of the Project Agreements.
- F. "Design-Build Contract" means the contract to be entered into by and between the BDD Board and a design-build contractor to design and construct the Project.
- G. The "Design-Build Contractor" refers to the contractor selected to design and construct the Project.
- H. The "Design and Construction Budget" means the comprehensive, multiyear budget for the design and construction of the Project.
- I. "Fiscal Year" means a year beginning on July 1 and ending on June 30.
- J. "The FOPA" means the Facility Operations and Procedures Agreements for the Buckman Direct Diversion Project Between the City of Santa Fe, Santa Fe County and Las Campanas LP.

K. "The JPA" means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, effective March 7, 2005.

L. "Las Campanas" means the Las Campanas Limited Partnership, a Delaware Limited Partnership, and a signatory of the FOPA.

M. "OMR&R" means operation, maintenance, replacement and repair.

N. "Owners' Consultant" means Camp, Dresser & McKee, Inc. (hereinafter referred to as "CDM"), under contract with the BDD Board as consulting engineer to the BDD Board, or any successor entity.

O. "The Owners' Consultant Contract" means the contract between the BDD Board and CDM, the Owners' consultant, as amended.

P. "The Project" means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande as described in the final Environmental Impact Statement for the Buckman Direct Diversion Project, and includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and the County.

Q. The phrase "the Project Agreements" means the WRA, JPA, the FOPA and the PFMSA.

R. "Project Expenses" means those expenditures of the Project approved by the BDD Board and included in a budget approved by the BDD Board, the City and the County, and reimbursement expenses retroactive to the execution date of the JPA.

S. "Project Manager" means the Sangre de Cristo Water Division of the City of Santa Fe.

T. "WRA" shall mean the Water Resources Agreement by and between the City of Santa Fe and Santa Fe County and dated on or about January 11, 2005.

ARTICLE 2. TERM, EFFECTIVE DATE.

This Agreement shall become effective as of the date the Agreement is approved and executed by the BDD Board and the Project Manager. This Agreement shall remain in full force and effect until December 1, 2015, unless terminated earlier as provided in Article 9.E. of this Agreement.

ARTICLE 3. RESPONSIBILITIES OF THE BDD BOARD.

The BDD Board shall be responsible to do all of the following:

A. Exercise all the responsibilities of the BDD Board as set forth in the Project Agreements;

B. Supervise the performance of the Project Manager pursuant to §§ 4 & 12 of the JPA;

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts and expenditures in amounts greater than \$20,000;

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to §§ 10 and 11 of the JPA.

Contracts and expenditures in amounts less than \$20,000 may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures up to \$30,000.

D. Establish by resolution of the BDD Board a document retention and protection policy.

E. Establish by resolution of the BDD Board the Annual Operating Budget;

F. Provide an adequate opportunity for the City, the County, and consistent with the FOIA, Las Campanas, and the public, to comment and make appropriate presentations on any proposed budget;

G. Consider and, if appropriate, adopt, by resolution of the BDD Board, amendments to a previously approved budget that the BDD Board deems advisable;

H. Create an Emergency Reserve Fund and establish procedures for its management pursuant to §24 of the FOIA;

I. Collect, through the Project Manager, contributions of the City, the County and Las Campanas toward design, construction, operation and maintenance of the Project, and related expenditures, and credit those contributions towards the obligations of the City, the County and Las Campanas as set forth in the Project Agreements;

J. Consistent with the Bateman Act, appropriately condition approval of each budget or amendment thereto on appropriation by the City and/or the County in an appropriate budget or budget amendment ;

K. Approve all financing and funding sources for the Project (except for funding to be provided by the City and the County pursuant to the Project Agreements)

and, as appropriate, enter into contracts in connection with such financing or funding sources;

L. Monitor the performance of the Owners' Consultant pursuant to the Owners' Consultant Contract and monitor the performance of the Design-Build Contractor pursuant to the Design-Build Contract; and

M. Take all steps that are necessary and proper for the design, construction, operation and maintenance of the Project.

ARTICLE 4. DELEGATION OF AUTHORITY TO AND GENERAL RESPONSIBILITIES OF THE PROJECT MANAGER.

The BDD Board delegates to the Project Manager the authority and responsibility to do the following:

A. Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support staff for BDD Board meetings, contract with independent legal counsel selected by the BDD Board, contract with specialized legal counsel as needed to support design, construction, operation and maintenance of the Project, and, as directed by the BDD Board, implement the Project during design and construction and, following completion of construction, manage, operate, and maintain the Project;

B. Seek and apply for funding (except for funding to be provided by the City and the County pursuant to the Project Agreements) in the form of grants, loans or loan guarantees, or other funding sources as may be deemed appropriate by the BDD Board, for the Project as directed by the BDD Board and manage any such grants, loans or loan guarantees;

C. Administer all funds loaned, granted or contributed by the City, the County or Las Campanas in connection with the Project, and respond to related audits as may be necessary;

D. Prepare and submit to the BDD Board, the City, the County and Las Campanas no later than December 15 of each Fiscal Year, an Annual Operating Budget, which shall include annual and 5 year projected OMR&R costs, including a 5 year schedule with the Project Manager's proposed facilities and equipment major maintenance and replacement costs, proposed allocation of costs among the City, the County and Las Campanas as provided in the FOPA, a facilities and equipment major repair and replacement fund, and an emergency reserve fund;

E. Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;

F. Develop a document retention and protection policy for adoption by the BDD Board;

G. Act as fiscal agent for the Project as provided in Article 7, herein;

H. Once an Annual Operating Budget is approved by the BDD Board, implement the budget, adhere strictly to the budget, and make recommendations for necessary budget adjustments throughout the Fiscal Year, and contract for an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board;

I. Prepare and submit to the BDD Board for approval all documentation to be used for procurement in the Project including, but not limited to, documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications and contracts in amounts greater than \$20,000;

J. Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board;

K. Consult with staff of the City, the County, and Las Campanas regarding the planning and design and OMR&R of the Project;

L. In consultation with the BDD Board, apply for, manage and maintain, including the preparation and submittal of all required compliance reports, all necessary permits for the operation of the Project, including, without limitation, those permits, easements, and rights-of-way held in the name of the BDD Board, and those permits required to be obtained by the BDD Board pursuant to Section 6 of the FOPA;

M. Maintain communication with the BDD Board, the City, the County and Las Campanas, primarily via monthly BDD Board meetings, and keep these entities informed of important matters as may be necessary in the interim between monthly BDD Board meetings;

N. As directed by the BDD Board, act as liaison for the BDD Board and represent the BDD Board in Project matters involving tribal governments, state and federal government agencies, and non-governmental organizations;

O. As directed by the BDD Board, and with the consent and approval of the City and the County, and in consultation with Las Campanas, coordinate the Project with regional water supply planning efforts; and

P. Perform other duties as assigned by the BDD Board consistent with funding and the Project Agreements.

Q. Make commercially reasonable efforts to enforce the terms of all agreements that the BDD Board approves. In the event that the Project Manager's administrative efforts to enforce a specific contract's terms are not successful, the Project Manager shall so inform the BDD Board and shall make specific recommendations for the BDD Board's consideration regarding the BDD Board's contract enforcement steps or procedures, including litigation.

ARTICLE 5. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING DESIGN AND CONSTRUCTION.

During design and construction of the Project (through project acceptance by the BDD Board), the Project Manager shall do the following:

A. Supervise the Owners' Consultant pursuant to the Owners' Consultant Contract as directed by the BDD Board;

B. On a monthly basis, provide a schedule of construction payments to the BDD Board, track Project costs, track progress of the Project, monitor design and construction costs to determine whether such costs are within the sum specified by the BDD Board in the Design and Construction Budget, and manage the Design-Build Contractor within the limits of contractual obligations such that construction of the Project is timely and reasonably delivered pursuant to the project testing and acceptance dates agreed to in the Design-Build Contract;

C. Negotiate and manage procurement of the Design-Build Contract in accordance with the City's Purchasing Manual and present same to the BDD Board for approval;

D. Oversee the Design-Build Contractor in connection with all design and construction activities, and recommend to the BDD Board legal action to enforce compliance with the contract, if necessary;

E. Administer requests for payment by the Design-Build Contractor pursuant to construction draw schedules and timely present requests for Change Orders to the BDD Board and process same;

F. Monitor testing of the completed Project in accordance with procedures outlined in the Design Build Contract and upon successful results accept the completed Project.

ARTICLE 6. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING PROJECT OPERATIONS.

During the operation, maintenance, repair and replacement phase of the Project, the Project Manager shall do the following:

A. Operate the Project within its design limitations to deliver treated water in sufficient pressure and volume to meet the actual demand of the City and the County, subject to the capacity allocations set forth in the FOPA §7, and of a quality that meets or exceeds all applicable State and federal regulations and standards;

B. Provide the treated water referred to the previous paragraph at a point or points of delivery at the BDD Project specified by the City or the County, provided, however, that the Project Manager is not obligated to deliver to points of delivery not constructed during the initial construction of the Project unless the City or the County first construct a new point of delivery at the BDD Project and provide the Project Manager and the BDD Board with thirty (30) days advance written notice of the need for water at the newly constructed point of delivery;

C. Deliver raw water to Las Campanas, at pump station 2A subject to the capacity allocation set forth in the FOPA §7, and manage the common facilities at pump station 2A;

D. Maintain water measurement devices that are part of the Project to account for the actual volume, rate, and time-of-day of all water deliveries to the City, the County and Las Campanas;

E. Use data provided from the metering facilities and monitors referred to in the preceding paragraph to analyze whether deliveries comply with Annual Operating Plan and the Project Agreements, and report to the BDD Board monthly;

F. Seek annually from the City, the County and Las Campanas, information required for the Annual Operating Plan as required by Section 27 of the FOPA;

G. From the data submitted pursuant to the previous paragraph, prepare the Annual Operating Plan and Delivery Schedule described in Section 27 of the FOPA, submit the report to the BDD Board, and make appropriate recommendations;

I. As soon as practicable after the end of each Fiscal Year, the Project Manager shall calculate the actual costs experienced by the Project in the previous Fiscal Year and the amounts paid by the City, the County and Las Campanas for the Project and make appropriate recommendations to the BDD Board for adjustments needed in the current Fiscal Year's budget;

J. Invoice the City, the County and Las Campanas for Project costs according to the cost sharing principles specified in the FOPA no less frequently than quarterly, and collect all sums so invoiced;

K. Schedule and coordinate reservoir release and Project diversion of San Juan-Chama Project water in accordance with the procedures of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers and the conditions of City and County

diversion permit No. 4842 issued by the State Engineer and future permits for diversion at the BDD of San Juan-Chama Project water and as directed by the designated representatives of the City, the County, and Las Campanas, each of whom has the responsibility to make water available at the reservoir from which it will be released;

L. Track raw water diversions by the Project for the City, the County, and Las Campanas, and provide to the BDD Board, with copies to the City, the County, and Las Campanas, a monthly accounting of actual raw and potable deliveries, daily water orders, and other statistical information as the BDD Board may require;

M. Monitor the relationship between the quantity of water actually delivered by the Project to the City, the County and Las Campanas and the permitted capacity of the Project's production facilities and make periodic reports of this analysis to the BDD Board, the City, the County and Las Campanas;

N. Reduce deliveries as provided in the FOPA §9 in the event of a reduced total capacity of the BDD Project caused by facility failure;

O. Provide all necessary staff, materials and supplies necessary to operate and maintain the Project consistent with BDD Board funding;

P. Recruit, hire and train staff for the Project according to the BDD Board's approved staffing plan as it may be amended from time to time and arrange for state drinking water certification for such staff in advance of operation of the Project, so that certified staff is available to operate the Project when the Project becomes operational, and set forth in each proposed budget the costs of the staff apportioned according to the respective benefit to the City and the Project

Q. Perform OMR&R duties for the Project at all relevant times in accordance with prudent water utility practices;

R. Report to the BDD Board quarterly and as otherwise required by the BDD Board regarding the OMR&R of the Project and all other relevant matters related to the Project;

T. In consultation with the City, the County and Las Campanas and pursuant to FOPA §27, prepare and present to the BDD Board for approval a comprehensive operations manual for the Project, and updates as needed, which shall include details of all aspects of Project operation including, but not limited to, process control, maintenance, scheduled maintenance outages, rehabilitation and replacement, contingency plans for unscheduled outages, and residuals management; distribute the comprehensive operations manual to the BDD Board, the City, the County and Las Campanas. The Project Manager may delegate, as appropriate, the preparation of the comprehensive operations manual to the Owner's Consultant, the Design-Build Contractor, or another;

U. Provide for appropriate security at all Project facilities;

V. Identify and report to the County the need for Buckman Road maintenance and reimburse the County for the apportioned cost according to the respective benefit to the County and the Project; and

W. Identify and report warranty problems to the Design-Build Contractor or the appropriate subcontractor or equipment supplier and, as necessary, recommend to the BDD Board legal action to enforce such warranties.

ARTICLE 7. FISCAL AGENT RESPONSIBILITIES.

The Project Manager shall act as fiscal agent for Project during the term of this Agreement, and as such shall have the following responsibilities:

A. Books and Accounts. The Project Manager shall maintain records of all transactions related to the Project, including third party transactions, in accordance with generally accepted accounting principles ("GAAP"), and standards established by the government accounting standards bureau ("GASB"), and shall:

- (1) establish a uniform system of accounts;
- (2) maintain segregated books and records consistent with GAAP to account for all separate funding sources, including, without limitation, funds provided by the City, the County, or Las Campanas in support of construction or subsequent OMR&R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.
- (3) maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies;
- (4) provide access at any time to the City, the County and Las Campanas, or each of them, and to the State Auditor, and members of the public, within 90 days following the end of each fiscal year and at any other time as may be reasonably requested, full and complete books and records relating to the Project;
- (5) provide to the City, the County and Las Campanas, or each of them, any additional financial information or documentation relating to the Project as may from time to time be reasonably requested;
- (6) within 90 days after the end of each fiscal year, provide copies of financial statements to the City, the County and Las Campanas, showing the assets, liabilities, revenues, expenses, equity balances and budget comparisons for the Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report but may

recommend that its auditors produce the financial statements, dependent on staff available and the complexity of the reporting requirements;

(7) account for the separate financial contributions from, and reimbursements to, the City, the County and Las Campanas, including crediting the County for the contribution of revenues from the County Capital Outlay Gross Receipts Tax imposed by the Board of County Commissioners in Santa Fe County Ordinance No. 2002-5, subject to the terms of that Ordinance;

(8) procure, contract, and pay for as budgeted an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board.

B. Financial Operations. The Project Manager, acting as fiscal agent, shall:

(1) receive and record deposits in connection with the Project in compliance with applicable state and federal statutes, all applicable requirements of grant and loan funding and requirements otherwise imposed by or on the sources of funding;

(2) make and account for all approved disbursements for the Project, ensuring that disbursements are valid and comply with all applicable State investment statutes, and policies and procedures adopted by the BDD Board;

(3) in consultation with the BDD Board, invest excess funds not required for current operations or capital expenditures in accordance with applicable statutes, City and County policies and applicable requirements of grant or loan funding, assuring that investment earnings are credited to Project funds;

(4) carry over any unencumbered monies that are present at the end of a Fiscal Year, and budget those funds to the succeeding Fiscal Year, to be utilized for purposes consistent with the Project Agreements in the succeeding Fiscal Year; and

(5) obtain all necessary approvals for expenditure of funds, including, without limitation, approvals by the BDD Board and the New Mexico Department of Finance and Administration.; and

(6) determine and record capital assets inventory for appropriate general ledger amounts, run and record depreciation, and submit year-end capital asset inventory for the annual physical inventory.

ARTICLE 8. COMPENSATION.

The Project Manager, the City and the County shall be compensated for services rendered, or credited for services rendered prior to the date of this Agreement or of any Project Agreement, as follows:

A. Following execution of this Agreement, the Project Manager shall be compensated for its services as fiscal agent to the Project in an amount equal to one percent (1%) of the total annual operating budget of the Project in any given fiscal year, which the Project Manager may deduct from revenues dedicated to the Project.

B. Following execution of this Agreement, the Project Manager shall confer with the City, Las Campanas and the County to assign expenditures made previously by the City, Las Campanas or the County to the Project, including the dedication of real or personal property to the Project, by including the same in a single proposed supplemental budget document and presenting same to the BDD Board as proposed expenditures of the Project. The expenditures approved by the BDD Board in the proposed supplemental budget document shall become Project Expenses and, the City, Las Campanas or the County may be reimbursed for such approved expenditures or may credit such prior expenditures against current or future obligations under the Project Agreements. Notwithstanding the foregoing, no cash payment or credit shall be made if it is determined by the City or the County's bond counsel, after review of the proposed supplemental budget document, that such payment may adversely affect the federal tax exemption of interest on the obligations issued by the City or the County to finance the Project.

C. Following execution of this Agreement, all expenses proposed to be incurred by the Project Manager in connection with project management of the Project shall be set forth in the Annual Operating Budget and the Design and Construction Budget.

D. The Project Manager shall not incur nor be paid for any additional or extraordinary OMR&R expenses in connection with performing the services described in this Agreement except as specified in the Annual Operating Budget, amendments thereto, or from the Emergency Reserve Fund.

ARTICLE 9. TRANSFER OF FUNDS TO MEET OBLIGATIONS UNDER THE PROJECT AGREEMENTS.

An obligation of a party in the Project Agreements may be met at any time by transferring funds to "the City of Santa Fe as Project Manager for the Buckman Direct Diversion Project." Any such transfer shall be credited immediately against the account of the contributing party, and the City, as Project Manager, shall be a trustee for any such funds received on account of the Project.

ARTICLE 10. MISCELLANEOUS.

A. Default. For purposes of this Agreement, the Project Manager shall be deemed to be in default only in the event of a breach of its obligations hereunder.

B. Right to cure. In the event of default, the Project Manager shall have sixty (60) days from receipt of written notification from the BDD Board to cure the default. If the Project Manager is unable to cure the default with the sixty day period, the Project Manager will notify the BDD Board, the City and the County at the earlier of (1) the time the Project Manager becomes aware of the inability to cure the default; or (2) expiration of the sixty day period.

C. Remedies on Default. In addition to the remedies specified in this Article, if an event of default remains uncured within the sixty day cure period, the BDD Board may elect to treat this Agreement as being in full force and effect and the BDD Board, the City and the County shall have the right to specific performance. If the BDD Board determines that the Project Manager cannot continue in its role as manager of the Project, the BDD Board may declare this Agreement terminated and appoint a successor as Project Manager for the remainder of the term of this Agreement. In the event of termination, the duties and obligations of the parties shall remain in full force and effect.

D. Termination. If this Agreement expires or a default remains uncured as provided in Article 9(B) of this Agreement, the BDD Board has authority to enter into a new Agreement as provide in §13 of the JPA with the Sangre de Cristo Water Division of the City of Santa Fe, the County of Santa Fe Water Utility, or a Regional Entity. In the event of termination, applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination. Each party shall remain obligated for its share of payments due pursuant to any obligations to a third party incurred as contemplated by this Agreement or the Project Agreements.

E. Dispute Resolution. If a dispute, other than a default which the Project Manager is unable to cure during the sixty day cure period, arises which the BDD Board and the Project Manager cannot satisfactorily resolve, then the BDD Board and the Project Manager agree to those forms of dispute resolution authorized by NMSA 1978, Section 12-8A-1, *et seq.* (2000), except binding arbitration, to resolve conflicts arising under this Agreement, the expenses of which shall be shared equally by the BDD Board, the Project Manager, and, as applicable, the City, the County and Las Campanas. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute.

F. Notices in writing. Notices required by this Agreement shall be addressed to the parties at the addresses noted on Attachment A hereto, as each party may update them from time to time by written notice to the other parties. Such notice shall either be hand delivered or mailed, first class mail, postage prepaid, to the representatives of the other parties. If mailed, the notice or communication shall be simultaneously sent

by facsimile or other electronic means. Any such notice or communication shall be deemed to have been received by the close of the business day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close of business in which case it shall be deemed received at the close of the next business day).

G. Representative for Notices. Each party shall maintain a designated representative to receive notices as set out in Attachment A. Any party may, by written notice to the other parties, change the representative or the address to which such notices and communications are to be sent.

H. Authority of Representatives. The parties' representatives designated above shall have authority to act for their respective principals in all technical matters related to the performance of this Agreement and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have authority to amend or modify any provision of this Agreement.

I. Insurance. The Project Manager shall obtain and continuously maintain insurance policies without interruption, during the term of this Agreement, for the operations and activities on or at the Project, from a licensed insurance company or companies deemed acceptable to the BDD Board, and the City, the County and Las Campanas, which policies shall name the BDD Board, the City, the County and Las Campanas as additional insured, in conformance with the specifications for insurance coverage set forth in Attachment B and the Annual Operating Budget.

J. Term and modification of insurance. All insurance required under this Agreement shall cover occurrences during the term and for a period of two years after the term. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the execution date and such insurance shall be maintained by the Project Manager for a minimum of five years after the term. The BDD Board shall have the right during the term to request the Project Manager to modify the insurance minimum limits specified in Attachment B in order to maintain reasonable coverage amounts. The Project Manager shall make all commercially reasonable efforts to comply with any such request. If any insurance required to be maintained by the Project Manager hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, the Project Manager shall provide written notice to the BDD Board, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for water utilities of similar type, geographic location, and capacity. Upon receipt of such notice, the Project Manager shall use commercially reasonable efforts to obtain other insurance which would provide comparable protection against the risk to be insured and the BDD Board shall not unreasonably withhold its consent to modify or waive such requirement.

K. Third Party Beneficiaries. This Agreement was not intended to and does not create any rights in any persons not a party hereto, specifically including Las Campanas except as otherwise set forth in the Project Agreements and, specifically, the FOPA.

L. Modifications. This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto.

M. Severability. If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

N. Subcontractors. The Project Manager shall not subcontract or delegate any portion of the services to be performed in excess of \$20,000 under this Agreement without the advance written approval of the BDD Board. Any attempted subcontracting or delegating without the BDD Board's advance written approval shall be null and void and without any legal effect.

O. Choice of Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The parties hereby submit to the exclusive jurisdiction of the courts of the State of New Mexico, and venue is hereby stipulated in the First Judicial District Court, State of New Mexico.

P. Sovereign immunity. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by parties or their "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.* (1976), as amended.

Q. Survival of obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the parties of obligations that by their nature should survive such cancellation, expiration, or earlier termination.

R. Binding effect. This Agreement, as it may be amended from time to time, shall be binding on and inure to the benefit of the parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

S. Other Documents. The parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

T. Execution in Counterparts. This Agreement may be executed in counterparts with separate signature pages in the format shown below.

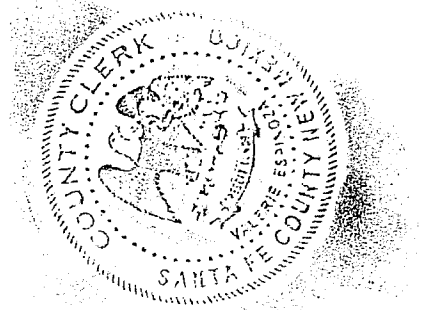
IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

THE BUCKMAN DIRECT DIVERSION BOARD

By: [Signature]
Chair

Date: 11-8-07

Attest: Valerie Espinoza
Valerie Espinoza, County Clerk [Signature]



THE SANGRE DE CRISTO WATER DIVISION OF THE CITY OF SANTA FE

By: [Signature]

By: David Coss
David Coss, Mayor

[Signature]
Approved as to form
City Attorney
[Signature]
City of Santa Fe Clerk
[Signature]
BDD 12/2/07

11-1-07
Date

12-3-07
Date

ATTACHMENT A

Parties designated to receive notices under this Agreement:

For the Sangre de Cristo Water Division of the City of Santa Fe

Rick Carpenter
Sangre de Cristo Water Company
801 West San Mateo Street
Santa Fe, NM 87505

With copies to:

City Manager
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-0909

City Attorney
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-0909

For the Buckman Direct Diversion Board:

Chair, Buckman Direct Diversion Board
c/o Stephanie Trujillo, Secretary
801 West San Mateo Street
Santa Fe, NM 87505

With copies to:

Santa Fe County
attn: County Manager
P.O. Box 276
Santa Fe, New Mexico 87504-0276

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504-0276

ATTACHMENT B

Specifications for Insurance Coverage

ATTACHMENT E

Project Manager Selection Process Committee Recommendations

1. References to "Project Manager" or "PM" should be changed to "Operational Support Entity" or "Support Agency" in order to clarify and separate roles and responsibilities of Project Manager and Facility Manager.
2. Transition from one Project Manager to another should occur at the end of the fiscal year.
3. BDDB should develop an independent Personnel Policy Manual to establish consistency regarding working conditions, employee benefits, and policies affecting employment regardless of selected Project Manager.
4. Assign selection committee to identify structural discrepancies (pot holes) within the existing agreement. This is to avoid running into some of the same issues we have experienced in the past.