

MINUTES OF THE
THE CITY OF SANTA FE & SANTA FE COUNTY
BUCKMAN DIRECT DIVERSION BOARD MEETING

August 3, 2023

1. CALL TO ORDER

This regular meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by County Commissioner Anna Hamilton, BDD Board Chair, at approximately 4:03 p.m. in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

2. ROLL CALL: Roll was called and a quorum was present as shown:

BDD Board Members Present:

Commissioner Anna Hamilton
Councilor Carol Romero-Wirth
Commissioner Anna Hansen
Councilor Renee Villarreal
J.C. Helms, Citizen Member
Tom Egelhoff, Las Campanas [non-voting]

Member(s) Excused:

None

Alternate(s) Present:

Peter Ives, Alternate for Citizen Member

Others Present:

Rick Carpenter, BDD Facilities Manager
Nancy Long, BDDDB Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Delfin Peterson, BDD Administrative Assistant
Randy Sugrue, BDD Operations Superintendent
Michelle Hunter, County Water Resources Manager
Jay Lazarus, BDDDB Consultant, Glorieta Geoscience, Inc.
Joni Arends, Concerned Citizens for Nuclear Safety

[Chair Hamilton read the agenda captions throughout the meeting.]

3. APPROVAL OF AGENDA

With no changes from staff, Commissioner Hansen moved to approve. There was a second by Councilor Villarreal, and the agenda was unanimously approved.

4. APPROVAL OF MINUTES: July 6, 2023

CHAIR HAMILTON: What's the pleasure of the Board?

MR. HELMS: Move to approve.

COMMISSIONER HANSEN: Second, but further discussion.

CHAIR HAMILTON: Yes.

COMMISSIONER HANSEN: There's a few places where just like an a or something – I didn't bring my book that I marked it up with, but otherwise they're perfectly fine.

CHAIR HAMILTON: Just a few little editorial things.

COMMISSIONER HANSEN: Minor. Almost unrecognizable.

CHAIR HAMILTON: Okay. Good. So I have a motion and a second.

The motion passed by unanimous [4-0] voice vote with Councilor Villarreal abstaining.

5. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

CHAIR HAMILTON: We have Randy Sugrue all ready for item 5. a. Welcome.

RANDY SUGRUE (BDD Operations Superintendent): Thank you very much, Madam Chair, members of the Board. This is our report for BDD operations for the month of July 2023. Raw water diversions averaged about 8.29 million gallons per day. Our drinking water deliveries, about 6.58 million gallons per day. Raw water delivery to Las Campanas, 1.47 million gallons per day. And our onsite storage variation when 24 million gallons per day.

We're providing approximately 44 percent of the water supply to the City and County for the month. Our total diversion for the month is significantly above our 12-year average, just based on demand and Canyon Road had some issues and lower production in the month.

Daily metered regional demand was in the vicinity – sometimes lower sometimes higher than 15 million gallons per day. That included some significant water use again on golf courses in replacement for effluent. Rio Grande flows averaged around 1,480 cubic feet per second and continue now in early August just a bit below a thousand cubic feet per second, so the river's pretty healthy for this time of year considering the heat and the dry weather. Canyon Road storage combined about 87.9 percent with an inflow around two million gallons per day.

And Canyon Road, since the issues they had in the middle of July now has increased their production, I think in the vicinity of six to seven million gallons per day. So BDD has eased back a little bit on our production. Abiquiu storage of SJC water is 11,897 acre-feet. That was as of July 19th. As of July 1st we did receive the remainder of our 100 percent SJC allocation for the year. So we have received 5,230 acre-feet of SJC water allocated. The storage in Abiquiu is reflected in the graph below, and the El Niño

summary states there's greater than 90 percent change that El Niño will continue through the wintertime here. And that's what I have for this month. I stand for questions.

CHAIR HAMILTON: Thank you. Mr. Ives.

MR. IVES: Thank you, Madam Chair. So on a daily basis I do look at the paper and look at the water statistics and the report for July 31st, so a few days ago, indicated that the total production in the City was 17,232,000 gallons, and that total consumption was 16,214,000 gallons. And I keep on recollecting that 15 million gallons is a trigger point for the City.

MR. SUGRUE: Actually, that trigger point is City storage. So you consider the ten million gallon tank, the hydro tank, the hospital tank, the various storage tanks around the city, the capacity I think is in the vicinity of 36 million gallons if those tanks were brim full. If that capacity falls to 15 the Water Division Director has the discretion to call for concern, you might say, in discussion with the City Manager.

MR. IVES: So I'd love to see the statement of that policy that was adopted by whomever.

MR. SUGRUE: I looked up City code. It does not define the specifics. That is at the discretion of the Water Division Director. It just says that the City Manager is authorized to determine and declare a water emergency if any of the following occur, and those bullet points are the Water Division Director's – at his discretion.

MR. IVES: Okay.

MR. SUGRUE: But yes, the 15 million is not how much we consume in a day; it's City storage, if it should drop to that level, because that would show a concern in production if we can't keep the level. Usually in the summer we keep Citywide storage somewhere in the vicinity of 30 million gallons total, again, to provide for just health, welfare, safety, fire flows, things like that.

MR. IVES: And again, love to get just a copy of that statement of policy.

MR. SUGRUE: Yes. I can give you this. I don't know if anyone else is interested I can provide it. It's simply the City code, title Section 25, Water Emergency Management Plan Ordinance. But you can have this one if you like and I'd be glad to provide some for others if they so desire.

CHAIR HAMILTON: Yes, please. That would be good for the whole Board to have that.

MR. SUGRUE: Sure. And again, a lot of it is open to sort of Water Division discretion but it does give you the bullet points as to what some of those unforeseeable situations might be.

CHAIR HAMILTON: Thank you. Was that it?

MR. IVES: That was it.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. You said that – is BDD water being used on the golf courses in the city? Or were you just mainly speaking to the –

MR. SUGRUE: The city as a whole, yes. I mean we just put water into the City system. We don't have the discretion to say what happens to it after that fact. So City water, I believe, in some instances is still going through that temporary system, and so that has resulted in some of this increased demand.

COMMISSIONER HANSEN: And that has to do with the fact that the wastewater plant is –

MR. SUGRUE: I don't specifically know, but that's kind of the impression I get.

COMMISSIONER HANSEN: Okay. Thank you.

CHAIR HAMILTON: Thank you. Any other questions? Thanks so much, Randy.

MR. SUGRUE: You're welcome. Thank you.

b. Report from the Facilities Manager

RICK CARPENTER (Facilities Manager): Thank you, Madam Chair. My memo has only a couple of items in it for this month. The first is an update on major repair and replacement. Just a heads-up to the Board that next month Randy and I expect to come to the Board with a major repair and replacement update of about a million dollars for our new membranes. That's not ready for this month, but I just wanted to give you a heads-up.

What we are doing, though however, is replacing two of the five granulated activated carbon vessels. That's in process now, and I have to call to the Board's attention, I have a type in my memo. I listed that cost as \$290,000 when in fact it's a little less than that, \$281,100. So I just wanted to make that correction.

The second bullet is a staffing update. I'm working very hard with our maintenance supervisor and HR on the following four positions: journeyman electrician, maintenance planner/scheduler, equipment repairman advanced, and equipment repairman intermediate. All four of these are – they could hit the street tomorrow. They're ready to go and be advertised. I checked this morning and they hadn't advertised as of today but by the time we have another Board meeting I hope to be able to report out that we have advertised them and hopefully have a list of eligibles for each one of these. And that concludes my report. I'm happy to stand for questions.

CHAIR HAMILTON: That's good. I appreciate getting the heads-up on things. It facilitates being able to think about things. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Rick. I'm wondering what is happening with the major repairs and the settlement funds that we received for the repair. Because we haven't seemed to have an update on that in some time.

CHAIR HAMILTON: No, we haven't but we are planning to have an update on that next month when we are pulling lots of information together and the way things progress we expect to have information on what the status is, how things like the RFQ are progressing and a little more of a timeline.

COMMISSIONER HANSEN: That would be good.

CHAIR HAMILTON: Anybody else? I do have a question on were these among the major items that you estimated would be needed to be done this year on major repair and replacement? We had like \$1.9 million this year and it was put in the budget and something similar or a little higher was anticipated for next year. Are these all in that or are we looking at very likely going over that this year?

MR. CARPENTER: Madam Chair, we won't go over without coming back to the Board.

CHAIR HAMILTON: Well, of course not. And it's not the concern about – I was just thinking in terms of predictable things.

MR. CARPENTER: I think the more likely scenario would be to assess that might maybe could cause us to go over, and then look at the budget and see if we could maybe push something down, or make a lower priority. That's an option.

CHAIR HAMILTON: Yes. And like I said, this was not because I have concerns about this. I literally looked at the \$1 million and said, well, we anticipated that magnitude of things to be done this year, and then I thought, well, I wonder if those membranes were not even on the list and you're already having to change things or we may have to add stuff. Like you said, it's not because it's a problem.

MR. CARPENTER: Madam Chair, that was anticipated as a big ticket item. But I didn't get to it today. It's a busy day as you know, but I expect to do the accounting on all of this tomorrow morning and just – if we have to update the plan we will.

CHAIR HAMILTON: Of course. Excellent. Thank you. Any other questions on this report? Thanks.

6. a. Request for approval of Amendment No. 1 to the Legal Services Agreement with Long, Komer and Associates, P.A. in an amount not to exceed \$285,000.00 plus applicable gross receipts tax

CHAIR HAMILTON: Rick, do you want to start us out on that?

MR. CARPENTER: Yes, ma'am. And Monique is not here because she's ill today so I'm doing her items. So this is \$285,000 to fund Long, Komer and Associates for the fiscal year of 24. It is budgeted. There was an RFP. I think we received three proposals. Long, Komer's was by far the strongest, and staff is requesting approval of this item.

COUNCILOR ROMERO-WIRTH: Move to approve.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: Under discussion, Councilor Villarreal.

COUNCILOR VILLARREAL: Thank you, Madam Chair. I just wanted to be clear about the contract. I wasn't quite sure what the total amount will be for four years. Because it's a four-year contract and this is an increase, but I didn't think it was increase. I thought it was just an additional year. Maybe you could explain that, because the contract is talking about compensation and shall not exceed for \$405,000, but that's not the full contract amount.

NANCY LONG (BDD Board Counsel): Madam Chair and Councilor, I think I can answer that, because I had that question too, because the amendments get drafted – since it's our contract we don't do our own amendments. It went through City staff. And so I looked at that number as well, the \$405,000, and I think that's because our contract was awarded in March, so we had a gap to get to this next fiscal year. Our contract went from March to the end of June. And so if you take the \$405,000, less the \$285,000 for this next year, that was \$110,000 to cover those four months and we actually did not bill that entire amount. It was probably more like half of that. But we understand that that's not to carry over, that our budget for this next year will actually be \$285,000.

But it's not for the full four years. Each year they'll come back with an amendment, even though the term can be four years, the compensation will be visited each year by way of first the budget, and then coming to you in an amendment.

COUNCILOR VILLARREAL: Thank you. It's always confusing with those amendments because it's really not an amendment, it's to continue a four-year contract. I think your explanation of making up the difference helped to clarify. I didn't under the –

MS. LONG: Yes, I didn't understand it at first either.

COUNCILOR VILLARREAL: Thank you. That was helpful. No further questions.

CHAIR HAMILTON: Thank you. Anything else under discussion? If not I have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

- b. Request Approval of Services Agreement with Calgon Carbon Corporation in an amount not to exceed \$281,100.00 from the Major Repair and Replacement Fund (MRRF) for the replacement of the Granular Activated Carbon Media, and request for approval of a Budget Adjustment Request in the amount of \$281,100.00 from the MRRF**

CHAIR HAMILTON: We'll to go Randy.

MR. SUGRUE: Thank you, Madam Chair, members of the Board. BDD is preparing to replace the GAC, granulated activated carbon media in two out of our five carbon contactors. Each one takes 70,000 pounds of carbon. We had a successful negotiation with the City Purchasing Department and went through the standard bid process and actually came in significantly lower than we expected. We had a good participation in the bid and we originally thought it might be over \$300,000. So the rep from Calgon Corporation themselves will be out in a couple weeks to inspect the facility. He has been here before. I think they installed the original carbon in the contactors, and then they'll take the old carbon and pile it on site and we'll dispose of it just all into the landfill, which is significantly less expensive than having them haul it off for us.

CHAIR HAMILTON: Excellent. So there was in fact a competitive bid for this.

MR. SUGRUE: Oh, absolutely.

CHAIR HAMILTON: Are there any questions.

COUNCILOR ROMERO-WIRTH: Move to approve.

COUNCILOR VILLARREAL: Second.

CHAIR HAMILTON: Excellent. Thank you. Anything under discussion?

The motion passed by unanimous [5-0] voice vote.

- c. Request for approval to award RFP 23/63/P to Glorieta Geoscience, a division of GZA GeoEnvironmental, to provide technical services for the Buckman Direct Diversion Board, and for approval of a Professional Services Agreement for FY24 in an amount not to exceed \$40,000.00 plus applicable New Mexico gross receipts tax**

CHAIR HAMILTON: We'll go back to Rick.

MR. CARPENTER: Thank you, Madam Chair. This is a request from staff for approval of a contract with Glorieta Geoscience. An RFP was issued. We received only one proposal from GGI, a very well done proposal I would add, for technical services. The amount staff is requesting is \$40,000. That's what's in the budget. The types of things that they would be doing for us are things that would help with our regulatory needs, hydrology studies, data quality and assessment, and water quality issues, especially as related to LANL. And so with that I would stand for questions.

COUNCILOR ROMERO-WIRTH: Move to approve.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: Thank you. I have a motion and second. Is there anything under discussion? Yes, Councilor.

COUNCILOR VILLARREAL: Thank you, Madam Chair. Just a quick question. I'm curious about one bid. Is that typical for this particular type of expertise? And then maybe you could just elaborate about how you advertise RFPs.

MR. CARPENTER: Madam Chair, members of the Board, I was expecting at least two. There are two or three firms in the area that have similar skill sets, but we only received the one. It's not typical to just receive one, but it is a highly specialized skill set. It's not like I was expecting five or six bids. That's just not going to happen.

As far as advertising the RFP we follow the City's Procurement Code to the letter. They saw to it.

COUNCILOR VILLARREAL: So that's the City RFP process?

MR. CARPENTER: Yes.

COUNCILOR VILLARREAL: Okay. Thank you.

CHAIR HAMILTON: Excellent. So I have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

7. MATTERS FROM THE PUBLIC

CHAIR HAMILTON: I know we have somebody here from the public Welcome, Joni.

JONI ARENDS: Good afternoon. My name is Joni Arends and I'm with Concerned Citizens for Nuclear Safety, and I'm following up on my comments last month about having the Environment Department coming to give a presentation about their concerns about the chromium plume. I wanted to see what the status of that is.

CHAIR HAMILTON: Unless – Rick, do you have –

COUNCILOR ROMERO-WIRTH: Isn't Public Comment one direction? Point of order. I think she can inquire and we just take that and –

MS. LONG: Correct.

COUNCILOR ROMERO-WIRTH: But we don't get into a back and forth here.

CHAIR HAMILTON: That's very true. That is policy. Okay. So we will take that question.

MS. ARENDS: Thank you.

CHAIR HAMILTON: So is there anybody else here from the public who wishes to speak? I don't see anybody so I'm going to close Public Comment.

8. MATTERS FROM THE BOARD

CHAIR HAMILTON: I'll go to J.C and then Commissioner Hansen.

MR. HELMS: I have a rather minor topic but it hard today because I have a very bad foot. Why is the door that is between the parking garage and this building always locked when we have our meeting?

COUNCILOR ROMERO-WIRTH: You'd have to ask the City Manager's Office but I think they are doing more around security of this building, and so during business hours the door that's open is the front. I think they're trying to create a front door and everything else is locked unless you have a key.

MR. HELMS: Isn't it kind of strange to have a garage over there and the only entrance over here? It doesn't make sense to me.

COUNCILOR ROMERO-WIRTH: Well, this whole space is not ideal. We try to make it work.

MR. HELMS: Well, anyway. That's all. Thank you.

CHAIR HAMILTON: It's a good question. Thank you. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Madam Chair. On another note, I want to share with the Board and the public that at the NACo conference, which is the National Association of Counties, I have the honor of being elected president of the Women of NACo, so that means that I now have a national constituency. And I'm really honored to be in this position. I was recruited by the Women of NACo to be in this position and I'm very honored and I'm going to take it very seriously. Some of the things I plan to do for NACo, which is a lobbying organization like your Municipal League organization is train women to write policy for women's issues but also for issues that they are concerned about. I have been very successful in bringing forward resolutions and I think that's part of the reason why I was put in this position, and they have covered a wide range of topics.

And then the other committee that I have started is Counties for Climate Action at NACo, and NACo is a pretty conservative organization so to have another force to be speaking to climate issues I think is really important, and the other thing that's happening is at the end of the month, in September, the large urban caucus of NACo will be meeting here. About 25 of the large urban counties, and it's the first time they've ever met in a small, rural county, which we are considered. And so I think that's really exciting for them to be coming here. So it should be exciting. It's an interesting choice for them to come to a small city and county.

COUNCILOR ROMERO-WIRTH: City and county – I'm just taking exception with the rural.

COMMISSIONER HANSEN: You can take issue with it but the county is rural.

CHAIR HAMILTON: We can have one meeting out in Glorieta and we'll get the little rural part of it going for just once.

COMMISSIONER HANSEN: Or at the Pojoaque Pueblo or San I Pueblo, which are all very rural areas also in our county.

COUNCILOR ROMERO-WIRTH: I totally agree. I was thinking about the City of Santa Fe as not being rural.

CHAIR HAMILTON: Yes. And this is where they're meeting. Okay. Thank you.

COMMISSIONER HANSEN: Thank you. I'm honored to be able to share that information.

CHAIR HAMILTON: Excellent. Thank you. Anybody else on the Board?

9. NEXT MEETING: Thursday, September 7, 2023 at 4:00 p.m.

10. ADJOURN

Having completed the agenda and with no further business to come before the Board, Chair Hamilton declared this meeting adjourned at approximately 4:30 p.m.

Approved by:

Anna Hamilton, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

KATHARINE E. CLARK
SANTA FE COUNTY CLERK

D R A F T

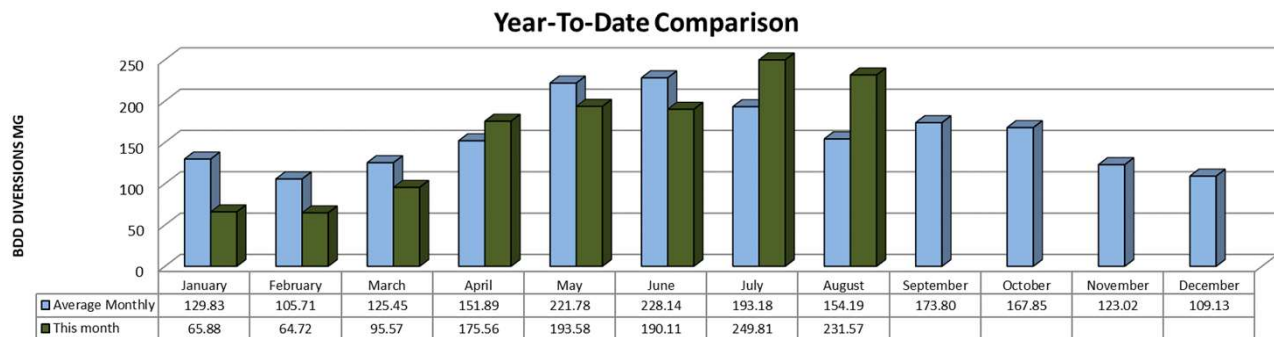
- subject to approval -



Date: September 7, 2023
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of August 2023

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of August 2023. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD), as follows:
 - a. Raw water diversions: 7.47 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 6.32 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.99 MG
 - d. WTP Onsite water storage variation: 0.16 MGD Average. (Average gain or loss per day to the 12MG WTP onsite storage.)
2. The BDD is providing approximately 42% percent of the water supply to the City and County for the month.
3. The BDD year-to-date diversions are depicted below:



4. Regional Demand/Drought Summary and Storage-see page 2.



Regional Water Overview

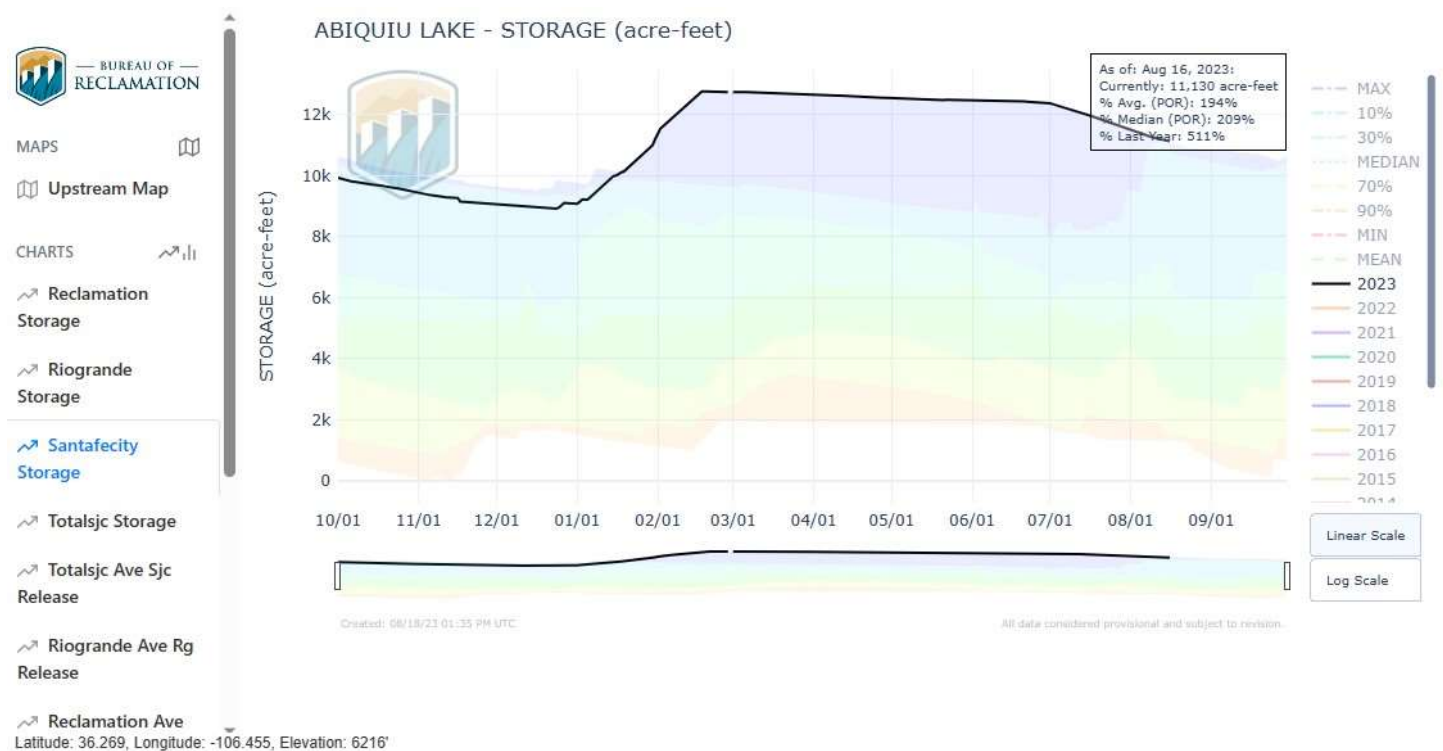
Daily metered regional water demand for the month of August 2023 is approximately 14.9 MGD.

Rio Grande flows for August 2023 averaged approximately 752 CFS (cubic feet per second.)

CRWTP reservoir storage: Nichols: 80.4%/McClure: 71.6% (73.0% combined) Watershed Inflow: 1.60 MGD

City/County/LC Storage- as updated by partners. As of August 16, 2023 City of SF Abiquiu SJC storage is at about 11,130AF.

As of July 1, 2023 the City of Santa Fe has been allocated 5230AF of 5230AF and SF County 374AF of 375AF of SJCP water.



ENSO Summary

August 14, 2023

El Niño conditions are observed.*

Equatorial sea surface temperatures (SSTs) are above average across the central and eastern Pacific Ocean.

The tropical Pacific atmospheric anomalies are consistent with El Niño conditions.

El Niño is anticipated to continue through the Northern Hemisphere winter (with greater than a 95% chance through December 2023-February 2024.)



Buckman Direct Diversion

Buckman Direct Diversion Monthly SJC and Native Diversions

Aug-23 In Acre-Feet								
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-04842-A RG Native VIA SFC LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	202.766	170.639	0.000	32.127	32.127	0.000	0.000	0.316
FEB	198.863	198.863	0.000	0.000	0.000	0.000	0.000	0.000
MAR	298.509	283.752	0.000	14.757	-0.183	14.940	0.000	0.148
APR	539.513	456.749	68.929	13.835	13.835	0.000	0.000	0.050
MAY	594.828	462.276	132.552	0.000	0.000	0.000	0.000	0.000
JUN	584.178	458.973	125.205	0.000	0.000	0.000	0.000	0.000
JUL	775.090	29.584	0.000	745.506	600.980	144.526	0.000	3.448
AUG	710.920	0.000	0.000	710.920	616.797	94.123	0.000	1.976
SEP	0.000	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	0.000
NOV	0.000	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	0.000
TOTAL	3,904.667	2,060.836	326.686	1,517.145	1,263.556	253.589	0.000	5.938

In Million Gallons

Month	Native COUNTY	SFC Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions
JAN	55.583	0.000	10.347	10.347	0.000	0.000	65.930
FEB	64.776	0.000	0.000	0.000	0.000	0.000	64.776
MAR	92.427	0.000	4.752	-0.059	4.819	0.000	97.179
APR	148.778	22.453	4.484	4.484	0.000	0.000	175.714
MAY	150.579	43.176	0.000	0.000	0.000	0.000	193.755
JUN	149.503	40.783	0.000	0.000	0.000	0.000	190.286
JUL	9.636	0.000	240.180	193.965	46.562	0.000	249.817
AUG	0.000	0.000	231.570	200.910	30.660	0.000	231.570
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	671.282	106.412	491.333	409.647	82.042	0.000	1,269.028



Buckman Direct Diversion

Buckman Direct Diversion Monthly SJC and Native Diversions								
Dec-22	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	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	511.288	154.905	0.000	356.382	356.382	0.000	0.000	3.203
FEB	421.814	421.814	0.000	0.000	0.000	0.000	0.000	0.000
MAR	376.496	302.219	0.000	74.277	74.277	0.000	0.000	0.758
APR	538.222	408.237	0.000	129.985	129.985	0.000	0.000	1.327
MAY	596.137	596.137	0.000	0.000	0.000	0.000	0.000	0.000
JUN	660.831	300.636	0.000	360.194	360.194	0.000	0.000	2.397
JUL	582.150	122.961	0.000	459.189	459.189	0.000	0.000	2.232
AUG	166.030	0.000	0.000	221.847	221.847	0.000	55.818	1.067
SEP	439.944	30.356	0.000	409.588	383.240	26.348	0.000	1.982
OCT	505.999	25.135	0.000	480.864	456.039	24.825	0.000	4.780
NOV	263.142	0.000	0.000	270.146	259.271	10.875	7.004	2.699
DEC	177.158	9.051	0.000	168.107	168.107	0.000	0.000	1.650
TOTAL	5,239.210	2,371.451	0.000	2,930.579	2,868.532	62.047	62.821	22.095
	In Million Gallons							
	Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions
	JAN	50.458	0.000	114.878	114.878	0.000	0.000	165.336
	FEB	137.399	0.000	0.000	0.000	0.000	0.000	137.399
	MAR	98.443	0.000	23.913	23.913	0.000	0.000	122.356
	APR	132.976	0.000	41.848	41.848	0.000	0.000	174.825
	MAY	194.181	0.000	0.000	0.000	0.000	0.000	194.181
	JUN	97.927	0.000	115.951	115.951	0.000	0.000	213.878
	JUL	40.052	0.000	147.861	147.861	0.000	0.000	187.914
	AUG	0.000	0.000	71.472	71.472	0.000	18.182	71.472
	SEP	9.888	0.000	131.951	123.448	8.503	0.000	141.839
	OCT	8.187	0.000	154.855	147.123	8.009	0.000	163.042
	NOV	0.000	0.000	86.992	83.484	3.508	2.281	86.992
	DEC	2.948	0.000	54.143	54.143	0.000	0.000	57.092
	TOTAL	772.460	0.000	943.866	924.123	20.020	20.463	1,716.326



Date: August 29, 2023

To: BDD Board

From: Rick Carpenter, BDD Facilities Manager

RC

Re: BDD Facilities Manager Monthly Update to the BDD Board

Item and Issue

Below is the monthly update from the BDD Facilities Manager for the BDD September 2023 Board meeting:

- Major Repair and Replacement (MR&R) Fund. The BDD Facility Manager is to provide updates as needed on MR&R fund expenditures or other major expenditures on projects. MR&R expenditures for the month of September will be \$989,037,82 for replacement of pressure membranes (see item 8a on the BDD Board agenda).
- Current Vacancies. The following positions are vacant/open in the Maintenance and Repair Section, and staff expects these to advertise soon after the date of this memo:
 - Journeyman Electrician
 - Maintenance Planner Scheduler
 - Equipment Repairman Advanced
 - Equipment Repairman Intermediate





Date: August 31, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, Contracts Administrator
Via: Rick Carpenter, Facilities Manager
Antoinette Armijo-Rougemont, Accounting Supervisor
Re: Security Services with Condor-New-Age-Logistics, LLC. for FY24

ITEM AND ISSUE

Request for approval of a Service Agreement with Condor-New-Age-Logistics, LLC. in an amount not to exceed \$158,184.00, plus NMGR, for security services through June 30, 2024.

BACKGROUND

A new contract with Condor Security of America, Inc. will commence upon execution of this signed agreement and run through June 30, 2024. BDD explored alternative options to lower the operating cost for security services. However at this time, we will continue services with Condor Security Services as they are the most cost efficient. Condor Security will provide security services 7 days a week Monday through Sunday from 5:00pm to 6:00am to the facility to include conducting patrols, reporting suspicious activity and ensuring the BDD corridor is secure.

ACTION:

Staff Recommends approval and processing of this contract. Funding is available up to an amount up to \$158,184.00 plus tax. Funding is available in the current year operating budget.

ORG/OBJ: 8000801.510310

PL: BDD7400

Condor: 3204266

Approved by BDDDB September 3, 2023

Anna Hamilton, BDD Chair



**BUCKMAN DIRECT DIVERSION BOARD
GENERAL SERVICES AGREEMENT
WITH CONDOR - NEW AGE LOGISTICS, LLC**

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the Buckman Direct Diversion Board, ("BDDB"), and Condor – New Age Logistics, LLC. ("Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the BDDB. New products and services shall not be added to the Products and Services Schedule.

B. "You" and "your" refers to Condor - New Age Logistics, LLC. "We," "us" or "our" refers to the BDDB and whose accounts are created under this Agreement.

2. Scope of Work

A. Contractor shall provide security services for the Buckman Direct Diversion Facilities ("BDD Facilities") as described in Exhibit A, attached hereto.

3. Compensation

A. The BDDB shall pay to Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item: Security Services</u>	<u>Price per hour</u>
\$ 141,088.78 (budgeted amount)	\$39.79 REG
\$ 6,268.50 (OT estimate)	\$59.69 OT/ Holiday
\$ 5,826.72 (fuel estimate)	

The total Compensation under this Agreement shall not exceed One Hundred Fifty-Three Thousand One Hundred Eighty-Four Thousand Dollars (\$153,184.00) plus New Mexico gross receipts tax.

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

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

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the BDDDB shall determine if the product or services provided meets specifications. Until the products or services have been accepted in writing by the BDD, the BDDDB shall not pay for any products or services. Unless otherwise agreed upon between the BDDDB and Contractor, within thirty (30) days from the date the BDDDB receives written notice from Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the BDDDB shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the BDDDB gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to Contractor's designated mailing address. Payment on each invoice shall be due within thirty (30) days from the date of the acceptance of the invoice. The BDDDB agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

C. Contractor certifies that its employees and subcontractors, who might be required to be on-site at any of the BDD Facilities, have received specific, adequate and appropriate training in order to perform assigned tasks and to be in possession of all current licenses and/or certifications that are required to perform the work. Contractor is required to instruct all its employees or subcontractors, who might be required to be on-site at any of the BDD Facilities, to complete up to four generalized work safety training sessions. Trainings will be provided by the Buckman Direct Diversion's safety and training staff and can be conducted on-line. Each of Contractor's employees and subcontractors must complete all the assigned training sessions prior to initiating work on-site at any of the BDD Facilities.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE BDDDB. This Agreement shall begin on date approved by the BDDDB, and end on June 30, 2024. The BDDDB reserves the right to renew the Agreement on an annual basis by mutual agreement not to exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The BDDDB reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the BDDDB, if Contractor fails to meet the provisions of this contract

and, except as otherwise provided herein, to hold Contractor liable for any excess cost occasioned by the BDDDB due to Contractor's default. Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the BDDDB shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery scheduled. The rights and remedies of the BDDDB provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

7. **Termination**

A. **Grounds.** The BDDDB may terminate this Agreement for convenience or cause. Contractor may only terminate this Agreement based upon the BDDDB's uncured, material breach of this Agreement.

B. **Notice; BDDDB Opportunity to Cure.**

(1) Except as otherwise provided in Paragraphs 7.A and 17, the BDDDB shall give Contractor written notice of termination ("Notice of Termination") at least thirty (30) days prior to the intended date of termination.

(2) Contractor shall give BDDDB written Notice of Termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the BDDDB's material breaches of this Agreement upon which the termination is based and (ii) state what the BDDDB must do to cure such material breaches. Contractor's Notice of Termination shall only be effective if (i) the BDDDB does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the BDDDB does not, within the thirty (30) day notice period, notify Contractor of its intent to cure and begin with due diligence to cure the material breach.

(3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor if (i) Contractor becomes unable to perform the services contracted for, as determined by the BDDDB; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the City of Santa Fe or the BDDDB; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations," of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the BDDDB's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a Notice of Termination; provided, however, that the Notice of Termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within

thirty (30) days of receiving or sending the Notice of Termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE BDDDB'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. **Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the BDDDB proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

Contractor, and Contractor's agents and employees, are independent Contractors for the BDDDB and are not employees of the BDDDB. Contractor, and Contractor's 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. Contractor acknowledges that all sums received hereunder are personally reportable by Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. Contractor agrees not to purport to bind the BDDDB unless Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the BDDDB.

11. **Subcontracting**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDDB. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the BDDDB.

12. **Non-Collusion**

In signing this Agreement, Contractor certifies Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the BDDDB.

13. **Inspection of Plant**

The BDDB may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the BDDB and are in addition to and do not limit any rights afforded to the BDDB by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the BDDB, the State Auditor and other appropriate state and federal authorities. The BDDB shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the BDDB to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the BDDB Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If the BDDB proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

Contractor, upon final payment of the amount due under this Agreement, releases the BDDB, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDB, unless

Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **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 prior written approval by the BDDB.

20. **Conflict of Interest**

A. Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the BDDB relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the BDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the BDDB notwithstanding anything in the Agreement to the contrary, the BDDB may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The BDDB reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the BDDB, adequately serving the needs of the BDDB.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and

understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

Contractor shall hold the BDDDB and its employees harmless and shall indemnify the BDDDB and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of Contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the BDDDB, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

Contractor's liability to the BDDB, for any cause whatsoever shall be limited to the purchase price paid to Contractor for the products and services that are the subject of the BDDB's, claim. The foregoing limitation does not apply to Paragraph 25 of this Agreement or to damages resulting from personal injury caused by Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any BDDB response to questions); (2) Contractor's best and final offer; and (3) Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) Contractor's best and final offer if such has been made and accepted by the BDDB; and (5) Contractor's response to the request for proposals.

30. **Workers' Compensation**

Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the BDDB.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Paragraph, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. Contractor shall provide and maintain an inspection system acceptable to the BDDB covering the services under this Agreement. Complete records of all inspection work performed by Contractor shall be maintained and made available to the BDDB and for as long thereafter as the Agreement requires. The BDDB has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The BDDB shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the BDDB performs inspections or tests on the premises of Contractor or a subcontractor, Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services does not conform with the requirements of this Agreement, the BDDB may require Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the BDDB may:

(1) require Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the BDDB may:

(1) by contract or otherwise, perform the services and charge to Contractor any cost incurred by the BDDB that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in BDD Facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the BDDB as additional insured.

A. **Commercial General Liability.** Insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the BDDB their officials, officers, employees, and agents as additional insureds.

B. **Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the BDDDB as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. Contractor shall defend, at its own expense, the BDDDB against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the BDDDB based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, Contractor agrees to reimburse the BDDDB for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the BDDDB shall:

- (1) give Contractor prompt written notice within 48 hours of any claim;
- (2) allow Contractor to control the defense of settlement of the claim; and
- (3) cooperate with Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in Contractor's opinion is likely to become the subject of a claim of infringement, Contractor shall at its option and expense:

- (1) provide the BDDDB the right to continue using the product or service and fully indemnify the BDDDB against all claims that may arise out of the BDDDB's use of the product or service;
- (2) replace or modify the product or service so that it becomes non-infringing;
or,
- (3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to Contractor. Contractor's obligation will be void as to any product or service modified by the BDDDB to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" in this Agreement shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the City of Santa Fe or the BDDDB for professional services, tangible personal property, services or construction agrees to disclose whether Contractor, or any principal of Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. Contractor shall provide immediate written notice to the BDDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of Contractor's responsibility and ability to perform under this Agreement. Failure of Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the Agreement, Contractor is indicted for, or otherwise criminally or civilly charged, by any government entity (federal, state or local) with commission of any offenses named in this Agreement, Contractor must provide immediate written notice to the BDDDB. If it is later determined that Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the BDDDB may terminate this Agreement for cause. Further, the City of Santa Fe or the BDDDB may suspend or debar Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the BDDDB.

40. **Suspension, Delay or Interruption of Work**

The BDDDB may, without cause, order Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the BDDDB may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Paragraph 8 of this Agreement.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to

have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the BDDB: Rick Carpenter,
BDD Facilities Manager
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: rrcarpenter@santafenm.gov

With a Copy to: Nancy R. Long
BDD Counsel
P.O. Box 5098
Santa Fe, NM 87502-5098
Email: nancy@longkomer.com

To Contractor: Condor – New Age Logistics, LLC.
1522 Constitution Blvd., Suite 112
Salinas, CA 93905
(800) 672-6057
Email: daniel.flores@condorsecurity.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

42. **Successors**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature by the required approval authorities below.

BUCKMAN DIRECT DIVERSION BOARD:

CONTRACTOR:

Condor – New Age Logistics, LLC.

BDDDB Chair, Anna Hamilton

NAME

DATE: _____

TITLE

ATTEST:

DATE: _____

COUNTY CLERK

CRS# _____

Registration # _____

ATTEST:

CITY CLERK

APPROVE AS TO FORM:

Nancy R. Long
Nancy R. Long
BDDDB ATTORNEY

APPROVED FOR FINANCES:

FINANCE DIRECTOR

Org. Name/Org.#

EXHIBIT A



SECURITY QUOTE

Mailing Address:

Condor – New Age Logistics

1522 Constitution Blvd #112, Salinas, CA 93905-3803

(800) 672-6057 - Office (831) 717-1314 - Fax

daniel.flores@condorsecurity.com

DATE: July 21, 2023

TO

City of Santa Fe – Water Treatment Plant

Attn: Monique Maes

Contracts Administrator/Buckman Direct Diversion (BDD)

341 Caja Del Rio Road

Santa Fe, NM 87506

505/955-4508

[mmaes@santafem.gov](mailto:mmmaes@santafem.gov)

JOB TYPE	DUE DATE
Uniformed security Services	Payment due upon receipt of invoice.

QTY	TYPE OF SERVICE	DESCRIPTION OF SERVICE	UNIT PRICE PER HOUR/PER OFFICER	ESTIMATED SUB-TOTAL
1	Security Services Armed Vehicle Patrol (4X4 Vehicle) • Fuel invoiced Monthly.	Monday-Sunday 07/01/23 – 06/30-24 1700-0800 (15 hrs. per day) (7 days a week) split shift with 30-minute lunch for each officer.	\$39.79 REG \$59.69 OT/Holiday	\$3,899.42 \$324.14
	Gross Receipts Tax (GRT)	GRT 8.312% multiplied to combined total \$3,899.42.		
ESTIMATED Weekly - TOTAL				\$4,223.56

*Overtime / Holiday / Monthly Fuel are not included in the estimated total

REV-1 REVISED DATE: July 21, 2023,



Date: July 6, 2023

To: Buckman Direct Diversion Board

Via: Rick Carpenter, BDD Facilities Manager

From: Antoinette Armijo-Rougmont, BDD Accounting Supervisor

Re: Request to Reauthorize Funding for the MRRF

RC

Antoinette Armijo-Rougmont

ITEM AND ISSUE:

Request for approval to reauthorize unexpended funds approved by the BDDDB from the Major Repair and Replacement Fund from FY2023 to FY2024.

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion Board authorized funding from the BDD Major Repair and Replacement Fund for the purpose of funding multiple projects. As of July 1, 2023 the following projects were still on-going and are expected to be completed within the current fiscal year:

MRRF On-going project balance:

- \$75,402 - Replace Maintenance Fleet Work Truck (approved 8/5/2021)
- \$300,000 – Replace Media in GAC Contactor 2@ \$150,000/each (Approved 7/6/23)
- \$51,000 – Modine Replacement ATF – HVAC (Approved 7/6/23)
- \$989,038 - Membrane Module Replacement (amount is combined with FY24 amount, pending approval at September 7, 2023 Board Meeting. Project approved 7/6/23)

Settlement Fund:

- \$227,819 - Wright Water Engineering (Approved 4/6/23 for FY23 & FY24) – Post litigation work

ACTION REQUESTED:

Staff recommends approval of the attached Budget Amendment Resolutions to re-authorize \$1,415,440 from the Major Repair and Replacement Fund and \$227,819 from the Settlement Fund.

Approved by BDDDB September 7, 2023

Commissioner Anna Hamilton, BDDDB Chair



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

City of Santa Fe, New Mexico

BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME PUD/Buckman Direct Diversion	DATE 9/7/2023
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ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<u>EXPENDITURES</u>				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}
System Equipment	8000825	570550		1,340,038	
Vehicles < 1.5 Tons	8000825	570950		75,402	
Interfund Transfer Out To 800	8010815	755800		1,415,440	
<u>REVENUES</u>				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}
Interfund transfer in from 801	8000825	655801		(1,415,440)	

JUSTIFICATION: (use additional page if needed) --Attach supporting documentation/memo	\$ 1,415,440	\$ -
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Move unexpended, approved funding from the MRRF for FY2023 to FY2024 for various pending projects referenced in our memo to the BDDB.	{Complete section below if BAR results in a net change to ANY Fund}										
	<table border="1" style="width: 100%;"> <tr> <th style="width: 60%;">Fund(s) Affected</th> <th style="width: 40%;">Fund Balance Increase/(Decrease)</th> </tr> <tr> <td style="text-align: center;">801</td> <td style="text-align: right;">(1,415,440)</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>TOTAL:</td> <td style="text-align: right;">(1,415,440)</td> </tr> </table>	Fund(s) Affected	Fund Balance Increase/(Decrease)	801	(1,415,440)					TOTAL:	(1,415,440)
Fund(s) Affected	Fund Balance Increase/(Decrease)										
801	(1,415,440)										
TOTAL:	(1,415,440)										

BDDB Approved 9/7/23	{Use this form for Finance Committee/ City Council agenda items ONLY}	
Antoinette Armijo-Rougemont Prepared By {print name}	9/7/2023 Date	Budget Officer
CITY COUNCIL APPROVAL		Finance Director {≤ \$5,000}
Division Director Signature {optional}	Date	Date
Department Director Signature	Date	City Manager {≤ \$60,000}

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

City of Santa Fe, New Mexico

BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME					DATE	
PUD/Buckman Direct Diversion					9/7/2023	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE	
<u>EXPENDITURES</u>				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}	
Professional Contracts	8000825	570550		227,819		
Interfund Transfer Out To 800	8010816	755800		227,819		
<u>REVENUES</u>				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}	
Interfund transfer in from 801	8000825	655801		(227,819)		
JUSTIFICATION: (use additional page if needed) --Attach supporting documentation/memo				\$ 227,819	\$ -	

Move unexpended, approved funding from the Settlement Fund from FY2023 to FY2024 for

Professional Contracts with Wright Water Engineering.

BDDDB Approved 9/7/23

{Complete section below if BAR results in a net change to ANY Fund}	
Fund(s) Affected	Fund Balance Increase/(Decrease)
801	(227,819)
TOTAL:	(227,819)

Antoinette Armijo-Rougemont

9/7/2023

Prepared By {print name}

Date

{Use this form for Finance Committee/
City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council

Approval Date

Agenda Item #:

Division Director Signature {optional}

Date

Department Director Signature

Date

Budget Officer

Date

Finance Director {≤ \$5,000}

Date

City Manager {≤ \$60,000}

Date



Date: August 29, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, Contract Admin.
Via: Rick Carpenter, BDD Facilities Manager
Brad Prada, Maintenance Supervisor
Re: Award of Contract for Andritz Separation INC.

ITEM:

Request for approval for Sole Source award to Andritz Separation Inc. in an amount not to exceed \$172,416.00 plus applicable tax and freight for FY24. and a request for approval of a Budget Adjustment Request (BAR) in the amount of 174,416.00 plus applicable tax and freight from the Major Repair and Replacement Fund.

BACKGROUND:

On July 19, 2023 a Sole Source was posted to the State of New Mexico website as Procurement ID # 40-M0087-23-CP317. The BDD operates multiple centrifuges and VFD controls for production. The centrifuges and VFDs have significantly aged and are in need of repairs. In order to keep the system operating efficiently and reduce risk of centrifuge failures, staff is recommending the unit be upgraded. Andritz is the original Equipment Manufacturer for replacement parts and services used for VFDs and centrifuge equipment. Centrifuges greatly reduce the volume of cost of solids disposal. The replacement parts and services have been procured as a Sole Source because its proprietary to the manufacture and for the benefit of standardization. With board approval, the cost shall not exceed \$172,416.00 plus tax and freight charges and funds will be utilized from BDD's major Repair and Replacement Fund ("MRRF")

Contract: 3204262
ORG/OB: 8000825.520150
PL Code: BDD1111

ACTION:

Staff Recommends approval of the Sole Source Purchase from Andritz Separation INC in the amount of \$172,416.00 plus GRT

Approved by BDDDB September 7, 2023

Commissioner Anna Hamilton, BDDB Chair



**BUCKMAN DIRECT DIVERSION BOARD
GENERAL SERVICES AGREEMENT
WITH ANDRITZ SEPARATION INC.**

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the Buckman Direct Diversion Board, ("BDDB"), and Andritz Separation Inc., ("Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the BDDB. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to Andritz Separation Inc. "We," "us" or "our" refers to the BDDB and whose accounts are created under this Agreement.

2. Scope of Work

A. Contractor shall perform the following work: Provide centrifuge control upgrade and provide spare parts as more fully described in Exhibit A, attached hereto.

3. Compensation

A. The BDDB shall pay to Contractor based upon fixed prices for each Deliverable item as listed here.

Deliverable item: Centrifuge Upgrade Including Parts Taxes and Freight
\$163,996.00 (upgrade)
\$8,420.00 (Parts)

The total Compensation under this Agreement shall not exceed One Hundred Seventy-Two Thousand Four Hundred Sixteen Dollars (\$172,416.00) plus freight charges and New Mexico gross receipts tax.

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

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the BDDDB shall determine if the product or services provided meets specifications. Until the products or services have been accepted in writing by the BDD, the BDDDB shall not pay for any products or services. Unless otherwise agreed upon between the BDDDB and Contractor, within thirty (30) days from the date the BDDDB receives written notice from Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the BDDDB shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the BDDDB gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The BDDDB agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE BDDDB. This Agreement shall begin on date approved by the BDDDB, and end on June 30, 2024. The BDDDB reserves the right to renew the Agreement on an annual basis by mutual agreement not to exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The BDDDB reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the BDDDB, if Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold Contractor liable for any excess cost occasioned by the BDDDB due to Contractor's default. Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the BDDDB shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery scheduled. The rights and remedies of the BDDDB provided in this paragraph

shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

7. **Termination**

A. Grounds. The BDDDB may terminate this Agreement for convenience or cause. Contractor may only terminate this Agreement based upon the BDDDB's uncured, material breach of this Agreement.

B. Notice; BDDDB Opportunity to Cure.

(1) Except as otherwise provided in Paragraphs 7.A and 17, the BDDDB shall give Contractor written notice of termination ("Notice of Termination") at least thirty (30) days prior to the intended date of termination.

(2) Contractor shall give BDDDB written Notice of Termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the BDDDB's material breaches of this Agreement upon which the termination is based and (ii) state what the BDDDB must do to cure such material breaches. Contractor's Notice of Termination shall only be effective if (i) the BDDDB does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the BDDDB does not, within the thirty (30) day notice period, notify Contractor of its intent to cure and begin with due diligence to cure the material breach.

(3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor if (i) Contractor becomes unable to perform the services contracted for, as determined by the BDDDB; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the City of Santa Fe or the BDDDB; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations," of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the BDDDB's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a Notice of Termination; provided, however, that the Notice of Termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the Notice of Termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE BDDDB'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

8. **Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the BDDB proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

Contractor, and Contractor's agents and employees, are independent Contractors for the BDDB and are not employees of the BDDB. Contractor, and Contractor's 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. Contractor acknowledges that all sums received hereunder are personally reportable by Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. Contractor agrees not to purport to bind the BDDB unless Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the BDDB.

11. **Subcontracting**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the BDDB.

12. **Non-Collusion**

In signing this Agreement, Contractor certifies Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the BDDB.

13. **Inspection of Plant**

The BDDB may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the BDDB and are in addition to and do not limit any rights afforded to the

BDDB by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the BDDB, the State Auditor and other appropriate state and federal authorities. The BDDB shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the BDDB to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the BDDB Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If the BDDB proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

Contractor, upon final payment of the amount due under this Agreement, releases the BDDB, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDB, unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **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 prior written approval by the BDDB.

20. **Conflict of Interest**

A. Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the BDDDB relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the BDDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the BDD Band notwithstanding anything in the Agreement to the contrary, the BDDDB may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The BDDDB reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the BDDDB, adequately serving the needs of the BDDDB.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

Contractor shall hold the BDDDB and its employees harmless and shall indemnify the BDDDB and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of Contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the BDDDB, its officers or employees.

26. **New Mexico Tort Claims Act**

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

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

Contractor's liability to the BDDDB, for any cause whatsoever shall be limited to the purchase price paid to Contractor for the products and services that are the subject of the BDDDB's, claim. The foregoing limitation does not apply to Paragraph 25 of this Agreement or to damages resulting from personal injury caused by Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any BDDB response to questions); (2) Contractor's best and final offer; and (3) Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) Contractor's best and final offer if such has been made and accepted by the BDDB; and (5) Contractor's response to the request for proposals.

30. **Workers' Compensation**

Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the BDDB.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Paragraph, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. Contractor shall provide and maintain an inspection system acceptable to the BDDB covering the services under this Agreement. Complete records of all inspection work performed by Contractor shall be maintained and made available to the BDDB and for as long thereafter as the Agreement requires. The BDDB has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The BDDB shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the BDDB performs inspections or tests on the premises of Contractor or a subcontractor, Contractor shall furnish, and shall require subcontractors to furnish, at no increase

in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services does not conform with the requirements of this Agreement, the BDDB may require Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the BDDB may:

(1) require Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the BDDB may:

(1) by contract or otherwise, perform the services and charge to Contractor any cost incurred by the BDDB that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in BDD Facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the BDDB as additional insured.

A. **Commercial General Liability.** Insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the BDDB their officials, officers, employees, and agents as additional insureds.

B. **Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the BDDB as an additional insured and provide for thirty (30) days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically

state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. Contractor shall defend, at its own expense, the BDDDB against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the BDDDB based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, Contractor agrees to reimburse the BDDDB for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the BDDDB shall:

- (1) give Contractor prompt written notice within 48 hours of any claim;
- (2) allow Contractor to control the defense of settlement of the claim; and
- (3) cooperate with Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in Contractor's opinion is likely to become the subject of a claim of infringement, Contractor shall at its option and expense:

(1) provide the BDDB the right to continue using the product or service and fully indemnify the BDDB against all claims that may arise out of the BDDB's use of the product or service;

(2) replace or modify the product or service so that it becomes non-infringing;
or,

(3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to Contractor. Contractor's obligation will be void as to any product or service modified by the BDDB to the extent such modification is the cause of the claim.

38. **Survival**

The paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" in this Agreement shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its principals who enter into an agreement greater than sixty thousand dollars (\$60,000.00) with the City of Santa Fe or the BDDB for professional services, tangible personal property, services or construction agrees to disclose whether Contractor, or any principal of Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. Contractor shall provide immediate written notice to the BDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of Contractor's responsibility and ability to perform under this Agreement. Failure of Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The

knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the Agreement, Contractor is indicted for, or otherwise criminally or civilly charged, by any government entity (federal, state or local) with commission of any offenses named in this Agreement, Contractor must provide immediate written notice to the BDDDB. If it is later determined that Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the BDDDB may terminate the this Agreement for cause. Further, the City of Santa Fe or the BDDDB may suspend or debar Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the BDDDB.

40. **Suspension, Delay or Interruption of Work**

The BDDDB may, without cause, order Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the BDDDB may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Paragraph 8 of this Agreement.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the BDDDB:

Rick Carpenter,
BDD Facilities Manager
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: rrcarpenter@santafenm.gov

With a Copy to:

Nancy R. Long
BDDDB Counsel
P.O. Box 5098
Santa Fe, NM 87502-5098
Email: nancy@longkomer.com

To Contractor:

Andritz Separation Inc.
Dept: 0312
P.O Box 120312
Dallas, TX 75312-0132
Email:

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

42. **Successors**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature by the required approval authorities below.

BUCKMAN DIRECT DIVERSION BOARD

CONTRACTOR:

Andritz Separation Inc

Anna Hamilton, BDDDB Chair

DATE: _____

ATTEST:

COUNTY CLERK

ATTEST:

CITY CLERK

APPROVE AS TO FORM:

Nancy R. Long
Nancy R. Long
BDDDB ATTORNEY

APPROVED FOR FINANCES:

FINANCE DIRECTOR

Org. Name/Org.#

NAME

TITLE

DATE: _____

CRS# _____

Registration # _____

EXHIBIT A



QUOTATION

Customer: 161867
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe NM 87506-8503

Contact: **Eric Armstrong**
Fax: **+15059554575**

Copy to:
Your inquiry: **null**

Our quote no: **20953809**

Supplier: **Andritz Separation Inc.**
Contact: **Victoria Torres**
Phone: **+1 817 375 4439**
Fax:
E-mail: **victoria.torres@andritz.com**
Date: **07/11/2023**

Sales **GREEN, BRICE**
Responsible:

Dear Eric Armstrong,

We thank you for your inquiry and are pleased to quote as follows:

1. Scope of supply

For 400287552 D-Type Decanter
Model: Decanter D7LL
Serial number: 80-5707
Andritz Job # 804496

Contact: Eric Armstrong

Should you choose to place an order, please provide the following information:

1. Shipping Address for Delivery
2. Billing Address for Invoice
3. Shipping Terms: If a specific carrier is preferred, please list as FCA, Origin Collect with preferred carrier. Otherwise, list as FCA, Origin Prepaid & Add.
4. Reference this Quote 20953809.
5. Must provide a copy of PO or document for backup.

Freight is excluded.

Delivery Time:
Submittals NA
Equipment 16-24 Weeks after acknowledgement of PO..

Please note currency is in US Dollars
Andritz Inc Standard Terms & Conditions apply

ANDRITZ Separation Inc.
1010 Commercial Blvd. South
Arlington, TX 76001 USA
Tel.: +1 (817) 485-5811
Fax: +1 (817) 488-3961

Remit to:
ANDRITZ Separation Inc.
Dept. 0512
P.O. Box 120312
Dallas, TX 75312-0312
Federal Tax ID Number: 56-3773483

Page 1 of 5
Wire Instructions:
Nordea Bank Abp
New York Branch
SWIFT: NDEAUS33
Account: 08719433001
ABA: 026010788



Our quote no: 20953809

Returned goods require preapproval and are subject to restocking and inspection fees.

Item	Product	ID No.	S/W*	Quantity	Unit	Unit Price	Amount
10	CENTERIFUGE CONTROL UPGRADE	129999901		1	PC	163,996.00	163,996.00
20	SPARE PARTS LOT	129999901		1	PC	8,420.00	8,420.00
Items total							172,416.00
Total Amount						USD	172,416.00

* S = Spare Parts, W = Wear Parts

Technical contact: Ray Potter /Phone: +1 817 419 1788 / ray.potter@andritz.com

Terms and Conditions

2. **Delivery Time:**
after receipt of order and any clarifications.
3. **Terms of delivery:**
Our terms of delivery are FCA Origin,Collect, according to INCOTERMS 2020.
4. **Terms of Payment:**
Within 30 days Due net
(1% default interest per month for delayed payment).
5. **Validity of quotation:**
This quotation is valid to 07/31/2023.

Other Terms:

6. *********
COVID-19 pandemic delays, disrupts, or prevents Andritz's performance, or increases shipping or freight costs, Andritz shall be entitled to change order containing an appropriate adjustment in the contract price and/or delivery schedule. Furthermore, in the event that developments related to the pandemic, whether initiated prior to or after the date of this proposal, quotation, or order, including but not limited to travel advisories, steps taken to protect the health and safety of

Page 2 of 5

ANDRITZ Separation Inc.
1010 Commercial Blvd. South
Arlington, TX 76001 USA
Tel: +1 (817) 485-5611
Fax: +1 (817) 485-3961

Remit to:
ANDRITZ Separation Inc.
Dept. 0312
P.O. Box 120012
Dallas, TX 75312-0312
Federal Tax ID Number: 59-3773463

Wire Instructions:
Nordea Bank Abn
New York Branch
SWIFT: NDBAUS34
Account: 0839433001
ABA: 026010786



Date: August 29, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, Contract Admin.
Via: Rick Carpenter, BDD Facilities Manager
Randy Sugrue, Operations Superintendent
Re: Approval of Professional Service Contract -Pall Corporation

ITEM:

Request for approval of Professional Service Agreement with Pall Corporation, in an amount not to exceed \$989,037.82 for FY24. and a request for approval of a Budget Adjustment Request in the amount of \$989,037.82 from the Major Repair and Replacement Fund.

BACKGROUND:

On August 11th a Sole Source was posted to the State of New Mexico website as Procurement ID 40-M0087-23-CP355. As initially constructed, the Buckman Direct Diversion (BDD) water treatment plant relies upon the usage of filtration, instrumentation and control equipment programmed by Pall Corporation, incorporated in its microfiltration process. BDD utilizes a Pall membrane microfiltration system consisting of 7 racks of 104 Microza filter cartridges each along with the Pall control system. We are preparing to replace 208 of the 728 Microza filter cartridges on the filter system. The scope of work will include removing the spent cartridges and their associated fittings and replacing them with new cartridges and fittings then testing the replaced components for proper filter function and no leaks. The Pall Microza filter cartridges are a proprietary Pall product of Pall Corp. and we requested a sole source vendor determination. This is a sole source because Pall is the sole provider of items that are compatible with existing equipment and system program. According to industry standards membrane modules are designed to last approximately 10 years and Pall cartridges have exceeded this.

Funding: 8000825.570550

Contract # 3204258

BDD1111

BDD32000

ACTION:

Staff Recommends approval of the Sole Source Purchase from Pall Corporation in the amount of \$989,037.82

Approved by BDDDB September 7, 2023

Commissioner Anna Hamilton, BDDDB Chair



**BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT
WITH
PALL CORPORATION**

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

1. SCOPE OF SERVICES

Contractor shall provide services for the BDDDB as follows and more particularly described in Exhibit 1 attached hereto:

A. Provide labor and materials for replacing 104 Microfiltration Modules on each of 2 filtration racks, for a total of 208 Modules.

B. Installation Supervision: Contractor will provide a qualified Field Service Engineer to supervise and assist with removing the old modules and install the new modules.

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.

C. Contractor certifies that its employees and subcontractors, who might be required to be on-site at any of the Buckman Direct Diversion Facilities ("BDD Facilities"), have received specific, adequate and appropriate training in order to perform assigned tasks and to be in possession of all current licenses and/or certifications that are required to perform the work. Contractor is required to instruct all its employees or subcontractors, who might be required to be on-site at any of the BDD Facilities, to complete up to four generalized work safety training sessions. Trainings will be provided by the Buckman Direct Diversion's safety and training staff and can be conducted on-line. Each of Contractor's employees and subcontractors must complete all the assigned training sessions prior to initiating work on-site at any of the BDD Facilities.

3. COMPENSATION

A. Compensation under this Agreement shall be Nine Hundred Eighty-Nine Thousand Thirty-Seven and .82/100 Dollars (\$989,037.82) plus applicable gross receipts tax.

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

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

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDDB and terminate June 30, 2024. 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 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 BDDDB.

9. CONFLICT OF INTEREST

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

10. ASSIGNMENT; SUBCONTRACTING

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

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, 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 all bodily injury, personal injury or property damage providing the following minimum limits of liability.

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 \$2 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 \$2,000,000 per claim and \$2,000,000 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 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, hold harmless and defend the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors performance or non-performance under this Agreement as well as the performance or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

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 BDDDB 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 BDDDB 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 BDDDB 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 BDDDB 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 BDDDB. 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 the event 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); electronic mail (Email); or mailed by certified or registered mail, postage prepaid, and addressed to the following:

BDDDB:	Rick Carpenter BDD Facilities Manager 341 Caja Del Rio Road Santa Fe, NM 87506 Email: rrcarpenter@ci.santa-fe.nm.us
With a copy to:	Nancy R. Long, Esq. BDDDB Contract Counsel Long, Komer & Associates, P.A. Santa Fe, NM 87502-5098
CONTRACTOR:	Pall Corporation P.O. Box 5630 839 State Route 13 Cortland, New York 13045-5630 Email: Pall_Technology_csc@pall.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. 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.

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

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Anna Hamilton, BDDB Chair

Date: _____

APPROVED AS TO FORM

Nancy R. Long
Nancy R. Long, BDDB Counsel

ATTEST

Katharine E. Clark, County Clerk

APPROVED

Emily K. Oster, City Finance Director

ATTEST

Kristine Bustos-Mihelcic, City Clerk

File Date: _____

**CONTRACTOR:
Pall Corporation**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration # _____



Attn: Buckman Santa Fe

Re: 2 Rack Module Replacement

Scope of Services

Technical Scope of Supply - MF System Module Replacement

Pall Water is pleased to propose providing labor and materials described below for replacing 104 Microfiltration Modules on each of 2 filtration racks on the Santa Fe water filtration system, for a total of 208 modules. Module replacement will be performed one rack at a time.

Item 1 - Modules and associated items: Pall will provide the following materials for module replacement:

- 208 ea Pall Water Microfiltration modules
- 4 Gal. Lubricant for module nuts
- 416 ea Module nuts
- 437 ea Module O-rings
- 11 ea XR Gaskets
- 11 ea XR Nuts
- 208 ea Clear couplings
- 208 ea Upper end caps
- 208 ea Lower end caps
- 4 each module wrenches
- 2 each torque wrenches
- 2 each clear coupling wrenches
- 107 each XR hoses
- 213 each 1.0-inch clamps
- 426 each 2.0-inch clamps

Item 2 - Installation Supervision: Pall will provide a qualified Field Service Engineer (FSE) to supervise and assist with removing the old modules and installing the new modules. This module replacement project will require an additional crew of 4 people for 3 days in addition to the Pall FSE complete. Additional labor crew is by others.

Overall, Pall expects this work to take up to 5 days to complete, including set up and first rack CIP at the beginning and clean up at the end. As part of this work, Pall will also provide a new Operating Protocol, and update the system Process & Instrumentation Diagram (P&ID) drawing. The Operating Protocol is a document created by Pall's Process Engineers based on a review of your MF system together with incoming water quality*, and includes recommended settings and protocols for Flux Maintenance (FM), Enhanced Flux Maintenance (EFM) and Clean-In-Place (CIP) operations. The OP is designed to give operators the information and guidance to achieve optimal system performance results. Potential benefits from following Pall's Operating Protocols include improved cleanings, increased up time, and extended service life.

Copies of both the P&ID and the Operating Protocol will be provided shortly after completion of the installation work.

*Incoming water quality data is provided by the customer. Pall can provide the comprehensive water quality analysis needed for the Operating Protocol at additional cost.

Change-Out Plan and Schedule

The Pall Field Service Engineer will arrive at the site a full day before the start of the module removal process to meet with site personnel, review the site where the work will be performed, initiate and complete a CIP on the first rack to be changed, and make preparations for the module change-out process. For safety, a clean-in-place (CIP) procedure will be performed on each rack prior to commencing module removal. At the conclusion of the CIP process the rack will be shut down and drained. The CIP will require one full day per rack to complete.

Once full drainage of the cleaned rack has been verified the old modules will be removed and the new ones installed. The old modules will be set aside for disposal. The new modules will need to be drained of preservative prior to installation on the module rack. Pall will provide a Material Safety Data Sheet for the module preservative upon receipt of order. Disposal of old modules and module preservative is by others.

While the modules on the current rack are being changed out, the CIP process will be performed on the next rack to prepare it for the following day. This means that as many as two racks a day will be unavailable for production during the module change-out process.

Once the full set of modules is installed on each rack, the rack will then be filled and rinsed in place to ensure all preservative has been removed from the modules. The FSE will then verify the operating set points, oversee the start-up of the rack, and verify proper operation.

Disclaimer: This proposal is based on information and conditions known at the time of quotation. Pall Water reserves the right to ~~revise this proposal through~~ request change order(s) should conditions vary significantly from those known at the time of quotation and require additional work or materials.

Proposal Summary

Modules, Ancillary Parts and Installation Supervision	\$977,037.82
Estimated Pre-Paid Freight	\$12,000.00

Total amount for purchase order: \$989,037.82

Currency: USD

* Modules are subject to availability at receipt of PO. Delivery to be confirmed at time of order confirmation.

~~**Service Reports:** If service reports are required by your site to comply with your company or state regulations, please indicate on your order that service report documents are required. Service reports detailing the visit and recommendations will then be provided.~~

Materials: This proposal covers parts and services.

Module Recycling: Pall Water has invested in a process to recycle modules for short-term and/or less critical applications. If your modules qualify for recycling, Pall Water will take possession of them after removal saving the costs associated with module disposal. To determine if your modules qualify for recycling please complete the attached "Module History" questionnaire and return it to Pall Water for evaluation. Pall Water may request a module for further evaluation based to determine suitability for recycling following review of the information provided.

Validity: This proposal is Valid until September 29, 2023. If a purchase order is not agreed upon by Seller and Buyer within the price validity period, the pricing set forth in this proposal shall not apply.

Module Availability: We are currently experiencing a shortage of modules due to the high global demand for PVDF (the raw material used to manufacture modules). Modules have been allocated for this proposal for the validity period stated above. We cannot guarantee module availability beyond this time. A contract must be executed with agreed upon T&C's to secure the module supply.

Payment Terms and Milestones: Net 30 days

Terms of Sale: Standard Terms and Conditions of Sale Non-Systems - The Americas

Terms of Service:

- Regular minimum service charge is for a 10-hour day.

Module Warranty: The modules are warranted for defects in material and workmanship for a period of 12 months from the date of delivery. Where Pall Water provides installation and/or installation supervision as part of the replacement module order, the modules carry an extended warranty of one year absolute and 9 years pro-rated. The module warranty is subject to the Pall Water Warranty Submittal (attached).

Service Order acceptance and payment terms: Pall Advanced Separations Systems requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order. Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

Changes: Pall shall not implement any changes in the scope of services described in Pall's proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall's Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

For US / Mexico / Latin American Customers	For Canadian Based Customers
Pall Corporation P.O. Box 5630 839 State Route 13 Cortland, New York 13045-5630 Tel: 866-475-0115 / Fax: 607.758.4526 Email: Pall_Technology_csc@pall.com Attn: Customer Service	Pall Canada ULC Ltd3450 Ridgeway Drive, Unit 6 Mississauga, ON. L5L-0A2 Phone: (905) 542-0330 Fax: (905) 5420331 Email: pall_technology_csc@pall.com

Pall Systems Support

To obtain support for your Pall systems installation, our Customers can contact Pall via our toll free number at 866-475-0115 or by email to pall_technology_csc@pall.com. Through this channel, you gain access to warranty assistance, technical support as well as our service and spares team.

Pall Customers have access to this 24/7 Service Hotline. Pall System Engineers are on full-time rotation to provide around-the-clock availability of live technical support. This service is charged at \$300? for support



time for the first 30 minutes, during normal workday hours between 9:00-AM and 4:00-PM EST, excluding weekends and holidays.

If your system is out of warranty or does not have a 24/7 service support contract, there will be a charge when technical support is to be provided for intervals longer than 30 minutes, or after-hours technical support to resolve the issue. Extensive off-site support will require a purchase order or credit card. Billing is based on a minimum 1-hour charge at Pall's off-site hourly service rate. You will be asked to provide your credit card number or service contract purchase order number that will be billed at Pall's Off-Site Service Rates, with a minimum 1-hour charge. If the problem cannot be resolved over the telephone, the Customer can request a Pall System Service Representative to visit the site location. You will be quoted an Emergency Service Rate and billed for last-minute travel expenses.

Please feel free to call me at your convenience with any questions or comments. We look forward to providing you with field services to assist you with system operation and await your purchase order.

Sincerely,

Sincerely,
Alex Braman
Regional Sales Manager
Cell: 720-202-6536
E-mail: alexander_braman@pall.com