



AGENDA

BUCKMAN DIRECT DIVERSION BOARD
JANUARY 07, 2021 AT 4:00 PM
ATTEND VIRTUALLY



SPECIAL PROCEDURES FOR BUCKMAN DIRECT DIVERSION BOARD MEETING

Attendance: In response to the State’s declaration of a Public Health Emergency, the Mayor’s Proclamation of Emergency, and the ban on public gatherings of more than five (5) people, the Buckman Direct Diversion Board meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe’s YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City’s YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Agenda: The agenda for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

Written Comments: The public may submit written comments on any of the consent items to be considered on the Consent Agenda, through 1:00 p.m. the day of the meeting, via the virtual comment “button” at santafe.primegov.com/portal/search.

Public Comment: To provide live public comment during the *Public Comment* section, you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm-gov.zoom.us/j/91073652466?pwd=eEFwTFN3WWJLeFM2a1NwL2tSUG9uQT09> Passcode: 764286

Attendees should use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799, Webinar ID: 910 7365 2466 Passcode: 764286

Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.



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1. **CALL TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF AGENDA**

4. **APPROVAL OF CONSENT AGENDA**

5. **APPROVAL OF MINUTES**

- a. Approval of Minutes from the December 3, 2020 Buckman Direct Diversion Board Meeting

6. **MATTERS FROM THE PUBLIC:**

Buckman Direct Diversion Board will take matters from the public in written form via email through 1:00pm on Thursday December 3, 2020. Emails must identify the submitting party's name and should be sent to Jamie-Rae Diaz, City of Santa Fe, Public Utilities, Administrative Manager, at jldiaz@santafenm.gov. These comments will be distributed to the Board for review prior to the meeting and placed in the minutes of the meeting.

7. **PRESENTATION/INFORMATIONAL ITEMS**

- a. Monthly Update on the BDD Operations. (Randy Sugrue, BDD Operations Superintendent, rccsugrue@santafenm.gov, 955-4501)
- b. Report from the Facilities Manager. VERBAL. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4206)

8. **ACTION ITEMS: CONSENT**

- a. Request for Approval to prepare and file amicus brief in State of California et al., v. Wheeler et al., Case No. 3:20-cv-03005 (N.D. Cal.) challenging the Navigable Waters Protection Rule which redefines Waters of the United States for purposes of Clean Water Act jurisdiction. (Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com, 986-9641)
- b. Request for Approval of Amendment to the Legal Services Agreement with Long, Komer & Associates for additional legal services associated with



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preparing and filing an amicus brief in State of California et al., v. Wheeler et al., Case No. 3:20-cv-03005 (N.D. Cal.), in the amount of \$30,000 plus New Mexico gross receipts tax. (Nancy Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

9. **ACTION ITEMS: DISCUSSION AND ACTION**

- a. Consideration and Possible Action on Resolution 2021-1, Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board and allowing the Board to continue to Limit Public Attendance at Meetings Provided there is Sufficient Means to Allow Remote Participation and Allowing the Board to Cancel any Meeting to Preserve the Public Health, Safety, and Welfare and Allowing for Alternate Forms of Attendance by its Public Members.(Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com 982-8405)

10. **MATTERS FROM THE BOARD**

11. **NEXT MEETING: Thursday, February 4, 2021 at 4:00 PM**

12. **ADJOURN**

13. **EXECUTIVE SESSION**

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDDB is a participant, including, without limitation: Buckman Direct Diversion Board v. CDM Smith, et al., First Judicial District Court Case No. D-101-CV-2018-01610.(Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

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

December 3, 2020

1. This meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Councilor JoAnne Vigil Coppler, Chair, at approximately 4:00 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, public entities are authorized to conduct virtual meetings.

[For clarity purposes, repetitive identification and confirmations of those on the line and their audibility have been eliminated and/or condensed in this transcript.]

2. Roll was called and the following members were present:

BDD Board Members Present:

Councilor JoAnne Vigil Coppler, Chair
Commissioner Anna Hansen, Vice Chair
Commissioner Anna Hamilton
J.C. Helms, Citizen Member
Councilor Carol Romero-Wirth
Tom Egelhoff, Las Campanas [non-voting]

Member(s) Excused:

None

BDD Board Alternate Members Present:

Peter Ives, Community Alternate
James Lightfoot, Las Campanas Alternate

Others Present:

Rick Carpenter, BDD Facilities Manager
Nancy Long, BDD Legal Counsel
Mackie Romero, BDD Finance Manager
Kyle Harwood, BDD Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Randy Sugrue, BDD Operations Superintendent
Greg Shaffer, County Attorney

Jamie-Rae Diaz, City Administrative Assistant
Joe Abeyta, City IT
Marcos Martinez, City Assistant Attorney
John Dupuis, County Water Division Director
Jay Lazarus, Glorieta Geoscience
James Bearzi, Glorieta Geoscience
Monique Maes, City Finance
Bryan Armstrong, BDD Maintenance Superintendent
Luke Pierpont, Egolf + Frelic + Martinez + Harwood

3. APPROVAL OF AGENDA [Exhibit 1: Agenda]

CHAIR VIGIL COPPLER: Does staff have any changes to the agenda?

RICK CARPENTER (BDD Facilities Manager): Madam Chair, we do have one change that staff would like to request and that is that item 8. C, Request for removal of vacant and unfunded Assistant Water Resources Coordinator position from the BDD org chart. That needs a little bit further consideration at the City Water Division and a request has been made to pull this item and possibly bring it back in the future.

CHAIR VIGIL COPPLER: So you're saying we need to remove item 8. C?

MR. CARPENTER: That is correct, Madam Chair.

CHAIR VIGIL COPPLER: Okay; any other changes?

NANCY LONG (Board Legal Counsel): Madam Chair, under 7. A, the date of the FSAC meeting should be December 2 and not December 1.

CHAIR VIGIL COPPLER: Okay.

COMMISSIONER HAMILTON: Madam Chair, may I actually ask for a clarification?

CHAIR VIGIL COPPLER: Yes.

COMMISSIONER HAMILTON: Thank you. So 8. C is being removed from the agenda all together, not just removed from Consent?

CHAIR VIGIL COPPLER: Yes. It would be removed from the agenda all together.

COMMISSIONER HAMILTON: Thank you.

CHAIR VIGIL COPPLER: Okay, 7. A the correction is to change December 1 to December 2nd.

MS. LONG: That is correct, Madam Chair.

CHAIR VIGIL COPPLER: Okay. Any other changes? All right. What are the wishes of the Board?

COUNCILOR ROMERO-WIRTH: Move to approve as amended.

COMMISSIONER HAMILTON: Second.

CHAIR VIGIL COPPLER: It's been moved by Councilor Romero-Wirth, seconded by Commissioner Anna Hamilton.

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

4. APPROVAL OF CONSENT AGENDA [See page 13]

CHAIR VIGIL COPPLER: We have item 8. C already removed or done away with. So what are the wishes of the Board?

COMMISSIONER HANSEN: Madam Chair.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: I would like to make a motion to approve the Consent Agenda.

CHAIR VIGIL COPPLER: Okay. Do we have a second?

BOARD MEMBER HELMS: Second.

CHAIR VIGIL COPPLER: Okay, it's been moved by Commissioner Hansen and seconded by Mr. Helms. Thank you.

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

5. APPROVAL OF MINUTES: November 5, 2020 BDD Board Meeting

CHAIR VIGIL COPPLER: I would like to start off by reading into the minutes for November 5th, stating for the record that the only matter discussed during executive session at our last Board meeting on November 5th was the matter stated in the motion to go into executive session, and that no action was taken. So I'd like to read that into the minutes. What's the pleasure of the Board?

COMMISSIONER HAMILTON: Madam Chair.

CHAIR VIGIL COPPLER: Commissioner Hamilton.

COMMISSIONER HAMILTON: Move to approve the minutes with that addition.

COMMISSIONER HANSEN: Second.

CHAIR VIGIL COPPLER: It's been move by Commissioner Hamilton, seconded by Commissioner Hansen to approve the minutes of November 5th.

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

6. MATTERS FROM THE PUBLIC

CHAIR VIGIL COPPLER: I believe we have one comment from the public and I'd like to ask Jamie-Rae Diaz to please read the public comment into the record as I understand the maker of the public comment agreed that it should be read into the record.

JAMIE-RAE DIAZ (Administrative Assistant): So this is by Joni Arends and public comment reads as follows: Concerned Citizens for Nuclear Safety, CCNS, submits the following comment and a question to the Buckman Direct Diversion for today's meeting. One, at last month's meeting on November 5, 2020, there was a discussion about a one-year extension of the 2018 BDD Board-LANL MOU which expired on December 1, 2020. This term is not listed on today's agenda. CCNS question: What is the status of the MOU?

Two, CCNS supports the approval of amendment No. 2 to the professional services agreement with Glorieta Geoscience, Inc, for technical support services to the Board. Thank you for this opportunity to make a public comment.

CHAIR VIGIL COPPLER: Okay. Thank you, Joni. If Joni Arends is listening, this is a public comment only but we may have an opportunity to say a thing or two about this later in the agenda. Thank you, Jamie-Rae.

6. PRESENTATION/INFORMATIONAL ITEMS

A. Report on December 2, 2020 Fiscal Services Audit Committee (FSAC)

MACKIE ROMERO (BDD Finance Manager): Madam Chair, members of the Board, the Fiscal Services Audit Committee was held on Tuesday, December 2nd. In attendance was myself, BDD Financial Manager, Rick Carpenter, BDD Facilities Manager, County Commissioner Hamilton and John Dupuis; from Las Campanas Tom Egelhoff and James Lightfoot.

We discussed the report on the first quarter financial position and then we discussed Consent Agenda items 8. A, 8. B and 8. C, and there were no major concerns.

I also provided an update on the BDD audit for fiscal year ending June 30, 2020, and stated that unfortunately, BDD's audit will be late. A letter was submitted to the State Auditor. We are tied with the City's audit and that report won't be submitted until March 31st. An update was also provided and we will provide updates every month until the report is officially issued to the State Auditor. That's the end of my report.

CHAIR VIGIL COPPLER: Thank you, Mackie. Does the Board or anyone, staff people, have any comment? Questions for Mackie? Commissioner Hansen first, Commissioner Hamilton, second.

COMMISSIONER HANSEN: I just want to express my disappointment in the fact that the audit will be late again. I don't really understand. I thought that the City had been given instructions to make it possible so that the cash receipts could be done earlier. So I just have to express my disappointment with that. I hope the City can start getting their fiscal house in order.

CHAIR VIGIL COPPLER: Thank you. Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you, Madam Chair. In that regard I wanted to say at first I fully understand that Mackie has done everything possible from the BDD side to make the audit as responsive as possible, but I'd like to ask, last year when the audit was late we had some discussion about potential remedial actions and I'd like them to be re-discussed and re-pursued this year. I'm not to the extent that we might want to ask why they weren't implemented the way they were discussed – I only want to ask for that if it helps figure out how we can do it this year. I'm not interested in blame but I really feel like this can and should be and truly needs to be remediated.

So if we can at some point have a discussion with what we can implement between the City and BDD so that we can get the information in a timely manner and have timely audits, I would really appreciate it.

CHAIR VIGIL COPPLER: Thank you. Mr. Carpenter, have you had any discussions with anyone at the City Finance to shed any light on this?

MR. CARPENTER: I have not. Mackie may have. I don't know that the Finance Department is going to be all that responsive to me. They speak in terms that Mackie understands but I don't know if she's reached out to them or not.

CHAIR VIGIL COPPLER: Ms. Romero.

MS. ROMERO: So Madam Chair, members of the Board, I have had discussions with Finance and Commissioner Hamilton is correct. Finance was trying to see if there was a way to separate cash, because that's one of the major components, but I know it's more difficult than originally was discussed. And so I will touch base again with Finance and see what those difficulties are and if that means changes to maybe some of the agreements then I can at least bring that forward so the Board is aware of what those steps would involve or take in separating BDD's cash from the City. That would hopefully help facilitate the audit.

CHAIR VIGIL COPPLER: Okay. Commissioner Hamilton.

COMMISSIONER HAMILTON: That's a great response and I would appreciate it. And Madam Chair, to the extent that it might help to have your as Chair, maybe after Mackie's first approach or when she has some feedback, to the extent that it might benefit BDD to have the Chair get involved in this – I'm just throwing that out as a thought.

CHAIR VIGIL COPPLER: Okay. Thank you. I will. I will say that the entrance conference with the auditors was not very comfortable to learn that we were going to be late again. They're concerned and I know I'm concerned. I know you all are concerned. So we will do whatever we can to make our concerns known and as see if there's any possible solution to this. It's obviously not going to be impacting this year's audit but in the future it could maybe effect a better position to be in for the next year's audit. So thank you for that.

Any other questions for Mackie Romero? Thank you, Mackie.

7. B. Monthly Update on BDD Operations

CHAIR VIGIL COPPLER: Randy Sugrue.

RANDY SUGRUE (Operations Superintendent): Thank you, Madam Chair, members of the Board, for the month of November and to date, the BDD operators are continuing to maintain a safe and healthy work environment. I'm pleased with that.

For the month of November our diversion averaged about 3.96 million gallons per day. Our deliveries through our booster stations averaged about 3.67 million gallons per day. Our delivery to Las Campanas has now come to zero as irrigation has stopped for the year. Our onsite treated and non-treated water is about 43 million gallons per day. We're providing 57 percent of the water supply to the City and County. That's increasing a bit. In December there is a regional demand drought summary update on page 2. As you can see on our report, our year-to-date diversions are depicted on the graph now. About an average for November.

Just as a note, we're just above two billion gallons of water produced at BDD for the year, which was similar to the previous year, a bit higher.

The daily demand for the month of November was about 6.4 mgd, so I stand for questions.

CHAIR VIGIL COPPLER: All right. Thank you. Does anyone have any

questions for Randy? Great. Seeing none, thank you, Randy. All very informative.

MR. SUGRUE: Thank you.

7. C. Report from the Facilities Manager

MR. CARPENTER: Thank you and good evening, Madam Chair and members of the Board. I have a few items. I think maybe I should start with the concurrence of Board general counsel – if I could ask Mr. Harwood, I think he has some answers to some of the pretty questions that Joni Arends asked in her email to the Board, and if it pleases the Chair, I'd like to invite Mr. Harwood to respond to that.

CHAIR VIGIL COPPLER: Okay.

KYLE HARWOOD (Board Counsel): Thank you, Madam Chair. Just two quick sentences. The letter extension to the MOU that was voted on by this Board in November has been executed. As you know, Chair, you got an electronic signature from me or a request for an electronic signature from me and then the site office has similarly executed that. So we do have that extension and that's just a quick update following on the Board's action from the last meeting.

And the second question from Ms. Arends, we'll have a full report at the January Board meeting regarding the status of our MOU negotiations. Not much has happened with Mr. Underwood's departure from the scene but we hope to have some additional progress to report at the January meeting if that suits the desire of you the Chair and the Board in general.

CHAIR VIGIL COPPLER: Yes. Sure.

MR. HARWOOD: Very good. That completes my updates that also just happen to fit into the public comment.

CHAIR VIGIL COPPLER: Thank you. Mr. Carpenter, do you want to proceed?

MR. CARPENTER: Thank you, Madam Chair. The next update I would like to share with the Board, Mackie and I have been working on the budget. We have been asked to comply with what I think is a pretty aggressive schedule, but we are doing pretty well. We've got a preliminary draft that is pretty tight, and we ran that by the City Water Division Director just yesterday. There are a couple little things we have to tighten up. There were no issues that we can't deal with. I think the budget's coming along really well. We're early in the year but we've got a pretty solid budget. It's going to be very thin, just like last year, but we are on track and complying with the schedule that's been presented to us. So I just wanted the Board to know that that is proceeding as it should be.

CHAIR VIGIL COPPLER: Okay. Before you proceed I see a hand from Commissioner Hamilton.

COMMISSIONER HAMILTON: Just quickly, could you give us a little verbal report on what the budget schedule is for the new fiscal budget?

MR. CARPENTER: It's pretty aggressive. We were directed – Mackie and I were directed to have a draft on the desk of the Water Division Director as of yesterday at 1:00 pm. We did that. I understand that we have to get that tightened up and presentable by the end of the week; that would be tomorrow. Shannon Jones, the Public Utilities Director, has to have his preliminary budget in to I guess the Finance Department some time next week. I'm not sure which day, but it's pretty aggressive and we'll go from there.

We have in our organic documents our own schedule on how to have the Board approve a draft budget and make the recommendation to the City and the County. We'll be able to stick with that unless there's something that I don't anticipate. So we're on schedule.

COMMISSIONER HAMILTON: Well, being on schedule is very nice, but clearly what you turn into the City is a first cut and it's recognized that the BDD budget comes to the BDD Board for approval and discussion, so in the process of revising the budget I think if you're presenting it to the City it should be presented to the Board.

MR. CARPENTER: I don't have a problem unless Mackie or Nancy has a problem presenting a preliminary budget. I think that would be helpful to perhaps even bring a preliminary draft to the Board at the next Board meeting, sooner rather than later is always good.

MS. ROMERO: So Madam Chair, if I could.

CHAIR VIGIL COPPLER: Sure.

MS. ROMERO: The City's deadline is aggressive. Once we were done with that it was our intention to then meet with both the County and Las Campanas as they are partners and part of this budget. And so I don't know if that's the level of discussion you were looking for, Commissioner Hamilton, or if you were looking for a higher level, but those meetings are planned and intended to happen. We were just trying to meet the City's deadline, but our intention is to meet with the remainders of the partners to go over the budget and the water projections and the numbers.

COMMISSIONER HAMILTON: Well, I appreciate that. I think that's a great idea. This is obviously earlier than you guys normally think that you need to present to the Board for approval of the BDD budget. What does come to mind, though, is that during the process of developing the draft budget, if the Board sees anything that they want some discussion on, the City has maybe good reason for wanting it earlier. That's great. They want to see where they're going to stand in the coming year and to be able to anticipate things but it doesn't leave room for their going ahead with the budget and the BDD Board, or the County and Las Campanas, and that will address some of it, but if there are things that come up, that would have to go back to the City to get information and some feedback early and have the Board as part of the process. It makes sense to me in terms of not having problems later.

CHAIR VIGIL COPPLER: I have a question. We would still go through budget hearings, right? And this is just kind of an accelerated prep time? We're preparing for meeting the deadline of submitting an operational budget by the DFA timeframe, right? Was that some time in May?

MS. ROMERO: So I know last year's budget was unique in that typically we don't go to budget hearings – or at least not BDD itself. The budget hearing remains within the Water Division and their budget, but I know last year was a unique situation and BDD did attend the budget hearings. I don't know if that will be the case again this year. But trying to stay in line with the original schedule was meeting with the partners, bringing the budget to the Board with all the partners' concurrence, and then getting the Board to then recommend that to both the City and the County, and then they include that in their budgets. But like Rick said, if we need to bring a preliminary draft so that the Board has an opportunity to have some discussion I think we can still do that.

CHAIR VIGIL COPPLER: Okay. Well I realize that discussion, whether we get into budget hearings or not is something we still need to discuss. I think the reason for

that was to begin to educate that BDD is a separate entity and to the extent the Board still wants to communicate in that fashion in may or may not be something you all want to do. But my point is, overall budgets have to be done and presented – is it the May deadline to DFA?

MS. ROMERO: I believe so, when it comes to the City and the County.

CHAIR VIGIL COPPLER: Okay. All right. I think there's still time. If we have to flex our budget muscle then we have some time to do it, but earlier is always sooner than later. Better than later. Thank you. Rick, do you want to continue?

MR. CARPENTER: Yes, Madam Chair. Thank you. I have two more items to update the Board on. They're bother going to be difficult for everyone. I do it with a heavy heart, but I need to let the Board know that Mackie Romero has decided to take a position elsewhere, with the State. It's a great career opportunity for her and an ability to apply the breadth and depth of her skills, more so than at the BDD and to be able to keep her options open as she moves through her career which I'm sure will be illustrious. But she has decided to take that position. She'll be leaving us on December 11th. We are working to see what we can do about a smooth transition and to fill the gaps until we can make a new hire. It will be difficult to find someone with the skill set that this job description requires. It always has been. That will be a challenge but I want the Board to know that I'm working on that already.

One thing we probably can't replace – we hope to, but it will be difficult, and that is filling the position is one thing; filling the person, which is Mackie Romero will be also very difficult. She's always been so helpful and so talented and a delight to work with, and everybody respects her and relies on her and so we are saddened that she will be moving on but we wish her well and I want to say in this public meeting, congratulations and we wish you well. Mackie, do you have anything to add?

MS. ROMERO: Thank you, Rick. I just want everyone to know it's been a pleasure. I've loved my seven years here at BDD. I love the staff. I love the work, the Board, the partners. Everybody's been very supportive in my career and I am excited about this new opportunity and saddened at the same time, but I do want to thank everyone and thank you, everyone, for all your kind words and support and wishes. So just thank you.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: Mackie, this is very sad news to hear, but also congratulations, and I am so happy for you moving up the ladder, so to speak. That's a great opportunity and I'm so proud and happy for you. But we are going to miss you desperately. I know that and I just want to express that from my heart. We will really miss you. There is no doubt about it. So thank you for all your service to the BDD and to all of us on the Board. We have gratitude for all that you've done.

CHAIR VIGIL COPPLER: Commissioner Hamilton.

COMMISSIONER HAMILTON: Yes, thank you, Madam Chair. What you've done for BDD can't be expressed any better than what Rick said but it is so amazing what a central figure you are between your expertise and the institutional knowledge and how you use that to make BDD successful. So it will be a challenge to replace that. But it's no surprise for you to get recruited to bigger and better things and I wish you – I mean it is no surprise at all. Well deserved and I wish you just so much luck in that. So if you hear the screams in the distance sometime after December 11th, you'll know what's going on. Congratulations, and thank you for everything.

MS. ROMERO: Thank you.

CHAIR VIGIL COPPLER: Anybody else? So Mackie, I was just like shocked to hear this and I'm saddened for the BDD Board and for all the people that work with you that I know are going to be very, very sad, but at the same time I'm just so – I'm excited for you for the career path that you're taking. I think there's no doubt one day you could be cabinet secretary for Department of Finance and Administration. And you've got some time to climb that ladder but I have no doubt that someone of your caliber and what you've been able to do for this Board and how you've kept it all together and your understanding, most of all, of the intricacies of finance and governing and such that there's no doubt that you could certainly end up in high places. So just remember all of us when you're there. We were nice to you. And just best of luck in your career. I know BDD is going to miss you and I hope you have a little life line for Rick Carpenter along the way because there's some things that are going to need – some questions, probably that will come up for you and I hope you're open to answering those questions in the future without jeopardizing anything that you have going on. But best of luck to you and just remember us fondly, and I think you will, because we will remember you fondly.

MS. ROMERO: Yes. Thank you.

CHAIR VIGIL COPPLER: Councilor Ives.

PETER IVES: Sorry, I just wanted to add that Mackie, obviously, our interactions have all been associated over the years with the BDD and having been a member of this Board for a number of years, and having served on many, many boards over the course of many years, having especially finance staff who are informed, who have the best interest of the organization at the forefront of the work they do and are able to provide confidence, those who serve on the board that they're getting accurate and correct and full information on financial matters makes all the difference to the operation of the Board but also the job that it's able to do. So I would say I give you my highest compliments in that regard because I have over the years built up a deep and abiding trust in what comes out of your mouth when you are presenting to this Board. So I would thank you for that and in closing I would only say that I hope you're coming over to the Department of Cultural Affairs.

MS. ROMERO: Thank you.

CHAIR VIGIL COPPLER: Okay, so thanks, Mackie, again.

MS. ROMERO: Thank you.

CHAIR VIGIL COPPLER: Mr. Carpenter, do you have any more good news, bad news?

MR. CARPENTER: Yes, Madam Chair and members of the Board, I'm afraid I do. With an equally heavy heart I need to announce to the Board that Mr. Bryan Armstrong will also be leaving the BDD. Bryan is the maintenance superintendent, has had a long and illustrious career with the City and the BDD. He has decided it would be in his best interest at this time to retire. He may or may not want to say words to the Board, but it's in his best interest that perhaps he retires. That too is going to be a difficult thing for the BDD to deal with. We've gotten so accustomed to Bryan helping us from the smallest maintenance item all the way up to tearing down and building up a 900 horsepower motor. There's nothing that that man can't do. He's a true hands-on working supervisor. His crew looks up to him and respects him. We all do. And like Mackie, we all like Bryan. He's easy to work with. He's a delight to work with and he's always, always willing to help. So we're

going to miss Bryan as well. His last scheduled day is December 25th, I believe. I think that's because it's the end of the pay period. That may or may not work out but he'll be leaving soon.

I need to let the Board know that I'm being as pro-active on this too as I can be. I've been sort of beating the bushes behind the scenes on possible replacements or anybody that might be interested in applying for the job and accelerating filling the job. We have tried to post that position earlier. Mackie and I are working on making sure that that happens and hopefully within the next day or so, we're not sure why it isn't posted yet, but we're being pro-active. We don't want a long-term void in filling Bryan's position.

But I want to thank Bryan personally in this meeting and congratulate him on a long, successful, amazing career and we will miss him as well. So, Bryan, I don't want to put you on the spot at all. I see that you're on the call but if you would like to say any words. You don't have to if you don't want to, but if you do, please feel free.

BRYAN ARMSRONG (Maintenance Superintendent): I'd like to say thank you to the Board and to all of the City for everything that I've been able to accomplish. I wasn't able to get done what I wanted to do for BDD. When I came back I had high hopes of getting everything straightened out down at the river where we had [inaudible] instead of a rush every day just to keep everything running. I thank everybody and I appreciate all the help that I've been given and I hope only the best for BDD.

CHAIR VIGIL COPPLER: Thank you, Bryan. Commissioner Hamilton.

COMMISSIONER HAMILTON: I know that you feel that you have less of a visible face to the Board than maybe Mackie does, but your efforts and your expertise and what you do for BDD is no less appreciated. I just wanted to express tremendous thanks for what you've carried and for what you've contributed to BDD and wish you all the best in retirement.

MR. ARMSTRONG: Thank you very much.

CHAIR VIGIL COPPLER: Any other comment? J.C.

BOARD MEMBER HELMS: I'm sorry I got blocked out earlier but I do want to join everybody in expressing thanks to Mackie for all she's done. She's been just wonderful to work with and I'm sorry to see her go, but I do wish her the very best. And I also want to say the same to Mr. Armstrong. I don't know him particularly well but he's obviously been extremely important to the organization and I'm very, very grateful and wish him the very best in the future. Thank you.

CHAIR VIGIL COPPLER: Thank you, J.C. Anyone else? Councilor Ives.

MR. IVES: Thank you, Madam Chair. I would just echo that yes, we do see Mackie of course at all the meetings but we are certainly cognizant of the complexity of the BDD operation and I think Rick's words probably were the best summary of the work that you've done for the organization and the fact that you are there and have been a person clearly that folks have relied upon over the years when tough jobs need to get done speaks tremendously to your work for the BDD, so I certainly want to extend those same thanks to you and how fun to be able to retire. Nice. Thank you.

CHAIR VIGIL COPPLER: Okay. Anyone else? I would like to join in the others, Mr. Armstrong, by wishing you well and I would also like to say as Commissioner Hamilton said, you may not be the picture perfect up front in any meetings but I sense and I know that you have the kind of job that when maybe something you didn't do or whatever went wrong then everybody knows who you are. So the fact that we may not have crossed

path is a good thing in that regard but that just speaks to your abilities and your accomplishments.

And please don't go away thinking that the Board doesn't appreciate your work because I know even those who haven't spoken have a high regard for the work that you do. It's important work and I'm sure everything that you've done has kept us in good standing and kept our operations running and in very good standing. So again, thank you for your service to the Board, to the City, to Las Campanas and the like and we just really appreciate you and we wish you well and we wish you a good future. Thank you.

MR. ARMSTRONG: Thank you very much.

CHAIR VIGIL COPPLER: I really don't feel like going back to you, Mr. Carpenter.

MR. CARPENTER: I'm sorry for the bad news, but I think that concludes my report to the Board.

CHAIR VIGIL COPPLER: Okay. Thank goodness.

COMMISSIONER HANSEN: Madam Chair.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: I just want to know when you will post the position for Mackie's position. I think that it is a critical position for BDD and what do you see as the future for posting and going through the hiring process?

MR. CARPENTER: Well, what I think I can tell you, Commissioner, at this point, and Madam Chair, members of the Board, we're going to move along as swiftly as we possibly can. I've already had some discussions with Mackie about getting all the paperwork prepared, job description, interview questions, the request to post, all of that is in process. Whether or not I can actually post before her scheduled departure date, December 11th, I don't know, or if we could even get it done by then, but that is the goal is to do it as rapidly as possible, and then I suppose we'll post for 30 days. We want to make sure that we get as many qualified applicants that might be interested as possible. And like I said earlier, I am already looking at people who may be interested and reaching out, and hopefully we'll get some qualified applicants that would be interested in applying and not having this – maybe another way to say it would be it is not my intention at all not to be aggressive about this.

I will approach the Water Division Director and if need be, the PUD Director and I'll hopefully gain their support to be as aggressive as we need to be so that the transition is as smooth as possible and the void is as short as possible, so we don't misstep anywhere along the way.

COMMISSIONER HANSEN: Thank you, Rick. I appreciate those comments and also thank you, Mr. Armstrong, for all of your hard work on all the projects at BDD. Thank you.

CHAIR VIGIL COPPLER: All right. Any other questions for Rick? Okay, seeing none.

7. D. Report on 1st Quarter Financial Position for Fiscal Year 2021

MS. ROMERO: Madam Chair, members of the Board, this report is to update the BDD Board and its partners on the first financial position as of September 30, 2020. This report I bring every quarter. The first part of the report is our budget

overview. As you can see from the second page of the report, our first quarter expenditures are a little over \$2.2 million. There are several line items that are rather high in the first quarter, but as you notice from Randy's report we were producing a lot of water, so our electrical for the first quarter was really high. Chemicals was really high and then our solids was really high, so we will probably see those numbers start to dip in the second quarter.

We are concerned with budget. Our budget is very thin this year so we will be monitoring those expenditures and bringing back any adjustments that we may have to make in the future.

The report also typically includes the first quarter billing to the partners but unfortunately, I was unable to get that done prior to printing of the packet so that was not included, but I will get the first quarter invoices out to the partners by the end of the week. So I'm actually working on that right now and am almost done.

The second part of the report is our other funds. We have the major repair and replacement fund and the emergency reserve fund. The Board has authorized \$492,000 from the major repair and replacement fund and as you can see from the budget overview there were no expenses in the first quarter, just encumbrances, so we should see some invoices coming in in the second quarter. I know the HVAC unit that the Board had approved was recently installed and completed so we should be getting that invoice in the second quarter.

Are there any specific questions about our expenses in the first quarter from the Board members?

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Mackie. With your departure, and with your working on the budget for the next year, I'm concerned that we have such a thin budget at the moment and that we're going to need to do possibly some BARs if we have created the thin budget. So do you foresee that with this budget that you are presenting to the Water Division that you will increase those places where we have used more water than we expected, and the solids? The electricity and the chemicals?

MS. ROMERO: So Madam Chair, members of the Board, like Rick mentioned, we did have these discussions with Jesse yesterday and you are correct, it was concerned about electricity and so I am going to have to do some shifting of expense to put something back in that particular category. We're also going to have some of our positions fully funded and so there will be some adjustments that will need to be made in the budget, and we'll work with those.

COMMISSIONER HANSEN: So, since you are leaving, who is going to do that? Or do you plan to get that done before you leave?

MS. ROMERO: My intent is to get the budget complete as far as I can before I leave.

COMMISSIONER HANSEN: I'm extraordinarily grateful. Thank you for that.

CHAIR VIGIL COPPLER: Okay. Commissioner Hamilton.

COMMISSIONER HAMILTON: Just a small thing, because I was thinking about, as you pointed out, there's a relationship, clearly, between the expenditure of electricity, which was – and the amount of water pumped. In July, all the summer months, they're high demand months, but thinking about it, I think that demand

is not just driven by a dry year. July was twice what the long-term average is from the operations report. So it just seems to me it must be partly driven by everybody being at home for COVID. Because there's less commercial use but I think it's got to be tremendously intuitively and empirically outweighed by higher residential use, which gives me the sense that it's not going to come down that much.

It's got to come down in the winter from the summer. But I bet it's got to be higher than average still. So I just think keeping that in mind when we think about the probability of using this year to project next year's budget for example, I just think we ought to keep that in mind.

CHAIR VIGIL COPPLER: Thank you, Commissioner. Any other questions for Mackie on this report? Okay. Thank you, Mackie. That is your report, ever.

MS. ROMERO: Thank you.

8. ACTION ITEMS: CONSENT

- A. **Request for Approval of Annual Payment to the Bureau of Land Management in the Amount of \$68,407.01**
- B. **Request for Approval of Amendment No. 2 to the Professional Services Agreement with Glorieta Geoscience, Inc. for Technical Support Services in the Amount of \$50,000 plus New Mexico Gross Receipts Tax**
 - 1. **Request for Approval of Budget Amendment Resolution (BAR) in the Amount of \$54,219**
- C. **Request for Approval to Remove Vacant and Unfunded Assistant Water Resources Coordinator from the BDD Org Chart REMOVED**

9. MATTERS FROM THE BOARD

CHAIR VIGIL COPPLER: Do we have any matters from the Board that anyone wants to bring up? We're all pretty depressed right now, I think. Well, then, seeing none.

10. **NEXT MEETING: Thursday, January 7, 2021 at 4:00 p.m.**

12. EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978, §10-15-1(H)(7), discussion regarding pending litigation in which the BDDB is a participant, or may become a participant, including, without limitation, the waters of the United States (WOTUS) Litigation entitled: *State of California, et al. v. Wheeler*, Case No. 3-20-CV-03005-RS (U.S.D.C.N.D Cal.)

CHAIR VIGIL COPPLER: We will adjourn after we make a motion to go into executive session. So I'll just take the liberty of moving that we go into executive session in accordance with the Open Meetings Act to discuss the Waters of the United States litigation entitled: *State of California, et al. v. Wheeler*, Case No. 3-20-CV-03005-RS. So that's my motion.

BOARD MEMBER HELMS: Second.

CHAIR VIGIL COPPLER: Mr. Helms made the second. Karen, will you please call for the vote.

The motion to adjourn and go into executive session passed by unanimous [5-0] roll call vote as follows:

Councilor Vigil Coppler	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Councilor Romero-Wirth	Aye
Board Member Helms	Aye

[The Board adjourned and met in executive session at 4:53 p.m.]

11. ADJOURNMENT

Chair Vigil Coppler adjourned the open portion of this meeting at approximately 4:53 p.m.

Approved by:

JoAnne Vigil Coppler, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

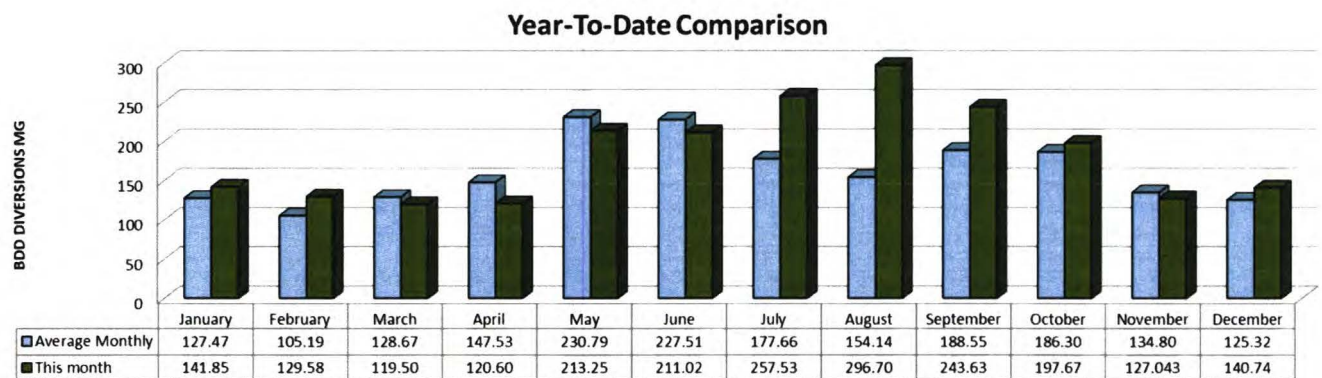
YOLANDA Y. VIGIL
SANTA FE CITY CLERK



Date: January 7, 2021
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of December 2020

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of December 2020. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
 - a. Raw water diversions: 4.54 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 4.43 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.00 MGD.
 - d. Onsite treated and non-treated water storage: 0.11 MGD Average.
2. The BDD is providing approximately 74% percent of the water supply to the City and County for the month.
3. Regional Demand/Drought Summary-see page 2.
4. The BDD year-to-date diversions are depicted below:

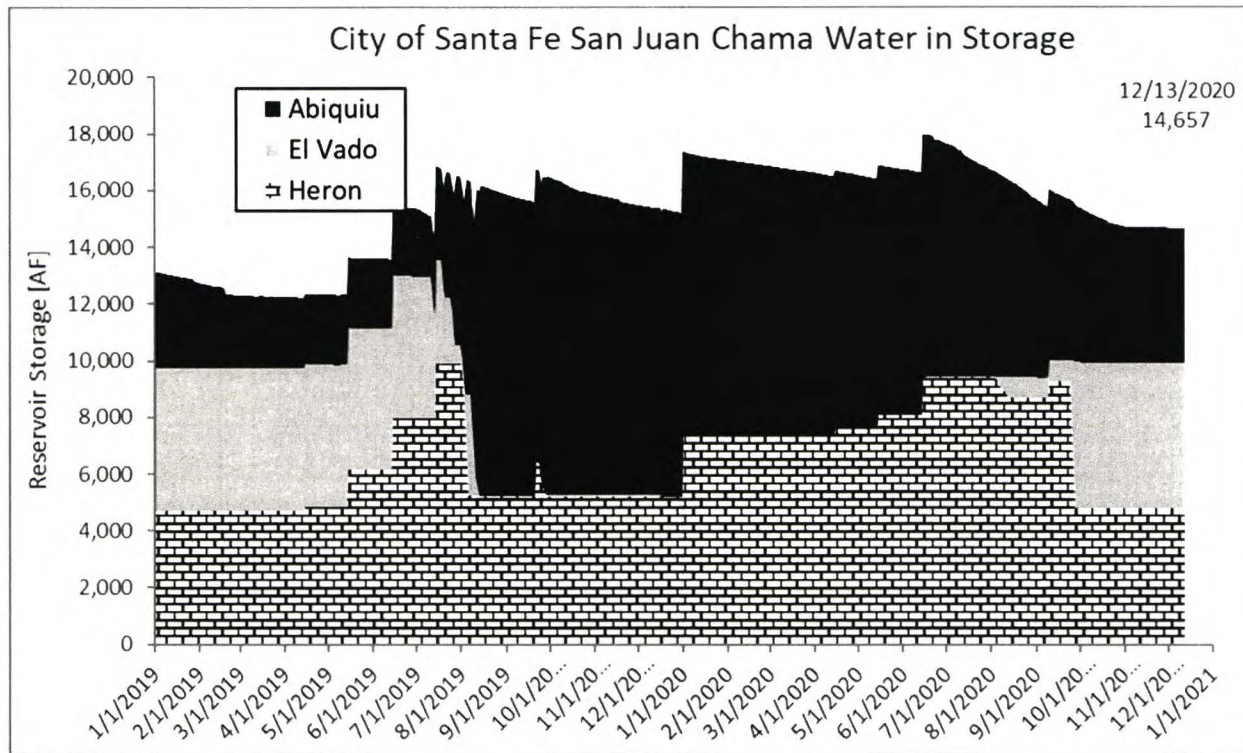




Regional Water Overview

Daily metered regional water demand for the month of November 2020 is approximately 6.0 MGD.

Rio Grande flows for November 2020 averaged approximately 480 CFS (cubic feet per second.)



ENSO Summary

December 14, 2020

ENSO Alert System Status: La Niña Advisory La Niña conditions are present. *Equatorial sea surface temperatures (SSTs) are below average from the west-central to eastern Pacific Ocean. The tropical atmospheric circulation is consistent with La Niña. La Niña is likely to continue through the Northern Hemisphere winter 2020-21 (~95% chance during January-March), with a potential transition during the spring 2021 (~50% chance of Neutral during April-June).



Buckman Direct Diversion Monthly SJC and Native Diversions							
Dec-20	In Acre-Feet						
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	438.797	134.433	0.000	304.364	298.249	6.115	2.759
FEB	396.508	218.194	0.000	178.314	178.314	0.000	1.679
MAR	357.764	185.598	0.000	172.165	172.165	0.000	1.621
APR	372.408	187.945	0.000	184.463	122.188	62.275	1.737
MAY	641.374	529.897	0.000	111.477	111.477	0.000	0.889
JUN	637.220	509.818	0.000	127.402	1.618	125.784	1.017
JUL	784.520	0.000	0.000	784.520	784.520	0.000	3.663
AUG	874.354	0.000	0.000	874.354	839.919	34.435	4.214
SEP	762.357	0.000	0.000	762.357	682.674	79.683	3.556
OCT	593.109	0.000	0.000	593.109	539.638	53.472	5.845
NOV	390.743	353.481	0.000	37.261	37.261	0.000	0.345
DEC	195.314	195.314	0.000	0.000	0.000	0.000	0.000
TOTAL	6,444.468	2,314.681	0.000	4,129.787	3,768.023	361.764	27.324

In Million Gallons							
Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions	
JAN	43.789	0.000	98.103	96.304	1.975	141.892	
FEB	71.073	0.000	57.454	57.454	0.000	128.527	
MAR	60.456	0.000	55.473	55.473	0.000	115.928	
APR	61.220	0.000	59.435	39.440	20.101	120.655	
MAY	172.605	0.000	35.812	35.812	0.000	208.417	
JUN	166.065	0.000	40.927	0.520	40.407	206.992	
JUL	0.000	0.000	252.754	252.754	0.000	252.754	
AUG	0.000	0.000	281.681	271.072	11.113	281.681	
SEP	0.000	0.000	245.686	219.960	25.726	245.686	
OCT	0.000	0.000	191.019	174.109	17.252	191.019	
NOV	115.140	0.000	12.008	12.008	0.000	127.148	
DEC	63.620	0.000	0.000	0.000	0.000	63.620	
TOTAL	753.968	0.000	1,330.351	1,214.905	116.574	2,084.319	



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

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



Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-18

In Acre-Feet

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

In Acre-Feet

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



Dec-17

In Acre-Feet

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

In Acre-Feet

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

Memorandum



Buckman Direct Diversion

Date: December 22, 2020
To: Buckman Direct Diversion Board
From: Kyle Harwood, BDD Legal Counsel *KH*
Subject: Possible Action re *State of California v. Wheeler* (Clean Water Act)

Item and Issue

Eighteen states including the State of New Mexico have challenged the Trump Administration's Navigable Waters Protection Rule in *State of California et al., v. Wheeler et al.*, Case No. 3:20-cv-03005 (N.D. Cal.).

The Navigable Waters Protection Rule presents a unique threat to the water supply of the BDD project by eliminating certain Clean Water Act protections and permitting requirements on the Pajarito Plateau upstream of the BDD intake. The BDD Board has an opportunity to participate in this challenge to the Navigable Waters Protection Rule by filing an amicus brief in the case.

Background

On April 21, 2020 the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) finalized the Navigable Waters Protection Rule, which redefined what water courses would be protected under the Clean Water Act. Among other things the Navigable Waters Protection Rule excludes all ephemeral streams, playas, non-adjacent wetlands, and arroyos from the definition of Waters of the United States. According to the New Mexico Environment Department, the Navigable Waters Protection Rule will exclude approximately 96% of New Mexico waterways from Clean Water Act jurisdiction.

For the Board, the practical effect is that the Rule removes most, if not all, stream reaches on the Pajarito Plateau from coverage and protection under the Clean Water Act, and therefore also removes EPA's authority to issue NPDES permits for stormwater or point-source discharges into those streams.

On May 1, 2020 New Mexico and seventeen other states, the District of Columbia and the City of New York filed a lawsuit against the EPA challenging its adoption of the Navigable Waters Protection Rule new rule in *State of California*. On June 19, 2020 the court issued an order denying the plaintiffs' request to block the rule. The Navigable Waters Protection Rule went into effect on June 20, 2020.

The plaintiffs' request for permanent injunctive relief is still pending and the court in *State of California* has established a briefing schedule for the case going forward, and has set a deadline of February 17, 2021 for filing of any amicus briefing. Because the case is based on the record of the EPA in drafting and promulgating the Navigable Waters Protection Rule, it is likely that it will be resolved on the briefing and a hearing on the briefs is scheduled for June 3, 2021.

Recommendation We recommend that the Board authorize BDD Counsel to prepare an amicus brief for filing in *State of California v. Wheeler*.



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



SANTA FE COUNTY

Signature: Kyle Harwood

Kyle Harwood (Dec 28, 2020 10:44 MST)

Email: kyle@egolflaw.com




ITEM 8a

Final Audit Report

2020-12-28

Created:	2020-12-28
By:	Jamie-Rae Diaz (jldiaz@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIQceiSzvZJntLMjTvw1aUDzBNSj4zla3



"ITEM 8a" History

-  Document created by Jamie-Rae Diaz (jldiaz@ci.santa-fe.nm.us)
2020-12-28 - 5:08:12 PM GMT- IP address: 63.232.20.2
-  Document emailed to Kyle Harwood (kyle@egofflaw.com) for signature
2020-12-28 - 5:08:48 PM GMT
-  Email viewed by Kyle Harwood (kyle@egofflaw.com)
2020-12-28 - 5:43:16 PM GMT- IP address: 67.164.147.101
-  Document e-signed by Kyle Harwood (kyle@egofflaw.com)
Signature Date: 2020-12-28 - 5:44:18 PM GMT - Time Source: server- IP address: 67.164.147.101
-  Agreement completed.
2020-12-28 - 5:44:18 PM GMT

Memorandum



Buckman Direct Diversion

Date: December 23, 2020
To: Buckman Direct Diversion Board
From: Monique Maes, Contracts Administrator 
Via: Rick Carpenter, Facilities Manager 
Subject: Long, Komer, and Associates P.A.

ITEM:

Request for approval of Amendment No. 2 to the Legal Service Agreement with Long, Komer, and Associates, P.A. in the amount of \$30,000.00 plus applicable gross receipts tax.

BACKGROUND:

On March 7, 2019 the Buckman Direct Diversion Board award RFP '19/22/P for legal service to Long Komer and Associates, P.A. to serve as the legal counsel for the Buckman Direct Diversion Board. This amendment will increase compensation for the amended term in the amount of \$30,000.00 plus applicable gross receipt tax. This increase is needed for additional legal services associated with preparing and filing an amicus brief in the State of California et al., v. Wheeler, et al., Case No. 3-20-CV-03005-RS.

ACTION REQUESED:

Staff recommends approval of Amendment No. 1 to the Legal Services Agreement with Long, Komer & Associates, LLP. Funding is available within our approved FY2021 operating budget.

BU/LI: Legal Services # 8000801.510200
MUNIS Contract# 3200406, Change Order 2

Approved by BDDDB January 7, 2021

Councilor JoAnne Vigil Coppler, BDDDB Chair



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



**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 2 TO
LEGAL SERVICES AGREEMENT
WITH LONG, KOMER & ASSOCIATES, PA
#19-0246**

THIS AMENDMENT No. 2 (the "Amendment") to the Legal Services Agreement, dated March 7, 2019, and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDDB") and Sub Surface Contracting, Inc. ("Contractor"). The effective date of this Amendment shall be the date it is executed by the Facilities Manager.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide legal service, acting in the capacity of legal counsel for the Board.

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

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of thirty thousand dollars (\$30,000.00) plus applicable gross receipts tax, so that Article 3, paragraph A reads in its entirety as follows:

A. Compensation under this agreement shall be in an amount not to exceed Five Hundred Forty Four Thousand Dollars (\$544,000.00), plus applicable gross receipts tax.

2. AGREEMENT IN FULL FORCE.

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

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

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

BUCKMAN DIRECT DIVERSION BOARD

By: _____
JoAnne Vigil Coppler, BDDDB Chair

Date: _____

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Dec 21, 2020 14:52 MST)

Senior Assistant City Attorney

APPROVED

Mary T. McCoy, City Finance Director

ATTEST

City Clerk

File Date: _____

CONTRACTOR:

Long, Komer & Associates P.A.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

New Mexico Tax & Revenue

CRS # _____

City of Santa Fe Business

Registration # _____



Buckman Direct Diversion Board

Real Estate Summary of Contracts, Agreements, Amendments & Leases



Section to be completed by department

1. Munis Contract # 3200406

Contractor: Long, Komer, & Associates P.A

Description: To increase compensation to the legal services contract # 19-0246 by \$30,000.00 plus tax. MUNIS Contract # 3200406 change order 2.

Contract Agreement Lease / Rent Amendment

Term Start Date: March 07, 2019 Term End Date: June 30, 2021

Approved by BDDDB or Approved by BDD Date: January 07, 2021
Facilities Manager

Contract / Lease:

Amendment # No. 1 to the Original Contract / Lease # 19-0246

Increase/(Decrease) Amount \$ 30,000.00

Extend Termination Date to: _____

Approved by BDDDB or Approved by BDD Date: January 7th, 2021
Facilities Manager

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

Contract 19-0246 first year of term \$265,000.00

Amendment No. 1, Item No. #20-0411 Increase \$265,000.00 and extend termination date to June 30, 2021.00

3. Procurement History: RFP # 19/22/P

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. Funding Source: BDD Operating Org / Object: 8000801.510200

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Monique Maes Phone # 505-955-4508

Email: mmaes@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

ITEM # 19-0246

BUCKMAN DIRECT DIVERSION BOARD

**LEGAL SERVICES AGREEMENT
WITH
Long, Komer & Associates, P.A.**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB) and Long, Komer & Associates, P.A. ("Contractor"). The effective date of this Agreement shall be the date when it is executed by the BDDDB.

1. SCOPE OF SERVICES

The Board seeks to use an independent contractor, qualified attorney to service as legal counsel for the Board on matters related to the Board's provision of regional water resources through the Buckman Direct Diversion ("BDD") Project. The required legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

A. The Contractor shall perform the following under the professional services agreement as stated:

- (1) Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- (2) Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- (3) Represent the Board in litigation not covered by insurance and in administrative matters,

(4) Provide legal advice on state and federal permitting such as, but not limited to; 1) the Environmental Impact Statement (EIS) for the BDD Project, 2) NEPA 3) the Biological Opinion covering the Project, and 4) NPDES permitting for the Project;

(5) Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;

(6) Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repair and replacement, other residual issues on existing contracts, and management plans as directed by the Board;

(7) Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;

(8) Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe; the Board of County Commissioners, and BDD Project Staff meetings;

(9) Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and

(10) Perform other duties as may be directed by the BDD Board or PUD Director or designee.

2. STANDARD OF PERFORMANCE; EXPERTISE; LICENSES

A. The Contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work of this Agreement. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government

contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The Contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The total compensation to be paid under this Agreement for the first year of the term shall be Two Hundred Sixty Five Thousand Dollars (\$265,000) plus applicable gross receipts tax as outlined in Exhibit A attached hereto.

- Fiscal Year 2018-2019, Eighty Five Thousand Dollars (\$85,000)
- Fiscal Year 2019-2020, One Hundred Sixty Thousand Dollars (\$180,000)

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

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

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

E. No Travel or per diem shall be paid by the Board under this Agreement. All costs of travel or per diem for the Contractor or the Contractor's staff are the sole responsibility of the Contractor.

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB and terminate on March 31, 2020. This agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years from the date of last signatory to this initial agreement.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 10 days written notice to the Contractor. In the event of such termination:

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

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

such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

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

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

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

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

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services

required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB. The Contractor shall not subcontract any portion of the services to be performed under this Agreement (other than as contained in the Contractor's proposal for services) without the prior written approval of the BDDB.

11. RELEASE

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

12. INSURANCE

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

reasonable request by the BDDB; (ii) obtained BDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

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

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

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

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

(2) **Automobile Liability.** For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and

effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the BDDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. The Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

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

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

D. Cancellation.

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

E. Insurer Requirements.

All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDB. The BDDB will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. Deductibles.

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

G. Specific Provisions Required.

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

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

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

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

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

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

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

13. INDEMNIFICATION

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

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

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any

limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

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

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDB and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the BDDB or the City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Any

action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

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

BDDB:

Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe, NM 87506

CONTRACTOR: Long, Komer & Associates
2200 Brothers Road
PO Box 5098
Santa Fe, NM 87502

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

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

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

BUCKMAN DIRECT DIVERSION BOARD

By: 
Peter Ives, BDDDB Chair

Date: 3/7/19

CONTRACTOR:

Long, Komer & Associates

Signature: 

Printed Name: Nancy R. Long

Title: Partner

Date: 3-19-19

APPROVED AS TO FORM

 FOR
Erin K. McSherry, City Attorney

NM Taxation & Revenue

CRS # 85-0353074
02075049008

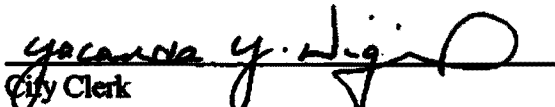
City of Santa Fe Business

Registration # 19-00058116

APPROVED

See Attached
Mary T. McCoy, City Finance Director

ATTEST


City Clerk

all


File Date: 4-4-19

BUCKMAN DIRECT DIVERSION BOARD

By: 
Peter Ives, BDDDB Chair

Date: 3/7/19

CONTRACTOR:
Long, Komer & Associates

Signature: 
Printed Name: Nancy R. Long
Title: Partner
Date: 3-19-19

APPROVED AS TO FORM

 ER
Erin K. McSherry, City Attorney

NM Taxation & Revenue
CRS # 85-0353074
02075049008
City of Santa Fe Business
Registration # 19-00058116

APPROVED


Mary T. McCoy, City Finance Director mm

ATTEST

City Clerk

File Date: _____

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

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

Exhibit A

Fee Schedule

The BDD Board shall pay compensation to the Contractor based upon hourly rates for provision of legal and administrative services. Such services shall be tracked and billed in one-tenth (0.01) hour increments to be paid as follows:

- The following attorneys shall be paid as hourly rate as stated:
 - Nancy R. Long, Partner \$190
 - Jonas M. Nohoum Associate \$165
 - Vicki R. Marco, Certified Paralegal \$100
 - Jane M. Clifford, Certified Paralegal \$100
 - Kyle Harwood, Partner \$190
 - Brittany Gaume, Paralegal \$100

Any services performed by Virtue & Najjar will be at the Partner rate.

Invoices shall be submitted to BDD Financial Manager and should include the following detailed information:

- i) Dates
- ii) Attorney
- iii) Description of billed services
- iv) Number of billed hours
- v) Hourly rate
- vi) Total Fees
- vii) NM Gross Receipts Tax

Item # 20-0411

**BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 1 TO
LEGAL SERVICES AGREEMENT
WITH
LONG, KOMER & ASSOCIATES, P.A.
#19-0246**

THIS AMENDMENT No. 1 (the "Amendment") to the Legal Services Agreement dated March 7, 2019, and as subsequently amended (the "Agreement") is made between the Buckman Direct Diversion Board ("BDDDB") and Long, Komer & Associates, P.A. ("Contractor"). The effective date of this amendment shall be the date it is executed by the BDDDB.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide legal service, acting in the capacity of legal counsel for the Board.

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

1. **COMPENSATION**

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of Two Hundred Seventy Thousand Dollars (\$249,000.00) plus applicable gross receipts tax, so that Article 3 paragraph A reads in its entirety as follows:

A. The total compensation to be paid under this Agreement for the second year of the term shall not exceed Five Hundred Fourteen Thousand Dollars (\$514,000.00) plus applicable gross receipts tax.

- Fiscal Year 2018-2019, Eight Five Thousand Dollars (\$85,000.00)
- Fiscal Year 2019-2020, One Hundred Eighty Thousand Dollars (\$180,000.00)
- Fiscal Year 2020-2021, Two Hundred Forty Nine Thousand Dollars (\$249,000.00)

2. **TERM AND EFFECTIVE DATE**

Article 5 of the agreement is amended to be retroactive from March 31, 2020 and extend the term to terminate on June 30, 2021.

3. **AGREEMENT IN FULL FORCE**

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

IN WITNESS WHEREOF, the parties have executed this Amendment No.1 to the Legal Service Agreement as the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: *JoAnne Vigil Coppler*
JoAnne Vigil Coppler, BDDB Chair

Date: 6/04/2020

CONTRACTOR:

Long, Komer & Associates P.A.

Signature: see next page

Printed Name: _____

Title: _____

Date: _____

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Senior Assistant City Attorney

New Mexico Tax & Revenue
CRS #02-075049008

APPROVED FOR FINANCES:

Mary T McCoy, City Finance Director

City of Santa Fe Business
Registration #20-00058116

ATTEST:

Yolanda Y. Vigil, City Clerk

File Date: _____

2. **TERM AND EFFECTIVE DATE**

Article 5 of the agreement is amended to be retroactive from March 31, 2020 and extend the term to terminate on June 30, 2021.

3. **AGREEMENT IN FULL FORCE.**

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

IN WITNESS WHEREOF, the parties have executed this Amendment No.1 to the Legal Service Agreement as the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: see previous page
JoAnne Vigil Coppler, BDDDB Chair

Date: _____

CONTRACTOR:

Long, Komer & Associates P.A.

Signature: Nancy R. Long

Printed Name: Nancy R. Long

Title: Partner

Date: 7-1-2020

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jun 9, 2020 08:44 MDT)
Senior Assistant City Attorney

New Mexico Tax & Revenue
CRS #02-075049008

APPROVED FOR FINANCES:

Mary McCoy
Mary T McCoy, City Finance Director

City of Santa Fe Business
Registration #20-00058116

ATTEST:

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

File Date: 8/21/2020 



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Long, Komer & Associates P.A.

Procurement Title: To serve as Legal Counsel for the BDDB RFP '19/22/P

Procurement Method: State Price Agreement Cooperative Sole Source Other RFP'19/22/P

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Buckman Direct Diversion Staff Name Monique Maes

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to BDD Facilities Manager (under 60K)/Buckman Direct Diversion Board (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	RFP
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All documentation presented to BDDB
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

<u>Monique Maes</u>	<u>Contracts Administrator</u>	<u>12/21/2020</u>
Department Rep Printed Name (attesting that all information included)	Title	Date

Purchasing Officer (attesting that all information is reviewed)	Title	Date
---	-------	------

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

*



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: LONG, KOMER & ASSOCIATES, P.A.
DBA: LONG, KOMER & ASSOCIATES,
P.A.

Business Location: 2200 BROTHERS RD
SANTA FE , NM 87502

Owner: LONG, KOMER & ASSOCIATES, P.A.

License Number: 58116

Issued Date: March 05, 2020

Expiration Date: December 31, 2020

CRS Number: 02075049008

License Type: Business License - Renewable

Classification: Business Registration - Standard

Fees Paid: \$35.00

LONG, KOMER & ASSOCIATES, P.A.
PO BOX 5098
SANTA FE, NM 87502

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CERTIFICATE OF LIABILITY INSURANCE

OP ID: SI

DATE (MM/DD/YYYY)

01/30/2019

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

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

PRODUCER Blue Chip Insurance Agency P.O. Box 5355 1040 Don Diego Santa Fe, NM 87502 Jay W. Winter		CONTACT NAME: John Bennett PHONE (A/C, No, Ext): 505-988-4425 FAX (A/C, No): 505-988-7454 E-MAIL ADDRESS: johnbennett@bluechipsantafe.com PRODUCER CUSTOMER ID #: LONGP-1	
INSURED LONG, KOMER & ASSOCIATES, PA Mark Komer P. O. Box 5098 Santa Fe, NM 87502-5098		INSURER(S) AFFORDING COVERAGE INSURER A: American Hallmark Insurance Co INSURER B: New Mexico Mutual Casualty Co. INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY						
A	X COMMERCIAL GENERAL LIABILITY	Y	44-PB-407497-22	02/03/2019	02/03/2020	EACH OCCURRENCE \$ 1,000,000
	CLAIMS MADE X OCCUR		44-PB-407497-21	02/03/2018	02/03/2019	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
						MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMPI/OP AGG \$ 2,000,000
						GEN'L AGGREGATE LIMIT APPLIES PER
X	POLICY	PRO-JECT	LOC			\$
AUTOMOBILE LIABILITY						
	ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	ALL OWNED AUTOS					BODILY INJURY (Per person) \$
	SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
A	X HIRED AUTOS		44-PB-407497-22	02/03/2019	02/03/2020	PROPERTY DAMAGE (PER ACCIDENT) \$
A	X NON-OWNED AUTOS		44-PB-407497-21	02/03/2018	02/03/2019	\$
						\$
UMBRELLA LIAB X OCCUR						
A	X EXCESS LIAB	CLAIMS-MADE	44-PB-407497-22	02/03/2019	02/03/2020	EACH OCCURRENCE \$ 2,000,000
	DEFLECTIBLE					AGGREGATE \$ 2,000,000
	X RETENTION \$	10000				\$
						\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	19745.121	02/03/2019	02/03/2020	X WC STATUTORY LIMITS OTH-ER \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	19745.120	02/03/2018	02/03/2019	E L DISEASE - EA EMPLOYEE \$ 500,000
						E L DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 The certificate holder is also listed as an additional insured with respects to the General Liability Coverage.

CERTIFICATE HOLDER		CANCELLATION
BUCKMAN Buckman Direct Diversion Board Rick Carpenter, Sr. Wtr Res. Co City of SF, Sangre de Cristo 801 W. San Mateo Santa Fe, NM 87504		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jay W. Winter

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EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
01/30/2019

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

AGENCY **Blue Chip Insurance Agency**
 P.O. Box 5355
 1040 Don Diego
 Santa Fe, NM 87502
 Jay W. Winter

PHONE (A/C, No, Ext): **505-988-4425**

FAX (A/C, No): **505-988-7454** E-MAIL ADDRESS: **bluechip@bluechipsantafe.com**

CODE: _____ SUB CODE: _____

AGENCY CUSTOMER ID #: **LONGP-1**

INSURED

COMPANY **American Hallmark Insurance Co**
 777 Main St., Ste. 1000
 Fort Worth, TX 76102

LOAN NUMBER _____ POLICY NUMBER **44-PB-407497-22**

EFFECTIVE DATE **02/03/19** EXPIRATION DATE **02/03/20** CONTINUED UNTIL TERMINATED IF CHECKED

THIS REPLACES PRIOR EVIDENCE DATED: _____

LONG, KOMER & ASSOCIATES
 Mark Komer
 P. O. Box 5098
 Santa Fe, NM 87502-5098

PROPERTY INFORMATION

LOCATION/DESCRIPTION **Attorney's Offices**
 2200 Brothers Road
 Santa Fe, NM 87505

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

COVERAGE INFORMATION

	COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Property : Personal Property		\$175,000	\$500

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS BUCKMAN DIRECT DIVERSION BOARD 801 W. San Mateo Santa Fe, NM 87505	MORTGAGEE	<input checked="" type="checkbox"/>	ADDITIONAL INSURED
	LOSS PAYEE	<input type="checkbox"/>	
	LOAN #		
	AUTHORIZED REPRESENTATIVE		Jay W. Winter

Memorandum



Buckman Direct Diversion

Date: January 7, 2021
To: Buckman Direct Diversion Board
From: Nancy R. Long
Subject: **Open Meetings Act Resolution 2021-1**

Item and Issue:

Adoption and approval of the Annual (2021) Open Meetings Act Resolution.

Background and Summary:

As the Board is aware, public bodies are required by the New Mexico Open Meetings Act (Act) to annually address the issue of what determines reasonable notice for its public meetings in compliance with the Act.

In 2013, and carried forward in the 2014 - 2020 Resolutions, the Board imposed an additional requirement not required by the Act that in order for a Board member to attend a board meeting by telephone, that board member must be needed to meet Board quorum requirements.

In May of 2020, due to the current and ongoing COVID-19 global pandemic; the State's Declaration of Public Health Emergencies; and the ongoing ban on public gatherings of more than five (5) people, it was prudent for the Board to amend its Open Meetings Act Resolution passed in January 2020. Resolution 2020-2 allowed for remote participation of the Board, allowed limiting public attendance at in-person meetings, provided there is adequate means for remote attendance, and allowed the Board Chair to cancel any BDDDB meeting to preserve the public health, safety and welfare. These provisions are carried forward and are contained in the proposed 2021 resolution.

Action Requested

Independent counsel recommends adoption by the Board of the Resolution Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board Resolution No. 2021-1; Rescinding Resolution No. 2020-2.



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



SANTA FE COUNTY

THE BUCKMAN DIRECT DIVERSION BOARD

RESOLUTION NO. 2021-1

**A RESOLUTION DETERMINING REASONABLE NOTICE FOR
PUBLIC MEETINGS OF THE BUCKMAN DIRECT DIVERSION BOARD;
RESCINDING RESOLUTION NO. 2020-2**

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

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

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

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

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

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

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

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

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

5. **Recessed Meetings.** The Board may recess and reconvene a meeting to a later

day, if, prior to recessing, the Board specifies the date, time and place for continuation of the meeting, and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting unless notice of the reconvened meeting is provided as otherwise set forth herein.

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

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

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

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

c. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was

separately scheduled, or held after adjournment, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

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

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

9. Resolution No. 2020-2 is hereby rescinded.

PASSED, APPROVED AND ADOPTED this 7th day of January 2021.

BUCKMAN DIRECT DIVERSION BOARD:

JoAnn Vigil Coppler, BDDDB Chair

APPROVED AS TO FORM:

Nancy R. Long, Board Counsel

ATTEST:

Yolanda Y. Vigil, City Clerk