

**PROJECT MANAGEMENT AND
FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

THIS PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT (hereinafter referred to as "the Agreement" or "PMFSA") is entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the City and the County, through the BDD Board, are designing, constructing, operating and maintaining the Buckman Direct Diversion Project;

WHEREAS, in preparation for creating the Project, the City and the County entered into the Water Resources Agreement on January 11, 2005;

WHEREAS, the City and the County entered into a Joint Powers Agreement on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015;

WHEREAS, the City, the County, and Las Campanas entered into the Facilities Operations and Procedures Agreement on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project;

WHEREAS, the purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms; and

WHEREAS, the BDD Board and the Project Manager desire to enter into the agreement to address the items noted in the foregoing paragraph.

NOW, THEREFORE, for the covenants, promises and consideration described herein, the BDD Board and the Project Manager agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS.

Capitalized words or phrases used in the foregoing recitals of this Agreement shall have the meanings assigned therein. In addition, the words and phrases defined in this Article 1 shall have the meanings assigned in this section.

A. "The Agreement," "this Agreement," or "PMFSA" as used herein refers to this Project Management and Fiscal Services Agreement.

B. "Annual Operating Budget" means the annual budget for all activities of the Project, including OMR&R, but excluding the budget for the design and construction.

C. "Annual Operating Plan and Delivery Schedule" means the annual operating plan and water delivery schedule prepared by the Project Manager with input from the City, the County and Las Campanas, described in Section 27 of the FOPA and herein.

D. "The "City" means the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico, and a signatory of the Project Agreements.

E. "The County" means Santa Fe County, New Mexico and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico, and a signatory of the Project Agreements.

F. "Design-Build Contract" means the contract to be entered into by and between the BDD Board and a design-build contractor to design and construct the Project.

G. The "Design-Build Contractor" refers to the contractor selected to design and construct the Project.

H. The "Design and Construction Budget" means the comprehensive, multiyear budget for the design and construction of the Project.

I. "Fiscal Year" means a year beginning on July 1 and ending on June 30.

J. "The FOPA" means the Facility Operations and Procedures Agreements for the Buckman Direct Diversion Project Between the City of Santa Fe, Santa Fe County and Las Campanas LP.

K. "The JPA" means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, effective March 7, 2005.

L. "Las Campanas" means the Las Campanas Limited Partnership, a Delaware Limited Partnership, and a signatory of the FOPA.

M. "OMR&R" means operation, maintenance, replacement and repair.

N. "Owners' Consultant" means Camp, Dresser & McKee, Inc. (hereinafter referred to as "CDM"), under contract with the BDD Board as consulting engineer to the BDD Board, or any successor entity.

O. "The Owners' Consultant Contract" means the contract between the BDD Board and CDM, the Owners' consultant, as amended.

P. "The Project" means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande as described in the final Environmental Impact Statement for the Buckman Direct Diversion Project, and includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and the County.

Q. The phrase "the Project Agreements" means the WRA, JPA, the FOPA and the PFMSA.

R. "Project Expenses" means those expenditures of the Project approved by the BDD Board and included in a budget approved by the BDD Board, the City and the County, and reimbursement expenses retroactive to the execution date of the JPA.

S. "Project Manager" means the Sangre de Cristo Water Division of the City of Santa Fe.

T. "WRA" shall mean the Water Resources Agreement by and between the City of Santa Fe and Santa Fe County and dated on or about January 11, 2005.

ARTICLE 2. TERM, EFFECTIVE DATE.

This Agreement shall become effective as of the date the Agreement is approved and executed by the BDD Board and the Project Manager. This Agreement shall remain in full force and effect until December 1, 2015, unless terminated earlier as provided in Article 9.E. of this Agreement.

ARTICLE 3. RESPONSIBILITIES OF THE BDD BOARD.

The BDD Board shall be responsible to do all of the following:

A. Exercise all the responsibilities of the BDD Board as set forth in the Project Agreements;

B. Supervise the performance of the Project Manager pursuant to §§ 4 & 12 of the JPA;

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts and expenditures in amounts greater than \$20,000;

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to §§ 10 and 11 of the JPA.

Contracts and expenditures in amounts less than \$20,000 may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures up to \$30,000.

D. Establish by resolution of the BDD Board a document retention and protection policy.

E. Establish by resolution of the BDD Board the Annual Operating Budget;

F. Provide an adequate opportunity for the City, the County, and consistent with the FOPA, Las Campanas, and the public, to comment and make appropriate presentations on any proposed budget;

G. Consider and, if appropriate, adopt, by resolution of the BDD Board, amendments to a previously approved budget that the BDD Board deems advisable;

H. Create an Emergency Reserve Fund and establish procedures for its management pursuant to §24 of the FOPA;

I. Collect, through the Project Manager, contributions of the City, the County and Las Campanas toward design, construction, operation and maintenance of the Project, and related expenditures, and credit those contributions towards the obligations of the City, the County and Las Campanas as set forth in the Project Agreements;

J. Consistent with the Bateman Act, appropriately condition approval of each budget or amendment thereto on appropriation by the City and/or the County in an appropriate budget or budget amendment ;

K. Approve all financing and funding sources for the Project (except for funding to be provided by the City and the County pursuant to the Project Agreements)

and, as appropriate, enter into contracts in connection with such financing or funding sources;

L. Monitor the performance of the Owners' Consultant pursuant to the Owners' Consultant Contract and monitor the performance of the Design-Build Contractor pursuant to the Design-Build Contract; and

M. Take all steps that are necessary and proper for the design, construction, operation and maintenance of the Project.

ARTICLE 4. DELEGATION OF AUTHORITY TO AND GENERAL RESPONSIBILITIES OF THE PROJECT MANAGER.

The BDD Board delegates to the Project Manager the authority and responsibility to do the following:

A. Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support staff for BDD Board meetings, contract with independent legal counsel selected by the BDD Board, contract with specialized legal counsel as needed to support design, construction, operation and maintenance of the Project, and, as directed by the BDD Board, implement the Project during design and construction and, following completion of construction, manage, operate, and maintain the Project;

B. Seek and apply for funding (except for funding to be provided by the City and the County pursuant to the Project Agreements) in the form of grants, loans or loan guarantees, or other funding sources as may be deemed appropriate by the BDD Board, for the Project as directed by the BDD Board and manage any such grants, loans or loan guarantees;

C. Administer all funds loaned, granted or contributed by the City, the County or Las Campanas in connection with the Project, and respond to related audits as may be necessary;

D. Prepare and submit to the BDD Board, the City, the County and Las Campanas no later than December 15 of each Fiscal Year, an Annual Operating Budget, which shall include annual and 5 year projected OMR&R costs, including a 5 year schedule with the Project Manager's proposed facilities and equipment major maintenance and replacement costs, proposed allocation of costs among the City, the County and Las Campanas as provided in the FOPA, a facilities and equipment major repair and replacement fund, and an emergency reserve fund;

E. Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;

F. Develop a document retention and protection policy for adoption by the BDD Board;

G. Act as fiscal agent for the Project as provided in Article 7, herein;

H. Once an Annual Operating Budget is approved by the BDD Board, implement the budget, adhere strictly to the budget, and make recommendations for necessary budget adjustments throughout the Fiscal Year, and contract for an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board;

I. Prepare and submit to the BDD Board for approval all documentation to be used for procurement in the Project including, but not limited to, documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications and contracts in amounts greater than \$20,000;

J. Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board;

K. Consult with staff of the City, the County, and Las Campanas regarding the planning and design and OMR&R of the Project;

L. In consultation with the BDD Board, apply for, manage and maintain, including the preparation and submittal of all required compliance reports, all necessary permits for the operation of the Project, including, without limitation, those permits, easements, and rights-of-way held in the name of the BDD Board, and those permits required to be obtained by the BDD Board pursuant to Section 6 of the FOIPA;

M. Maintain communication with the BDD Board, the City, the County and Las Campanas, primarily via monthly BDD Board meetings, and keep these entities informed of important matters as may be necessary in the interim between monthly BDD Board meetings;

N. As directed by the BDD Board, act as liaison for the BDD Board and represent the BDD Board in Project matters involving tribal governments, state and federal government agencies, and non-governmental organizations;

O. As directed by the BDD Board, and with the consent and approval of the City and the County, and in consultation with Las Campanas, coordinate the Project with regional water supply planning efforts; and

P. Perform other duties as assigned by the BDD Board consistent with funding and the Project Agreements.

Q. Make commercially reasonable efforts to enforce the terms of all agreements that the BDD Board approves. In the event that the Project Manager's administrative efforts to enforce a specific contract's terms are not successful, the Project Manager shall so inform the BDD Board and shall make specific recommendations for the BDD Board's consideration regarding the BDD Board's contract enforcement steps or procedures, including litigation.

ARTICLE 5. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING DESIGN AND CONSTRUCTION.

During design and construction of the Project (through project acceptance by the BDD Board), the Project Manager shall do the following:

A. Supervise the Owners' Consultant pursuant to the Owners' Consultant Contract as directed by the BDD Board;

B. On a monthly basis, provide a schedule of construction payments to the BDD Board, track Project costs, track progress of the Project, monitor design and construction costs to determine whether such costs are within the sum specified by the BDD Board in the Design and Construction Budget, and manage the Design-Build Contractor within the limits of contractual obligations such that construction of the Project is timely and reasonably delivered pursuant to the project testing and acceptance dates agreed to in the Design-Build Contract;

C. Negotiate and manage procurement of the Design-Build Contract in accordance with the City's Purchasing Manual and present same to the BDD Board for approval;

D. Oversee the Design-Build Contractor in connection with all design and construction activities, and recommend to the BDD Board legal action to enforce compliance with the contract, if necessary;

E. Administer requests for payment by the Design-Build Contractor pursuant to construction draw schedules and timely present requests for Change Orders to the BDD Board and process same;

F. Monitor testing of the completed Project in accordance with procedures outlined in the Design Build Contract and upon successful results accept the completed Project.

ARTICLE 6. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING PROJECT OPERATIONS.

During the operation, maintenance, repair and replacement phase of the Project, the Project Manager shall do the following:

A. Operate the Project within its design limitations to deliver treated water in sufficient pressure and volume to meet the actual demand of the City and the County, subject to the capacity allocations set forth in the FOPA §7, and of a quality that meets or exceeds all applicable State and federal regulations and standards;

B. Provide the treated water referred to the previous paragraph at a point or points of delivery at the BDD Project specified by the City or the County, provided, however, that the Project Manager is not obligated to deliver to points of delivery not constructed during the initial construction of the Project unless the City or the County first construct a new point of delivery at the BDD Project and provide the Project Manager and the BDD Board with thirty (30) days advance written notice of the need for water at the newly constructed point of delivery;

C. Deliver raw water to Las Campanas, at pump station 2A subject to the capacity allocation set forth in the FOPA §7, and manage the common facilities at pump station 2A;

D. Maintain water measurement devices that are part of the Project to account for the actual volume, rate, and time-of-day of all water deliveries to the City, the County and Las Campanas;

E. Use data provided from the metering facilities and monitors referred to in the preceding paragraph to analyze whether deliveries comply with Annual Operating Plan and the Project Agreements, and report to the BDD Board monthly;

F. Seek annually from the City, the County and Las Campanas, information required for the Annual Operating Plan as required by Section 27 of the FOPA;

G. From the data submitted pursuant to the previous paragraph, prepare the Annual Operating Plan and Delivery Schedule described in Section 27 of the FOPA, submit the report to the BDD Board, and make appropriate recommendations;

I. As soon as practicable after the end of each Fiscal Year, the Project Manager shall calculate the actual costs experienced by the Project in the previous Fiscal Year and the amounts paid by the City, the County and Las Campanas for the Project and make appropriate recommendations to the BDD Board for adjustments needed in the current Fiscal Year's budget;

J. Invoice the City, the County and Las Campanas for Project costs according to the cost sharing principles specified in the FOPA no less frequently than quarterly, and collect all sums so invoiced;

K. Schedule and coordinate reservoir release and Project diversion of San Juan-Chama Project water in accordance with the procedures of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers and the conditions of City and County

diversion permit No. 4842 issued by the State Engineer and future permits for diversion at the BDD of San Juan-Chama Project water and as directed by the designated representatives of the City, the County, and Las Campanas, each of whom has the responsibility to make water available at the reservoir from which it will be released;

L. Track raw water diversions by the Project for the City, the County, and Las Campanas, and provide to the BDD Board, with copies to the City, the County, and Las Campanas, a monthly accounting of actual raw and potable deliveries, daily water orders, and other statistical information as the BDD Board may require;

M. Monitor the relationship between the quantity of water actually delivered by the Project to the City, the County and Las Campanas and the permitted capacity of the Project's production facilities and make periodic reports of this analysis to the BDD Board, the City, the County and Las Campanas;

N. Reduce deliveries as provided in the FOPA §9 in the event of a reduced total capacity of the BDD Project caused by facility failure;

O. Provide all necessary staff, materials and supplies necessary to operate and maintain the Project consistent with BDD Board funding;

P. Recruit, hire and train staff for the Project according to the BDD Board's approved staffing plan as it may be amended from time to time and arrange for state drinking water certification for such staff in advance of operation of the Project, so that certified staff is available to operate the Project when the Project becomes operational, and set forth in each proposed budget the costs of the staff apportioned according to the respective benefit to the City and the Project

Q. Perform OMR&R duties for the Project at all relevant times in accordance with prudent water utility practices;

R. Report to the BDD Board quarterly and as otherwise required by the BDD Board regarding the OMR&R of the Project and all other relevant matters related to the Project;

T. In consultation with the City, the County and Las Campanas and pursuant to FOPA §27, prepare and present to the BDD Board for approval a comprehensive operations manual for the Project, and updates as needed, which shall include details of all aspects of Project operation including, but not limited to, process control, maintenance, scheduled maintenance outages, rehabilitation and replacement, contingency plans for unscheduled outages, and residuals management; distribute the comprehensive operations manual to the BDD Board, the City, the County and Las Campanas. The Project Manager may delegate, as appropriate, the preparation of the comprehensive operations manual to the Owner's Consultant, the Design-Build Contractor, or another;

U. Provide for appropriate security at all Project facilities;

V. Identify and report to the County the need for Buckman Road maintenance and reimburse the County for the apportioned cost according to the respective benefit to the County and the Project; and

W. Identify and report warranty problems to the Design-Build Contractor or the appropriate subcontractor or equipment supplier and, as necessary, recommend to the BDD Board legal action to enforce such warranties.

ARTICLE 7. FISCAL AGENT RESPONSIBILITIES.

The Project Manager shall act as fiscal agent for Project during the term of this Agreement, and as such shall have the following responsibilities:

A. Books and Accounts. The Project Manager shall maintain records of all transactions related to the Project, including third party transactions, in accordance with generally accepted accounting principles ("GAAP"), and standards established by the government accounting standards bureau ("GASB"), and shall:

- (1) establish a uniform system of accounts;
- (2) maintain segregated books and records consistent with GAAP to account for all separate funding sources, including, without limitation, funds provided by the City, the County, or Las Campanas in support of construction or subsequent OMR&R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.
- (3) maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies;
- (4) provide access at any time to the City, the County and Las Campanas, or each of them, and to the State Auditor, and members of the public, within 90 days following the end of each fiscal year and at any other time as may be reasonably requested, full and complete books and records relating to the Project;
- (5) provide to the City, the County and Las Campanas, or each of them, any additional financial information or documentation relating to the Project as may from time to time be reasonably requested;
- (6) within 90 days after the end of each fiscal year, provide copies of financial statements to the City, the County and Las Campanas, showing the assets, liabilities, revenues, expenses, equity balances and budget comparisons for the Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report but may

recommend that its auditors produce the financial statements, dependent on staff available and the complexity of the reporting requirements;

(7) account for the separate financial contributions from, and reimbursements to, the City, the County and Las Campanas, including crediting the County for the contribution of revenues from the County Capital Outlay Gross Receipts Tax imposed by the Board of County Commissioners in Santa Fe County Ordinance No. 2002-5, subject to the terms of that Ordinance;

(8) procure, contract, and pay for as budgeted an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board.

B. Financial Operations. The Project Manager, acting as fiscal agent, shall:

(1) receive and record deposits in connection with the Project in compliance with applicable state and federal statutes, all applicable requirements of grant and loan funding and requirements otherwise imposed by or on the sources of funding;

(2) make and account for all approved disbursements for the Project, ensuring that disbursements are valid and comply with all applicable State investment statutes, and policies and procedures adopted by the BDD Board;

(3) in consultation with the BDD Board, invest excess funds not required for current operations or capital expenditures in accordance with applicable statutes, City and County policies and applicable requirements of grant or loan funding, assuring that investment earnings are credited to Project funds;

(4) carry over any unencumbered monies that are present at the end of a Fiscal Year, and budget those funds to the succeeding Fiscal Year, to be utilized for purposes consistent with the Project Agreements in the succeeding Fiscal Year; and

(5) obtain all necessary approvals for expenditure of funds, including, without limitation, approvals by the BDD Board and the New Mexico Department of Finance and Administration.; and

(6) determine and record capital assets inventory for appropriate general ledger amounts, run and record depreciation, and submit year-end capital asset inventory for the annual physical inventory.

ARTICLE 8. COMPENSATION.

The Project Manager, the City and the County shall be compensated for services rendered, or credited for services rendered prior to the date of this Agreement or of any Project Agreement, as follows:

A. Following execution of this Agreement, the Project Manager shall be compensated for its services as fiscal agent to the Project in an amount equal to one percent (1%) of the total annual operating budget of the Project in any given fiscal year, which the Project Manager may deduct from revenues dedicated to the Project.

B. Following execution of this Agreement, the Project Manager shall confer with the City, Las Campanas and the County to assign expenditures made previously by the City, Las Campanas or the County to the Project, including the dedication of real or personal property to the Project, by including the same in a single proposed supplemental budget document and presenting same to the BDD Board as proposed expenditures of the Project. The expenditures approved by the BDD Board in the proposed supplemental budget document shall become Project Expenses and, the City, Las Campanas or the County may be reimbursed for such approved expenditures or may credit such prior expenditures against current or future obligations under the Project Agreements. Notwithstanding the foregoing, no cash payment or credit shall be made if it is determined by the City or the County's bond counsel, after review of the proposed supplemental budget document, that such payment may adversely affect the federal tax exemption of interest on the obligations issued by the City or the County to finance the Project.

C. Following execution of this Agreement, all expenses proposed to be incurred by the Project Manager in connection with project management of the Project shall be set forth in the Annual Operating Budget and the Design and Construction Budget.

D. The Project Manager shall not incur nor be paid for any additional or extraordinary OMR&R expenses in connection with performing the services described in this Agreement except as specified in the Annual Operating Budget, amendments thereto, or from the Emergency Reserve Fund.

ARTICLE 9. TRANSFER OF FUNDS TO MEET OBLIGATIONS UNDER THE PROJECT AGREEMENTS.

An obligation of a party in the Project Agreements may be met at any time by transferring funds to "the City of Santa Fe as Project Manager for the Buckman Direct Diversion Project." Any such transfer shall be credited immediately against the account of the contributing party, and the City, as Project Manager, shall be a trustee for any such funds received on account of the Project.

ARTICLE 10. MISCELLANEOUS.

A. Default. For purposes of this Agreement, the Project Manager shall be deemed to be in default only in the event of a breach of its obligations hereunder.

B. Right to cure. In the event of default, the Project Manager shall have sixty (60) days from receipt of written notification from the BDD Board to cure the default. If the Project Manager is unable to cure the default with the sixty day period, the Project Manager will notify the BDD Board, the City and the County at the earlier of (1) the time the Project Manager becomes aware of the inability to cure the default; or (2) expiration of the sixty day period.

C. Remedies on Default. In addition to the remedies specified in this Article, if an event of default remains uncured within the sixty day cure period, the BDD Board may elect to treat this Agreement as being in full force and effect and the BDD Board, the City and the County shall have the right to specific performance. If the BDD Board determines that the Project Manager cannot continue in its role as manager of the Project, the BDD Board may declare this Agreement terminated and appoint a successor as Project Manager for the remainder of the term of this Agreement. In the event of termination, the duties and obligations of the parties shall remain in full force and effect.

D. Termination. If this Agreement expires or a default remains uncured as provided in Article 9(B) of this Agreement, the BDD Board has authority to enter into a new Agreement as provide in §13 of the JPA with the Sangre de Cristo Water Division of the City of Santa Fe, the County of Santa Fe Water Utility, or a Regional Entity. In the event of termination, applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination. Each party shall remain obligated for its share of payments due pursuant to any obligations to a third party incurred as contemplated by this Agreement or the Project Agreements.

E. Dispute Resolution. If a dispute, other than a default which the Project Manager is unable to cure during the sixty day cure period, arises which the BDD Board and the Project Manager cannot satisfactorily resolve, then the BDD Board and the Project Manager agree to those forms of dispute resolution authorized by NMSA 1978, Section 12-8A-1, *et seq.* (2000), except binding arbitration, to resolve conflicts arising under this Agreement, the expenses of which shall be shared equally by the BDD Board, the Project Manager, and, as applicable, the City, the County and Las Campanas. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute.

F. Notices in writing. Notices required by this Agreement shall be addressed to the parties at the addresses noted on Attachment A hereto, as each party may update them from time to time by written notice to the other parties. Such notice shall either be hand delivered or mailed, first class mail, postage prepaid, to the representatives of the other parties. If mailed, the notice or communication shall be simultaneously sent

by facsimile or other electronic means. Any such notice or communication shall be deemed to have been received by the close of the business day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close of business in which case it shall be deemed received at the close of the next business day).

G. Representative for Notices. Each party shall maintain a designated representative to receive notices as set out in Attachment A. Any party may, by written notice to the other parties, change the representative or the address to which such notices and communications are to be sent.

H. Authority of Representatives. The parties' representatives designated above shall have authority to act for their respective principals in all technical matters related to the performance of this Agreement and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have authority to amend or modify any provision of this Agreement.

I. Insurance. The Project Manager shall obtain and continuously maintain insurance policies without interruption, during the term of this Agreement, for the operations and activities on or at the Project, from a licensed insurance company or companies deemed acceptable to the BDD Board, and the City, the County and Las Campanas, which policies shall name the BDD Board, the City, the County and Las Campanas as additional insured, in conformance with the specifications for insurance coverage set forth in Attachment B and the Annual Operating Budget.

J. Term and modification of insurance. All insurance required under this Agreement shall cover occurrences during the term and for a period of two years after the term. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the execution date and such insurance shall be maintained by the Project Manager for a minimum of five years after the term. The BDD Board shall have the right during the term to request the Project Manager to modify the insurance minimum limits specified in Attachment B in order to maintain reasonable coverage amounts. The Project Manager shall make all commercially reasonable efforts to comply with any such request. If any insurance required to be maintained by the Project Manager hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, the Project Manager shall provide written notice to the BDD Board, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for water utilities of similar type, geographic location, and capacity. Upon receipt of such notice, the Project Manager shall use commercially reasonable efforts to obtain other insurance which would provide comparable protection against the risk to be insured and the BDD Board shall not unreasonably withhold its consent to modify or waive such requirement.

K. Third Party Beneficiaries. This Agreement was not intended to and does not create any rights in any persons not a party hereto, specifically including Las Campanas except as otherwise set forth in the Project Agreements and, specifically, the FOPA.

L. Modifications. This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto.

M. Severability. If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

N. Subcontractors. The Project Manager shall not subcontract or delegate any portion of the services to be performed in excess of \$20,000 under this Agreement without the advance written approval of the BDD Board. Any attempted subcontracting or delegating without the BDD Board's advance written approval shall be null and void and without any legal effect.

O. Choice of Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The parties hereby submit to the exclusive jurisdiction of the courts of the State of New Mexico, and venue is hereby stipulated in the First Judicial District Court, State of New Mexico.

P. Sovereign immunity. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by parties or their "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.* (1976), as amended.

Q. Survival of obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the parties of obligations that by their nature should survive such cancellation, expiration, or earlier termination.

R. Binding effect. This Agreement, as it may be amended from time to time, shall be binding on and inure to the benefit of the parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

S. Other Documents. The parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

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

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

THE BUCKMAN DIRECT DIVERSION BOARD

By: [Signature]
Chair

Date: 11-8-07

Attest: [Signature]
Valerie Espinoza, County Clerk [Signature]



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

By: [Signature]

By: [Signature]
David Coss, Mayor

[Signature]
Approved as to form
City Attorney
[Signature]
City of Santa Fe Clerk
[Signature]
12/3/07

11-1-07
Date

12-3-07
Date

ATTACHMENT A

Parties designated to receive notices under this Agreement:

For the Sangre de Cristo Water Division of the City of Santa Fe

Rick Carpenter
Sangre de Cristo Water Company
801 West San Mateo Street
Santa Fe, NM 87505

With copies to:

City Manager
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-0909

City Attorney
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87504-0909

For the Buckman Direct Diversion Board:

Chair, Buckman Direct Diversion Board
c/o Stephanie Trujillo, Secretary
801 West San Mateo Street
Santa Fe, NM 87505

With copies to:

Santa Fe County
attn: County Manager
P.O. Box 276
Santa Fe, New Mexico 87504-0276

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504-0276

ATTACHMENT B
Specifications for Insurance Coverage

**AMENDMENT NO. 1
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 1 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 1") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the project, and other necessary terms; and

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 1 to increase the Project Manager's monetary authority to enter into contracts and expenditures for the project.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 1, the BDD Board and the Project Manager agree as follows:

1. Article 3, Section C is deleted in its entirety and replaced with the following:

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation, and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts, expenditures in amounts greater than \$30,000,

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to Sections 10 and 11 of the JPA.

Contracts and expenditures in amounts of \$30,000 or less may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures over \$30,000 if it is not practical to submit the contracts or expenditures to the BDD Board for approval prior to the transaction. In that event, the BDD Board shall be informed of the emergency procurement in excess of \$30,000 at the next scheduled meeting.

2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 1 to be executed and delivered by its duly authorized representatives as of the date specified below.

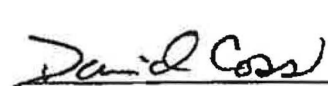
**THE BUCKMAN DIRECT DIVERSION
BOARD**

By: 
Name: Rebecca Espinoza
Title: Chair
Date: July 10, 2008

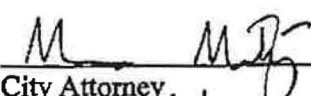
Attest:

Valerie Espinoza, County Clerk

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

By: 
Name: David Coss
Title: Mayor
Date: 8-14-08

Approved as to form:


City Attorney
Date: 7/8/08

Galanda y. Nigip
City of Santa Fe Clerk 8-11-08
Date: 8-15-08

**AMENDMENT NO. 2
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 2 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 2") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 2 to the Agreement approved by the BDD Board on July 10, 2008 to increase the Project Manager's monetary authority to enter into contracts and expenditures from the project from \$20,000 to \$30,000; and

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 2 to further increase the Project Manager's monetary authority to enter into contracts and expenditures for the project.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 2, the BDD Board and the Project Manager agree as follows:

1. **Article 3, Section C** is deleted in its entirety and replaced with the following:

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation, and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts, expenditures in amounts greater than \$50,000,

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to Sections 10 and 11 of the JPA.

Contracts and expenditures in amounts of \$50,000 or less may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures over \$50,000 if it is not practical to submit the contracts or expenditures to the BDD Board for approval prior to the transaction. In that event, the BDD Board shall be informed of the emergency procurement in excess of \$50,000 at the next scheduled meeting.

2. **Article 4, Section I** is amended by deleting the monetary amount contained in the section and replacing it with "\$50,000."

3. **Article 10, Section N Subcontractors** is amended by deleting the monetary amount contained in the section and replacing it with "\$50,000."

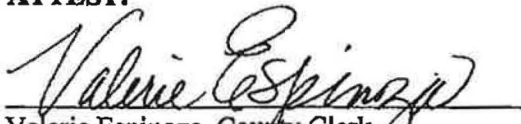
4. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 2 to be executed and delivered by its duly authorized representatives as of the date specified below.

**BUCKMAN DIRECT DIVERSION
BOARD**

By: 
Commissioner Virginia Vigil
Chairperson BADB-9/3/09

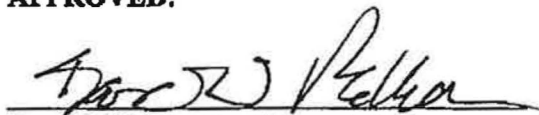
ATTEST:


Valerie Espinoza, County Clerk

APPROVED AS TO FORM:


Nancy R. Long BDDDB Counsel

APPROVED:


David Millican, City Finance Director

N/A
Business Unit/Line Item

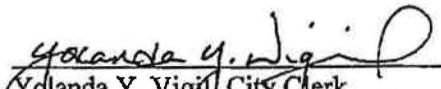
**THE SANGRE DE CRISTO WATER
DIVISION OF THE CITY OF SANTA FE**

By: 
David Coss
Mayor
Date: 10/16/09

APPROVED AS TO FORM:

MDM
City Attorney
Date: 9/9/09

ATTEST:


Yolanda Y. Vigil City Clerk
File Date: ccm-fg 10/14/09

ITEM # 12-0995

**AMENDMENT NO. 3
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 3 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 3") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement, approved by the BDD Board on July 10, 2008, to increase the Project Manager's monetary authority to enter into contracts and expenditures for the project from \$20,000 to \$30,000;

WHEREAS, the Agreement was amended pursuant to Amendment No. 2 to the Agreement, approved by the BDD Board on September 3, 2009, to increase the Project Manager's monetary authority to enter into contracts and expenditures for the project from \$30,000 to \$50,000; and

WHEREAS, the BDD Board and the Project Manager desire to enter into Amendment No. 3 to clarify that the Project Manager's monetary authority excludes any applicable gross receipts tax.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 3, the BDD Board and the Project Manager agree as follows:

1. **Article 3, Section C**, third paragraph, is amended by the addition of the underscored language:

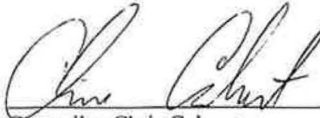
Contracts and expenditures in amounts of \$50,000 or less, excluding any applicable gross receipts tax to be paid, may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures over \$50,000 if it is not practical to submit the contracts or expenditures to the BDD Board for approval prior to the transaction. In that event, the BDD Board shall be informed of the emergency procurement in excess of \$50,000 at the next scheduled meeting.

2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

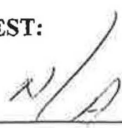
IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 3 to be executed and delivered by its duly authorized representatives as of the date specified below.

BUCKMAN DIRECT DIVERSION
BOARD

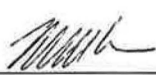
By:


Councilor Chris Calvert
Chairperson *BDDB Approved 11/12*

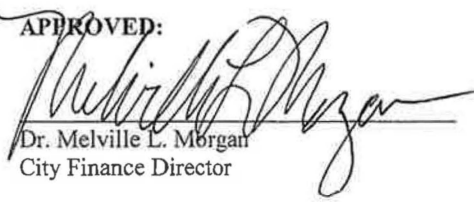
ATTEST:


Valerie Espinoza, County Clerk
File Date: _____

APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel

APPROVED:


Dr. Melville L. Morgan
City Finance Director

Business Unit/Line Item

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

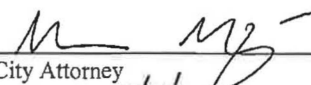
By:


David Coss
Mayor

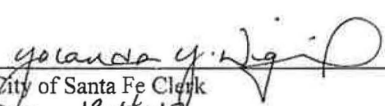
Date:

12-3-12

APPROVED AS TO FORM:


City Attorney
Date: *11/5/12*

ATTEST:


Yolanda Y. Wiggins
City of Santa Fe Clerk
Date: *12-4-12*
County 11-28-12

**AMENDMENT NO. 4
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 4 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 4") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project ("Project") on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; and pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is exclusive of gross receipts tax; and

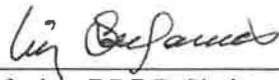
WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 4 to extend the term of the Agreement.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 4, the BDD Board and the Project Manager agree as follows:

1. **ARTICLE 2, TERM, EFFECTIVE DATE**, is amended to extend the term of the Agreement effective as of December 1, 2015 to June 30, 2016.
2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

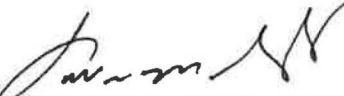
IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 4 to be executed and delivered by its duly authorized representatives as of the date specified below the signatory for the Sangre de Cristo Water Division of the City of Santa Fe.

BUCKMAN DIRECT DIVERSION BOARD

By: 
Liz Stefanics, BDDDB Chair

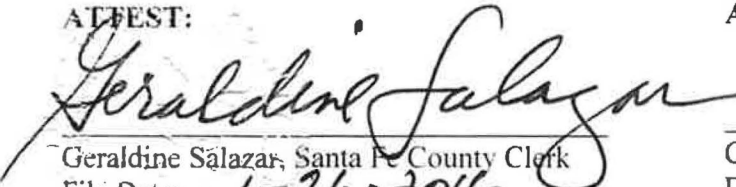
BDDDB Approved 11/5/2015

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

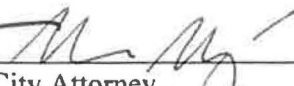
By: 
Javier Gonzales,
Mayor

Date: 12/21/15

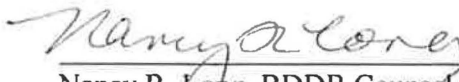
ATTEST:

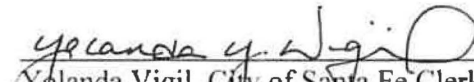

Geraldine Salazar, Santa Fe County Clerk
File Date: 1-26-2016

APPROVED AS TO FORM:


City Attorney
Date: 12/2/15

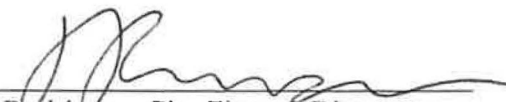
APPROVED AS TO FORM:


Nancy R. Long, BDDDB Counsel


Yolanda Vigil, City of Santa Fe Clerk
Date: 12-23-15

CC mtg. 12/9/15

APPROVED:


Oscar Rodriguez, City Finance Director

Business Unit/Line Item

**AMENDMENT NO. 5
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 5 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 5") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project ("Project") on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is

exclusive of gross receipts tax; and pursuant to Amendment No. 4 to extend the term of the Agreement; and

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 5 to further extend the term of the Agreement.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 5, the BDD Board and the Project Manager agree as follows:

1. **ARTICLE 2, TERM, EFFECTIVE DATE**, is amended to extend the term of the Agreement effective as of July 1, 2016 to December 31, 2016.
2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 5 to be executed and delivered by its duly authorized representatives as of the date specified below the signatory for the Sangre de Cristo Water Division of the City of Santa Fe.

BUCKMAN DIRECT DIVERSION BOARD

By: C. Dominguez
Carmichael Dominguez,
BDDDB Chair

BDDDB Approved - June 2, 2016

APPROVED AS TO FORM:

Nancy R. Long
Nancy R. Long, BDDDB Counsel

APPROVED:

Oscar Rodriguez
Oscar Rodriguez, City Finance Director

N/A
Business Unit/Line Item

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

By: Javier Gonzales
Javier Gonzales,
Mayor

Date: 6/16/16

APPROVED AS TO FORM:

ADAM
City Attorney
Date: 6/17/16

Yolanda Vigil
Yolanda Vigil, City of Santa Fe Clerk *mb*
Date: 6-24-16



Buckman Direct Diversion

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memorandum

Date: For June 2, 2016 meeting
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: **Consideration of Extension to the Term of the PMFSA**

ITEM AND ISSUE:

Discussion and possible action to extend the term of the Project Management and Fiscal Services Agreement (PMFSA) from June 30, 2016 to December 31, 2016.

BACKGROUND AND SUMMARY:

The Staff Advisory Group recommended that the Buckman Direct Diversion Board select the City of Santa Fe to continue to serve as the Support Entity for the BDDDB and enter into a new agreement for support services with a term through June 30, 2020. The Board adopted the Staff Advisory Group's recommendation. The original term of the PMFSA was December 31, 2015 but was extended to June 30, 2016 to allow time for the negotiation of a new agreement.

Negotiations have been ongoing regarding the terms of the new Support Entity Agreement. It is unlikely that the new agreement will be finalized prior to the expiration of the term of the PMFSA which is June 30, 2016. It is therefore recommended that the term of the PMFSA be extended through December 31, 2016. It is expected that the new Support Entity Agreement can be completed prior to that time.

RECOMMENDATION:

It is recommended that the Board approve Amendment No. 5 to the PMFSA, extending the term of the agreement to December 31, 2016. The amendment must also be approved by the City of Santa Fe.



**AMENDMENT NO. 5
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 5 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 5") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project ("Project") on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is



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

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

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

2 Name of Contractor Santa Fe County, BDDDB, City of Santa Fe

3 Complete information requested

☒ Plus GRT

☐ Inclusive of GRT

Original Contract Amount: na

Termination Date: November 8, 2007

☐ Approved by BDDDB Date: _____

☒ or by Project Manager Date: Pending

Contract is for: project management and fiscal services agreement for the BDD

Amendment # 5 to the Original Contract# _____

Increase/(Decrease) Amount \$ na

Extend Termination Date to: December 31, 2016

☒ Approved by BDDDB Date: June 2, 2016

☐ or by Project Manager Date: _____

Amendment is for: Extend term

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

☒ Plus GRT

☐ Inclusive of GRT

Amount \$ na of original Contract# 14-0661 Termination Date: 06/30/2015

Reason: professional services

Amount \$ na amendment # 1 Termination Date: na

Reason: increase pm monetary authority

Amount \$ na amendment # 2 Termination Date: na

Reason: increase pm monetary authority

Amount \$ na amendment # 3 Termination Date: _____

Reason: clarify monetary authority

Amount \$ na amendment # 4 Termination Date: _____

Reason: extend term 6/30/16

Total of Original Contract plus all amendments: \$ na

**AMENDMENT NO. 7
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 7 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 7") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project ("Project") on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is

exclusive of gross receipts tax; and pursuant to Amendment Nos. 4, 5 and 6 to extend the term of the Agreement.

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 7 to further increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$50,000.00 plus applicable gross receipts tax to \$60,000.00 plus gross receipts tax.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 7, the BDD Board and the Project Manager agree as follows:

1. **Article 3, Section C** is deleted in its entirety and replaced with the following:

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation, and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts, expenditures in amounts greater than \$60,000.00.

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to Sections 10 and 11 of the JPA.

Contracts and expenditures in amounts of \$60,000.00 or less may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures over \$60,000.00 if it is not practical to submit the contracts or expenditures to the BDD Board for approval prior to the transaction. In that event, the BDD Board shall be informed of the emergency procurement in excess of \$60,000.00 at the next scheduled meeting.

2. **Article 4, Section I** is amended by deleting the monetary amount contained in the section and replacing it with "\$60,000.00."

3. **Article 10, Section N Subcontractors** is amended by deleting the monetary amount contained in the section and replacing it with "\$60,000.00."

4. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 7 to be executed and delivered by its duly authorized representatives as of the date specified below the signatory for the Sangre de Cristo Water Division of the City of Santa Fe.

BUCKMAN DIRECT DIVERSION BOARD

By: _____

Peter Ives,
BDDDB Chair

Date: _____

6-7-18

APPROVED AS TO FORM:

Nancy R. Long, BDDDB Counsel

APPROVED:

City Finance Director

N/A
Business Unit/Line Item

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

By: _____

Alan Webber,
Mayor

Date: _____

7-17-18

APPROVED AS TO FORM:

City Attorney

Date: _____

6/15/18

Yolanda Vigil, City of Santa Fe Clerk

Date: _____

cc mtg. 7/11/18

**AMENDMENT NO. 8
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 8 ("Amendment No. 8") to the Project Management and Fiscal Services Agreement ("Agreement") is between the Buckman Direct Diversion Project Board (the "BDD Board") and the City of Santa Fe ("City" or "Project Manager").

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is exclusive of gross receipts tax; pursuant to Amendment Nos. 4, 5 and 6 to extend the term of the Agreement; and pursuant to Amendment No. 7 to increase the Project Manager's monetary authority from \$50,000 plus applicable gross receipts tax to \$60,000.00 plus gross receipts tax;

WHEREAS, the BDD Board and the Project Manager desire to further amend the Agreement as set out below;

WHEREAS, the County has reviewed and approved this Amendment No. 8.

NOW, THEREFORE, for consideration, the BDD Board and the Project Manager agree as follows:

1. **ARTICLE 1. DEFINITIONS.** Section L of Article 1 is deleted in its entirety and replaced with the following:

- L. "Las Campanas" means the Las Campanas Water and Sewer Cooperative, a New Mexico cooperative association and the Club at Las Campanas, a New Mexico not for profit association, both signatories of the FOPA.

2. **ARTICLE 3. RESPONSIBILITIES OF THE BDD BOARD.** Subsection B of

Article 3 is deleted in its entirety and replaced with the following:

- B. Supervise the performance of the Project Manager pursuant to §§ 4 and 12 of the JPA, as amended.

3. **ARTICLE 6. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING OPERATIONS.** Subsection O of Article 6 is deleted in its entirety and replaced with the following:

- O. Provide all necessary staff, materials, and supplies necessary to operate and maintain the Project consistent with Board funding. All Project staff shall be employees of the City, including a Facilities Manager, who shall be responsible for reporting to the BDD Board and the City Manager, for the day-to-day operations of the Project, and for supervising all other Project staff. Consistent with the City Charter, only the City Manager has the authority to hire, fire, and discipline the Facilities Manager.

Prior to hiring the Facilities Manager, the City Manager will brief the BDD Board in executive session regarding the candidates for the position, and the BDD Board may appoint the Citizen member or his/her alternate to be on the interview panel.

Upon receiving a written resignation from the Facilities Manager, and before issuing a suspension, demotion, dismissal, or re-assignment of the Facilities Manager, the City Manager shall brief the County Attorney, the City Attorney, and the BDD Board Attorney regarding the effects, if any, of the action on the operation of the BDD or other matters concerning the BDD.

The Parties do not intend to create any third-party beneficiaries to this Agreement and nothing herein is intended to create or affect the rights or obligations of any City employee, including the Facilities Manager, or conflict with the City Charter;

4. **ARTICLE 7. FISCAL AGENT RESPONSIBILITIES.** Subsection A(6) of

Article 7 is deleted in its entirety and replaced with the following:

- (6) After the end of each fiscal year, and in accordance with the New Mexico state audit rule, provide copies of audited financial statements to the City, the County and Las Campanas, showing the

assets, liabilities, revenues, expenses, equity balances and budget comparisons for the BDD Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report. The Project Manager shall be allowed to recommend that its auditors produce the financial statements, dependent on staff availability and the complexity of the reporting requirements.

5. **ARTICLE 8. COMPENSATION.** Section A of Article 8 is deleted in its entirety and replaced with the following:

- A. The Project Manager shall be compensated for its services as fiscal agent to the Project in an amount equal to four and one-half percent (4.5%) of the total annual operating budget (excepting reserve funds and litigation expenses) of the Project in each fiscal year.

6. Except as expressly modified by this Amendment No. 8 and prior Amendment Nos. 3, 6, and 7, the Agreement remains in full force and effect in accordance with its terms.

[Signature pages follow]

BUCKMAN DIRECT DIVERSION BOARD

By: _____

Peter Ives,
BDDDB Chair

Date: _____

11/1/15

APPROVED AS TO FORM:

Nancy R. Long, BDDDB Counsel

SANTA FE COUNTY APPROVAL

By: Anna Hansen
Anna Hansen, Chair
Board of County Commissioners



ATTEST:

Geraldine Salazar
Geraldine Salazar
County Clerk

Approved as to form:

R. Bruce Frederick
R. Bruce Frederick
County Attorney

APPROVED:

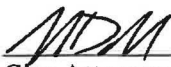
Stephanie Schardin Clarke
Stephanie Schardin Clarke
Finance Director

CITY OF SANTA FE

By: 
Alan Webber,
Mayor

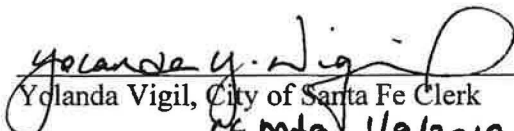
Date: 1/30/19

APPROVED AS TO FORM:

 FOR
City Attorney

 
City Finance Director

N/A
Business Unit/Line Item


Yolanda Vigil, City of Santa Fe Clerk
cc mtg. 1/9/2019



AGENDA

The City of Santa Fe And Santa Fe County

Buckman Direct Diversion Board Meeting

THURSDAY, DECEMBER 1, 2016

4:15 PM

**CITY COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM THE NOVEMBER 3, 2016 BUCKMAN DIRECT DIVERSION BOARD MEETING
6. MATTERS FROM STAFF

INFORMATIONAL ITEMS

7. Monthly Update on BDD operations. (Erick LaMonda)
8. Presentation on the Report: Storm Water Quality Monitoring of the Rio Grande at the Buckman Direct Diversion, 2015. (Daniella Bowman)

CONSENT AGENDA

9. Request for approval of the 2017 Fiscal Services Audit Committee (FSAC) meetings calendar. (Erminia Tapia)
10. 1st Quarter Financial Report. (Mackie Romero)

DISCUSSION AND ACTION

11. Request for approval of recommendation of matching funds for the FY 2017 Water Trust Board Application for funding an additional 4 million gallon storage tank at the BDD Regional Water Treatment Facility. (Rick Carpenter and Alan Hook)
12. Request for approval of payment to the Bureau of Land Management in the amount of \$71,036.64 for BDDDB right-of-way rental agreements effective 01/01/2017 – 12/31/2017. (Mackie Romero)
13. Consideration and possible approval of Amendment No. 6 to the Project Management and Fiscal Services Agreement (“PMFSA”) between the Buckman Direct Diversion Board and the City of Santa Fe to extend the term of the Agreement from December 31, 2016 on a month by month basis until a replacement agreement for support services is entered into between the parties. (Nancy R. Long)

MATTERS FROM THE PUBLIC

REPORT FROM THE EXECUTIVE DIRECTOR

MATTERS FROM THE BOARD

NEXT MEETING: Thursday, January 5, 2017 @ 4:15pm

ADJOURN

EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding threatened or pending litigation in which the BDDDB is, or may become, a participant, including without limitation: Discussion regarding Diversion Structure issues. (Nancy R. Long)



PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE

The motion passed by unanimous voice vote.

- 13. Request for approval of Amendment No. 6 to the Project Management and Fiscal Services Agreement (“PMFSA”) between the Buckman Direct Diversion Board and the City of Santa Fe to extend the term of the Agreement from December 31, 2016 on a month by month basis until a replacement agreement for support services is entered into between the parties**

NANCY LONG (BDD Board Consulting Attorney): Mr. Chair, members of the Board, we are seeking Board approval for amendment number 6 which does extend the term of the PMFSA from the current expiration date of December 31 at the end of this year on a month to month basis while we continue to negotiate the terms of the agreement. As my memo notes and you all will remember, a staff advisory group was constituted to decide on recommendations to make to the Board for the successor support entity and it was decided and recommended as approved by the Board that the City would continue to serve in that role. Then the staff group continued to put together the terms of the new agreement, which we are calling a Support Entity Agreement at this time, and that had some vetting on the staff side and then has now gone to the City. The City will provide comments back and we’re hopeful that we will come to a successful resolution of those terms shortly. But it was determined that the end of the year just was not looking very likely with everything else that was going on. So the agreement is changing, of course, from the time that it was entered into when there wasn’t even a project yet so we’re deleting a lot of unnecessary terms in the agreement and negotiating on the conceptual level of how this will look. So we’ll hear back from the City shortly I’m sure, and we’ll hope to get it done in the first part of next year.

CHAIR DOMINGUEZ: Okay, so the first part of next year. Okay. I was going to ask, you’re not asking – we’re not going to have to do this every month for the next eight months are we?

MS. LONG: No, the amendment is worded such that it extends month to month until that new agreement is entered into and of course that will come to you for your approval. It’s an agreement that is entered into between the Board and the City.

CHAIR DOMINGUEZ: Okay.

CHAIRMAN CHAVEZ: Mr. Chair.

CHAIR DOMINGUEZ: Commissioner.

CHAIRMAN CHAVEZ: There was something else that was discussed and Mackie may have to help me remember this piece, but won’t this also help you to align our budget review, annual review, with the City’s budget cycle; won’t those align better?

MS. ROMERO: Mr. Chair, Commissioner Chavez, yes. There is a section in the agreement that has to do with the completion of the financial statements and that’s what we were talking about. The current agreement gives us a 90-day deadline to have financial statements at the end of the fiscal year which, as we know, BDD has not been able to adhere to that deadline. It is just because we are intertwined with the City it makes more sense to change that language. So that’s one of the items that will be adjusted on this new agreement.

CHAIR DOMINGUEZ: All right. Anyone else? What are the wishes of the Board on item number 13?

COUNCILOR IVES: Move to approve.

CHAIR DOMINGUEZ: Motion by Councilor Ives. Do we have a second?

MS. FORT: Second.

CHAIR DOMINGUEZ: And a second by Board Member Fort. Any discussion?

The motion passed by unanimous voice vote.

MATTERS FROM THE PUBLIC

CHAIR DOMINGUEZ: Is there anyone from the public that would like to address the Board? Anyone from the public? I'll call it a third time, is there anyone from the public that would like to address the Board? I see done.

REPORT FROM EXECUTIVE DIRECTOR

MR. VOKES: Mr. Chair, members of the Board, quickly a few items that I would like to bring forward. We have had a number of school groups at the BDD. We are continuing to improve and customize our program. We also are emphasizing the importance of science to these kids. We are talking about biology, that there's chemistry, there's physics, there's hydrologics, there's engineering. We also met with the City conservation group so that we can become an integral part of their education program too. So that's ongoing.

I will let you know that the new County Commissioners have scheduled a tour for the 19th of December so we can introduce them to the BDD. And the final item I have is an update on BDD vacancies which you've been handed. I will let you know that we are working very hard with the Human Resources Department of the City of Santa Fe to fill positions. We did do some interviews for the maintenance superintendent. We did select a candidate. We're in the process of doing background checks and looking at the approval process to make an offer to that individual. We do have a new BDD operator that's starting. A member of the metering department is transferring over because of the automation there – there are jobs being eliminated, so we are going to take one of their best staff and he's coming over so we are very excited about that. The maintenance mechanic, there were four candidates that were invited to do WorkKeys; none of the candidates were able to pass the WorkKeys to move on to the interview process. One of the things – Mr. Carpenter and I met yesterday to talk about the WorkKeys and perhaps adjusting the WorkKeys and so we're going to be taking that back to the Human Resources Department to see if we can make some adjustments on that to allow more candidates into the interview process. I will say that we have advertised a journeyman industrial electrician which has been vacant, seems like forever, two years. We did use the website Indeed to advertise this position. I think we got over 246 hits, people showing interest in it. We had about 17 or 18 that indicated that they were going to apply. The last I talked to the Human Resources Department she got about eight

**AMENDMENT NO. 6
TO
PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT
BUCKMAN DIRECT DIVERSION PROJECT**

This Amendment No. 6 to the Project Management and Fiscal Services Agreement (hereinafter referred to as "Amendment No. 6") is entered into by and between the Buckman Direct Diversion Project Board (the "BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

WHEREAS, the BDD Board and the Project Manager entered into the Project Management and Fiscal Services Agreement (the "Agreement") for the Buckman Direct Diversion Project ("Project") on November 8, 2007;

WHEREAS, the purpose of the Agreement was to specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the partners will be paid and credited against the obligations in connection with the Buckman Direct Diversion Project, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms;

WHEREAS, the Agreement was amended pursuant to Amendment No. 1 to the Agreement to increase the Project Manager's monetary authority to enter into contracts and expenditures for the Project from \$20,000 to \$30,000; pursuant to Amendment No. 2 to the Agreement to increase the Project Manager's monetary authority from \$30,000 to \$50,000; pursuant to Amendment No. 3 to the Agreement to clarify that the monetary authority is

exclusive of gross receipts tax; pursuant to Amendment Nos. 4 and 5 to extend the term of the Agreement.

WHEREAS, the BDD Board and the Project Manager desire to enter into this Amendment No. 6 to further extend the term of the Agreement.

NOW, THEREFORE, for the covenants, promises and consideration described in this Amendment No. 6, the BDD Board and the Project Manager agree as follows:

1. **ARTICLE 2, TERM, EFFECTIVE DATE**, is amended to extend the term of the Agreement from December 31, 2016 on a month by month basis until a new support services agreement executed by the parties.
2. In all other respects, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico, have caused this Amendment No. 6 to be executed and delivered by its duly authorized representatives as of the date specified below the signatory for the Sangre de Cristo Water Division of the City of Santa Fe.

BUCKMAN DIRECT DIVERSION BOARD

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

By: _____
Carmichael Dominguez,
BDDDB Chair

By: _____
Javier Gonzales,
Mayor

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Nancy R. Long, BDDDB Counsel

City Attorney
Date: _____

APPROVED:

Adam Johnson, Interim City Finance Director

Yolanda Vigil, City of Santa Fe Clerk

Date: _____

Business Unit/Line Item