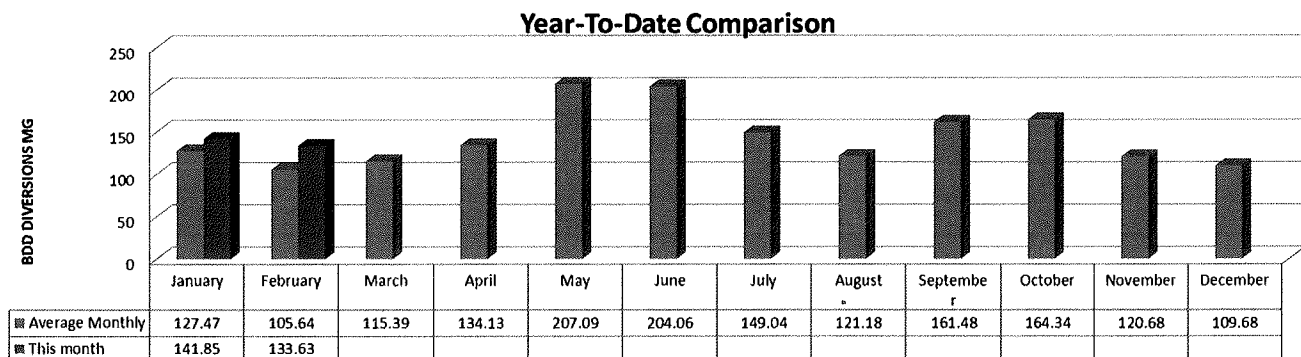




Date: March 5, 2020
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of February 2020

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of February 2020. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
 - a. Raw water diversions: 4.61 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 4.39 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.0 MGD.
 - d. Onsite treated and non-treated water storage: 0.22 MGD Average.
2. The BDD is providing approximately 76% percent of the water supply to the City and County for the month.
3. Drought Summary.
4. The BDD year-to-date diversions are depicted below:

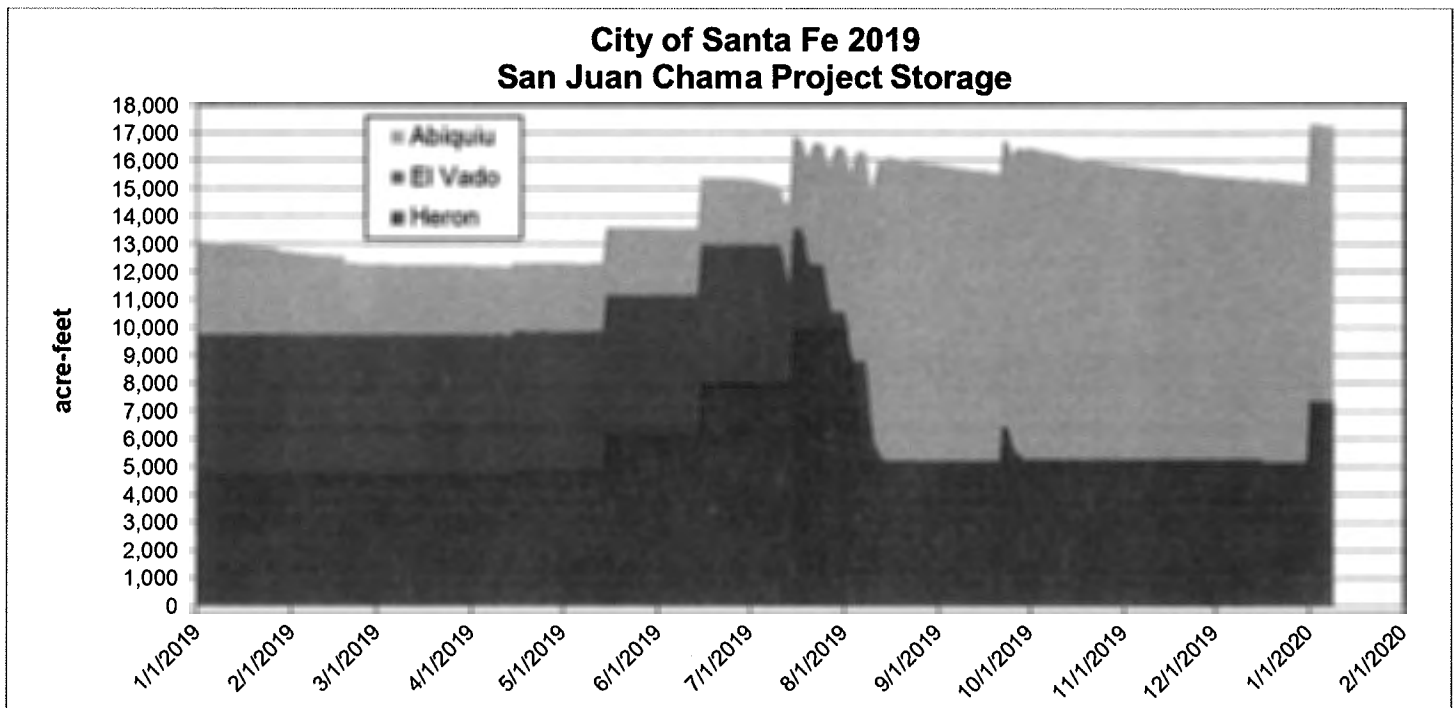


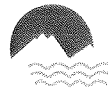


Drought/Monsoon, and Storage

NOAA recently updated their ENSO report (February 18th). ENSO-neutral conditions are present. Equatorial sea surface temperatures (SSTs) are near-to-above average across the Pacific Ocean. The tropical atmospheric circulation is generally consistent with ENSO-neutral. ENSO-neutral is favored through the Northern Hemisphere spring 2020 (~60% chance), continuing through summer 2020 (~50% chance).

Combined storage in Nichols and McClure Reservoirs is 374 acre-feet, or 29.29% of capacity. Rio Grande Compact Article VII storage restrictions are not in effect currently.





Buckman Direct Diversion

Buckman Direct Diversion Monthly SJC and Native Diversions

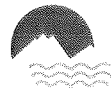
Feb-20

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	438.797	134.433	0.000	304.364	298.249	6.115	2.759
FEB	409.538	231.478	0.000	178.060	178.060	0.000	0.984
MAR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	848.335	365.911	0.000	482.424	476.309	6.115	3.743

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	43.789	0.000	98.103	96.304	1.975	141.892
FEB	75.400	0.000	33.680	33.680	0.000	109.080
MAR	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	119.189	0.000	131.783	129.984	1.975	230.972



Buckman Direct Diversion

Dec-19		In Acre-Feet					
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	327.677	56.671	0.000	271.007	271.007	0.000	2.483
FEB	278.357	71.266	0.000	207.090	207.090	0.000	1.908
MAR	134.335	88.610	0.000	45.725	45.725	0.000	3.498
APR	126.924	114.750	0.000	12.175	12.175	0.000	0.110
MAY	550.285	550.285	0.000	0.000	0.000	0.000	0.000
JUN	546.222	546.222	0.000	0.000	0.000	0.000	0.000
JUL	649.014	23.285	0.000	625.729	519.383	106.345	2.907
AUG	422.340	17.075	0.000	405.265	318.606	86.659	1.912
SEP	518.606	169.956	0.000	348.650	261.901	86.749	1.564
OCT	531.254	15.373	0.000	515.881	477.452	38.429	4.676
NOV	325.023	42.180	0.000	282.843	280.865	1.978	2.936
DEC	334.880	48.808	0.000	286.071	286.071	0.000	2.893
TOTAL	4,744.916	1,744.482	0.000	3,000.434	2,680.275	320.160	24.886

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversion
JAN	18.460	0.000	87.342	87.342	0.000	105.802
FEB	23.214	0.000	66.739	66.739	0.000	89.953
MAR	28.863	0.000	13.735	13.735	0.000	42.598
APR	37.378	0.000	3.924	3.924	0.000	41.302
MAY	179.246	0.000	0.000	0.000	0.000	179.246
JUN	177.923	0.000	0.000	0.000	0.000	177.923
JUL	7.585	0.000	201.598	167.635	34.262	209.183
AUG	5.562	0.000	130.586	102.846	27.974	136.148
SEP	55.360	0.000	112.401	84.384	28.017	167.762
OCT	5.008	0.000	166.279	154.168	12.409	171.287
NOV	13.739	0.000	91.045	90.407	0.638	104.785
DEC	15.899	0.000	92.109	92.109	0.000	108.008
TOTAL	568.235	0.000	965.760	863.292	103.299	1,533.995



Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-18

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	383.578	77.954	0.000	305.624	305.624	0.000	2.708
FEB	343.467	75.227	0.000	268.240	268.240	0.000	2.415
MAR	363.780	267.512	0.000	96.268	96.268	0.000	4.036
APR	662.407	569.253	0.000	93.154	93.154	0.000	3.898
MAY	941.240	209.538	0.000	731.702	615.366	116.336	8.171
JUN	912.903	30.894	0.000	882.009	740.070	141.939	8.707
JUL	905.897	0.000	0.000	905.897	816.188	89.709	4.255
AUG	678.383	1.466	0.000	676.917	676.917	0.000	6.087
SEP	694.411	0.000	0.000	694.411	694.411	0.000	6.404
OCT	608.789	0.000	0.000	608.789	599.228	9.560	5.805
NOV	404.616	82.390	0.000	322.226	316.641	5.585	3.196
DEC	369.186	2.966	0.000	366.220	366.220	0.000	3.392
TOTAL	7,268.656	1,317.200	0.000	5,951.456	5,588.327	363.129	59.073

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	77.954	0.000	302.916	302.916	0.000	380.870
FEB	75.227	0.000	265.825	265.825	0.000	341.052
MAR	267.512	0.000	92.231	92.231	0.000	359.744
APR	569.253	0.000	89.256	89.256	0.000	658.509
MAY	209.538	0.000	723.531	608.494	115.037	933.069
JUN	30.894	0.000	873.302	732.764	140.538	904.196
JUL	0.000	0.000	900.737	811.539	89.198	900.737
AUG	1.466	0.000	670.830	670.830	0.000	672.295
SEP	0.000	0.000	688.007	688.007	0.000	688.007
OCT	0.000	0.000	602.984	593.515	9.469	602.984
NOV	82.390	0.000	319.030	313.500	5.530	401.420
DEC	2.966	0.000	362.829	362.829	0.000	365.794
TOTAL	1,317.200	0.000	5,891.477	5,531.706	359.772	7,208.677



Buckman Direct Diversion

Dec-17

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	395.248	84.736	0.000	310.512	310.512	0.000	2.717
FEB	383.179	26.107	3.426	353.646	353.646	0.000	3.087
MAR	547.849	17.804	11.643	518.402	518.402	0.000	4.564
APR	592.385	381.170	0.000	211.216	211.216	0.000	1.821
MAY	488.240	478.925	0.000	9.315	9.315	0.000	0.072
JUN	616.871	12.970	0.000	603.900	477.780	126.121	5.517
JUL	626.113	23.719	0.000	602.394	484.406	117.988	5.429
AUG	557.303	17.073	0.000	540.230	540.230	0.000	4.871
SEP	637.339	230.584	0.000	406.755	395.200	11.555	3.873
OCT	444.333	127.611	0.000	316.723	316.723	0.000	2.938
NOV	356.536	107.143	0.000	249.394	203.128	46.266	1.658
DEC	360.218	73.071	0.000	287.147	287.147	0.000	2.321
TOTAL	6,005.614	1,580.910	15.069	4,409.635	4,107.705	301.930	38.868

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversion
JAN	84.736	0.000	307.795	307.795	0.000	392.531
FEB	26.107	3.426	350.559	350.559	0.000	380.091
MAR	17.804	11.643	513.838	513.838	0.000	543.285
APR	381.170	0.000	209.395	209.395	0.000	590.565
MAY	478.925	0.000	9.243	9.243	0.000	488.168
JUN	12.970	0.000	598.383	473.415	124.969	611.354
JUL	23.719	0.000	596.965	480.040	116.925	620.684
AUG	17.073	0.000	535.359	535.359	0.000	552.431
SEP	230.584	0.000	402.883	391.437	11.445	633.466
OCT	127.611	0.000	313.785	313.785	0.000	441.396
NOV	107.143	0.000	247.736	201.777	45.958	354.878
DEC	73.071	0.000	284.826	284.826	0.000	357.898
TOTAL	1,580.910	15.069	4,370.767	4,071.470	299.297	5,966.747

Memorandum



Buckman Direct Diversion

Date: April 28, 2020

To: Buckman Direct Diversion Board

From: Kyle Harwood, BDD Legal Counsel

Subject: Summary of Clean Water Act Waters of the United States (WOTUS) Rules and Litigation

ITEM AND ISSUE:

Beginning in 2015 the EPA has attempted to set forth a clear definition of what 'waters', 'water courses' and 'water bodies' are subject to the Clean Water Act. The Obama era Clean Water Rule described in detail what intermittent and ephemeral waterways would be subject to the Clean Water Act and sought an expansion of those definitions.

The Trump administration has subsequently filed a rulemaking procedure to withdraw the Obama-era Clean Water Rule, and on April 21, 2020 finalized its own revised definition of Waters of the United States limiting what waterways would be covered by the Clean Water Act.

This memo briefly describes the three rules and the history of rulemaking and provides a brief look at the litigation associated with each of these rule changes.

BACKGROUND AND SUMMARY:

Regarding the 2015 Clean Water Rule, the Obama administration promulgated the Clean Water Rule, which expanded the definition of Waters of the United States. The Clean Water Rule extended Clean Water Act protections to many streams and wetlands by clarifying what connected waterways qualified as Waters of the United States.

The 2015 Clean Water Rule was challenged immediately by 13 states, including the State of New Mexico, and implementation of the Clean Water Rule was stayed in those states by the 6th Circuit Court of Appeals on February 22, 2016. As a result of the stay the Clean Water Rule never became effective in New Mexico and the other states that challenged the Rule. However, the Clean Water Rule did become effective and was implemented in those states that had not challenged the Rule as the stay did not apply to those states.

In March 2019, the New Mexico Environment Department filed a motion in the litigation against the 2015 Clean Water Rule seeking to withdraw from the lawsuit.



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



In September 2019, the EPA repealed the 2015 Clean Water Rule which had the effect of returning EPA and Army Corps of Engineers to the pre-2015 definition of Waters of the United States. On the same day EPA repealed the 2015 Clean Water Rule, the New Mexico Cattle Growers Association filed suit against the EPA and Army Corps challenging the pre-2015 definition of Waters of the United States as contrary to the statute, and in violation of the constitution. The New Mexico Cattle Growers case remains unresolved in light of the adoption of the EPA and Army Corps of Engineers adoption of the Navigable Waters Protection Rule, which redefines the Waters of the United States.

The repeal of the 2015 Clean Water Rule was challenged by 14 states, New York City, and Washington D.C. in Federal District Court for Southern District of New York on December 20, 2019. The BDD Board submitted comments in opposition to the repeal of the 2015 Clean Water Rule.

On April 21, 2020 the EPA and Army Corps of Engineers promulgated the Navigable Waters Protection Rule, which becomes effective June 20, 2020. Among other things the Navigable Waters Protection Rule excludes all ephemeral streams, playas, non-adjacent wetlands, and arroyos from the definition of Waters of the United States. According to the New Mexico Environment Department the Navigable Waters Protection Rule will exclude approximately 96% of New Mexico waterways from Clean Water Act jurisdiction.

New Mexico is further impacted by the rule change because it is one of three states in the nation that lack permitting authority (primacy) under the Clean Water Act - which means that discharge permits, and 404 dredge and fill permits are issued and enforced by the EPA and Army Corps of Engineers, not the state.

On February 13, 2020 a coalition of environmental groups, led by the Center for Biological Diversity and WildEarth Guardians filed a Notice of Intent to Sue letter to the EPA Administrator under the Endangered Species Act (ESA), claiming the adoption of the Navigable Waters Protection Rule required the EPA and Army Corps of Engineers to consult with the Fish and Wildlife Service on the effects of the Rule on Endangered and Threatened Species.

We are also aware that several environmental groups, including NRDC and the Southern Environmental Law Center plan to sue EPA and the Army Corps of Engineers over the adoption of the Navigable Waters Protection Rule. As noted in the BDD Board comments on the repeal of the Clean Water Rule the BDD project may be particularly impacted by the adoption of the Navigable Waters Protection Rule due to its location downstream of the Pajarito Plateau, Los Alamos National Laboratory, and Los Alamos County. It is conceivable that removal of ephemeral streams, such as Los Alamos and Sandia Canyons, from Clean Water Act jurisdiction will mean that Los Alamos National Laboratory will no longer be required to permit its discharges into those waterways under the National Pollution Discharge Elimination System (NPDES) which regulates point source discharges into surface waters.

RECOMMENDATION:

Board staff, counsel and consultants continue to monitor the Rule and litigation and provide updates to the Board in order to inform possible future actions by the Board.

New York Times Opinion Section
February 10, 2020

Trump Weakens the Nation's Clean Water Efforts

The president's decision to roll back protections is deeply misguided.

By Chris Wood, Collin O'Mara and Dale Hall

Mr. Wood is president of Trout Unlimited, Mr. O'Mara is president of the National Wildlife Federation and Mr. Hall is a former director of the United States Fish and Wildlife Service.

The Environmental Protection Agency made a startling admission last month when it announced that many of the nation's streams and wetlands would no longer be protected under the Clean Water Act, perhaps the nation's most successful antipollution law.

The agency said it could not predict how many miles of streams and acres of wetlands would lose their protection because of "existing data and mapping limitations."

In other words, the E.P.A. was sharply narrowing the reach of a landmark environmental law without understanding the consequences of its actions.

This is flat wrong on every level. We do know the consequences. And we can say unequivocally that this ill-informed policy will reduce water protections to a level not seen in more than a generation.

We understand the impact not just because the three of us have spent decades working to protect fish and wildlife, and not just because our organizations have an intimate understanding of the significance of the now-jeopardized headwater streams and wetlands that are so critical to healthy wildlife, waterfowl and wild trout.

We know this because we did what the E.P.A. apparently did not do: We dug into the best available mapping resources to find out what will happen.

Last year, Trout Unlimited analyzed detailed United States Geological Survey stream and topographic maps and other resources, and while these maps did not tell us whether a particular stream, lake or wetland will be protected or not under the new policy, they did help us reach larger conclusions.

Trout Unlimited's research suggests that more than six million miles of streams — half the total in the United States — will now be unprotected by the Clean Water Act, because they flow only after rainfall. More than 42 million acres of wetlands — again, about half the country's total — will no longer be protected because they are not immediately adjacent to larger waters.

This will make it easier to pollute streams and fill in wetlands that safeguard our water supplies, reduce flood risks and provide for healthy fish and wildlife habitat. And it will make it harder to

provide sensible oversight of oil and gas projects, pipeline construction and major housing development. The impacts will be felt nationwide.

In Arizona, for instance, home of the threatened Apache trout, almost all streams are dry except during and after rainstorms. As a result, 83 percent of Arizona streams will lose protection under the E.P.A.'s new policy, according to state officials, along with 99 percent of lakes. Because the state does not have its own regulations, 98 percent of the permits that limit pollution discharges into waterways will simply no longer be in force.

The situation is similar in New Mexico, where the new rule will effectively invalidate permits controlling the levels of mercury and PCBs running off the heavily contaminated grounds of Los Alamos National Laboratory and into the Rio Grande, Santa Fe's main drinking water supply.

In West Virginia and Virginia, there will no longer be federal protections for some 82 small streams that are to be excavated if the 600-mile Atlantic Coast Pipeline is built, based on surveys by Dominion, the pipeline's developer.

In the Great Plains, the E.P.A. will no longer conserve freshwater marshes known as prairie potholes that fill with water in the spring and provide critical, timely habitat for more than half of North America's migratory waterfowl. In the flood-prone Houston area, federal permits will not be required to develop coastal and prairie wetlands that absorb excess rainwater and provide habitat for migrating songbirds and waterfowl.

The E.P.A.'s new policy comes with a price tag. It's not just that it threatens an \$887 billion American outdoor recreation economy powered in part by anglers, duck hunters and wildlife watchers.

When the E.P.A. stops protecting these streams and wetlands, states will have to foot the bill for regulatory oversight; many states may decide not to step in at all. When developers fill in wetlands, local communities will be on the hook for cleaning up more frequent flood damage. When headwaters are polluted, cities downstream will pay to treat their drinking water.

You need only consider the name to recognize what's happening here. What was the Waters of the United States Rule is now the Navigable Waters Protection Rule. This signals a narrow concern only for commerce but not, illogically, for the network of tributaries and wetlands that keep navigable waters healthy.

It also completely misses the point of the Clean Water Act, which is to protect the health of all the nation's waters.

If we are to reach that goal — if we are to keep our streams and wetlands safe for fish and wildlife, recreation, and drinking — we must not allow this flawed and misguided rule to stand.

Chris Wood is the president and chief executive of Trout Unlimited. Collin O'Mara is president and chief executive of the National Wildlife Federation. Dale Hall was a director of the United States Fish and Wildlife Service under President George W. Bush.

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Memorandum



Buckman Direct Diversion

Date: May 7, 2020
To: Buckman Direct Diversion Board
From: Mackie Romero, BDD Financial Manager
Subject: 3rd Quarter Financial Statements

Information Item:

This report is to update the BDD Board and its partners on the 3rd quarter financial position as of March 31, 2020.

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

- Beginning Budget – FY19/20 Adopted Budget includes any budget adjustments.
- Expended – Expenditures for services and/or goods received as of 3/31/2020.
- Encumbrances – Executed purchase orders for goods and services.
- Projected – Projected salary and benefits as currently staffed, pending requisitions and or contracts to be executed within the fiscal year.
- Available Balance – Represents vacancy savings and uncommitted budget balance.
- Percentage – Represents percentage of projected expended budget balance.

90 Day Cash Reserve Credit – Represents the partners cash reserve credit, which is used to fund current and future obligations as per the BDD Working Capital and Billing Policy.

Fixed & Variable Costs – Expenses to be billed to our partners for services and/or goods received as of March 31, 2020. Billing for project wide costs and variable cost have been allocated based on estimated water usage.

Other Funds - Major Repair & Replacement and Emergency Reserve Fund monthly contributions, cash balances and budget overview of funds authorized by the BDDB for expenditure.

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

If you require any additional information to be included in this report, please contact me.





3rd Quarter Financial Statement – Operations (07/01/2019-3/31/2020)

Budget Overview

CATEGORY	BEGINNING	EXPENDED	EXPENDED	EXPENDED	ENCUMB	PROJECTED		BALANCE	EXP
	BUDGET	1st Quarter	2nd Quarter	3rd Quarter	Thru 3/31/2020	Thru 6/30/2020	TOTAL	AVAILABLE	BDGT %
Employee Salaries & Benefits	2,404,610	401,184	454,451	571,196	-	516,292	1,943,123	461,487	81%
Electricity	1,173,761	186,326	188,384	295,282	-	364,725	1,034,717	139,044	88%
Chemicals	1,200,000	227,804	178,789	171,602	-	259,000	837,195	362,805	70%
Solids	336,000	109,020	72,231	64,015	-	90,734	336,000	-	100%
Materials & Supplies	44,500	24,122	9,738	4,867	-	5,773	44,500	-	100%
Other Operating Costs	1,002,054	34,773	133,246	74,770	402,346	-	645,135	356,919	64%
Litigation Costs	1,128,840	281,975	193,406	180,189	447,744	-	1,103,314	25,526	98%
Fiscal Agent Fees	1,990,000	-	1,066,127	693,367	230,506	-	1,990,000	-	100%
TOTAL	320,644	-	-	-	-	320,644	320,644	-	100%
	9,600,409	1,265,204	2,296,372	2,055,288	1,080,596	1,557,168	8,254,628	1,345,781	86%
DOE Federal Grant	96,000	-	52,465	-	43,535	-	96,000		100%

Total Expenses thru 3/31/2020

5,669,329

90-Day Cash Reserve Credit

	Balance
City of Santa Fe	1,674,748
Santa Fe County	536,031
LC - Club	92,191
LC - Coop	18,637
	2,321,607

Fixed & Variable Cost – Operations

July - September	Total	Fixed	Variable (Projected)	Project Wide (Projected)
Partner Revenue				
City of Santa Fe	2,368,546	683,514	344,034	1,340,998
Santa Fe County	1,035,609	240,015	195,147	600,447
LC - Club	118,657	16,852	41,761	60,045
LC - Coop	21,748	21,748	-	-
Total	3,544,561	962,129	580,941	2,001,490
Jan - March Expenses - Unbilled	2,046,461			
Other Revenue				
PNM Solar Rebate	25,842			
DOE Federal Grant	52,465			
Total	78,307			
Grand Total	5,669,329			





3RD Quarter Financial Statement – Other Funds (07/01/2019-3/31/2020)

Pre-Bills – Major Repair & Replacement Fund (Yearly Contribution)

	Total	City of SF	SF County	Las Campanas Coop	Las Campanas Club
Major Repair Fund	626,706	445,545	156,494	13,898	10,769
	626,706	445,545	156,494	13,898	10,769

Financial Position - Cash

	*Emergency Reserve	Major Repair
Balance at 06/30/2019	2,063,495	1,791,227
19/20 Yearly Contributions - Pending	-	626,706
Total	2,063,495	2,417,933
Beginning Budget		645,147
Projected Cash Balance		1,772,786

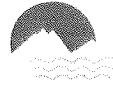
* Emergency Reserve Fund has reached the funding target, per the established policy.

Budget Overview – Major Repair and Replacement Fund

CATEGORY	FY19/20 BUDGET	EXPENDED 1st Quarter	EXPENDED 2nd Quarter	EXPENDED 3rd Quarter	ENCUMB Thru 3/31/2020	BALANCE AVAILABLE
Engineering Services	40,000	-	-	-	40,000	-
System Equipment	605,147	-	370,971	67,412	166,764	-
TOTAL	645,147	-	370,971	67,412	206,764	-



Memorandum



Buckman Direct Diversion

Date: May 7, 2020
To: Buckman Direct Diversion Board
From: Mackie M. Romero, BDD Financial Manager
Subject: Snell & Wilmer, LLP Amendment No. 3

ITEM AND ISSUE:

Request for the approval of Amendment No. 3 to the Legal Services Agreement with Snell & Wilmer, LLP for litigation services for FY19/20 in the amount of \$400,000 exclusive of NMGRT.

BACKGROUND AND SUMMARY:

On March 1, 2018, the Buckman Direct Diversion Board awarded RFP #18/12/P' for litigation services to Snell & Wilmer, LLP to serve as legal counsel for the Buckman Direct Diversion Board. This request will increase compensation in the amount of \$400,000 exclusive of NMGRT to continue services needed for the remained of the current fiscal year.

This request also includes approval of a Budget Amendment Resolution to transfer funds within BDD major categories to the legal services line item to cover the cost of the contract.

ACTION REQUESTED:

Staff recommends approval of Amendment No. 3 to the Legal Services Agreement with Snell & Wilmer, LLP. Funding is available within our approved FY 19/20 operating budget.

BU/LI: Legal Services # 8000801.510200.BDD9990

MUNIS Contract# 3200242

Approved by BDDDB May 7, 2020

Councilor JoAnne Vigil Coppler, BDDDB Chair



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



**AMENDMENT NO. 3
TO THE LEGAL SERVICES AGREEMENT
WITH SNELL & WILMER, LLP**

This Amendment No. 3 (the "Amendment") to the Legal Services Agreement, dated March 27, 2018 (the "Agreement"), between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, P.A. ("Contractor") shall be effective as of the date when it is executed by the Board Chair.

RECITALS

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

B. Pursuant to Article 19 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and Contractor agree as follows:

1. COMPENSATION

Article 2 of the Agreement is amended to increase the amount of compensation by a total of Four Hundred Thousand Dollars (\$400,000.00) plus applicable gross receipts tax, so that Article 2, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to Contractor in full payment for services, costs and fees incurred, a sum not to exceed Three Million Eight Hundred Thousand Dollars (3,800,000), 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. 3 to the Legal Services Agreement as of the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
JoAnne Vigil Coppler, BDDDB Chair

Date: _____

APPROVED AS TO FORM



Nancy R. Long

APPROVED

Mary T. McCoy, City Finance Director

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR:

Snell & Wilmer, LLP

Signature: _____

Name: Daniel R. Frost

Title: _____

Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration# _____



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

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

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

2 Name of Contractor Snell & Wilmer, LLP

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: \$200,000.00

Termination Date: June 30, 2019

☒ Approved by BDDDB Date: March 1, 2018

☐ or by BDD Facilities Manager Date: _____

Contract is for: To provide litigation services for the Buckman Direct Diversion Board.

Amendment # 3 to the Original Contract# 18-0424

Increase/(Decrease) Amount \$ 400,000

Extend Termination Date to: June 30, 2020

☒ Approved by BDDDB Date: Pending

☐ or by Project Manager Date: _____

Amendment is for: To add additional compensation for FY19.20 services

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

☐ Inclusive of GRT

Amount \$ 200,000.00 of original Contract# 18-0424 Termination Date: 6/30/2019

Reason: To provide litigation services for the Buckman Direct Diversion Board.

Amount \$ 1,500,000.00 amendment # 1 Termination Date: 6/30/2019

Reason: To increase compensation under the agreement

Amount \$ 1,700,000.00 amendment # 2 Termination Date: 6/30/2020

Reason: To increase compensation for FY19.20 services.

Amount \$ 400,000.00 amendment # 3 Termination Date: 6/30/2020

Reason: Add additional compensation

Total of Original Contract plus all amendments: \$ 3,800,000



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

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

RFP# 18/12/P Date: December 15, 2017

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 Procurement History: year 2 of 4 year contract
example: (First year of 4 year contract)

7 Funding Source: BDD Operating Fund **BU/Line Item:** 8000801.510200.BDD9990

Budget Officer Approval

Comments or Exceptions: _____

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: Mackie Romero, BDD Financial Manager

Phone # 955-4506

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

Comments:

BUCKMAN DIRECT DIVERSION BOARD



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/4/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER N/A	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Attorneys' Liability Assurance Society Ltd.,	15445
INSURED Snell & Wilmer L.L.P. One Arizona Center 400 East Van Buren Street, Suite 1900 Phoenix, AZ 85004-2202	INSURER B: A Risk Retention Group	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability	N	N	ALA 1229	1/1/2019	1/1/2020	\$50,000,000 per claim \$100,000,000 annual aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
Buckman Direct Diversion Board 341 Caja Del Rio Road Santa Fe, NM 87506	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Nancy J. Montroy, V.P. - Director of Underwriting, ALAS Ltd., RRG

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Log # {Finance use <u>only</u> }:	
Batch # {Finance use <u>only</u> }:	

City of Santa Fe, New Mexico

BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME PUD/Buckman Direct Diversion	DATE 5/1/2020
--	------------------

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<u>EXPENDITURES</u>				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}
Electric	8000810	514050			(100,000)
Solar Electric	8000810	514055			(130,000)
Building & Structure	8000810	570400			(200,000)
Legal Services	8000810	510200		430,000	
<u>REVENUES</u>				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}

JUSTIFICATION: (use additional page if needed)
 --Attach supporting documentation/memo

	\$ 430,000	\$ (430,000)
--	------------	--------------

To move funds to cover increase in compensation for legal services.

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
TOTAL:	0

BDDDB Approved 05/07/2020

Mackie Romero	4/28/2020	{Use this form for Finance Committee/ City Council agenda items ONLY}	
Prepared By {print name}	Date	CITY COUNCIL APPROVAL <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> City Council Approval Date <div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto;"></div> </div> <div style="text-align: center;"> Agenda Item #: <div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto;"></div> </div> </div>	Budget Officer
Division Director Signature {optional}	Date		Finance Director {≤ \$5,000}
Department Director Signature	Date		City Manager {≤ \$60,000}

ITEM # 19-0622

**BUCKMAN DIRECT DIVERISON BOARD
AMENDMENT NO. 2
TO THE LEGAL SERVICES AGREEMENT
WITH SNELL & WILMER, LLP**

This Amendment No. 2 (the "Amendment") to the Legal Services Agreement, dated March 27, 2018, and subsequently amended, (the "Agreement"), between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, P.A. ("Contractor") shall be effective as of the date when it is executed by the BDDDB.

RECITALS

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

B. Pursuant to Article 19 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and Contractor agree as follows:

1. COMPENSATION

Article 2 of the Agreement is amended to increase the amount of compensation by a total of *One Million Seven Hundred Thousand Dollars (\$1,700,000.00)* plus applicable gross receipts tax, so that Article 2, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to Contractor in full payment for services, costs and fees incurred, a sum not to exceed Three Million Four Hundred Thousand Dollars (\$3,400,000.00), plus applicable gross receipts tax.

2. TERM AND EFFECTIVE DATE.

Article 5, of the Agreement is amended to extend the term to June 30, 2020.

3. **AGREEMENT IN FULL FORCE**

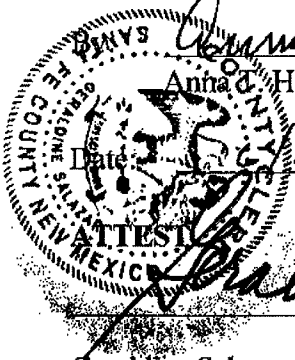
Except as specifically provided in this Amendment, the Agreement remains, and shall remain, in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Legal Services Agreement as of the dates set forth below.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

 Anna T. Hamilton
Anna T. Hamilton, BDDDB Chair
Date: 6/6/19
Geraldine Salazar
Geraldine Salazar, County Clerk

CONTRACTOR:

Snell & Wilmer/LLP

Signature: [Signature]

Name: Daniel R. Frost

Title: Partner

Date: 6/10/19

NM Taxation & Revenue
CRS # 03-359454-00-6

APPROVED AS TO FORM

Nancy R. Long
Nancy R. Long

City of Santa Fe Business
Registration# 18-00150945

APPROVED

Mary T. McCoy
Mary T. McCoy, City Finance Director me

ATTEST

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk all

File Date:

7-23-19

**AMENDMENT NO. 1
TO THE LEGAL SERVICES AGREEMENT
WITH SNELL & WILMER, LLP**

This Amendment No. 1 (the "Amendment") to the Legal Services Agreement, dated March 27, 2018, (the "Agreement"), between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, P.A. ("Contractor") shall be effective as of the date when it is executed by the Board Chair.

RECITALS

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

B. Pursuant to Article 19 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and Contractor agree as follows:

1. COMPENSATION

Article 2 of the Agreement is amended to increase the amount of compensation by a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00) plus applicable gross receipts tax, so that Article 2, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to Contractor in full payment for services, costs and fees incurred, a sum not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000.00), 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.

BUCKMAN DIRECT DIVERSION BOARD

By: _____

Peter Ives, BDDDB Chair

Date: _____

6-7-18

CONTRACTOR:

Snell & Wilmer, LLP

Signature: _____

Name: Daniel R. Frost

Title: _____

Date: _____

[Handwritten Signature]
Partner
6/26/18

APPROVED AS TO FORM

Nancy R. Long

[Handwritten Signature]

NM Taxation & Revenue

CRS # 03-359454-00-6

City of Santa Fe Business

Registration# 18-00150945

APPROVED

City Finance Director

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

8-16-18

[Handwritten Signature]
7280000.510200.999030

[Handwritten Signature]
all

**BUCKMAN DIRECT DIVERSION BOARD
LEGAL SERVICES AGREEMENT
WITH SNELL & WILMER, LLP**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, LLP ("Contractor"). The date of this Agreement shall be the date when it is executed by the Chair of the Board.

1. SCOPE OF SERVICES

Contractor shall perform the following under this agreement:

- Evaluation of the design-build and construction issues at the Buckman Direct Diversion Project ("BDD Project"), evaluation of the operative documents pertaining to the construction of the Project, retaining and/or working with experts regarding potential contractual, warranty, insurance and tort liability and damage issues, evaluation of case strength and advice regarding insurance and bonding;
- Attend BDDDB meetings, as needed, and relevant meetings of the Governing Body of the City, the Board of County Commissioners, and BDD Project staff meetings to provide legal advice and updates related to the BDD Project defects and legal proceedings;
- Brief BDD Project partners' officials and staff members, as directed by the BDDDB; and
- Represent the BDDDB in mediation and litigation proceedings related to design, inspection, manufacturing and construction issues. Although Contractor's services may involve communication with the Project partners, Contractor's sole client is the BDDDB.

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor must possess the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor must be licensed to practice law and must maintain such license throughout the term of this Agreement.

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. The total compensation under this Agreement shall be Two-hundred Thousand Dollars (\$200,000.00) plus applicable New Mexico Gross Receipts Tax to be billed according to the fee schedule attached hereto as Exhibit A.

B. Contractor shall be responsible for making the payment of gross receipts taxes, if applicable, to the State of New Mexico on the sums paid under this Agreement.

C. Detailed invoices for services will be made on a monthly basis.

D. Payment to Contractor will be made within thirty (30) days after the date of billing.

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's Chair and terminate on June 30, 2019. This Agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years from the date of last signatory to this initial agreement.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 10 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 BDDB original copies of all work product, research or papers prepared under this Agreement.
2. If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

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

A. Contractor and its subcontractors, agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. 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 contractors retained by Contractor in the performance of the services under this Agreement. Contractor shall comply with the City of Santa Fe Minimum Wage Ordinance, 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 BDDB.

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 BDDDB. Contractor shall not further subcontract any portion of the services to be performed under this Agreement (other than as contained in Contractor's proposal for services) without the prior written approval of the BDDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, the City of Santa Fe and 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 BDDDB to any obligation not assumed herein by the BDDDB 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 Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDDB's request provided to the BDDDB,

insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (ii) obtained BDDDB 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 BDDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDDB'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. CGL limits may be satisfied through a combination of general CGL and excess/umbrella coverage.

General Annual Aggregate (other than Products/ Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence	\$2,000,000

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 BDDDB that reflects coverage for any automobile [any auto].

3. **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, 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 \$2,000,000 per claim and \$2,000,000 annual aggregate. Contractor shall ensure both that: (i) the policy is in effect on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be renewed on an annual basis through termination of this Agreement. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

4. **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	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Each Employee

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDDB, City of Santa Fe and Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas 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 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 general liability 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 AM. 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. Contractor's Professional Liability Insurance is rated by Fitch (proof of which will be provided upon request).

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 BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, the City of Santa Fe, Santa Fe County 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 BDDB, the City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

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

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

c. The BDDB 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 BDDB. The BDDB 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 and hold harmless the BDDB, the City of Santa Fe and Santa Fe County, and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on

account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's fault or negligence under this Agreement as well as the performance or non-performance of Contractor's employees and those directly under Contractor's control.

Indemnification for Professional Acts, Errors or Omissions. The General Indemnification shall apply only to professional acts, errors or omissions covered by Contractor's Professional Liability insurance.

Limitations. The terms of this General Indemnification shall not apply to the actions of any of Contractor's independent contractors, nor shall it apply to any claims relating to the fault or negligence of the BDDb, the City of Santa Fe or Santa Fe County.

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:

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

With a copy to: Nancy R. Long,
BDDB Independent Counsel
Long, Komer & Associates
P.O. Box 50968
Santa Fe, NM 87502-5098
Email: nancy@longkomer.com

CONTRACTOR: Snell & Wilmer, LLP
Daniel R. Frost
1200 Seventeenth Street, Suite 1900
Denver, CO 80202-5854
dfrost@swlaw.com

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

Snell & Wilmer, LLP

By: [Signature]
Henry Roybal, BDDDB Chair

Date: 3/27/18 ^W

Signature: [Signature] See Attached

Name: Daniel R. Frost

Title: Partner

Date: March 13, 2018

ATTEST

[Signature]
Geraldine Salazar, County Clerk

NM Taxation & Revenue

CRS # 03-359454-00-6

City of Santa Fe Business

Registration# 18-00150945

APPROVED AS TO FORM

[Signature]
Nancy R. Long

APPROVED

[Signature] 4.13.18
Adam K. Johnson, City Finance Director

ATTEST

[Signature]
Yolanda Y. Vigil, City Clerk

File Date: 4-19-18

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Henry Roybal, BDDB Chair

Date: _____

ATTEST

Geraldine Salazar, County Clerk

APPROVED AS TO FORM

Nancy R. Long

APPROVED

Adam K. Johnson, City Finance Director

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR:
Snell & Wilmer, LLP

Signature: _____

Name: Daniel R. Frost

Title: _____

Date: _____

NM Taxation & Revenue
CRS # 03-359454-00-6

City of Santa Fe Business
Registration# 18-00150945

Exhibit A

Schedule of Hourly Rates and Costs

Hourly Rates

The firm will offer the BDDDB a discount from its published hourly rates, resulting in the following actual rates:

Dan Frost	\$490
Ellie Lockwood	\$365
Mike Lindsay	\$475
Krystle Wagner	\$215

The firm will agree to keep these discounted rates in effect through the end of December 2019. We will also consider discussing blended rates or other alternative fee arrangements, if desired by the BDDDB.

Costs

The firm will not charge for phone calls of any type or routine copying or scanning costs. We will not bill for computerized research or secretarial overtime. We may, however, forward to BDDDB large disbursement billings for direct payment to the vendor. We agree to comply with The City of Santa Fe Living Wage Ordinance to the extent applicable.

Management of Costs and Budgeting

At Snell & Wilmer, value is our primary objective. We will make certain at all times that our work for you is being staffed appropriately and handled at the right level of experience and billing rate. Our team is from the Denver office, but we propose to conduct and manage a large part of this engagement from our Albuquerque office. Therefore, we will not charge travel time or travel expense for travel to or from our New Mexico office or the BDDDB office. Nor will we bill time for other travel. We will, however, bill for out-of-pocket travel expenses beyond our New Mexico office or the BDDDB office.

Memorandum



Buckman Direct Diversion

Date: May 7, 2020
To: Buckman Direct Diversion Board
From: Mackie Romero, BDD Financial Manager
Subject: Glorieta Geoscience, Inc

ITEM AND ISSUE:

Request for approval of Amendment No. 1 to Professional Services Agreement with Glorieta Geoscience, Inc. to extend term of agreement to June 30, 2021.

BACKGROUND AND SUMMARY:

On March 7, 2019 the Buckman Direct Diversion Board award RFP '19/04/P to procure Technical Support Services from Glorieta Geoscience, Inc. Work performed under this agreement is authorized pursuant to approved task orders issued by the BDD Facilities Manager and shall not exceed \$160,000 exclusive of NMGRT.

This recommendation will extend the termination of this contract to June 30, 2021. This extension will allow the contractor to continue its work on the following approved task orders. Any funds remaining at June 30, 2020, will be rolled over to the new fiscal year.

- LANL MOU Support Services
- TREAT Studies
- GAC Disposition

The funding for this contract was included in the approved 2021 Annual Operating Budget.

ACTION REQUESTED:

Staff recommends approval to extend the term of this contract to June 30, 2021.

Fiscal Year	Org/Line Item/Description
2020/2021	8000801.510340 Other Consulting

MUNIS Contract #3200380

Approved by BDDDB May 7, 2020

Councilor JoAnne Vigil Coppler, BDDDB Chair



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
WITH GLORIETA GEOSCIENCE, INC.
#19-0302**

THIS AMENDMENT No. 1 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated March 7, 2019, (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDDB") and Glorieta Geoscienc, Inc. ("Contractor"). The effective date of this Amendment shall be the date it is executed by the BDDDB.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to perform professional technical oversight and support services on an as needed basis as assigned and directed by the BDD Facilities Manager.

B. Pursuant to Article 18 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Board and Contractor agree as follows:

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to extend the term of roll over compensation, so that Article 3, paragraph A reads in its entirety as follows:

A. The BDDDB shall pay to Contractor in full payment for services rendered, a sum not to exceed One Hundred Sixty Thousand Dollars (\$160,000.00), plus applicable gross receipts taxes, billed in accordance with the Hourly Rate Schedule attached hereto as Exhibit A.

- (1) Fiscal Year 2018-2019, Sixty-Five Thousand Dollars (\$65,000.00)
- (2) Fiscal Year 2019-2020, Ninety-Five Thousand Dollars (\$95,000.00)

B. Any unexpended budget in (2) above for Fiscal Year 2019-2020 shall roll over to Fiscal Year 2020-2021.

C. 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 performed.

2. TERM AND EFFECTIVE DATE.

Article 5, of the Agreement is amended to extend the term to terminate on June 30, 2021.

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: _____
JoAnne Vigil Coppler, BDDDB Chair

Date: _____

CONTRACTOR:
Glorieta Geoscience, Inc.

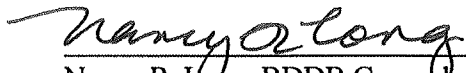
Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM



Nancy R. Long, BDDDB Counsel

APPROVED

Mary T. McCoy, City Finance Director

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 Glorieta Geoscience, Inc.

3 Complete information requested ☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: \$160,000.00

Termination Date: June 30, 2020

☒ Approved by BDDB Date: March 7, 2019

☐ or by Facilities Manager Date: _____

Contract is for: To provide technical oversight and support services to BDD Regulatory Compliance.

Amendment # 1 to the Original Contract# 19-0302

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: June 30, 2021

☒ Approved by BDDB Date: Pending

☐ or by Project Manager Date: _____

Amendment is for: To extend term of the contract, and roll-over unexpended balance to FY20/21.

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

☒ Inclusive of GRT

Amount \$ 160,000.00 of original Contract# 19-0302 Termination Date: 6/30/2020

Reason: To provide technical support services

Amount \$ _____ amendment # 1 Termination Date: 6/30/2021

Reason: extend term of contract.

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 160,000



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

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

RFP# 19/04/P Date: March 7, 2019

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 Procurement History: Year 2 of 4 year award
example: (First year of 8 year contract)

Purchasing Approval

7 Funding Source: _____ **BU/Line Item:** 8000801.510340

Budget Officer Approval

Comments or Exceptions: _____

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: Mackie Romero, BDD Financial Manager

Phone # 955-4506

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

To be recorded by City Clerk:

Contract # _____

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

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

Comments:

Buckman Direct Diversion Board



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Daniels Insurance, Inc.-Santa Fe 805 St. Michaels Drive Santa Fe NM 87505	CONTACT NAME: Steve Crawford	FAX (A/C, No): (505) 989-9186	
	PHONE (A/C, No, Ext): (505) 982-4302	E-MAIL ADDRESS:	
INSURED Glorieta Geoscience, Inc. P.O. Box 5727 Santa Fe NM 875025727	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Admiral Insurance Company		24856
	INSURER B: Cincinnati Indemnity Company		23280
	INSURER C: Cincinnati Casualty Company		28665
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER: Cert ID 24849

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y		FEI-ECC-17407-05	09/03/2018	09/03/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Empl Benefits Liab \$ 1,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			EBA 0286267	10/30/2018	10/30/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	EWC0406995-03	10/30/2018	10/30/2019	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution/Environmental L			FEI-ECC-17407-05	09/03/2018	09/03/2019	\$5,000 Deductible \$ 2,000,000
A	Professional Liability			FEI-ECC-17407-05	09/03/2018	09/03/2019	\$5,000 Deductible \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All operations of the insured, per policy conditions. Liability: Continental U.S.; Workers Compensation: New Mexico. Certificate holder and City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; with their respective elected officials, officers, employees, agents, volunteers and representatives are listed as additional insured, per form ECC319-0712, as respects to the General Liability, per written contract. Policy is Primary Non-Contributory. Workers Compensation Waiver of Subrogation in favor, per written contract, form #WC000313.

CERTIFICATE HOLDER

CANCELLATION

Buckman Direct Diversion Board 341 Caja Del Rio Road Santa Fe NM 87506	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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**BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT
WITH
GLORIETA GEOSCIENCE, INC.**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Glorieta Geoscience, Inc. ("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 described as follows:

A. Participate with and act as Technical Team Leader for *ad hoc* technical groups (including but not limited to BDD, City, and County staff) to evaluate water quality data from the BDD Project treatment works and other sources, assess analytical data, regulatory framework, and disposal alternatives for treatment media.

B. Evaluate existing BDD Project data, staff conclusions, and recommendations to improve BDD decision making concerning environmental sampling, compliance, and study design.

C. Serve as Technical Team Leader for *ad hoc* technical groups (including but not limited to BDD, City and County staff) to develop data quality objectives, sampling and analysis plans and processes, quality assurance project plans, data verification and validation protocols, and develop data assessment tools as they relate to future water quality studies of BDD background, intake, treatment, and finished water.

D. Assist BDD, City, and County staff in public engagement and outreach strategies, information exchange and dissemination, and management of technical issues related to BDD.

E. Assist BDD, City, and County staff in developing and implementing a memorandum of understanding with Los Alamos National Laboratory concerning its interaction with, support of, and interest in the BDD Project.

F. Assist the BDD in assessing existing and new data for correlations with treatment works operations, and otherwise furthering the objections of the TREAT study as they currently exist or may evolve.

G. Perform other related tasks as assigned by BDD.

Work performed under this Agreement shall be authorized in writing by the Facilities Manager or designee pursuant to a Task Order. Each Task Order shall be prepared by Contractor and shall include a detailed description of the nature, extent and character of the work, as well as performance criteria, delivery schedules and a detailed estimate of the budget for the services to be performed in accordance with the rates set forth in Exhibit A. The Task Order must be approved by the Facilities Manager or designee.

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 not exceed One Hundred Sixty Thousand Dollars (\$160,000.00) plus applicable gross receipts tax, billed in accordance with the Hourly Rate Schedule attached hereto as Exhibit A.

(1) Fiscal Year 2018-2019, Sixty-Five Thousand Dollars (\$65,000.00)

(2) Fiscal Year 2019-2020, Ninety-Five Thousand Dollars (\$95,000.00)

B. Any unexpended budget in (1) above for Fiscal Year 2018-2019 shall roll over to Fiscal Year 2019-2020.

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

D. 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, 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, 2020. This Agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years.

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 for work accomplished and refund all amounts earned.

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 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 BDDB.

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, 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 BDDDB to any obligation not assumed herein by the BDDDB 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 Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDDB's request provided to the BDDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (ii) obtained BDDDB 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 BDDDB.

B. Further, Contractor shall not modify any policy or endorsement thereto which increases the BDDDB'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) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, 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. Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractor's policy shall not contain exclusions for those activities.

(4) **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 Professional 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 BDDDB 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 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 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.

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

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDDB 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 BDDDB 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 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 City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDB and 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 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: Rick Carpenter
Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: rrcarpenter@santafenm.gov

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

CONTRACTOR: Glorieta Geoscience, Inc.
P.O. Box 5727
Santa Fe, NM 87502
Jay Lazarus
Email: lazarus@glorietageo.com

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

By: _____

Peter Ives, BDD Board Chair

Date: _____

3-7-19

APPROVED AS TO FORM

Nancy R. Long
Nancy R. Long, BDDDB Counsel

APPROVED

Mary T. McCoy
Mary T. McCoy, City Finance Director

7280000.510340.753025

Business Unit/Line Item

ATTEST

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

File Date: _____

4-29-19

CONTRACTOR:

Glorieta Geoscience, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue

CRS #02-090021-000

City of Santa Fe Business

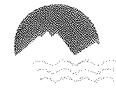
Registration # 19-00027562

“Exhibit A”

Hourly Rate Schedule

Title	Rate
Principal/Sr. Geohydrologist	\$250.00/hr
Principal/Sr. Geologist	\$200.00/hr
Senior Modeler/Geologist	\$150.00/hr
Sr. Env. Geologist	\$150.00/hr
Ecologist	\$125.00/hr
Project Geologist	\$115.00/hr
Staff Geologist/Env. Scientist	\$ 95.00/hr
Field Technician	\$67.00/hr
Administrative	\$45.00/hr
Office Expenses	Cost x 8%
Subcontractors/other direct cost	Cost x 15%

Memorandum



Buckman Direct Diversion

Date: April 28, 2020

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Facility Manager
Kyle Harwood, BDD Legal Counsel

Subject: Review of 2007 BDD Board Letter to the U.S. Department of Energy

ITEM AND ISSUE:

BDD Board Citizen Member Alternate and Counselor Peter Ives requested at the February, 2020 Board meeting an evaluation of the BDD Board's 2007 letter to the U.S. Department of Energy.

BACKGROUND:

In 2007, the Buckman Direct Diversion (BDD) Board (the Board) sent a letter to the U.S. Department of Energy (DOE) and its operating contractor for the Los Alamos National Laboratory (LANL) expressing its concerns regarding LANL-generated contaminants in Rio Grande and Los Alamos/Pueblo (LA/P) Canyon sediments, and how contaminants in the sediments could adversely affect the proposed BDD Project. The letter requested DOE and the LANL contractor to address and fund six actions to mitigate these contaminant issues. Some version of these "action steps" forms the basis of the Board's current requests to DOE and the Memoranda of Understanding (MOU) between the Board and DOE, including the existing MOU which expires at the end of 2020:

1. Stop migration of LANL contaminants to the Rio Grande and to groundwater.
2. Properly monitor the transport of legacy contaminants in both the surface water and groundwater flow systems.
3. Measure the radioactive and toxic contamination of buried sediments containing higher concentrations of post-World War II LANL legacy contaminants now buried in the slough (side channel) upstream of the BDD diversion site.
4. Provide an early warning system (ENS) so the BDD can temporarily cease diversion of any water from the Rio Grande when the Rio Grande is expected to contain elevated levels of contaminants of LANL origin.
5. Monitor the mass of any LANL-origin contaminants diverted with BDD raw water supplies and account for that mass in water treatment plant residuals and treated drinking water.
6. Provide funding for the BDD Board to retain independent peer review by qualified persons with regard to matters of potential LANL-origin contamination of the public drinking water resources of Santa Fe County and the City of Santa Fe.



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



SUMMARY:

Progress has been made on the action steps since 2007, although DOE's attention to the projects attendant to the tasks has significantly waned since 2017. The status of each task is summarized below.

1. **Stop migration of LANL contaminants to the Rio Grande and to groundwater through the construction of additional sediment barrier and containment systems, improved waste treatment and disposal practices, stabilization and cleanup of sediment beds and banks in the Rio Grande tributary canyons that have received LANL waste discharges, and other appropriate management actions.**

LANL's work related to this task was a high priority under the 2005 Compliance Order on Consent (Consent Order) governing cleanup of legacy contamination at LANL, particularly in Los Alamos and Pueblo Canyons. The Board has provided suggestions for changes to the Consent Order to the New Mexico Environment Department (NMED). Many improvements sought by the Board were complete by 2010, including construction of the Los Alamos Canyon Weir and the grade control structures in Pueblo Canyon. Monitoring of sediment migration, particularly as it relates to flood conditions, continued until at least 2016. Under the 2016 Consent Order, Los Alamos and Pueblo Canyons are no longer priorities, in part because much work has been completed, but also because the new "campaign" approach focuses on groundwater remediation and material disposal areas. In fact, only the TA-21 campaign is squarely in the Board interest. Regardless, one of the crucial steps in negotiating a new MOU is to ensure DOE support for the Early Notification System (ENS), which will require BDD and GGI to ascertain the status of monitoring, reporting, and sediment migration mitigation measures in Los Alamos/Pueblo Canyon.

Arresting sediment migration and improving waste treatment and disposal practices is also driven by LANL's National Pollutant Discharge Elimination System (NPDES) permits that provide coverage for both industrial and storm water discharges. The proposed WOTUS rule change, if fully implemented, could remove NPDES permitting for any LANL industrial and storm water discharges. The U.S. Environmental Protection Agency (EPA) has issued draft permits for both types of discharges. Public comment periods end May 31, 2020, and the Board has already provided comments on both expressing its concerns and recommending the EPA not issue either permit as currently written.

Status: The BDD does not have sufficient information to determine that LANL has satisfied the Board's 2007 request.

2. **Properly monitor the transport of legacy contaminants (contaminants from the 1940s-1960s) in both the surface water and groundwater flow systems, including implementation of all recommendations contained in a report entitled "Plans and Practices for Groundwater Protection at Los Alamos National Laboratory, Final Report (2007)," published by the National Academy of Sciences with especially high priority placed on improvements in monitoring the transport of contaminants in the regional groundwater flow toward the Buckman well field and implementation of the recommendations addressing surface water and transport of contaminants from LANL property.**

This action step was focused on groundwater, potential contaminant migration through the regional aquifer beneath the Pajarito Plateau, and the possibility of transport to the Buckman Wellfield. LANL has improved its groundwater monitoring capability since 2007, and has devoted significant resources toward addressing groundwater contamination, particularly with respect to the chromium plume. The groundwater



pathway is not a focus of the Board at this time because the Buckman Wellfield is not under the purview of the Board and groundwater is not a significant input to water at the BDD intake structure.

The BDD has concerns that LANL is not fully monitoring contaminant transport via the surface water pathway in Los Alamos/Pueblo Canyons, particularly under the 2016 Consent Order. BDD has requested that LANL provide an outline of its current monitoring efforts in this watershed. Although early monitoring efforts (in 2008 and 2009) did not identify LANL-origin contaminants in the Rio Grande at Buckman, subsequent monitoring (see number 5 below) has called this conclusion into question.

Status: The BDD does not have sufficient information to determine that LANL has satisfied the Board's 2007 request.

- 3. Measure the radioactive and toxic contamination of buried sediments containing higher concentrations of post-World War II LANL legacy contaminants now buried in the slough upstream of the BDD diversion site to determine whether the BDD, as currently aligned, will intersect areas with elevated concentrations of these contaminants and help the BDD determine if minor realignment of project facilities could avoid these areas.**

NMED and the BDD Board designed, funded and completed this work in 2008. The U.S. Forest Service, which required this work, approved it.

Status: The BDD considers this request fully satisfied.

- 4. Provide an early notification system so the BDD can temporarily stop diversions of any water from the Rio Grande when the Rio Grande is expected to contain elevated levels of contaminants of LANL origin.**

Under the 2010 (first) Memorandum of Understanding (MOU), DOE committed to build three stream gages in Los Alamos and Pueblo Canyons and transmit the information to the BDD Project control room in near-real-time. The MOU contained considerable detail about ENS telemetry specifications, station locations, and analyte lists and detection limits for ENS and sampling under a "Contaminant Fate Analysis" study at the BDD Project location¹ and a storm water quality sampling program at ENS gage stations. At the time, DOE's work included wireless communication of the gage data to the Buckman Direct Diversion control room and installation of automatic samplers that collect samples at times of storm water runoff flow at these gages.

Discussions about assessment of the ENS stations, and particularly rebuilding or relocating the station downstream of the confluence of Guaje and Los Alamos Canyons (known as E109.9) have slowed, in part because of access approval from San Ildefonso Pueblo. Furthermore, the existing MOU (2017-2020) removed the storm water sampling program which reduces the ability of all parties, particularly BDD, to determine the presence of absence of contaminants entrained in storm water.

¹ This study would form the basis of and transition to The Removal Efficiency and Assessment of Treatments (TREAT) study under subsequent MOUs.



Status: Although DOE made great strides initially to satisfy this request, full addressing the Board's concerns about the ENS requires ongoing effort by DOE. The BDD does not have sufficient information to determine that DOE continues to fully support and maintain the ENS.

5. Monitor LANL Contaminants in BDD Diversions, Sand Return, Residuals, and Drinking Water.

Through the MOUs, DOE has provided funds to cover the cost of this monitoring, now known as The Removal Efficiency and Assessment of Treatments (TREAT) study, the results of which are on the BDD web site. Study design and quality assurance/quality control challenges with the first TREAT studies are being evaluated in anticipation of the fifth and final study, potentially as early as this fall. This study will be outside the current MOU.

Status: Although the monitoring under this request is ongoing, DOE has satisfied its commitments to fulfill this request.

6. Provide funding for the BDD Board to retain independent peer review by qualified persons with regard to matters of LANL-origin contamination of the public drinking water resources of Santa Fe County and the City of Santa Fe.

The BDD received a grant from DOE to fund independent peer review, which began in 2009 and concluded in 2010.

Status: The BDD considers this request fully satisfied.

RECOMMENDATIONS:

No recommendations at this time.

Memorandum



Buckman Direct Diversion

Date: April 29, 2020

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Facility Manager
Kyle Harwood, BDD Legal Counsel

Subject: Preliminary Framework and Principles for 2020 LANL MOU

ITEM AND ISSUE:

The current BDD Board LANL MOU expires this year and BDD Project staff and counsel request guidance on a framework and principles for negotiating a new LANL MOU.

BACKGROUND:

The background on the LANL MOU and issues addressed by the MOU are the topic of other memos to the Board.

RECOMMENDATIONS:

Board staff, counsel and consultants recommend the following principles be requested to be included in a new MOU.

Early Notification System in Los Alamos/Pueblo Canyon [section E.2 2017 MOU]

1. Continue to maintain the design and functionality of the ENS system in LA/Pueblo Canyon in order to provide the BDD Project real time notification of surface water flows in this tributary of the Rio Grande upstream of the BDD Project intake. Continue to identify stations by name in the MOU, and continue to operate E050.1, E060.1, E062 and E099 as components of the ENS.
2. Identify a schedule, budget and required approvals for the re-installation of E109.9 as a placeholder (subject to change of location or configuration depending on current condition and access agreement(s) with San Ildefonso Pueblo)
3. Evaluate and re-initiate the E110 station, and continue coordination with NMED on co-located samplers (note: which does not include the Guaje Canyon tributary)
4. Board staff, counsel and consultants, in conjunction with LANL staff, conduct a site visit of each station upon execution of the new MOU (subject to work and distance restrictions) and prepare a joint report of current conditions of each gage, control measures and changes in aggradation/incision of stream bed over time.



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



5. LANL/DOE will conduct inspection and maintenance of ENS components in April and October of each year with written inspection reports provided to BDD staff. Other inspections as needed if ENS is damaged.
6. Board staff, counsel and consultants will conduct independent assessment or co-inspections of ENS components as needed.
7. Board staff, counsel and consultants provide the BDD Board an annual report summarizing Los Alamos/Pueblo and Guaje Canyons flow events, whether or not detected by ENS stations. The summary will include a correlation with shut-off events at BDD and detection of flow at ENS locations.
8. Board staff, counsel and consultants will establish a renewed effort to document a Storm Water Quality Sampling Program and Report using DOE "Annual Surveillance Report" and NMED data.
9. LANL/DOE will provide funding for all inspections and identified improvements of \$XXX,000 (dependent on assessment of current condition of ENS stations and locations). Unexpended funds do not revert to DOE and instead may be carried over to future years for use on these issues.

Sediment Evaluations in Los Alamos/Pueblo Canyon

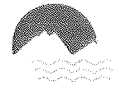
10. DOE will provide an annual report on sediment sampling/mapping and monitoring to BDD (including all submittals to regulatory agencies, such as DOE and NMED).
11. DOE will provide an initial summary of current and prior 5 year work effort regarding sediment sampling/mapping program, including technical details, regulatory notifications and approvals, and monitoring results of sediment control structures (including all submittals to regulatory agencies, such as DOE and NMED).
12. For actions taken in Los Alamos/Pueblo and Guaje Canyons, the BDD is copied on all correspondence between NMED/DOE and LANL, and is provided copies of all reports and workplans submitted to regulatory agencies (including DOE for monitoring, remediation and reporting of actions relations to radionuclides).
13. Board staff, counsel and consultants will conduct assessment of the Contaminant Inventory in the Los Alamos/Pueblo and Guaje Canyons to evaluate and update appropriate protections to LANL-derived pollutants.
14. DOE responded on March 31, 2020 to BDD's initial request for technical information on contaminated sites in Los Alamos/Pueblo Canyon, and DOE will provide updates annually to those requests for technical information as the issues are updated. Reconnaissance level review conducted by Board staff, counsel and consultants in conjunction with ENS "current state" assessment if significant data gaps are revealed.

BDD Project Location Sampling in Rio Grande [section E.3 2017 MOU]

15. Board staff, counsel and consultants will conduct Rio Grande base-flow and event water sampling in Rio Grande at the BDD Project intake.
16. Board staff, counsel and consultants to conduct sediment sampling on floodplain/slough/low water sediment exposure sites upstream of BDD and downstream of Los Alamos Canyon and at intake structure.
17. Board staff, counsel and consultants review and assess previous work to determine sampling locations, extent, and need for additional information.
18. DOE will provide new funding for Rio Grande sediment mapping sampling -- \$XXX,000 / year (tbd after assessment described above).
19. DOE will provide continued funding for Rio Grande water quality sampling -- \$96,000 / year
20. DOE will provide new funding for TREAT 5 -- \$70,000 project estimate cost

Data Sharing [section F. 2017 MOU]

21. DOE will continue to collect ENS data, and report to BDD.



22. DOE will continue to monitor or increase sediment sampling/mapping in response to results from 11-14 above, and report to BDD.
23. DOE will continue monitor and maintain sediment control structures, and report to BDD.
24. DOE will continue to monitor or increase storm water sampling and analysis at ENS sites in response to the results from 1-9 above, and report to BDD.
25. BDD will conduct project location sampling in Rio Grande and within treatment works (e.g., TREAT), and will provide to BDD and post verified/validated data on the BDD Project website.

Coordination with DOE/LANL and San Ildefonso Pueblo [section E.1 2017 MOU]

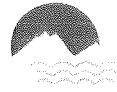
26. Recognize the importance and role of San Ildefonso Pueblo under DOE/San Ildefonso MOU, BDD/San Ildefonso MOU, conduct biannual MOU review meetings with all stakeholders and quarterly technical meetings regarding the new technical initiatives described above, annual schedule to be modified after initiatives are established.

List of Acronyms

BDD Buckman Direct Diversion
DOE U.S. Department of Energy
ENS Early Notification System
LANL Los Alamos National Laboratory
MOU Memorandum of Understanding
NMED – New Mexico Environment Department
TREAT – The Removal Efficiency and Assessments of Treatments



Memorandum



Buckman Direct Diversion

Date: May 7, 2020

To: Buckman Direct Diversion Board

From: Nancy R. Long

Subject: **Open Meetings Act Resolution Amendments to Address the Public Health Emergency Declaration**

Item and Issue:

Amending the annual (2020) Open Meetings Act Resolution to take into account the declaration of a public health emergency in New Mexico.

Background and Summary:

Due to the current and ongoing COVID-19 global pandemic and the State's declaration of a Public Health Emergency and the ban on public gatherings of more than five (5) people, it has become necessary to change the procedures for conducting public meetings. Although the Board just adopted its Open Meetings Act Resolution in January, the public health emergency arising since that time makes it prudent to adopt another resolution addressing new meeting procedures. At paragraph 8, the Resolution allows for remote participation of the Board, allows limiting public attendance at in-person meetings, provided there is adequate means for remote attendance and allows the Board Chair to cancel any BDDDB meeting to preserve the public health, safety and welfare. The Resolution is also reformatted and revised in minor ways from the resolution passed in January.

Action Requested

Independent counsel recommends adoption by the Board of the Resolution Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board Resolution No. 2020-2; Rescinding Resolution No. 2020-1.



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



1 **THE BUCKMAN DIRECT DIVERSION BOARD**

2 **RESOLUTION NO. 2020-2**

3 **A RESOLUTION DETERMINING REASONABLE NOTICE FOR**
4 **PUBLIC MEETINGS OF THE BUCKMAN DIRECT DIVERSION BOARD;**
5 **RESCINDING RESOLUTION NO. 2020-1**
6
7
8

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

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

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

23 **WHEREAS**, the Buckman Direct Diversion Board (the “Board”) desires to address in its
24 Open Meetings Act Resolution, revisions to what constitutes reasonable notice of its meetings and
25 how board members and the public may attend and participate in its public meetings.
26

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

3 1. **Regular Meetings.** Unless otherwise specified, regular meetings of the Board shall
4 be held each month on the first Thursday of the month in the Santa Fe City Council Chambers or
5 at the Santa Fe County Commission Chambers. Notice of any regular meeting shall be provided
6 a minimum of seventy-two (72) hours prior to the meeting to the public and to those broadcast
7 stations licensed by the Federal Communications Commission and newspapers of general
8 circulation that have made written request for such notice. The notice shall include the date, time
9 and place of the meeting. The agenda for regular meetings will be available at least seventy-two
10 (72) hours prior to the meeting and shall be posted in a conspicuous and appropriate place at the
11 Santa Fe County Administrative Building, at Santa Fe City Hall, and on the Board's, Santa Fe
12 County's and the City's internet web sites (www.bddproject.org, www.santafecounty.org and
13 www.santafenm.gov).

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

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

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

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

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

6 **6. Participation by Conference Telephone.** Voting members of the Board may
7 participate in a meeting of the Board by means of conference telephone or other similar
8 communications equipment when it is difficult or impossible for the voting member to attend the
9 meeting in person and only when necessary to meet the quorum requirements for the meeting. At
10 least one voting member of the Board must be physically present at the noticed location for the
11 meeting.

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

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

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

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

1 8. **Public Health Emergency Provisions.** Notwithstanding any other provision of
2 this Resolution, meeting locations, in-person meetings, posting requirements and any other
3 deviation deemed necessary or advisable due to any public health emergency or conditions, may
4 be made, while taking into account guidance provided by the New Mexico Attorney General's
5 Office for public meetings during public health emergencies. Specifically, board members may
6 participate remotely in meetings by conference telephone, video platforms or other similar
7 communications equipment provided that means are provided to allow for the public to hear
8 and/or view the Board meeting. Additionally, the Board Chair has the authority to take the
9 following actions: (i) exclude or limit the public from in-person attendance at meetings, provided
10 that the public may witness the meeting either by telephone or video means; or (ii) cancel any
11 meeting prior to commencement of such meeting to preserve the public health, safety and
12 welfare.

13 9. **Definitions: "Meeting" and "Member."** For purposes of this Resolution, the
14 term "meeting" shall be defined as a meeting of a quorum of the Board held for the purpose of
15 formulating public policy, rules, regulations or ordinances, discussing public business, or taking
16 any action within the authority of or the delegated authority of the Board. For purposes of this
17 Resolution, the term "Member," when not
18 otherwise qualified within this Resolution, shall mean both the voting and non-voting members of
19 the Board.

20 9. Resolution No. 2020-1 is hereby rescinded.

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22 **PASSED, APPROVED AND ADOPTED this 7th day of May 2020.**
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BUCKMAN DIRECT DIVERSION BOARD:

JoAnn Vigil Coppler, BDDDB Chair

APPROVED AS TO FORM:

Nancy R. Long, Board Counsel

ATTEST:

Yolanda Y. Vigil, City Clerk