

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

September 7, 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 4:00 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

Others Present:

Rick Carpenter, BDD Facilities Manager
Kyle Harwood, BDD Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Delfin Peterson, BDD Administrative Assistant
Randy Sugrue, BDD Operations Superintendent
Monique Maes, BDD Contracts Administrator
Joni Arends, Concerned Citizens for Nuclear Safety
Bot Pierce, Glorieta Geoscience, Inc.

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

3. APPROVAL OF AGENDA

BDD Facilities Administrator Rick Carpenter requested the removal of item 7.c., under the Consent Agenda regarding the request for approval of a Service Agreement with Andritz Separation, Inc.

With that change, Councilor Villarreal moved to approve the agenda. Councilor Romero-Wirth seconded and the motion passed by unanimous voice vote. [Mr. Helms was not present for this action and arrived directly thereafter.]

4. CONSENT AGENDA

Upon motion by Councilor Romero-Wirth and second by Councilor Villarreal, the Consent Agenda was unanimously approved.

7. ACTION ITEMS: CONSENT

- a. Request for approval of a Service Agreement with Condor-New Age Logistics, LLC., in an amount not to exceed \$158,184.00 plus New Mexico Gross Receipts Tax for security services through June 30, 2014**
- b. Request for approval to re-authorize unexpended funds approved by the BDD Board from the BDD major Repair and Replacement Fund from FY23 to FY24**
 - (i) Request for approval of a Budget Amendment Resolution (BAR) to re-authorize the unexpended funds**

5. APPROVAL OF MINUTES: August 3, 2023

Commissioner Hansen noted the following correction:

Page 3, 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 million the Water Division Director has the discretion to call for concern, you might say, in discussion with the City Manager.

Commissioner Hansen moved to approve the August 3, 2023 with the change as noted above. Councilor Villarreal seconded and the motion passed by unanimous voice vote.

6. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

RANDY SUGRUE (BDD Operations Superintendent): Thank you Madam Chair and members of the Board. This is my update for BDD operations for the month of August 2023. Our raw water diversions averaged about 7.47 million gallons per day. Our drinking water deliveries through Booster Stations 4A and 5A averaged 6.32 million gallons per day. Water delivery to Las Campanas, averaged .99 million gallons. Our onsite storage variation was .6 million gallons per day. BDD provided around 42 percent of the water supply to the City and County for the month. Our year to date diversions are

depicted in the graph below compared to our 12-year average. Again, in August, we produced significantly more than the average due to City demand, somewhat lower production from Canyon Road Water Treatment Plant which was a plant strategy.

Our regional drought summary for the month – demand was around 14.9 million gallons per day. That is beginning to taper down a bit as the summer wears on. Rio Grande flows for August averaged approximately 752 cubic feet per second at Otowi. Today, it's about 1,100. They are transferring water from Abiquiu to Cochiti Reservoir, stored water, that will then eventually be transferred to Elephant Butte. The Rio Grande flow is pretty low at this point just because of seasonal lows and lack of rainfall. I noted to the Chair earlier that we do sometimes get significant rainfall in September and October so again, we can still think positive.

Canyon Road storage levels, 80 percent and McClure 71 – I'm sorry, 71 in McClure and 80 in Nichols, 73 percent combined. They are working to bring that down gradually. The watershed inflow about 1.6 million gallons per day. Abiquiu storage of City San Juan-Chama water, 11,130 acre-feet as of August 16th. Our El Niño summary for August still anticipated El Niño to continue through northern hemisphere winter with greater than 95 percent chance to continue through December 23 and February 24.

So that's my report and I stand for questions.

CHAIR HAMILTON: Excellent. Do we have any questions? I just have to ask, is the high demand in the last month just largely because it has been hot and dry:

MR. SEGRUE: Hot and dry, of course, the little supply to the golf courses that issue is being rectified through the effluent production. They're working through that. It's not easy but they're working through that. That's one reason why it has dropped off pretty significantly all of a sudden. So a lot of it – that 100 degree weather is just hot so that's part of it too.

CHAIR HAMILTON: Just an indication of something else we're going to have to deal with. Any other questions? Thank you so much.

MR. SEGRUE: Thank you.

b. Report from the Facilities Manager

RICK CARPENTER (Facilities Manager): Thank you, Madam Chair, members of the Board. Just a couple of items in my report for this month. An update on the Major Repair and Replacement Fund, we have one item to update the Board for a contract for two new membrane racks, special membranes, that are 13 years old need to be replaced. So for two racks the quote that we received is just short of \$1 million at \$991,037 and that is from the Major Repair and Replacement Fund. It was in the plan. The dollar amount has changed a little bit but it is something that we will be bringing back to this Board annually this year as we start replacing those items on the schedule. That's my report on the MR&R.

In terms of vacancies, we have four in our maintenance division. A journeyman electrician, maintenance planner scheduler, equipment repairman advance and equipment repairman intermediate. The maintenance planner scheduler was actually advertised yesterday so we are on our way there. We are having trouble filling it and this is the third time that we've advertised. And the other three I am hoping will advertise, I didn't get a chance to check this afternoon, but maybe by Friday or Monday and I hope to get those filled as well. And that concludes my report and I'll be happy to stand for questions.

CHAIR HAMILTON: Are there any questions on that part of the report.
Yes, Councilor.

COUNCILOR VILLARREAL: Just a clarification on the vacancies.
There's two positions that say, "repairman" do they have to be men?

BERNARDINE PADILLA (BDD Public Relations Coordinator): Could you repeat the question, please.

COUNCILOR VILLARREAL: There are two positions, vacant positions, and two say repairman, equipment repairman. So I'm curious if they have to be men.

COMMISSIONER HANSEN: I think she's asking if they can be a repair person.

MR. CARPENTER: Thank you for pointing that out.

COUNCILOR VILLARREAL: I'm asking if it just needs to be men and if it's not then we should change it to person.

MS. PADILLA: That's an HR thing.

COUNCILOR VILLARREAL: Does it say that in the HR description?

MS. PADILLA: It has to go through – probably –

MR. CARPENTER: I'll have to take it to HR and that shouldn't be a problem.

COUNCILOR VILLARREAL: Yeah, have them change it. Okay.

MS. PADILLA: That's not just for BDD. It's across the whole City.

COUNCILOR VILLARREAL: I know.

COMMISSIONER HANSEN: How about the whole state.

MS. PADILLA: Yes, ma'am.

COUNCILOR VILLARREAL: Thank you. If you could just bring that to their attention, thank you.

MR. CARPENTER: Madam Chair, I did skip over one item. There has been some discussion about inviting NMED to this Board and making a presentation and I'm working on getting that setup with the Cabinet Secretary. We're shooting for November. That's what we think is going to happen.

CHAIR HAMILTON: Excellent.

MR. CARPENTER: So we're working on that. And then Mr. Harwood I think has something he would like to add on a tour that we cancelled and we're trying to reschedule.

KYLE HARWOOD (BDD Board Counsel): Yes, thank you, Rick and thank you, Madam Chair. As you know, we had a scheduling conflict for the ENS tour with LANL a couple of weeks ago. I wanted to just ask the Board, is that something you'd like us to try and put back together? There is another alternative that we have sort of been kicking around a little bit which might be a lot easier but won't be the same. But that is to do sort of a virtual tour here with ED and exhibits and ask a couple of folks that are familiar with the LA Pueblo Canyon Watershed to kind of walk us through it in detail. It is not the same as going and actually seeing it but I just wanted to share with the Board that we're prepared to put that ENS tour back together again, if you like, or there are other alternatives.

CHAIR HAMILTON: I think it is always useful to articulate what the goal of doing this is. We are trying to familiarize the Board with the terms of the scope

of the thing, spacing and what geographic distribution issues and how they relate to BDD; is that accurate?

MR. HARWOOD: It is. That's exactly the point as I think you know and I think many of us understand, there really is no substitute for going and seeing it with your own eyes. But I did want to just offer this other alternative up in case it was a better fit given how busy everything is and we could get a fair amount of the same educational value out of a virtual tour. It would take different staff time and resources to put that together. But I am sensing you would prefer we put the tour back together.

CHAIR HAMILTON: I think so. I think everybody is shaking their head yes. There's always a certain amount of sensitivity when you set something up and then we messed it up but everybody is big boys and girls and it's not that embarrassing that we are putting them out substantially.

MR. HARWOOD: No, I think it's fine. I don't know anybody that hasn't had to cancel something – so I think we all are familiar with that.

CHAIR HAMILTON: Exactly.

MR. HARWOOD: So, we'll go ahead and I'm going to suggest that we try to put it together for maybe October or early November when it's cool and that will be a nice change from battling the heat which would have been an issue a couple of weeks ago. But it does take some lead time to put it together and get the proper approvals and go through the process. We'll get started on that right away and check with you on your schedules.

CHAIR HAMILTON: Thank you. And there is one week in October that I'll be on the east coast and be gone.

MR. HARWOOD: I'll reach out to you all and get that sorted.

COUNCILOR VILLARREAL: Madam Chair. I'm just curious, is there a reason why we couldn't do it around the time of our next BDD Board meeting?

MR. HARWOOD: You mean to do it on a BDD Board meeting day?

COUNCILOR VILLARREAL: Yeah.

MR. HARWOOD: We have generally not tried to do those things because then the BDD occupies a big part of everyone's calendar for that day. But if that's preference to try and do it on a BDD Board meeting day, we can certainly look at that.

COUNCILOR VILLARREAL: It works better for me.

CHAIR HAMILTON: I have no personal objective to that.

COMMISSIONER HANSEN: I think it has to do with when the pueblo is going to be open to us. There has to be somebody there to provide the tour and be on the grounds.

MR. HARWOOD: Let me put out one logistical piece to it, Councilor. We all meet at 3:15 ahead of the Board meetings to get organized and we were trying to either put the tour outside of lunch so we didn't have to involve lunch as part of the tour because that adds to the complexity. I'm happy to go to El Parasol any day. But it does complicate things and we need a couple of hours and if we're all going to try and get back here at 3 and then we starting at 10:30 or 11. So that is one of the challenges given the amount of time that we need and trying to get it either before lunch or after lunch on a day so we're not trying to manage lunch as well.

So let me do this, if it's okay, let me check in with each of you on your preferred schedules and dates and we'll just sort of see what falls out. Perhaps the morning of a

BDD meeting day might work or might not. And then, of course, the next two Board meeting days are October 5th and November 2nd. So we'll put it back together and get your schedules. Thank you.

CHAIR HAMILTON: Anymore questions on this? [Light banter]

c. Update on Status of the BDD Rebuild Project

CHAIR HAMILTON: The BDD Technical Working Group is comprised of the BDD Board Chair, that's me, the Vice Chair, Councilor Romero-Wirth, the Board's attorney, Nancy Long, the City Public Works and Utilities Directors that's John Dupuis and Jesse Roach and the County Public Works and Utilities Director that's Brian Snyder and Paul Choman, the Las Campanas operator, Tom Egelhoff and the BDD Facilities Manager Rick Carpenter. We began meeting on May 11, 2022. At that time we held irregular meetings during the first year when the main activities were to hire a legal consultant and an engineering consultant through the City's procurement process.

Since June 2023, so more recently, the Technical Working Group has been meeting regularly, usually two or three times a month. In addition to the Technical Working Group those meetings have usually included the Board's legal consultant, Dan Frost, our engineering consultant, Wright Water, Wayne Lorenz and supplemented as needed by other subject matter experts from City and County staff.

I have a bunch of bullets of our progress to date. We hired and started working with the consulting legal and engineering experts, Dan Frost and Wright Water. We developed a – consultants developed a summary of the main design issues that need to be addressed, as background for developing the scope of work for procuring design and/or build firms. There is analysis of the various project delivery methods that could be used for design and construction of the BDD facility big fix. And my apologies, as Rick has suggested that we have naming contest but we haven't actually figured out what to call it other than the big fix. Key considerations of that analysis included management and appropriate distribution of risk to the contractor for design and construction and the need for flexibility to continue facility operations during needed, ongoing major repair/replacement during design and construction phases, which may require adaptation of design elements over time, and possible phasing of approach.

Accordingly, the recommendation is to use some form of the design-build procurement approach. There are subcategories like traditional design-build or progressive design-build. If design-build is pursued in a two-phase process, starting with a Request for Qualifications, that's an RFQ, to obtain qualifications from as many design-build firms and teams as possible. Up to about three of the most-qualified firms/teams would be selected from responses to the RFQ. These firms will be asked to submit detailed technical solutions and cost and scheduling proposals. After evaluation by the selection committee, the final design-build contractor will be selected with appropriate negotiations as needed.

Dan Frost and Wright Water are currently drafting an RFQ to solicit design-build firms/teams. The draft RFQ should be completed soon and will be reviewed by the Technical Working Group, revised as needed, and presented to the BDD Board.

The Technical Working Group also is recommending the BDD Board engage a project manager that will report directly to the Board and will manage the design-build

process. This management clearly requires expertise and will be too much effort over the course of the big fix project to be undertaken by existing full-time employees. Dan Frost is currently drafting an RFP to solicit and engage a Project Manager.

So that's a summary of everything that has happened so far. If there are any questions – I guess we all stand for questions. Yes.

MR. HELMS: What is the scale of the presumed project manager?

CHAIR HAMILTON: I am giving you all of the information I have. That's not set yet. The RFP will get proposals and we'll see what the proposals say.

MR. HELMS: You'll get proposals from the applicants or are we going to set the scale ourselves?

CHAIR HAMILTON: It's going to be an RFP situation. We're going to set the scope of what we expect to have done. And then we're going to also within the RFP they usually set qualifications. We're not looking for like a high school graduate to be able to – we are looking for XYZ expertise and then people will come with their responses and what their charge rates are and what their qualifications are to do that work.

MR. HELMS: I understand but we don't have some in-house number in mind?

CHAIR HAMILTON: I have actually not asked that question yet. So I don't have that information. I mean it is entirely possible that any number of people who might have a ballpark in their head but we haven't gotten to that point. It's a good question and it's not going to go ahead without the Board being informed of what's going on.

MR. HELMS: Thank you.

CHAIR HAMILTON: Commissioner.

COMMISSIONER HANSEN: Thank you, Madam Chair. So how long will it take to get through the City Procurement?

CHAIR HAMILTON: I can't answer that question. Rick?

MR. CARPENTER: Madam Chair, members of the Board. We hope to have a draft RFP within a couple of weeks. It will probably be five or six weeks until we get responses back. We'll have to evaluate those and then move forward towards the RFP. I would envision that whole process to take from eight to 10 months.

COMMISSIONER HANSEN: I am asking how long it takes to get through City Procurement.

CHAIR HAMILTON: For which process?

COMMISSIONER HANSEN: For everything.

CHAIR HAMILTON: There are two separate processes.

COMMISSIONER HANSEN: It seems, from what I have heard, it takes a long time to get through procurement process in the City. And since this is something that we're hiring and using our own money, do we have to go through City Procurement? Because we're using our own money and we're the Board and we're going to be hiring this person –

CHAIR HAMILTON: The Board is not a fiscal agent.

COMMISSIONER HANSEN: So.

CHAIR HAMILTON: And the City is the fiscal agent and I'm about 97.2 million percent sure that – oh more than that? The answer is no.

COMMISSIONER HANSEN: So we're talking about a year from now?

CHAIR HAMILTON: We don't know that. It's possible but we don't know that. I think it is really clear of what time urgency is. We took a year the first time and I was not happy about that. But it is still a process that we have to go through.

MR. EGELHOFF: Looking on the bright side, we're gaining interest on our money.

CHAIR HAMILTON: We're not gaining interest as fast as we're losing value. That's just a fact. I ran the numbers and I'll bring them in and show you next time.

COMMISSIONER HANSEN: I appreciate the report and I know everything moves slow and I would like to see something move faster that's all I can say.

CHAIR HAMILTON: I appreciate the comment and I agree.

COMMISSIONER HANSEN: So I think where I'm going is, if there is any way we can expedite the procurement from the City then I would hope that will happen.

CHAIR HAMILTON: We will look for all avenues and I am assuming that we will have updated on RFQs next month. Other questions, thoughts? Thank you.

8. ACTION ITEMS

- a. Request for approval of a Professional Services Agreement with Pall Corporation for BDD plant module replacement in the amount of \$989,037.82**

COUNCILOR ROMERO-WIRTH: Madam Chair, do you want a motion on this?

CHAIR HAMILTON: Do you want to hear the description first?

COUNCILOR ROMERO-WIRTH: I was just going to give you a motion first. I would move to approve.

MR. HELMS: Second.

CHAIR HAMILTON: Great. Motion and a second. Rick or Randy do you have anything?

MR. SUGRUE: Briefly, I wanted to mention after the previous discussion that after as go through these increasingly larger projects and request for procurement we are developing a closer relationship with the Purchasing Department and I think that is going to facilitate some of our activities as well.

CHAIR HAMILTON: That's a good point, thank you. So just so everybody realizes, this was part of Rick's facility report. This is what Rick was discussing. Any further discussion?

COMMISSIONER HANSEN: Yes, thank you, Madam Chair. You said in your report that this is the first time that we're replacing these in 13 years; are these the original modules that were in the BDD in the beginning?

MR. SUGRUE: Correct.

COMMISSIONER HANSEN: I saw the 2011 – so I guess that's 13 years, 12, 13, okay. I am certain that they were properly installed before the plant opened. Is that a normal lifecycle on these modules?

MR. CARPENTER: Madam Chair, members of the Board, the industry standard is 10 years.

COMMISSIONER HANSEN: Okay, thank you. That's good to know.

CHAIR HAMILTON: Thank you. Are there any other questions? If not, I have a motion and a second.

The motion passed by unanimous voice vote.

- 8. a. (i) Request for approval of a Budget Adjustment Request for FY24 in the amount of \$989,037.82 from the Major Repair and Replacement Fund to fund the Agreement**

CHAIR HAMILTON: And there's a separate item for approval of the BAR to move the money from MR&R to fund this agreement.

COUNCILOR ROMERO-WIRTH: move to approve.

COMMISSIONER HANSEN: Second.

CHAIR HAMILTON: Thank you. Any discussion? If not, I have a motion and a second.

The motion passed by unanimous voice vote.

9. MATTERS FROM THE PUBLIC

CHAIR HAMILTON: Is there anyone from the public wishing to speak? Seeing none, we'll close matter of the public.

10. MATTERS FROM THE BOARD

Commissioner Hansen thanked Mr. Harwood for continuing to work on the tour.

- 11. NEXT MEETING:** Thursday, October 5, 2023 at 4:00 p.m.

12. 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

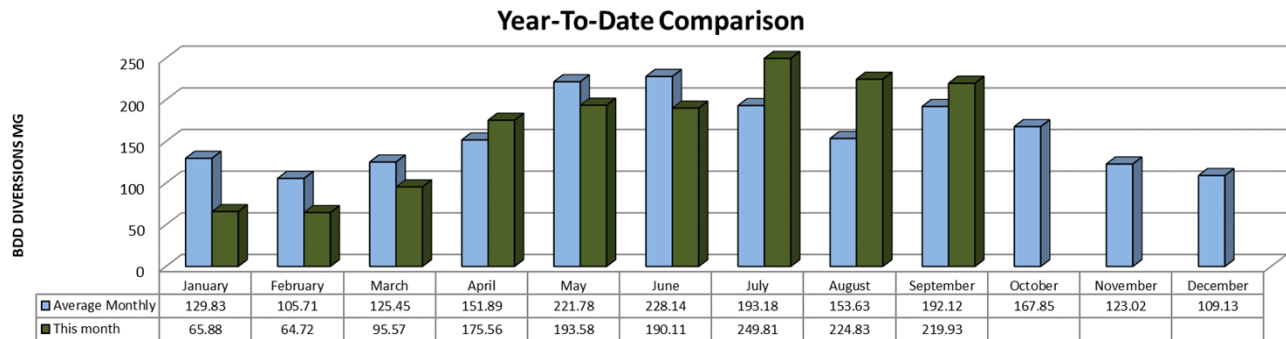
- subject to approval -



Date: October 5, 2023
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of September 2023

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of September 2023. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD), as follows:
 - a. Raw water diversions: 7.33 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 5.30 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.94 MG
 - d. WTP Onsite water storage variation: 1.09 MGD Average. (Average gain or loss per day to the 12MG WTP onsite storage.)
2. The BDD is providing approximately 67% 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

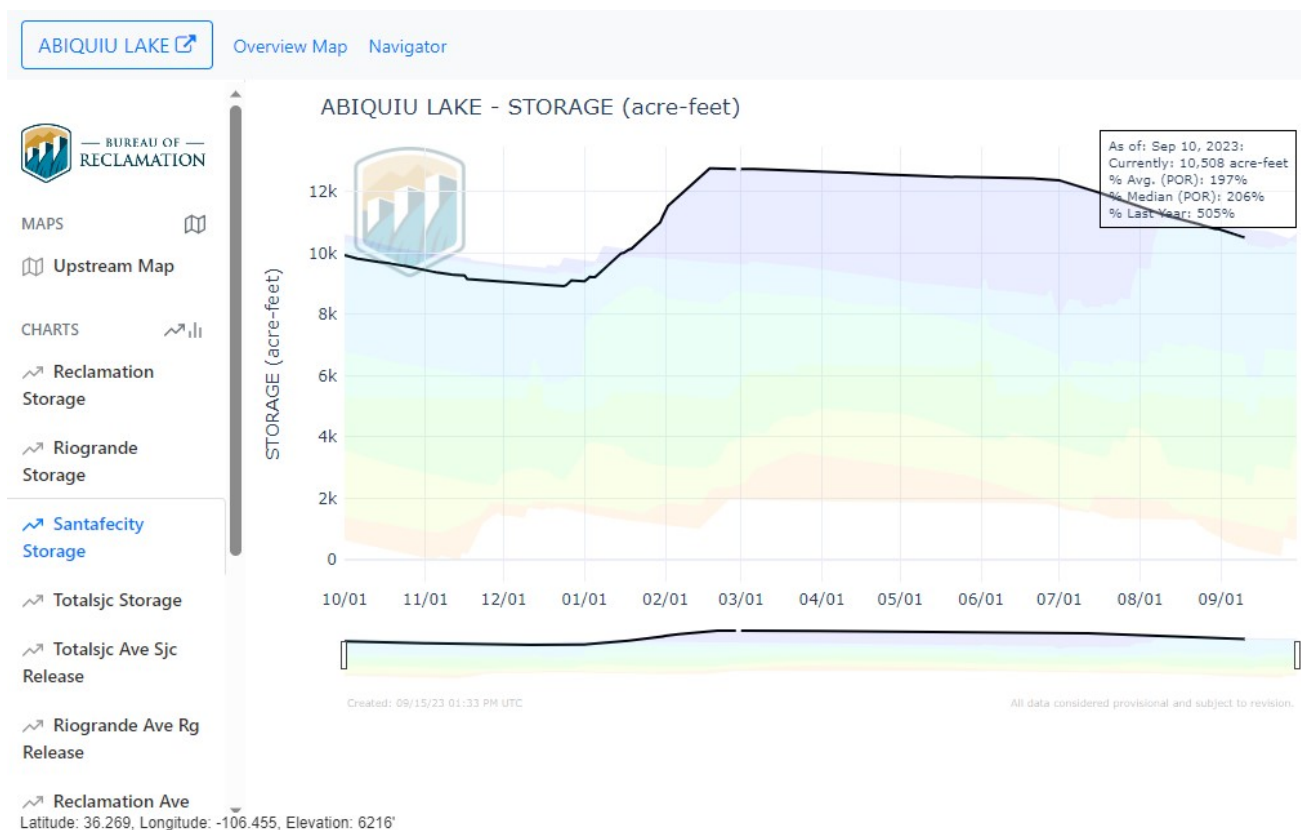
Daily metered regional water demand for the month of September 2023 is approximately 11.0 MGD.

Rio Grande flows for September 2023 averaged approximately 800 CFS (cubic feet per second.)

CRWTP reservoir storage: Nichols: 75%/McClure: 53% (57.0% combined) Watershed Inflow: 1.3 MGD

City/County/LC Storage- as updated by partners. As of September 10, 2023 City of SF Abiquiu SJC storage is at about 10,508AF.

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

September 11, 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.

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



Buckman Direct Diversion Monthly SJC and Native Diversions

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	691.219	0.000	0.000	691.305	661.055	30.250	0.086	3.300
SEP	675.185	0.000	0.000	675.185	588.335	86.850	0.000	2.750
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	4,560.151	2,060.836	326.686	2,172.716	1,896.149	276.567	0.086	10.012

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	222.731	213.366	9.764	0.028	222.731
SEP	0.000	0.000	219.930	191.640	28.290	0.000	219.930
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	702.424	613.742	89.435	0.028	1,480.119



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: September 25, 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 October, 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. There are no new MR&R expenditures for the month of October but staff is continuing with the procurement and implementation of new GAC and pressure membrane racks.
- Current Vacancies. The following positions are vacant/open and advertising in the Maintenance and Repair Section:
 - Journeyman Electrician
 - Maintenance Planner Scheduler
 - Equipment Repairman Advanced
 - Equipment Repairman Intermediate





Date: September 27, 2023
To: Buckman Direct Diversion Board
From: Delfin Peterson, Administrative Assistant
Re: Memo for Approval of the Buckman Direct Diversion Board 2024 Meeting Dates

Item and Issue

2024 Buckman Direct Diversion Board Meetings Calendar

Background

The Buckman Direct Diversion Board Meetings are normally conducted on the 1st Thursday of each month. The meetings are held in the City Council Chambers starting at 4:00pm. The following is the proposed 2024 Meeting Calendar;

January 4, 2024

February 1, 2024

March 7, 2024

April 4, 2024

May 2, 2024

June 6, 2024

July 11, 2024

August 1, 2024

September 5, 2024

October 3, 2024

November 7, 2024

December 5, 2024

Recommended Action

For your Approval.

BDD Board Chair Anna Hamilton





Date: October 5, 2023
To: Buckman Direct Diversion Board
From: Antoinette Armijo-Rougemont, BDD Accounting Supervisor /s/
Re: 2024 FSAC Meeting Calendar

ITEM AND ISSUE:

2024 Fiscal Services and Audit Committee (FSAC) Meeting Calendar

BACKGROUND AND SUMMARY:

The BDD FSAC meetings are usually scheduled on the Monday of the week of the Board meetings, whenever a meeting is necessary, and may be scheduled another day, depending on holidays. The meetings are held via zoom at 2:30 pm. The following is the proposed 2024 schedule for the Fiscal Services and Audit Committee meetings:

FSAC	BDDB	BCC
Friday, December 29, 2023	Thursday, January 4, 2024	January 9th & 30th
Monday, January 29, 2024	Thursday, February 1, 2024	February 13th & 27th
Monday, March 4, 2024	Thursday, March 7, 2024	March 12th & 26th
Monday, April 1, 2024	Thursday, April 4, 2024	April 9th & 30th
Monday, April 29, 2024	Thursday, May 2, 2024	May 14th & 28th
Monday, June 3, 2024	Thursday, June 6, 2024	June 11 th & 25 th
Monday, July 8, 2024	Thursday, July 11, 2024	July 9 th & 30 th
Monday, July 29, 2024	Thursday, August 1, 2024	August 13 th & 27 th
Friday, August 30, 2024	Thursday, September 5, 2024	Sept. 10 th & 24 th
Monday, September 30, 2024	Thursday, October 3, 2024	Oct. 8 th & 29 th
Monday, November 4, 2024	Thursday, November 7, 2024	November 12 th & 26 th
Monday, December 2, 2024	Thursday, December 5, 2024	December 10th

ACTION REQUESTED:

For your approval.

BDD Board Chair Anna Hamilton





Date: September 27, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, BDD Contracts Administrator
Via: Rick Carpenter, BDD Facilities Manager
Danny J. Carter, Chemist
Subject: Hall Environmental Analysis Laboratory, Inc.

ITEM:

Request for approval of purchase with Hall Environmental Analysis Laboratory, Inc. for laboratory analysis services for FY24 in the total amount of \$79,965.99.

BACKGROUND:

Under Statewide Price Agreement #00-66700-20-24666 services for surface water analysis will be procured for fiscal year 2024 in the total amount of \$79,965.99. This compensation was based on the estimated funding needed for the BDD Intake Sampling Program as described in the MOU between the DOE EM-LA and the BDD Board. This Purchase Order will not include the ordinary treated drinking water and special waste analyses provided by Hall Environmental Analysis Laboratory, Inc. which have already been provided for in a separate purchase order. Hall Environmental Analysis Laboratory, Inc. will provide the following analytical sampling services:

- Conduct analytical testing of water and provide results
- Meet the minimum requirements for laboratory reporting and electronic data deliverables.
- Meet US Environmental Protection Agency and NM Environment Department compliance requirements.
- Apply US Environmental Protection Agency and NM Environment Department approved analytical methods.
- Meet US Environmental Protection Agency and NM Environment Department approved QA/QC requirements.

Action Requested:

Staff recommends approval of Purchase with Hall Environmental Analysis Laboratory, Inc. Funding is available in the approved FY24 operating budget.

BU/LI: Compliance Service 8000801.510250
PL: BDD7530

Approved by BDDDB October 5th 2023

Commissioner Anna Hamilton, BDDDB Chair





Date: September 27, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, Contract Admin.
Via: Rick Carpenter, BDD Facilities Manager
Bradley Prada, BDD Maintenance Superintendent
Re: Approval of Contract and BAR for Andritz Separation INC.

ITEM:

Request for approval contract with Andritz Separation Inc. in an amount not to exceed \$172,416.00 plus applicable freight and NMGRF for FY24. And a request for approval of a Budget Adjustment Request (BAR) in the amount of 174,416.00 plus applicable freight and applicable tax 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 contract with Andritz Separation INC in the amount of \$172,416.00 plus GRT and use of Major Repair and Replacement funds.

Approved by BDDDB October 5, 2023

Anna Hamilton, BDDDB 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, ("BDDDB"), 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 BDDDB. 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 BDDDB.

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 BDDDB 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 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 Agreement 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 the 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 material provisions of this Agreement 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 reasonably 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 reasonably determined by the BDDDB; (ii) if, during the term of this Agreement, the 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 REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT IN ACCORDANCE WITH PARAGRAPH 28.*

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 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 Agreement.

14. **Commercial Warranty**

Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the warranty conditions as contained in Exhibit A.

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 BDDDB, the State Auditor and other appropriate state and federal authorities. The BDDDB shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the BDDDB 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 BDDDB 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 BDDDB to Contractor (clause 7.C shall apply). The BDDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If the BDDDB proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement (clause 7.C shall apply) 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 BDDDB, 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 BDDDB, 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 a party in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization without prior written approval by the other party subject to the provisions of the New Mexico Inspection of Public Records Act.

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 BDDDB 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 third party's 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. The Contractor shall be entitled to defend and settle any indemnity claim.

26. **New Mexico Tort Claims Act**

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

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 BDDDB 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) Contractor's best and final offer if such has been made and accepted by the BDDB; and (4) Contractor's response to the request for proposals and (5) the request for proposals, including attachments thereto and written responses to questions and written clarifications.

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 Agreement 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 Agreement 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 during the warranty period defined in clause 14, the BDDB may require Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement

amount. When the defects in services cannot be corrected by re-performance as confirmed by Contractor in writing, the BDDDB 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 BDDDB may:

(1) by agreement or otherwise, perform the services and charge to Contractor any cost incurred by the BDDDB 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 BDDDB 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 \$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 add the BDDDB their officials, officers and employees, as additional insureds.

B. Contractor shall maintain the above insurance for the term of this Agreement and add the BDDDB 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**

Contractor shall retain ownership in its intellectual property used in the performance of the services. The BDDB's right to use Contractor's proprietary software is limited to a non-exclusive and non-transferrable license.

A. Contractor shall defend, at its own expense, the BDDB against any third party's 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 BDDB based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, Contractor agrees to reimburse the BDDB for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the BDDB 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.

Contractor shall be entitled to defend and settle any third-party's claim under this clause.

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 BDDDB to the extent such modification is the cause of the claim.

C. The BDDDB is aware of the fact that parts of the equipment subject to the services generate machine and/or process data (the "Machine Data") that Contractor may use for the optimization of the performance and further improvement of the concerned equipment delivered by Contractor (the "Purpose"). Machine Data shall be kept confidential and may be accessed exclusively by Contractor free of charge without prior notice either by direct duplication from the control systems installed at the plant, by direct access via a computer network or by any other means agreed between the parties. Contractor shall only be entitled to use such Machine Data for the Purpose. Contractor shall keep confidential all Machine Data, and shall neither publish nor communicate such Machine Data to third parties in a form that personally identifies the BDDDB. In order to ensure the operation of such tools the BDDDB will fulfill the system requirements as requested by Contractor in writing. The undisturbed collection of and access to such proprietary Machine Data is an important pre-requisite for the proper fulfilment of Contractor's warranty obligations and Contractor's possibility to support the BDDDB operation remotely.

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 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 Agreement sum and Agreement 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 Agreement 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:

Anna Hamilton, BDDDB Chair

DATE: _____

ATTEST:

COUNTY CLERK

ATTEST:

CITY CLERK

APPROVE AS TO FORM:

Nancy R. Long
BDDDB ATTORNEY

APPROVED FOR FINANCES:

FINANCE DIRECTOR

Org. Name/Org.#

CONTRACTOR:

Andritz Separation Inc

NAME *ROBERT KING*

TITLE *VP OPERATIONS*

DATE: *09/26/2023*

CRS# _____

Registration # _____

Exhibit A



QUOTATION

Customer: 161867

Buckman Direct Diversion

341 Caja Del Rio Road
Santa Fe NM 87506-8503

Contact:

Fax:

Eric Armstrong
+15059554575

Copy to:

Your inquiry: null

Our quote no: 20953809

Supplier: Andritz Separation Inc.

Contact:

Phone:

Fax:

E-mail:

Victoria Torres

+1 817 375 4439

victoria.torres@andritz.com

Date: 07/11/2023

Sales

Responsible:

GREEN, BRICE

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. Remit to: Wire instructions:

1010 Commercial Blvd. South ANDRITZ Separation Inc. Nordea Bank Abp

Arlington, TX 76001 USA Dept: 0312 New York Branch

P.O. Box 120312 SWIFT: NDEAUS3N

Tel : +1 (817) 465-5611 Dallas, TX 75312-0312 Account: 8879433001

Fax: +1 (817) 468-3961 Federal Tax ID Number: 59-3773483 ABA: 026010786

Our quote no: 20953809

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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).

Other Terms:

5 . *****

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

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employees, Government orders, and temporary facility shutdowns, increase the cost or time for delivery, Andritz shall be entitled to adjust the price and delivery dates herein to reflect these impacts. Andritz's delivery date and prices (including freight) are estimates only based on Andritz's standard delivery dates and prices and do not account for the present and future schedule impacts of the COVID-19 pandemic. Nothing in this proposal, quotation, or order, or any contract based hereon, shall be construed as a waiver of these rights.

The crisis in Russia/Ukraine is impacting the complete global supply chain, including but not limited to, raw material shortages, extended delivery times, unavailability/restricted availability of transport as well as unforeseeable price increases. The Parties therefore agree that the price and delivery times in this order confirmation are indicative only. In case the crisis leads to any impacts on the delivery time or to a price increase of more than 5% of the order value after the date of the order confirmation, we reserve our right to adapt the prices and/or the delivery times accordingly. Nothing in this order confirmation can be construed as a waiver of such right. Of course, we will stay in close contact with you, being stipulated that we are doing our best effort to overcome this significant cost pressure and hurdles in the supply chain.

TERMS APPLICABLE

This quotation or acknowledgement and Seller's sale of Products and /or provision of Services described in Buyer's purchase order issued in whole or in part in response to this quotation or in response to which this acknowledgement is issued are expressly limited to and expressly made conditional on, Buyer's acceptance of the Terms and Conditions of Sale and/or Service listed below, which are the exclusive terms and conditions upon which Andritz Separation Inc. or the applicable Andritz entity supplying the same ("Seller") will accept a purchase order for the sale of new, used and refurbished products, equipment, parts and/or the provision of services ("Products" and "Services"). These Terms and Conditions of Sale and/or Service control, supersede and replace any and all other additional and/or different terms and conditions of Buyer, and Seller hereby objects to and rejects all such terms and conditions of Buyer without further notification, except to the extent Seller expressly agrees to

such conditions in writing. Seller's commencement of work under the Purchase Order or Buyer's acceptance of delivery of or payment for any Products or Services covered by this Agreement, in whole or in part, shall be deemed Buyer's agreement to the foregoing. The term "this Agreement" as used herein means this quotation or acknowledgment or Buyer's purchase order, together with any attachment thereto, any documents expressly incorporated by reference (but excluding any Buyer terms and conditions attached thereto or incorporated therein by reference), and these Terms and Conditions of Sale and/or Service.

6 . DELIVERY OR PERFORMANCE

Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance. Installation of any Product shall not be Seller's responsibility unless specifically provided for in this Agreement. Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in this Agreement, according to INCOTERMS 2010.

7 . WARRANTY

(a) Products Warranty.

(i) New Equipment Warranty. In the case of the purchase of new equipment the Seller warrants to Buyer that the new equipment manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the new equipment to Buyer and shall expire on the earlier to occur of 12 months from initial operation of the new equipment and 18 months from delivery thereof (the "Warranty Period").

(ii) Parts and Used or Reconditioned Machinery or Equipment Warranty. In the case of parts or used or reconditioned machinery or equipment, and unless otherwise indicated, Seller warrants to Buyer that the parts or the used or reconditioned machinery or equipment manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the parts or the used or reconditioned machinery or equipment to the buyer and shall expire 6 months from delivery thereof (the "Warranty Period").

(iii) If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, on the same terms as the original delivery was made, according to INCOTERMS 2010, a replacement part or repair the defect in place. Any repair or replacement part furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products under this Paragraph 3(a): (i) if the Products have not been stored, installed, operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(b) Services Warranty. Seller warrants to Buyer that the Services performed will be free from defects in workmanship and will conform to any mutually agreed upon specifications. If any failure to meet this warranty appears within 12 months from the date of completion of the Services, on the condition that Seller be promptly notified in writing thereof, Seller as its sole obligation for breach of this warranty will correct the failure by re-performing any defective portion of the Services furnished. Seller does not warrant the accuracy of, or performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the Service provided and Seller shall not be liable for any loss of use or any production losses whatsoever.

c) Seller further warrants to Buyer that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.

(d) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) The remedies provided in Paragraphs 3(a), 3(b) and 3(c) are Buyer's exclusive remedy for breach of warranty.

(f) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

8 . LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by

reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each

case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with the Products, Services, or this Agreement or from the performance or breach hereof.

(b) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach hereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the contract price.

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P.O. Box 120312 SWIFT: NDEAUS3N

Tel : +1 (817) 465-5611 Dallas, TX 75312-0312 Account: 8879433001

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(c) The limitations and exclusions of liability set forth in this Paragraph 4 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach hereof shall terminate on the third anniversary of the date of this Agreement.

(e) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of goods by the Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

9 . CHANGES, DELETIONS AND EXTRA WORK

Seller will not make changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Buyer, without invalidating this Agreement, may make changes by altering, adding to or deducting from the general scope of the Services by written Change Order. Any such Change Order will include an appropriate adjustment to the contract price and delivery schedule. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order will include appropriate modifications to this Agreement. Seller shall be entitled to a Change Order adjusting the contract price, delivery schedule and/or any affected obligations of Seller if after the date of this Agreement a change in applicable law should require a change in the Products or Services or in the event and to the extent that an act or omission of Buyer, or any error or change in Buyer-provided information, affects the Seller's performance hereunder.

10 . TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products or Services shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

11 . SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller a lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

12 . SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

13 . PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing, (i) Seller shall defend against claims made in a suit or proceeding brought against Buyer by an unaffiliated third party that any Product infringes a device claim of a United States or Canadian patent issued as of the effective date of this Agreement and limited to the field of the specific Products provided under this Agreement; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such claims; (ii) Seller shall satisfy any judgment (after all appeals) for damages entered against Buyer on such claims so long as such damages are not attributable to willful conduct or sanctioned litigation conduct;

and (iii) if such judgment enjoins Buyer from using any Product or a part thereof, then Seller will, at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the purchase price that Seller has received for such Product or part. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

14 . SOFTWARE LICENSE, WARRANTY, FEES

The following Software Terms and Conditions apply to any embedded or separately packaged software produced by Seller and furnished by Seller hereunder:

(a) Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sub-licensable license to the Software, and any modifications made by Seller thereto only in connection with configuration of the Products and operating system for which the Software is ordered hereunder, and for the end-use purpose stated in the related Seller operating documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, except Buyer may create a single copy for backup or archival purposes in accordance with the related Seller operating documentation (the "Copy"). Buyer's license to use the Software and the Copy of such Software shall terminate upon any breach of this Agreement by Buyer. All copies of the Software, including the Copy, are the property of Seller, and all copies for which the license is terminated shall be returned to Seller with written confirmation after termination.

(b) Seller warrants that, on the date of shipment of the Software or the Products containing the Software to Buyer: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation.

(c) If within 12 months from the date of delivery of the Software or Products containing the Software, Buyer discovers that the Software is not as warranted above and notifies Seller in writing prior to the end of such 12 month period, and if Seller determines that it cannot or will not correct the nonconformity, Buyer's and Buyer's Seller-authorized transferee's exclusive remedies, at Seller's option, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of a pro rata share of the contract price or license fee paid.

(d) If any infringement claims are made against Buyer arising out of Buyer's use of the Software in a manner specified by Seller, Seller shall: (i) defend against any claim in a suit or proceeding brought by an unaffiliated third party against Buyer that the Software violates a registered copyright or a confidentiality agreement to which Seller was a party, provided that Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense and settlement of such claims (including the sole authority to select counsel and remove the Software or stop accused infringing usage); (ii) Seller shall satisfy a final judgment (after all appeals) for damages entered against Buyer for such claims, so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using the Software, Seller may at its option: (a) obtain for Buyer the right to continue using such Software; (b) eliminate the infringement by replacing or modifying the Software, or (c) take back such Software and refund to Buyer all payments on the purchase price that Seller has received. However, Seller's obligations under this Paragraph shall not apply to the extent that the claim or adverse final judgment relates to:

(1) Buyer's running of the Software after being notified to discontinue; (2) non-Seller software, products, data or processes; (3) Buyer's alteration of the Software; (4) Buyer's distribution of the Software to, or its use for the benefit of, any third party; or (5) Buyer's acquisition of confidential information (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a third party who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the confidential information. Buyer will reimburse Seller for any costs or damages that result from actions 1 to 5. In Seller's discretion and at Seller's own expense, with regard to any actual or perceived infringement claim related to the Software, Seller may: (i) procure the right to use the Software, (ii) replace the Software with a functional equivalent, and/or (iii) modify the Software. Under (ii) and (iii) above, Buyer shall immediately stop use of the allegedly infringing Software.

(e) This warranty set forth in subparagraph (c) above shall only apply when: (1) the Software is not modified by anyone other than Seller or its agents authorized in writing; (2) there is no modification in the Products in which the Software is installed by anyone other than Seller or its agents authorized in writing; (3) the Products are in good operating order and installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer or a third party; (5) Buyer promptly notifies Seller in writing, within the

period of time set forth in subparagraph (c) above, of the nonconformity; and (6) all fees for the Software due to Seller have been timely paid. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

(f) Buyer and its successors are limited to the remedies specified in this Paragraph.

(g) Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee.

15 . SITE RISKS

(a) Concealed Conditions. The parties acknowledge and agree that increased costs or schedule extensions due to any concealed conditions at the job site shall be to Buyer's account. Buyer shall hold Seller harmless for increased costs and grant any necessary schedule extensions if any concealed or hazardous conditions are found.

(b) Environmental Remediation. Buyer acknowledges that Seller is not an expert in environmental remediation and shall not be directed by change order or otherwise to perform any environmental remediation as part of the Services, including but not limited to asbestos and lead paint removal. If any environmental remediation becomes necessary, Buyer will contract directly with a qualified third party to perform such work.

16 . TERMINATION

(a) Buyer may terminate this Agreement upon breach by Seller of a material obligation hereunder and Seller's failure to cure, or to commence a cure of, such breach within a reasonable period of time (but not less than 30 days) following written receipt of notice of the same from Buyer.

(b) Buyer may only terminate this Agreement for Buyer's convenience upon written notice to Seller and upon payment to Seller of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expenses (direct and indirect) incurred and commitments already made by Seller and an appropriate profit; provided, that in no event shall Seller's termination charges be less than 25% of the contract price.

(c) Seller shall have the right to suspend and/or terminate its obligations under this Agreement if payment is not received within 30 days of due date. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

17 . CONFIDENTIALITY

Buyer acknowledges that the information that Seller submits to Buyer in connection with this Agreement and the performance hereof includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to

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disclose such information to third parties without Seller's prior written consent. Seller grants to Buyer a non-exclusive, royalty-free, perpetual, non-transferrable license to use Seller's confidential and proprietary information for the purpose of the installation, operation, maintenance and repair of the Products that are the subject hereof only. Buyer further agrees not to, and not to permit any third party to, analyze, measure the properties of, or otherwise reverse engineer the Products, fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this Agreement. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorneys' fees). All copies of Seller's confidential and proprietary information shall remain Seller's property and may be reclaimed by Seller at any time in the event Buyer is in breach of its obligations under this Paragraph.

18 . END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained

such End User's consent.

19 . FORCE MAJEURE

(a) Force Majeure Defined. For the purpose of this Agreement "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, rejection of main forgings and castings, lack of available shipping by land, sea or air, lack of dock lighterage or loading or unloading facilities, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions.

(b) Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to

account for the delay.

(c) Option to Terminate. If the period of suspension or reduction of operations will extend for more than four (4) consecutive months or periods of suspension or reduction total more than 6 months in any 12 month period, then either Buyer or Seller may terminate this Agreement.

(d) Strikes On-Site. Notwithstanding anything herein to the contrary, in the event a strike, lockout, labor, union or other industrial disturbance at Buyer's site affects, delays, disrupts or prevents Seller's performance of this Agreement, Seller shall be entitled to a Change Order containing an appropriate adjustment in the contract price and delivery schedule.

20 . INDEMNIFICATION AND INSURANCE

(a) Indemnification. Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or damage to tangible property ("Loss") arising in connection with the Products or the Services provided by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

(b) Insurance. Seller shall maintain commercial general liability insurance with limits of \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Products or Services. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Services will be performed, and owned and non-owned auto liability insurance with limits of \$1,000,000 combined single limit. Seller will provide a Certificate of Insurance certifying the existence of such coverages upon request.

21 . GENERAL

(a) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable federal, state, and local laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not

be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.

(b) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.

(c) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, Services and any prior course of dealings or usage of the trade not expressly incorporated herein.

(d) This Agreement may be modified, supplemented, or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit, or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition hereof.

(e) All terms of this Agreement which by their nature should apply after the cancellation, completion or termination of this Agreement shall survive and remain fully enforceable after any cancellation, completion, or termination hereof.

(f) (i) If Seller's office is located in the United States, this Agreement and the performance hereof will be governed by and construed according to the laws of the State of Georgia. (ii) If Seller's office is located in Canada, this Agreement and the performance hereof will be governed by and construed according to the laws of the Province of New Brunswick.

(g) (i) In the circumstances of f(i) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled by arbitration, to the exclusion of courts of law, administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules in force at the time this Agreement is signed and to which the parties declare they will adhere (the "AAA Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Atlanta, Georgia by a panel of three members, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the panel and will be appointed by mutual agreement of the two party appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the AAA in accordance with the AAA Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to

arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the AAA in accordance with the AAA Rules. (ii) In the circumstances of f(ii) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled under the auspices of the Canadian Commercial Arbitration Centre ("CCAC"), by means of arbitration and to the exclusion of courts of law, in accordance with its General Commercial Arbitration Rules in force at the time the Agreement is signed and to which the parties declare they will adhere (the "CCAC Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Saint John, New Brunswick by a panel of three arbitrators, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the arbitral tribunal and will be appointed by mutual agreement of the two party-appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party-appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the CCAC in accordance with the CCAC Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the CCAC in accordance with the CCAC Rules.

(h) In the event this Agreement pertains to the sale of any goods outside the United States or Canada, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

(i) The parties hereto have required that this Agreement be drawn up in English. Les parties aux présentes ont exigé que la présente convention soit rédigée en anglais.

Please do not hesitate to contact us if you require further information.

Yours sincerely

Andritz Separation Inc.

This document is issued electronically and valid without signature.

ANDRITZ Separation Inc. Remit to: Wire instructions:
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