

**BUCKMAN DIRECT DIVERSION BOARD  
SERVICES AGREEMENT  
WITH**

**BDD SAMPLING LOCATION PROGRAM**

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

**1. SCOPE OF SERVICES**

Contractor shall provide services for the BDDDB as follows:

A. Provide laboratory analysis of environmental samples, to include meeting standards for QA/QC and for reporting in accordance with the electronic data deliveries described therein. Contractor shall analyze environmental samples in accordance with approved EPA, or industry accepted methods including specified EPA method detection limits or equivalent methods, as described in Exhibit A, attached hereto.

**2. STANDARD OF PERFORMANCE; LICENSES**

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

B. 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. Compensation under this Agreement shall be \_\_\_\_\_ dollars inclusive of applicable gross receipts tax, in accordance with the Fee Schedule provided in Exhibit B, hereto.

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

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

**4. APPROPRIATIONS**

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

**5. TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the BDDDB and terminate June 30, 2021.

**6. TERMINATION**

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

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

(2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of

such termination. If full payment has been made, Contractor agrees to prorate to the date of termination and refund all amounts received for any months after the termination date.

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

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

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

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

**8. CONFIDENTIALITY**

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

**9. CONFLICT OF INTEREST**

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

**10. ASSIGNMENT; SUBCONTRACTING**

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB.

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**

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

**12. INSURANCE**

A. Contractor shall not begin the services required under this Agreement until it has:

- (i) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB;
- (ii) obtained BDDB approval of each company or companies as required below; and
- (iii) confirmed that all policies contain the specific provisions required.

Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to

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

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

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

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

General Annual Aggregate (other than Products/Completed Operation)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

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

(3) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal

law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

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

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.

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

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDDB. The BDDDB will accept insurance

provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

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

G. **Specific Provisions Required.**

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

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

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

(b) Before performing any services, Contractor shall provide the BDDDB with all Certificates of Insurance accompanied with all endorsements.

(c) The BDDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDDB. The BDDDB will reimburse

Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

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

### **13. INDEMNIFICATION**

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

### **14. NEW MEXICO TORT CLAIMS ACT**

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

### **15. THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall



claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

**16. RECORDS, DOCUMENT CONTROL AND AUDIT**

A. Contractor shall conform with and participate in the Document Control policies of the BDDB or the City of Santa Fe. Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, 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 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, Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**18. AMENDMENT**

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

**19. SCOPE OF AGREEMENT**

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

**20. NON-DISCRIMINATION**

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

**21. SEVERABILITY**

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

**22. NOTICES**

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

**BDDDB:**                    **Charles Vokes**  
BDD Facilities Manager  
Buckman Direct Diversion  
341 Caja Del Rio Road  
Santa Fe, NM 87506  
Email: cmvokes@ci.santa-fe.nm.us

**With a copy to:**        Nancy R. Long, Esq.  
BDDDB Independent Counsel  
Long, Komer & Associates, P.A.  
2200 Brothers Road  
P. O. Box 5098  
Santa Fe, NM 87502-5098  
Email: nancy@longkomer.com

**CONTRACTOR:**        \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the email stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**BUCKMAN DIRECT DIVERSION BOARD**

**CONTRACTOR:**

By: \_\_\_\_\_  
BDDDB Chairman

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Nancy R. Long, BDDDB Counsel

**APPROVED**

\_\_\_\_\_  
City Finance Director

Business Unit/Line Item: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
City Clerk

File Date: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NM Taxation & Revenue  
CRS # \_\_\_\_\_

City of Santa Fe Business  
Registration # \_\_\_\_\_

**Exhibit A  
Scope of Services**

<b>Task</b>	<b>Number of Sub-Task</b>	<b>Sub-Task Descriptions</b>
<b>Laboratory Provided Equipment &amp; Services</b>	1A 1B 1C 1D	<ul style="list-style-type: none"> <li>▪ Laboratory shall provide ice chests, sample containers (with appropriate preservatives);</li> <li>▪ Laboratory shall provide Chain-of-Custody (COC) form;</li> <li>▪ Laboratory shall provide sample labels; and</li> <li>▪ Laboratory shall bear all shipping cost for shipment of five (5) or more samples.</li> </ul>
<b>Laboratory Handling &amp; Documentation of Samples</b>	2A 2B 2C	<ul style="list-style-type: none"> <li>▪ Laboratory shall handle &amp; document all samples for analyses according to generally accepted chain-of-custody procedures;</li> <li>▪ BDD shall ship samples to laboratory or sub-contracted laboratory unless laboratory specifies its own pick-up service;</li> <li>▪ Any work requested by BDD through submission of the COC form will become part of this Contract.</li> </ul>
<b>Laboratory Provided Analyses</b>	3A 3B 3C 3D	<ul style="list-style-type: none"> <li>▪ Upon request of BDD, the laboratory shall perform analysis on solid (soil or sediment) and water samples.</li> <li>▪ Attachment 1 contains a blank fee schedule with a list of the analyses. All sub-contracted laboratories must be listed on the form for specific analyses. Specific analyses may be upgraded or replaced to comply with EPA or industry-accepted upgrades. Additions, modifications, or deletions of analytical methods or specific analytes by the laboratory or sub-contracted laboratory are subject to approval by BDD.</li> <li>▪ Laboratory shall analyze the samples within the method-specific holding time following appropriate COC, preparation and method QA/QC procedures;</li> <li>▪ Upon completion of analyses, the laboratory shall be responsible for the disposal of all samples but shall not dispose of the samples for at least thirty (30) days after delivery of the final laboratory reports.</li> </ul>

<p><b>Laboratory Provided Deliverables</b></p>	<p>4A</p> <p>4B</p> <p>4C</p>	<ul style="list-style-type: none"> <li>▪ Laboratory shall provide complete data packets to BDD as soon as possible after analyses are completed but no later than thirty (30) days, unless a delay in delivery was approved by BDD in writing;</li> <li>▪ The data packet shall include a detailed lab report if requested by BDD and an electronic data deliverables (EDDs) of all analyses in the format specified by BDD. The laboratory must transmit data packets electronically; and</li> <li>▪ The data packet shall include a Level III quality control description at no additional cost.</li> </ul>
<p><b>Laboratory Provided Technical Services</b></p>	<p>5A</p> <p>5B</p>	<ul style="list-style-type: none"> <li>▪ Upon request by BDD, laboratory shall make available to BDD laboratory personnel for the purposes of providing oral or written testimony in administrative or legal proceedings; and</li> <li>▪ Laboratory shall make available its premises at mutually-agreed times for inspection by BDD or designated third party for the purposes of data verification and validation.</li> </ul>