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:

<table>
<thead>
<tr>
<th>FSAC</th>
<th>BDDB</th>
<th>BCC</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 4th</td>
<td>February 6th</td>
<td>February 11th &amp; 25th</td>
</tr>
<tr>
<td>March 4th</td>
<td>March 6th</td>
<td>March 11th &amp; 25th</td>
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<tr>
<td>April 1st</td>
<td>April 3rd</td>
<td>April 8th &amp; 29th</td>
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<tr>
<td>April 24th *</td>
<td>May 1st</td>
<td>May 13th &amp; 27th</td>
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<td>June 3rd</td>
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<td>July 1st</td>
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<tr>
<td>August 5th</td>
<td>August 7th</td>
<td>August 12th &amp; 26th</td>
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<tr>
<td>September 4th *</td>
<td>September 11th</td>
<td>September 9th &amp; 30th</td>
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<tr>
<td>September 25th *</td>
<td>October 2nd</td>
<td>October 14th &amp; 28th</td>
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<tr>
<td>November 4th</td>
<td>November 6th</td>
<td>November 25th</td>
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<tr>
<td>December 2nd</td>
<td>December 4th</td>
<td>December 9th</td>
</tr>
</tbody>
</table>

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 BDDB.

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
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 (BDD) requested a written agreement with Los Alamos National Laboratory (LANL). On May 13, 2010, the Buckman Direct Diversion Board (BDD) 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
Memo

Date: January 27 2014

To: Buckman Direct Diversion Board

From: Kyle Harwood via Shannon Jones & Rick Carpenter

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 USACE 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

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

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

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

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

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 Grande\(^2\) 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. Coxe, 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.

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. The following table shows the average densities of silvery minnow found in the fall based on the magnitude of flow in the spring:

<table>
<thead>
<tr>
<th>Rate of Flow (cubic feet per second)</th>
<th>Average Density in Fall (silvery minnow/100m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2500</td>
<td>~ 1.0</td>
</tr>
<tr>
<td>3300</td>
<td>~ 1.5</td>
</tr>
<tr>
<td>5400</td>
<td>~ 5.0</td>
</tr>
</tbody>
</table>

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.

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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.
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:

<table>
<thead>
<tr>
<th>Duration of Low Flow Days (i.e. &lt;150 cfs at San Acacia gage in summer or &lt;300 cf in winter)</th>
<th>Average Density in Fall (silvery minnow/100m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>98 days</td>
<td>~ 1.5</td>
</tr>
<tr>
<td>63 days</td>
<td>~ 3.0</td>
</tr>
</tbody>
</table>

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 cf in winter) results in less silvery minnows:

<table>
<thead>
<tr>
<th>Magnitude of River Drying</th>
<th>Average Density in Fall (silvery minnow/100m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>42 miles</td>
<td>~ 1.5</td>
</tr>
<tr>
<td>30 miles</td>
<td>~ 3.0</td>
</tr>
</tbody>
</table>

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*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,

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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").\textsuperscript{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.

\textsuperscript{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

<table>
<thead>
<tr>
<th>DATE</th>
<th>RG DEL NORTE (Daily Average)</th>
<th>RG LOBATOS (Daily Average)</th>
<th>(Del Norte - Lobatos)</th>
<th>% Remaining @ CO-NM State Line</th>
<th>AVG % Remaining/Annual Peak</th>
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<td>Time</td>
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<td>Error Value</td>
<td>Error Percentage</td>
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<td>2030</td>
<td>58.2</td>
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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
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.

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.
## 2nd Quarter Financial Statement – Operations (Cumulative)
(Unaudited 07/01/2013-12/31/2013)*

### Budget Overview

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

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<td>Santa Fe County</td>
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<td>Las Campanas</td>
<td>84,499</td>
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<td><strong>TOTAL</strong></td>
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<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Cash at 12/31/2013</td>
<td>259,984</td>
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### Pre-Bills - Operations

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>1st Quarter</th>
<th>October</th>
<th>November</th>
<th>December</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Santa Fe</td>
<td>2,671,774</td>
<td>1,386,125</td>
<td>389,386</td>
<td>429,681</td>
<td>466,581</td>
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<tr>
<td>Santa Fe County</td>
<td>803,824</td>
<td>435,120</td>
<td>127,167</td>
<td>121,336</td>
<td>120,201</td>
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<tr>
<td>Las Campanas</td>
<td>125,701</td>
<td>77,142</td>
<td>19,442</td>
<td>15,297</td>
<td>13,821</td>
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<td><strong>TOTAL</strong></td>
<td><strong>3,601,300</strong></td>
<td><strong>1,898,387</strong></td>
<td><strong>535,995</strong></td>
<td><strong>566,314</strong></td>
<td><strong>600,603</strong></td>
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### Actual Expenses – Operations

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<tr>
<th></th>
<th>Total</th>
<th>1st Quarter</th>
<th>October</th>
<th>November</th>
<th>December</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter Expenses</td>
<td>2,614,580</td>
<td>1,264,825</td>
<td>434,325</td>
<td>398,126</td>
<td>517,303</td>
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### Outstanding Accounts Receivable

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</thead>
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<td>City of Santa Fe</td>
<td>466,581</td>
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<tr>
<td>Santa Fe County</td>
<td>120,201</td>
</tr>
<tr>
<td>Las Campanas</td>
<td>14,869</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>601,651</strong></td>
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</table>

*Note: FY12/13 Ending balances have not been included in presentation of statement, except for cash.*
# 2nd Quarter Financial Statement – Other Funds (Cumulative)
(UNAUDITED 07/01/2013-12/31/2013)

## Pre-Bills – Major Repair & Emergency Reserve Funds

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>1st Quarter</th>
<th>City of Santa Fe</th>
<th>Santa Fe County</th>
<th>Las Campanas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Repair Fund</td>
<td>205,902</td>
<td>102,951</td>
<td>72,960</td>
<td>25,939</td>
<td>4,052</td>
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<tr>
<td>Emergency Reserve Fund</td>
<td>500,004</td>
<td>250,002</td>
<td>163,293</td>
<td>63,653</td>
<td>23,057</td>
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<tr>
<td></td>
<td>705,906</td>
<td>352,953</td>
<td>236,253</td>
<td>89,592</td>
<td>27,108</td>
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## Financial Position

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<th>Emergency Reserve</th>
<th>Major Repair</th>
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<tr>
<td>Balance at 06/30/2013</td>
<td>1,416,678</td>
<td>583,389</td>
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<tr>
<td>1st Quarter Billing</td>
<td>250,002</td>
<td>102,951</td>
</tr>
<tr>
<td>2nd Quarter Billing</td>
<td>250,002</td>
<td>102,951</td>
</tr>
<tr>
<td>Total</td>
<td>1,916,682</td>
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<tr>
<td>Target Balance Feb 2014</td>
<td>2,000,000</td>
<td>823,624</td>
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<tr>
<td>Remaining Balance</td>
<td>83,318</td>
<td>34,333</td>
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### Outstanding Accounts Receivable

<table>
<thead>
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<th>Balance</th>
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</thead>
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<tr>
<td>City of Santa Fe</td>
<td>78,751</td>
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<tr>
<td>Santa Fe County</td>
<td>29,864</td>
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<tr>
<td>Las Campanas</td>
<td>9,036</td>
</tr>
<tr>
<td></td>
<td>117,651</td>
</tr>
</tbody>
</table>
Date: January 27, 2014

To: Buckman Direct Diversion Board

From: Gary C. Durrant, Chief Operator BDD

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

<table>
<thead>
<tr>
<th>BDD Diversion of San Juan-Chama Water</th>
<th>af</th>
<th>mg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total SJC water arrived at the BDD diversion site</td>
<td>274.19</td>
<td>89.34</td>
</tr>
<tr>
<td>Total SJC diverted at BDD</td>
<td>274.19</td>
<td>89.34</td>
</tr>
<tr>
<td>Total SJC available for offsetting depletions under RG-20516.</td>
<td>0</td>
<td>0.00</td>
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</tbody>
</table>

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

### Metered Diversions under Permit SP-2847-E and SP-4842

<table>
<thead>
<tr>
<th>Meter Serial Number</th>
<th>OSE Meter Number</th>
<th>Current Month Meter Reading</th>
<th>Previous Month Meter Reading</th>
<th>Diversion by Meter</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC004816000-Diversion</td>
<td>14113</td>
<td>1874.369</td>
<td>1845.7965</td>
<td>ac-ft: 87.69, mg: 28.57</td>
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<tr>
<td>CC004916000-Diversion</td>
<td>14114</td>
<td>1908.122</td>
<td>1876.2871</td>
<td>ac-ft: 97.70, mg: 31.83</td>
</tr>
<tr>
<td>CC004A16000-Diversion</td>
<td>14115</td>
<td>1885.104</td>
<td>1843.8202</td>
<td>ac-ft: 126.70, mg: 41.28</td>
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<tr>
<td>CC000A16000-Return</td>
<td>14255</td>
<td>184.5315</td>
<td>176.1759</td>
<td>ac-ft: 25.64, mg: 8.36</td>
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<tr>
<td><strong>Total Metered Diversions</strong></td>
<td></td>
<td></td>
<td></td>
<td>ac-ft: 286.44, mg: 93.34</td>
</tr>
</tbody>
</table>
### Buckman Direct Diversion Monthly SJC and Native Diversions

#### December 2013

<table>
<thead>
<tr>
<th>Month</th>
<th>Total SJC Release (AF)</th>
<th>SJC Conveyance Losses (AF)</th>
<th>Total SJC Available at BDD (AF)</th>
<th>SJC Diversion, SP-2847-E (AF)</th>
<th>SJC Diversion, SP-2847-N-A (AF)</th>
<th>Total Native Rio Grande Diversion SP-4842 (AF)</th>
<th>Release of SJC in Elephant Butte (AF)</th>
<th>Total BDD Surface Diversion (all permits)</th>
<th>SJC from SP-2847-E used to offset Buckman Wells RG-20516 (AF)</th>
<th>SJC from SP-2847-N used to offset Buckman Wells RG-20516 (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
<td>439.04</td>
<td>4.24</td>
<td>441.79</td>
<td>441.79</td>
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<td>44.09</td>
<td>0</td>
<td>485.88</td>
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<tr>
<td>FEB</td>
<td>261.03</td>
<td>2.47</td>
<td>257.94</td>
<td>257.94</td>
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<td>10.49</td>
<td>0</td>
<td>268.42</td>
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<tr>
<td>MAR</td>
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<td>3.30</td>
<td>343.57</td>
<td>343.57</td>
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<td>75.66</td>
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<td>661.33</td>
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<td>5656.89</td>
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</table>

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

```
<table>
<thead>
<tr>
<th>Month</th>
<th>Total Release (AF)</th>
<th>City of Santa Fe (AF)</th>
<th>Santa Fe County (AF)</th>
<th>Club at Las Campanas (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
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<td>439.04</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
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<td>261.03</td>
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</tr>
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<td>680.73</td>
<td>680.73</td>
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<td>0</td>
</tr>
<tr>
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<td>0</td>
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<tr>
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<td>52.90</td>
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<td>44.09</td>
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<tr>
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<tr>
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<td>4822.62</td>
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## Buckman Direct Diversion Monthly SJC and Native Diversions

### December 2012

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<thead>
<tr>
<th>Month</th>
<th>Total SJC Release SP-2847-E (AF)</th>
<th>Conveyance Losses (AF)</th>
<th>Total SJC Available at BDD Diversion (AF)</th>
<th>Total SJC Diversion SP-2847-E (AF)</th>
<th>Total Native Rio Grande Diversion SP-4842 (AF)</th>
<th>Release of SJC in Elephant Butte (AF)</th>
<th>Total BDD Surface Diversion SP-2847-E plus SP-4842 (AF)</th>
<th>SJC used to offset Buckman Wells RG-20516 (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
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<td>4.06</td>
<td>447.00</td>
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<td>0</td>
<td>372.06</td>
<td>10.76</td>
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### Source of SJC Releases in reporting month. Includes conveyance losses.

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*Note: Grey fields indicate revisions to previous monthly report*
**Buckman Direct Diversion End of Month Report**

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<th>Total Native Rio Grande Diversion SP-4842 (AF)</th>
<th>Release of SJC in Elephant Butte (AF)</th>
<th>Total BDD Surface Diversion SP-2847-E plus SP-4842 (AF)</th>
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January 1, 2011: 1059.8 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.**

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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

VIA: Nick Schiavo, Acting Public Utilities Department and Water Division/ASA  
      Director

DATE: January 06, 2014

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

CURRENT UPDATE – GENERAL WATER RESOURCE MANAGEMENT

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

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Upper Santa Fe River/CRWTP

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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 about 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 norm, 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.
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 NMGRT) 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
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.

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 "BDDB") and Padilla Industries Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDB.

RECITALS

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

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 BDDB 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 BDDB 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, BDBB Counsel

APPROVED:

Marcos A. Tapia, City Finance Director

Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil, City Clerk
File Date: _______________________

3
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).
Table 1. Cost estimate for material, labor and incidentals for constructing parking and livestock enclosure fence.

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<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>UNITS</th>
<th>QTY</th>
<th>MATTLS</th>
<th>LABOR</th>
<th>FUEL</th>
<th>RENT</th>
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<td></td>
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<tr>
<td>4</td>
<td>- 24&quot; TIN GUTTER PIPE - QTY with 3 horiz. bars</td>
<td>LF</td>
<td>$110.00</td>
<td>1</td>
<td>$110.00</td>
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<td>- Section # 2 - Length=99' x 2 Horizontals</td>
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<td>$10.00</td>
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SUBTOTALS FOR MATERIALS & LABOR | $15,985.50 | $43,636.50 | $69,621.00 | $69,621.00 |

17 Overhead @ 10% on Labor,mob, & Serv. only | $4,363.65 | $4,363.65 | $4,363.65 |
18 Profit @ 10% on Mob., Survey, & Labor only - Includes 3.5% Contingency | $7,348.17 | $7,348.17 | $7,348.17 |

SUBTOTAL BID ITEMS 1-18 | $86,807.80 |
K.M. GROSS RECEIPTS TAX (NMGR) AT 8.1875% | $6,616.14 |
TOTAL OF BASE BID ITEMS PLUS NMGR | $87,424.00 |
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
   Original Contract Amount: $206,375.00
   Termination Date: December 31, 2014
   ☑ Approved by BDDB 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 BDDB 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

Total of Original Contract plus all amendments: $ 287,183
Procurement Method of Original Contract: (complete one of the lines)

RFP# __________________________ Date: __________________________
RFQ [ ] 14/12/B __________________________ Date: __________________________
Sole Source [ ] __________________________ Date: __________________________
Other __________________________

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

Funding Source: __________________________ BU/Line Item: BDD Carve Out

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

Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

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:

_____________________________________________________________
_____________________________________________________________
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 NMGRT) 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 NMGRT. 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 NMGRT).
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 "BDDB") and Harwood Consulting, PC. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDB.

RECITALS

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

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 BDDB 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 BDDB 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

By: ________________________________
Title: ______________________________
Date: ______________________________

CONTRACTOR:
HARWOOD CONSULTING, PC

By: ________________________________
Name: Kyle Harwood
Title: ______________________________
Date: ______________________________

APPROVED AS TO FORM:

[Signature]
Nancy R. Long, BDDB 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

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  of amendment # 1  Termination Date:  na  
Reason:  comp increase

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

Amount $  25,000.00  of amendment # 3  Termination Date:  12/31/2013  
Reason:  comp and term increase

Amount $  60,000.00  of amendment # 4  Termination Date:  6/30/2014  
Reason:  comp and term

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

__________________________________________________________________________

__________________________________________________________________________
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 NMGRT to $100,000 plus NMGRT.

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 NMGRT, 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

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<th>Project</th>
<th>Trade</th>
<th>Hrs</th>
<th>Cost/ Hour</th>
<th>Total Labor Cost</th>
<th>Material Cost</th>
<th>Equipment Cost</th>
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<td>$9,815.00</td>
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### 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 NMGRT.

### Financial Implications

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

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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 "BDDB") and Alpha Southwest, Inc. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDB.

RECITALS

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

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 BDDB 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 BDDB 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:

CONTRACTOR:

By: ______________________
Name: _____________________
Title: _____________________
Date: _____________________

NM Taxation & Revenue
CRS # ________________

City of Santa Fe Business
Registration # _____________

APPROVED AS TO FORM:

[Signature]
Nancy R. Long, BDOB Counsel

APPROVED:

[Signature]
Marcos A. Tapia, City Finance Director

Business Unit/Line Item

ATTEST:

[Signature]
Yolanda Y. Vigil, City Clerk
File Date: ________________
Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

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

1 FOR: ORIGINAL CONTRACT ✓ or CONTRACT AMENDMENT ☐

2 Name of Contractor Alpha Southwest

3 Complete information requested ✓ Plus GRT
   □ Inclusive of 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: 
   Amount $ amendment # Termination Date: 
   Reason: 

Total of Original Contract plus all amendments: $ 100,000
Procurement Method of Original Contract: (complete one of the lines)

RFP#________________________________________ Date: ______________________

RFQ □____________________________________ Date: ______________________

Sole Source ✓________________________________ Date: ______________________

Other ______________________________________

Procurement History: __________________________________________
example: (First year of 4 year contract)

Funding Source: ________________________________ BU/Line Item: ________________ 7280000

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

Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

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

**TABLE 1.**

<table>
<thead>
<tr>
<th>Project</th>
<th>Project Date</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Santa Fe Master Plan</td>
<td>2009</td>
<td>$800,000.00</td>
</tr>
<tr>
<td>Eldorado Water System Master Plan</td>
<td>2012</td>
<td>$200,000.00</td>
</tr>
</tbody>
</table>

**TABLE 2.**

<table>
<thead>
<tr>
<th>Deliverables</th>
<th>CDMsmith Cost Analysis</th>
<th>Estimated Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Asset Management Plan</td>
<td>$400,000</td>
<td>$145,000</td>
</tr>
<tr>
<td>Capital Improvement Plan</td>
<td>$200,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>GIS and Geo Database of Assets</td>
<td>$40,000</td>
<td>$30,000</td>
</tr>
</tbody>
</table>

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.
"REQUEST FOR PROPOSALS"

ENGINEERING SERVICES
FOR
BUCKMAN DIRECT DIVERSION
CAPITAL ASSET MANAGEMENT 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

ADV - 1
# PROPOSAL SCHEDULE

**RFP# xx/xx/**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Advertisement</td>
<td>February 15, 2014</td>
</tr>
<tr>
<td>2</td>
<td>Issuance of RFP'S:</td>
<td>February 15, 2014</td>
</tr>
<tr>
<td>4</td>
<td>Receipt of proposals:</td>
<td>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</td>
</tr>
<tr>
<td>5</td>
<td>Evaluation of proposals:</td>
<td>March 29, 2014</td>
</tr>
<tr>
<td>6</td>
<td>Interviews:</td>
<td>April 5, 2014</td>
</tr>
<tr>
<td>7</td>
<td>Negotiation of Contract:</td>
<td>April 12, 2014</td>
</tr>
<tr>
<td>8</td>
<td>Recommendation of award to Buckman Direct Diversion Board:</td>
<td>May 2, 2014</td>
</tr>
</tbody>
</table>

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

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 swjonessantafenm.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 BDDB 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 BDDB 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 BDDB, 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 BDDB or if
   such variation has been caused by documented conditions beyond the vendor's control,
   and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS
   Any applicable discounts should be included in computing the bid submitted. Every
   effort will be made to process payments within 30 days of satisfactory receipt of goods or
   services. The 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 BDDB 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 BDBB reserves the right to cancel all or any part of this RFP without cost to the BDBB 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 BDBB 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 BDBB and the BDBB 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 President's 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 (BDDB) 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 BDDB 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

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

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 BDDB 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 BDDB representatives and other BDDB-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 BDDB, 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 usable 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 BDDB to discuss the BDDB’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. PROPOLEN(T)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 BBDB 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 on 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.

<table>
<thead>
<tr>
<th>Proposal Component</th>
<th>Weighted Value</th>
<th>(1=low, 10=high)</th>
<th>Total Score</th>
<th>Max Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Approach/ Methodology; Grasp of project requirements</td>
<td>25</td>
<td>250</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relevant experience of firm and specific qualifications &amp; experience of project team, demonstrated by previous projects</td>
<td>15</td>
<td>150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Past Performance; 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.</td>
<td>15</td>
<td>150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knowledge of Local Conditions; Industry Std. Construction practice; Labor &amp; Trades, bonding, seasonal construction limitations, project site, environmental, regulatory and procurement requirements.</td>
<td>5</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work Plan &amp; Project Schedule; discussion of work elements and time frames</td>
<td>15</td>
<td>150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work Load: Consultant’s staff size related to current uncompleted work and the amount of work proposed under this project.</td>
<td>5</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed Fees: 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.</td>
<td>20</td>
<td>200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Score</td>
<td>100</td>
<td>1000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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: __________________

EVAL - 3
INTERVIEW EVALUATION FORM
RFP 'xx/xx/x
Buckman Direct Diversion Asset Management Plan

CONSULTANT FIRM: ____________________________________________

INTERVIEW EVALUATION CRITERIA

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Weighted Value</th>
<th>(1=low, 10=high)</th>
<th>Total Score</th>
<th>Max Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 &amp; 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?</td>
<td>20</td>
<td></td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>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 &amp; time control, claim management &amp; prevention, dispute and change order negotiations.</td>
<td>20</td>
<td></td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>3. Project Management: evaluation of firm's &amp; specific project team members' style &amp; efficacy; evaluation of firm's intent to interact with and mentor BDD professional staff; evaluation of project team's relevant experience &amp; creativity; does this discussion tend to support firm's stated qualifications, experience and expertise?</td>
<td>20</td>
<td></td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>4. Responses to other relevant issues: raised by Selection Committee evaluation of firm's responses to committee's questions and issues.</td>
<td>20</td>
<td></td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>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.</td>
<td>20</td>
<td>Carry over Score from Evaluation Criteria Form</td>
<td>200</td>
<td>200</td>
</tr>
</tbody>
</table>

Total Score: 100

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: ________________
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 who 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 SFCC 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 to 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
Propósito.
La Ciudad de Santa Fe ha adoptado esta Ordenanza de sueldo y vivienda para establecer una tarifa de salario mínimo por hora.

Quién es afectado.
- Todos los oficios sean de ganancia o sin ganancia, oficios que atiengan una licencia de oficio O han obtenido una regis-
  tración de oficio de la Ciudad de Santa Fe, Y emplean 25 O más 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, 2008.
- 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.
- Empiezan a Enero 1, 2009 y cada año siguiente el salario mínimo por hora será ajustado por cantidad correspondi-
  da a el aumento de el año anterior, si hay aumento, en el indice de precios del consumidor por la región del poeste para
  ganadores urbanos y trabajadores que de cuestumbre reciben mas de $100.00 mensual en propinas O comisiones,
  cualquiera propia O comisiones recibidas Y retenidas por el trabajador debe ser contando como salario Y creditado
  hasta 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 serán permitido.
- Organizaciones sin ganancia cuales los origenes primarios de fondos son atendidos depíente de documento de tenen
  CIA de Mediación serán exento.

Probaciones a contra de Represalias Y Circunstancias.
- Será contra la ley para cualquier oficio, empleado O agente del empleado O representante tomar acción a contra del
  individuo de represalias.
- Tomar acción adversa a contra del individuo entre 60 días de la asertión O de comunicación de información.
- Será contra la ley para el oficio O empleado 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 recurso permitir Y aplicar esta ordenanza.
- Pena Criminal- La persona que viola esta ordenanza sera culpable de (Rehoria) delito menor Y suelo de convicción
  Otros Remedios - La Ciudad, cualquier individuo agravado por la violación de esta ordenanza, O cualquier ser en
  cual los miembros han sido agravados por la violación de esta ordenanza podrán atraer una acción civil en un 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 ordenan-
  za excluye a ninguna persona de encontrar cualquier otro remedio, pena, O relato sometido por la ley.

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

Anuncio Y Publicación.
Cualquier oficio expuestos a las provisiones de esta ordenanza debe como condición, obtener Y mantener una licencia O
  registración de la Ciudad De Santa Fe, anunciada en una locacion prominenente a lado de al vivencia o registracion del
  oficio como notificación en Inglés Y en Espanol que el oficio esta en obediencia con la provision de esta ordenanza.

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

Para más informacion, favor de comunicarse con Carlos Martinez @ 995-6949. 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

<table>
<thead>
<tr>
<th>7. DIRECT LABOR (specify categories)</th>
<th>ESTIMATED HOURS</th>
<th>HOURLY RATE</th>
<th>ESTIMATED COST</th>
<th>TOTALS</th>
</tr>
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<tbody>
<tr>
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</table>

DIRECT LABOR TOTAL:  

<table>
<thead>
<tr>
<th>8. OVERHEAD (specify cost pool)</th>
<th>RATE</th>
<th>X BASE</th>
<th>ESTIMATED COST</th>
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</thead>
<tbody>
<tr>
<td></td>
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</table>

OVERHEAD TOTAL:  

9. FEE OR PROFIT (show rate and base)

#### SUPPLEMENTAL SERVICES

<table>
<thead>
<tr>
<th>10. SUBCONTRACTS (Identify &amp; purpose)</th>
<th>ESTIMATED COST</th>
</tr>
</thead>
<tbody>
<tr>
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SUBCONTRACTOR TOTAL:  

<table>
<thead>
<tr>
<th>11. SPECIAL EQUIPMENT</th>
<th>RATE</th>
<th>ESTIMATED HOURS</th>
<th>ESTIMATED COST</th>
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</thead>
<tbody>
<tr>
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EQUIPMENT TOTAL:  

<table>
<thead>
<tr>
<th>12. TRAVEL</th>
<th>ESTIMATED COST</th>
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<tbody>
<tr>
<td>A. transportations:</td>
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<td>B. per diem:</td>
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Attachment B - 1
<table>
<thead>
<tr>
<th>Description</th>
<th>TRAVEL TOTAL</th>
<th>ESTIMATED COST</th>
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<tr>
<td>13. OTHER REIMBURSABLE COST</td>
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</table>

| OTHER REIMBURSABLE TOTAL:        |              |                |

| SUBTOTAL ITEMS 7-12:             |              |                |

| 14. GROSS RECEIPTS               |              |                |

| 15. TOTAL PRICE                  |              |                |

| 16. SIGNATURE OF PREPARER        | BDD REVIEW BY|
| HEAD DIVISION                    |               |

COST SUMMARY PAGE ___ OF ___.

Attachment B - 2
<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Percent</th>
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<tr>
<td><strong>Base Productive Salaries</strong></td>
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<td>100%</td>
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<tr>
<td><strong>Payroll Burden</strong></td>
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<td></td>
</tr>
<tr>
<td>Holidays and Excused Time</td>
<td></td>
<td></td>
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<tr>
<td>Vacations and Pay in Lieu There of</td>
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<tr>
<td>Sick Leave</td>
<td></td>
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<tr>
<td>Social Security Tax</td>
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<tr>
<td>Federal Unemployment</td>
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<tr>
<td>State Unemployment</td>
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<tr>
<td>Workmen’s Compensation Insurance</td>
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<tr>
<td>Group Life Insurance</td>
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<td>Group Health Insurance</td>
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<td>Retirement</td>
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<tr>
<td><strong>Subtotal – Payroll Burden</strong></td>
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<tr>
<td><strong>General and Administrative Costs</strong></td>
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<tr>
<td>General and Administrative Salaries</td>
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<tr>
<td>Accounting, stenographic &amp; clerical salaries</td>
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<tr>
<td>Nonproductive Technical Salaries</td>
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<td>Salaries – Proposal Preparation Costs</td>
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<td>Employee Incentive Salaries</td>
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<td>Reproduction Costs, Materials &amp; Supplies</td>
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<tr>
<td>Office and Storage Rentals</td>
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<td>Light, Heat, Power</td>
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<td>Telephone &amp; Telegraph</td>
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<tr>
<td>Postage &amp; Expenses</td>
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<td>Legal, Auditing and Professional</td>
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<td>Insurance – General</td>
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<td>Errors and Omissions Insurance</td>
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<td>Repairs and Maintenance – Office Building</td>
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<td>Repairs and Maintenance – Office and Engineering Equipment</td>
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<td>Office, Engineering, Drafting Supplies</td>
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<td>Personnel, Recruiting, and Education</td>
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<td>Miscellaneous Expense</td>
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<td>Pre-contract and Proposal Costs</td>
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<tr>
<td>Employee Expense</td>
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<td>Depreciation of Office &amp; Engineering Equipment</td>
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<td>Computer Services and Programs</td>
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<td>State Income Taxes</td>
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<td>State Franchise &amp; Personal Property Taxes</td>
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<td>Real Estate, Sales Taxes, and Other Taxes</td>
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<td>Interest Expense</td>
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<td>Contributions</td>
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<td>Uncollectible Accounts</td>
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<td>Key Personnel Life Insurance</td>
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<td>Prof. Registrations, Memberships, &amp; Subscriptions</td>
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<td>Entertainment</td>
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<td><strong>Subtotal – General Administrative</strong></td>
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<tr>
<td><strong>Total</strong></td>
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Attachment B - 3
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 BDDB will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

By: ___________________________ Authorized Representative: ___________________________  
Print Name ___________________________ Date: ___________________________

Subscribed and sworn before me by ___________________________ this ____ day of ____,  
My commission expires: ___________________________  
Notary Public

Seal

Attachment D-1
BUCKMAN DIRECT DIVERSION BOARD

PROFESSIONAL SERVICES AGREEMENT

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

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

5. TERM AND EFFECTIVE DATE

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

6. TERMINATION

A. This Agreement may be terminated by the BDDB 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 BDDB 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 BDDB 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 BDDB and are not employees of the BDDB. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB 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 BDDB.

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

11. **RELEASE**

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, 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 BDDB to any obligation not assumed herein by the BDDB 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.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Annual Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>(other than Products/Completed Operation)</td>
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</tr>
<tr>
<td>Products/Completed Operations</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Aggregate Limit</td>
<td></td>
</tr>
<tr>
<td>Personal Injury Limit</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Attachment E-2
(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 Contractors policy shall not contain exclusions for those activities.

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

Attachment E-12
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 #
“Exhibit B” Fee Schedule
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.

<table>
<thead>
<tr>
<th>Project</th>
<th>Material Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rebuild Pump #3 @ RWLS</td>
<td>$45,679.00</td>
</tr>
<tr>
<td>Rebuild Pump #2 @ 1A</td>
<td>$5,596.00</td>
</tr>
<tr>
<td>Rebuild Pump #4 @ 2A</td>
<td>$5,596.00</td>
</tr>
<tr>
<td>Rebuild Pump #1 @ 1A</td>
<td>$5,596.00</td>
</tr>
<tr>
<td>Rebuild Pump #2 @ 2A</td>
<td>$5,596.00</td>
</tr>
<tr>
<td>Rebuild Pump #2 @ RWLS</td>
<td>$45,679.00</td>
</tr>
<tr>
<td>Replenish spare parts to BDD Inventory</td>
<td>$19,858.00</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Fund Source</th>
<th>Business Unit/Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2013/2014</td>
<td>Rep and Replace System Equip #7280000.520150</td>
<td>$135,600.00</td>
</tr>
</tbody>
</table>
Memo

Date: January 9, 2014

To: Robert Rodarte, Purchasing Director

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

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 manufacturer’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, etc. 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

Robert Rodarte, Purchasing Director
To: Buckman Direct Division Board

From: Nancy R. Long

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.
MEMORANDUM

To: Buckman Direct Diversion Board

From: Nancy R. Long

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.
THE BUCKMAN DIRECT DIVERSION BOARD

RESOLUTION NO. 2014-1

A RESOLUTION DETERMINING REASONABLE NOTICE FOR
PUBLIC MEETINGS OF THE BUCKMAN DIRECT DIVERSION BOARD;
RESCINDING RESOLUTION NO. 2013-2

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

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

WHEREAS, the Act further requires a public body to determine in a public meeting at least annually what notice is reasonable when applied to that body; and
WHEREAS, Santa Fe County and the City of Santa Fe are parties to that certain Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, dated March 7, 2005; and

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

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

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

2. **Special Meetings.** A special meeting of the Board may be called by the Chair or by any two members of the Board upon three (3) days’ notice at such time and place as the Chair or the two members deem appropriate. Notice of special meetings shall be met by posting notice of the date, time and place in a conspicuous and appropriate place at the Santa Fe County Administrative building, at Santa Fe City Hall and on the Board’s, Santa Fe County’s and City’s internet websites (www.bddproject.org, www.santafecounty.org and www.santafenm.gov) at least seventy-two (72) hours prior to a special meeting. Notice of a special meeting shall also be provided to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notice.
3. **Emergency Meetings.** An emergency meeting of the Board may be called by the Chair or by any two members of the Board to consider unforeseen circumstances that, if not addressed immediately, will likely result in injury or damage to persons or property or substantial financial loss. An emergency meeting may be conducted at a time and place as the Chair or the two members deem appropriate. If possible, given the emergency circumstances, notice of an emergency meeting shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building and at Santa Fe City Hall at least twenty-four (24) hours prior to the meeting. If twenty-four (24) hours advance notice cannot be given, notice shall be posted as soon as possible under the emergency circumstances in existence. Notice of an emergency meeting shall also be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notice. Within ten (10) days of taking action on an emergency matter, the Board shall report to the attorney general’s office the action taken and the circumstances creating the emergency.

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

5. **Recessed Meetings.** The Board may recess and reconvene a meeting to a later day, if, prior to receding, the Board specifies the date, time and place for continuation of the
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
formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business, or taking any action within the authority of or the delegated authority of the Board.


PASSED, APPROVED AND ADOPTED this _____ day of February 2014.

BUCKMAN DIRECT DIVERSION BOARD:

__________________________

ATTEST:

__________________________
County Clerk

APPROVED AS TO FORM:

__________________________
NANCY R. LONG, Board Counsel
Memo

Date: January 24, 2013

To: Buckman Direct Diversion Board

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

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.

![Diagram of 3 steps: Identify, Evaluate, Rank]

**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.
"PROCESS FOR SELECTING THE BDD PROJECT MANAGER"
TABLE OF CONTENTS

Executive Summary and Background........................................ PMS1
Definitions..............................................................................PMS2
Potential Entities.....................................................................PMS4
Roles and Responsibilities.................................................... PMS5
Evaluation Form.......................................................................PMS9
Process Timeline ..................................................................... PMS10
Transition Plan ......................................................................... PMS11

Attachments:
1. 2004 JPA.......................................................... Attachment A (13 Pages)
2. 2005 WRA .......................................................... Attachment B (14 Pages)
3. 2006 FOPA .......................................................... 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 BDD Board 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 PFMS 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
- BDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDB to have authority to set policy
- Extent FOPA agreement
- Restructure Organization Chart so Facility Manager reports directly to the BDDB

Level Two Regionalization – SWMA Model

- Change name of Project Manager to Support Entity
- BDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDB to have authority to set policy
- Facility Manager reports directly to the BDDB
- 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 BDDB employees
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 (BDDB) 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 BDDB for approval.

**Step Three: Evaluation of Potential Entities for Project Manager.**

Once Roles and Responsibilities have been finalized and approved by the BDDB, 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 BDDB 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.

<table>
<thead>
<tr>
<th>Responsibility of Project Manager</th>
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</thead>
<tbody>
<tr>
<td>1. Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support 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;</td>
</tr>
<tr>
<td>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;</td>
</tr>
<tr>
<td>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;</td>
</tr>
<tr>
<td>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&amp;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;</td>
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<tr>
<td>5. Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&amp;R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;</td>
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<td>6. Develop a document retention and protection policy for adoption by the BDD Board;</td>
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<td>7. Act as fiscal agent for the Project</td>
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<tr>
<td>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 12-6-1-1, et seq., and 2.2.2. NMAC, et seq., as amended, and report the results of the audit to the BDD Board.</td>
</tr>
<tr>
<td>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.</td>
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<tr>
<td>10. Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board.</td>
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</table>
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.
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<tr>
<td>39.</td>
<td>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&amp;R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.</td>
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<tr>
<td>40.</td>
<td>Maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies</td>
</tr>
<tr>
<td>41.</td>
<td>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;</td>
</tr>
<tr>
<td>42.</td>
<td>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;</td>
</tr>
<tr>
<td>43.</td>
<td>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</td>
</tr>
<tr>
<td>44.</td>
<td>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;</td>
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<tr>
<td>45.</td>
<td>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.</td>
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<tr>
<td>46.</td>
<td>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;</td>
</tr>
<tr>
<td>47.</td>
<td>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;</td>
</tr>
<tr>
<td>48.</td>
<td>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;</td>
</tr>
<tr>
<td>49.</td>
<td>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</td>
</tr>
<tr>
<td>50.</td>
<td>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.</td>
</tr>
<tr>
<td>51.</td>
<td>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.</td>
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</table>
# 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.

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Concur this service should be provided</th>
<th>Do Not concur that this service should be provided</th>
<th>Priority of service, 1-10 (1=low, 10=high)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Utility Support Structure</strong> (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).</td>
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<tr>
<td><strong>Financial Support</strong> (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).</td>
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<tr>
<td><strong>Human Resources</strong> (for example, items # 30 and 31 listed above).</td>
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<td><strong>Risk Management</strong> (for example, item # 35 listed above).</td>
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<tr>
<td><strong>Information Technology</strong> (for example, item # 5 listed above).</td>
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<tr>
<td><strong>Administration Services</strong> (for example, items #1, 2, 4, 6, 9, and 13 listed above).</td>
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**SELECTION COMMITTEE**

EVALUATOR SIGNATURE: ___________________________ DATE: ____________________
**ENTITY**

**EVALUATION CRITERIA FORM**

**PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION**

**NAME OF ENTITY:**  City of Santa Fe

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Weighted Value</th>
<th>(1=low, 10=high)</th>
<th>Total Score</th>
<th>Max Score</th>
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<tbody>
<tr>
<td><strong>Utility Support Structure</strong> <em>(for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance)</em></td>
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<tr>
<td><strong>Financial Support</strong> <em>(for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits)</em></td>
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<td><strong>Human Resources</strong> <em>(for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing)</em></td>
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<tr>
<td><strong>Risk Management</strong> <em>(for example, Workmans Comp, Drug Testing, Accident Reporting)</em></td>
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<td><strong>Information Technology</strong> <em>(for example, E-mail Service, Networking, Software Compatibility, Telephone Service)</em></td>
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| 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

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Weighted Value</th>
<th>(1=low, 10=high)</th>
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<td>Utility Support Structure</td>
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<tr>
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<tr>
<td>Administration Services</td>
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| Total Score | 100 | 1000 |

SELECTION COMMITTEE

**EVALUATOR SIGNATURE:**

**DATE:**

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**ENTITY**
**ENTITY**

**EVALUATION CRITERIA FORM**

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

**NAME OF ENTITY:** Regional Entity Level 1

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Weighted Value</th>
<th>(1=low, 10=high)</th>
<th>Total Score</th>
<th>Max Score</th>
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</thead>
<tbody>
<tr>
<td>Financial Support (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).</td>
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<td>Total Score</td>
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**SELECTION COMMITTEE**

**EVALUATOR SIGNATURE:** ____________________________ **DATE:** _____________________
**ENTITY**
**EVALUATION CRITERIA FORM**

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

**NAME OF ENTITY:** Regional Entity Level 2

<table>
<thead>
<tr>
<th>Evaluation Component</th>
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<tbody>
<tr>
<td><strong>Utility Support Structure</strong> <em>(for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance)</em></td>
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**Total Score**

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**SELECTION COMMITTEE**

**EVALUATOR SIGNATURE:** ____________________________  **DATE:** ________________
Project Manager Selection Process Timeline

Finalize Selection Process and Identify Project Manager Evaluation Team

Complete Evaluations and present recommendations to the BDDB

BDDB Approval of Project Manager

Develop Transition Plan and Draft and/or Amend Agreements

Execute Agreements and Implement Transition Plan

03/14
Finalize Selection Process and Identify PM Evaluation Team

04/14
Complete Evaluations and Present recommendations to BDDB

05/14
BDDB Approval of Project Manager

06/14
Develop Transition Plan and Draft and/or Amend Agreements

07/14

08/14

09/14

10/14

11/14

12/14

01/15

02/15

03/15

04/15

05/15

06/15

Execute Agreements and Implement Transition Plan
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
Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project

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

Recitals

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

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

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

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

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 and City agree as follows:

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

afy means acre feet per year.

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

BDD Board means the governing board of directors of the BDD Project as established by the this Agreement.
BDD Project means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande at Buckman, as described in the draft Environmental Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and County.

BOR means the United States Bureau of Reclamation.

Design Build Contract means a contract entered into between the BDD Board and the Design Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.

Design Build Contractor means the contractor hired pursuant to the Design Build Contract to design and build the BDD Project.

Facility Operations and Procedures Agreement (FOPA) means the agreement between the City, the County and Las Campanas governing the operations and procedures of the BDD Project.

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

ISC means the New Mexico Interstate Stream Commission.

Owners' Consultant means a consultant specializing in providing professional services to the Project Owners to manage and oversee the design build process on a public water project on behalf of the Project Owners, including, but not limited to, providing all professional services for the Project Owners that are necessary to fully develop, procure, design, construct and initially operate the BDD Project.

Owners' Consultant Contract means the contract between the City and the County as Project Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.

OSE means the New Mexico Office of the State Engineer.

Project Management and Fiscal Services (PMFS) Contract means a contract between the BDD Board and the Project Manager for the provision of the management and fiscal services as described in Section 12 of this Agreement.

Project Manager means the designated entity that provides the management and fiscal services as required by the PMFS Contract.

Project Owners means the City and County.

Regional Entity means an entity which includes both the City and County that seeks to
cooperatively manage water supply and delivery from the BDD Project on a regional basis.

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

**Sangre de Cristo Water Division** means the operating water utility division of the City’s Independent Water System.

**Water Resources Agreement** means the “Water Resources Agreement between the City of Santa Fe and the County of Santa Fe”, executed contemporaneously with this Agreement.

**Agreement**

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

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

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

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

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

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

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

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

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

Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's Mayor with the approval of the Governing Body. The members shall serve for such a period as may be determined from time to time by the Mayor with the approval of the Governing Body.

The Mayor may appoint, with the approval of the Governing Body, a third member of the Governing Body to serve as an alternate in the event one of the two regular members is unable to attend a BDD Board meeting.

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

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

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

Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this Agreement.
6. Meetings of the BDD Board. The BDD Board shall have at least one regularly scheduled meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board members is present. A simple majority of BDD Board members who are present at a duly called meeting of the BDD Board at which a quorum is present shall act for the BDD Board with respect to all matters brought before the BDD Board at that meeting.

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

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

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

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

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

12. 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 approval's 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, Design Build 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 a 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 PFMS Contract shall specify the types and threshold amounts of expenditures that require
approval of the BDD Board in advance.

13. Designation of Project Manager. The City and County agree that the Sangre de Cristo
Water Division will be the initial Project Manager and that the BDD Board shall enter 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) 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.

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

15. Inclusion of Las Campanas. The 1,800 afy allocation of BDD Project capacity reserved for
Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures
Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as
part of the Facility Operations and Procedures Agreement.
16. **Cost Sharing for Design and Construction Costs for the BDD Project.** The City and County agree to contribute $30 million each to design and construct the BDD Project. The City and the County shall disburse funds in accordance with the annual budget duly approved by them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the BDD Board, and contributions to support the budget shall be incorporated in each of the parties' annual budgets.

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

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

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

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

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

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

19. **Termination.** The parties may terminate this Agreement only by the formal action of the Governing Body of the City of Santa Fe and the Board of County Commissioners.
If upon termination of this Agreement, a successor public entity is authorized to carry on the activities of the BDD Board and assume its rights, obligations and responsibilities, then such rights, obligations and responsibilities shall be transferred to the successor public entity in accordance with law. If upon termination of this Agreement and a successor public entity is not authorized to carry on the activities of the BDD Board, then any property, rights and assets of the BDD Board (other than the BDD Project) shall be divided among the parties according to the respective contributions (ownership interests) of the parties.

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

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

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

23. Insurance. The BDD Board shall obtain and carry public liability insurance coverage (including directors and officers coverage) consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq., and with combined single limits of no less than $1,000,000. The BDD Board shall carry and maintain fire and extended insurance coverage on all of the BDD Project buildings, structures and improvements, and upon all of the contents and other personal property. The Public Liability insurance policy shall provide occurrence-based coverage against losses arising out of all operations conducted on the premises, contractual liability coverage, crime, automobile, directors’ and officers’ coverage, and other appropriate coverages. The BDD Board shall also carry and maintain workers’ compensation insurance (or create and administer a program of self insurance approved by the City and the County).
by the Director of the Workers' Compensation Administration) that complies with the
requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et
seq., if applicable. The expense of obtaining and maintaining the required insurance shall be
included in the annual budget of the BDD Board. The insurance provided for under this Section
shall be maintained in full force and effect throughout the duration of this Agreement. A copy of
any insurance policy shall be provided to any party at the party's request.

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

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

26. Dispute Resolution. The City and County agree to use any and all methods of dispute
resolution, up to and including binding arbitration, to resolve any conflicts arising under this
Agreement, the expenses of which shall be shared equally by the City and County. 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. If the parties are unable to resolve the dispute through informal
mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving
rise to the dispute, either party may give notice to the other party that the dispute is to be
submitted to binding arbitration. Any dispute requiring notice shall be shall be reported to the
next meeting of the respective City and County governing bodies. Such notice shall contain the
name of a proposed arbitrator, and in the event the other party does not agree with the proposed
arbitrator, the model guidelines of the American Arbitration Association shall be used to select
an arbitrator and govern the conduct of the arbitration, rendering of any award and enforcement of
the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be
appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's
award shall be binding on the parties.

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

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

29. Counsel. The City and County acknowledge that they have freely entered into this
Agreement with the advice of their respective legal counsel.
30. **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.

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

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

**To the City:**
Director of the Sangre de Cristo Water Division  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-4200  
Fax: 955-4352

**With a copy to:**
City Manager  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-6509  
Fax: 955-6683

City Attorney  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-6511  
Fax: 955-6748

**To the County:**
Santa Fe County Utilities Director  
Santa Fe County  
205 Montezuma  
Santa Fe, N.M. 87505  
Phone: 986-6210  
Fax: 992-8421

**With a copy to:**
County Manager  
Santa Fe County  
P.O. Box 276  
Santa Fe, N.M. 87504  
Phone: 986-6200  
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.

[Signature]
Chairman,
Board of Santa Fe County Commissioners

[Signature]
Approved as to form
Santa Fe County Attorney

[Signature]
Santa Fe County Clerk

[Signature]
Mayor
City of Santa Fe Council

Approved as to form
City of Santa Fe Attorney

[Signature]
City of Santa Fe Clerk

[Signature]
State of New Mexico
Department of Finance Administration

By: [Signature]

Date: 1-11-05

Date: 1-18-05

Date: 1-18-05

Date: 1-18-05

Date: 1-18-05
DEPARTMENT of FINANCE and ADMINISTRATION (DFA)
JOINT POWERS AGREEMENT (JPA) BRIEF

JPA 1 - 10/96

PRIMARY PARTY: Santa Fe County
SECONDARY PARTY: The City of Santa Fe
OTHER PARTY: 

CONTACT NAME: Stephen C. Ross
PHONE: 986-6279

DOCUMENTS ENCLOSED: AMOUNT:

- JPA Federal Funds $0
- JPA Amendment General Funds $0
- Purchase Document Other State Funds $0
- Written Justification Local Gov. Funds $60,000*
- Other Total $60,000*

*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)
- Yes - 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?
- Yes - Does the JPA provide for the expenditure or transfer of public funds by a state agency? (All public money must be budgeted.)
- Yes - 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.
- Yes - 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

AGENCY HEAD SIGNATURE

Attachment A 2004 JPA
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 § 11-6-1 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 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 986-0279 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 ______________________ day of ______________________, 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

Attachment B 2005 WRA
WHEREAS, the County and City will cooperate on the purchase of future water rights for use in the BDD Project.

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

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

afy means acre feet per year.

Agreement means this “Water Resources Agreement between the City of Santa Fe and Santa Fe County”.

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

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

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

BOR means the federal United States Bureau of Reclamation.

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

ISC means the New Mexico Interstate Stream Commission.

OSE means the New Mexico Office of the State Engineer.

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

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

2. Quantity. Wholesale Water Delivery to the County Independent Water System. From the effective date of this Agreement until deliveries of water from the BDD Project begin, the City Independent Water System shall provide up to 875 afy to the 3 points of delivery currently serving the County Independent Water System. After deliveries of water from the BDD Project begin, 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. Wholesale Water Delivery shall be subject to Shortage Sharing, Section 9, of this Agreement.

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

4. Quantity. Re-delivery to City customers using County Independent Water System. The Wholesale Water Delivery provided to the County Independent Water System shall not include the quantity necessary to supply City customers on the County Independent Water System. The City shall supply the County Independent Water System sufficient water supply to serve the City’s customers on the County Independent Water System. The City and County shall jointly prepare a report of ‘Re-delivery to City customers using County Independent Water System infrastructure’ within 6 months of the effective date of this Agreement and present it to respective governing bodies of the City and County.

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

6. Cooperative Water Right Transfers of County Water Rights into the City’s Buckman Groundwater System for Offset Purposes. The County may transfer, for offsetting purposes only, up to 1325 afy (1700 afy County BDD Project capacity – 375 afy Wholesale Water Delivery to the City Independent Water System).
7. Drought Protection for the County Independent Water System. Under drought /
catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions,
OSE/ISC restrictions), the City shall provide the County Independent Water System an
amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity
from the BDD Project. After the deliveries of water from the BDD Project begin and
when the County’s diversion of surface water from the BDD Project drops below 850 afy
(50% of 1,700 afy), the City Independent Water System shall provide the County
Independent Water System the necessary water to maintain deliveries of no less than 850
afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section
9, of this Agreement. The City and County shall be separately responsible for the
acquisition and maintenance of their own water right portfolios and any applicable limits
placed on water rights contained in their own water right portfolios. The Drought
Protection provision is separate from the Wholesale Water Delivery, Section 2, of this
Agreement and the SJCP Allocation, Section 5, of this Agreement.

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

The City and the County will develop a ‘Comprehensive Joint Conjunctive Use and
Sustainability Water Resource Strategy’ that places the use of surface water as a higher
priority than the use of groundwater and which manages the regional aquifer on a
sustainable basis. The Strategy shall include a shortage sharing agreement that will help
guide management decisions made by the BDD Board and the Regional Planning
Authority. The Strategy shall incorporate the principle that the County and the City will
consult prior to the drilling of new wells in the area around the City and County
Independent Water Systems, as they exist at the time of signing of this Agreement, so as
to encourage cooperation, avoid conflict and avoid the impairment of City or County
water rights.
The County reserves the right to drill in-Basin groundwater wells and commence the permitting of additional groundwater wells. The County shall consult with the City on the location of any proposed groundwater wells.

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

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

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

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

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

14. Metering. The City shall maintain the meters and related equipment for measuring the quantity of water delivered to the County Independent Water System at the points of delivery. The City shall read the meters and report the readings in monthly billings to the County. Meter reading reports shall include the meter readings for re-delivery to those City customers connected to the County Independent Water System pursuant to Quantity.
Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at
the request of either the City or the County, not more than once during each twelve (12)
month period, and the City and the County shall share the expense of calibration equally.
The Directors of the City and County Independent Water Systems shall resolve any
inconsistency in billing, metering or calibration in a manner as set forth in Dispute
Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60
days shall initiate the notice provision and related procedures described in Dispute
Resolution, Section 16, of this Agreement.

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

16. Dispute Resolution. The City and County agree to use any and all methods of
dispute resolution, up to and including binding arbitration, to resolve any conflicts arising
under this Agreement, the expenses of which shall be shared equally by the City and
County. 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. If the parties are
unable to resolve the dispute through informal mechanisms or mediation within 30 days
of the occurrence of the event or circumstances giving rise to the dispute, either party
may give notice to the other party that the dispute is to be submitted to binding
arbitration. Any dispute requiring notice shall be reported to the next meeting of the
respective City and County governing bodies. Such notice shall contain the name of a
proposed arbitrator, and in the event the other party does not agree with the proposed
arbitrator, the model guidelines of the American Arbitration Association shall be used to
select an arbitrator and govern the conduct of the arbitration, rendering of an award and
enforcement of the award consistent with New Mexico state law. Within 60 days of
notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall
prepare an award. The arbitrator's award shall be binding on the parties.

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

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of
the parties and their respective representatives, successors, and assigns.
19. Counsel. The City and County acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

20. 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.

21. Law. The laws of the State of New Mexico shall govern this Agreement.

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

To the City: Director of the Sangre de Cristo Water Division
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-4200
Fax: 955-4352

With a copy to: City Manager
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6509
Fax: 955-6683

City Attorney
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6511
Fax: 955-6748

To the County: Santa Fe County Utilities Director
Santa Fe County
205 Montezuma
Santa Fe, N.M. 87505
Phone: 986-6210
Fax: 992-8421

With a copy to: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
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

Approved as to form
Santa Fe County Attorney

Santa Fe County Clerk

Mayor
City of Santa Fe Council

Approved as to form
City of Santa Fe Attorney

City of Santa Fe Clerk
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:

BDD FOPA
BDDD approved version September 7, 2006
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Attachment C 2006 FOPA
Definitions. Capitalized words or phrases used in this Agreement, if defined below, shall have the following meanings:

1. AFY or afy means acre feet per year.

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

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

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

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

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

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

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

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

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

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

12. Las Campanas Separate Facilities means those portions of the BDD Project, including pumping equipment in booster station 2A and the raw water pipeline extending from booster station 2A to Las Campanas that provide water only to Las Campanas, as shown on Exhibit A of this Agreement.
13. MGD means million gallons per day.

14. Owners’ Consultant means the consulting engineer contracted by the BDD Board to create the delivery of the BDD Project.

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

16. PMFSA means the Project Management and Fiscal Services Agreement.

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

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

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

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

Agreement

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

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

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

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

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BDDB approved version September 7, 2006
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Attachment C 2006 FOPA
and responsibilities of a limited partner in a business/corporate model under New Mexico law.

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

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

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

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

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

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

9. Sharing of Shortages. Facility Failure. In the event of reduced total capacity of the BDD Project caused by facility failure, the BDD Partners shall receive deliveries on a reduced basis that are computed from a pro-rata percentage of peak day (mgd) diversion capacity as described by FOPA Section 7. BDD Project Facility Capacity Allocation. Facility failure does not include the occurrence of low flow on the Rio Grande, any restrictions on diversions pursuant to the BDD Project EIS, or limitations on the use of specific water rights. Facility failure does include damage caused by floods, upstream spills of pollutants or toxic materials, failure or damage to the BDD Project, and scheduled or unscheduled shut downs required for maintenance, repair, or replacement.
10. **BDD Project Operations. Actual Water Deliveries.** Each BDD Partner shall use its best efforts to conform the actual water demand it places on the BDD Project to its demand schedules prepared in conformance with FOPA Section 26. **BDD Project Requested Delivery Schedule.** No BDD Partner shall exert an actual demand on the BDD Project at a rate that exceeds the capacity allocation set forth in FOPA Section 7. **BDD Project Facility Capacity Allocation** adjusted for the sharing of shortages as set forth in FOPA Section 8. **Water Rights and Divertable Water Supply and FOPA Section 9. Sharing of Shortages. Facility Failure.** The Project Manager shall operate the facility to meet the BDD Partners’ actual demand, subject to the capacity allocation set forth in FOPA Section 7. **BDD Project Facility Capacity Allocation** adjusted for the sharing of shortages as set forth in FOPA Section 8. **Water Rights and Divertable Water Supply and FOPA Section 9. Sharing of Shortages. Facility Failure.** The BDD Project shall include water measurement devices to account for the actual volume, rate, and time-of-day of all water deliveries to each BDD Partner. The BDD Project, in conjunction with operations procedures, shall include controls to limit each BDD Partner’s water demand to its peak day and annual volume allocations.

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

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

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

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

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

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

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15. Cost Sharing. Construction Costs of the Las Campanas Separate Facilities. Las Campanas shall pay all of the costs of design and construction of the Las Campanas Separate Facilities, including those costs of the Owner’s Consulting Engineer and the BDD Project design-build contractor to implement that portion of the Las Campanas Separate Facilities located within booster station 2A and the Las Campanas pipeline extending from booster station 2A to the location near Dead Dog Well where the Las Campanas Separate Facilities physically diverge from the City/County Separate Facilities.


20. Cost Sharing. Fixed OMR&R Costs for the Shared Facilities. Fixed OMR&R Costs of the Shared Facilities shall be apportioned between the County, the City and Las Campanas using the capacity allocation shown in FOPA Section 7. BDD Project Facility Capacity Allocation.

21. Cost Sharing. Variable OMR&R Costs of the Shared Facilities. Variable OMR&R costs of the Shared Facilities shall be apportioned between the County, the City and Las Campanas based on the actual delivery of water to each BDD Partner in accordance with FOPA Section 27. Annual Operating Plan.

22. Cost Sharing. Fixed and Variable OMR&R Costs of the Las Campanas Separate Facilities. Las Campanas shall pay the full amount of the Fixed and Variable OMR&R costs of the Las Campanas Separate Facilities.

23. Cost Sharing. Fixed and Variable OMR&R Costs of the City/County Separate Facilities. Fixed OMR&R costs of the City/County Separate Facilities shall be apportioned between the County and the City using the capacity allocation of the City/County Separate Facilities [County 24.6%, 3.7 mgd of 15 mgd, City 75.3%, 11.3 mgd of 15 mgd]. Variable OMR&R costs of the City/County Separate Facilities shall be
apportioned between the County and City based on the actual delivery of water to each
BDD Partner in accordance with FOPA Section 27. Annual Operating Plan. Each year
following commencement of operations of the BDD Project and in connection with its
approval of the budget pursuant to JPA Section 17. Cost Sharing for Operation and
Maintenance Costs for the BDD Project, the BDD Board shall review the proposed
allocation of costs between the fixed and variable categories and either approve, reject or
modify same. At the same time, the BDD Board shall review the allocation methodology
of fixed and variable costs as between the City and the County set forth in this section to
determine whether the allocation is reasonable and appropriate, and shall explore
alternative methodologies.

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

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

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

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

The BDD Board and Las Campanas shall coordinate to develop the annual BDD
operational plan, notice procedures for planned shutdowns, annual OMR&R accounting
practices, emergency and facility failure plans, water right and water resource
management processes and procedures in accordance with applicable regulations, and the
environmental compliance management in accordance with applicable regulations.

26. BDD Project Requested Delivery Schedule. The BDD Partners acknowledge that
management of minimum and low flows in the shared diversion and conveyance system
is important because of sediment and OMR&R concerns and because each BDD Partner
has different needs in the Shared Facilities. The Project Manager shall require that the
design of the BDD Project shall be capable of accommodating each of the BDD Partners’
expected minimum deliveries.
27. **Annual Operating Plan.** The BDD Partners shall submit to the Project Manager the
daily, weekly and monthly requested deliveries for each upcoming year no later than
October 1 of each year. The Project Manager, in consultation with the BDD Partners.
shall schedule the anticipated demand for the upcoming year for each BDD Partner in a
Draft Delivery Schedule, which will be finalized among the BDD Partners by December
1 of that year. The Project Manager, with input from and in consultation with the BDD
Partners, shall prepare a manual for project operations, which will be distributed among
the BDD Partners.

28. **Early Start.** Any BDD Partner may begin an early start of facility construction in
accordance with all applicable permits, agreements and construction requirements.

29. **Data & Information Sharing.** Each BDD Partner shall designate an engineering
and a legal representative to coordinate, facilitate, and implement information sharing,
including the SCADA telemetry.

30. **Operations, Maintenance and Security.** Operations, maintenance and security
responsibilities shall be performed by the City of Santa Fe as Project Manager until
December 1, 2015, as set forth in the JPA, except that Buckman Road shall be maintained
by the County as required for access to the BDD Project facilities. All expected and
planned operations and maintenance shall be presented to the BDD Board for approval
and budget purposes.

31. **Dispute Resolution.** The Project Manager shall be responsible for resolving
disputes arising in this agreement. If the Project Manager cannot satisfactorily resolve a
dispute, then any BDD Partner may petition the BDD Board for a resolution. In the event
these steps do not resolve the dispute, then the BDD Partners agree to use any and all
methods of dispute resolution, up to and including binding arbitration, to resolve any
conflicts arising under this Agreement, the expenses of which shall be shared equally by
the BDD Partners. 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.
If the parties are unable to resolve the dispute through informal mechanisms or mediation
within 30 days of the occurrence of the event or circumstances giving rise to the dispute,
either party may give notice to the other party that the dispute is to be submitted to
binding arbitration. Any dispute requiring notice shall be shall be reported to the next
meeting of the respective City and County governing bodies. Such notice shall contain
the name of a proposed arbitrator, and in the event the other party does not agree with the
proposed arbitrator, the model guidelines of the American Arbitration Association shall
be used to select an arbitrator and govern the conduct of the arbitration, rendering of an
award and enforcement of the award consistent with New Mexico state law. Within 60
days of notice an arbitrator shall be appointed and within 120 days of notice the arbitrator
shall prepare an award. The arbitrator’s award shall be binding on the parties.
32. **Entire Agreement.** This Agreement contains the Entire Agreement between the BDD Partners with regard to the matters set forth herein.

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

34. **Counsel.** The BDD Partners acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

35. **Other Documents.** The BDD Partners 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.

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

37. **Execution in Counterparts.** This Agreement may be executed in counterparts with separate signature pages in the format shown below.

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

**To the City:**
Director of the Sangre de Cristo Water Division
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-4200
Fax: 955-4352

**With a copy to:**
City Manager
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6509
Fax: 955-6683

City Attorney
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6511
Fax: 955-6748

**To the County:**
Santa Fe County Utilities Director
Santa Fe County
205 Montezuma
Santa Fe, N.M. 87505
Phone: 986-6210
Fax: 992-8421

With a copy to:
County Manager
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6200
Fax: 986-6362

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

To Las Campanas: Las Campanas Engineering
218 Camino La Tierra
Santa Fe, NM 87506
Phone: 986-8090
Fax: 986-6076

With a copy to: Counsel for Las Campanas
Law and Resource Planning Associates
201 Third Street NW, Suite 1750
Albuquerque, NM 87102
Phone: 346-0998
Fax: 346-0997

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, the County of Santa Fe, New Mexico, and Las Campanas LP has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.
THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By:

Harry B. Montoya, Chair

ATTEST:

Valerie Espinoza, County Clerk

Approved as to form:

Séraphin C. Ross, County Attorney
Approved by the City of Santa Fe

David Coe
Mayor, City of Santa Fe Council / Date

Approved as to form

V. H. Hoj, CEO / 10/16/06
City of Santa Fe Attorney / Date

Reviewed

Yocum / 9/21/06
City of Santa Fe Clerk / Date

Kathryn / 10/16/06
City of Santa Fe Finance / Date
Las Campanas Limited Partnership
By: Las Campanas Corporation, Its General Partner

Date

10-15-05
The quantities, locations and points of interconnection of the BDD finished water pipelines are not finalized.
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 OM&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 FOPA, 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 FOPA;

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.

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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 2.22. 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.

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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 within 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.

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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, County Clerk

THE SANGRE DE CRISTO WATER DIVISION OF THE CITY OF SANTA FE

By: [Signature]

Date: 11-1-07

By: David Coss, Mayor

Approved as of Date
City Attorney

Date: 12-3-07

City of Santa Fe Clerk

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Attachment D 2007 PMFSA
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.