



AGENDA

BUCKMAN DIRECT DIVERSION BOARD
MARCH 02, 2023 AT 4:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE



PROCEDURES FOR BUCKMAN DIRECT DIVERSION BOARD MEETING

Written Public Comment: Members of the public may submit written comments by clicking on the comment bubble to the right of the meeting on the public portal at <https://santafe.primegov.com/public/portal> three hours prior to the start of the meeting.

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

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 February 2, 2023 Buckman Direct Diversion Board Meeting.

6. PRESENTATION/INFORMATIONAL ITEMS

- a. Monthly Update on the BDD Operations. (Randy Sugrue, BDD Operations Superintendent, rcsugrue@santafenm.gov, 505-955-4501).
- b. Report from Facilities Manager. (VERBAL) Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 505-955-4507).
- c. Report on February 27th Fiscal Services Audit Committee (FSAC) (VERBAL)(Antoinette Armijo-Rougemont, BDD Accounting Supervisor, amarmijo@santafenm.gov, 955-4506).
- d. Presentation regarding Wild Earth Guardians v. US Fish and Wildlife Service and US Bureau of Reclamation, Case No. 1:22-cv-914. (VERBAL) (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov , 505-955-4507, Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com , 505-986-9641)
- e. Presentation of Rio Grande Water Quality Update pursuant to BDDB Resolution No. 2022-2 for calendar year 2023. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 505-955-4507, Kyle Harwood, BDDB Legal Counsel, kyle@egolflaw.com , 505-986-9641, Jay Lazarus, BDDB Consultant/Glorieta Geoscience Inc., lazarus@glorietageo.com , 505-983-1625, James Bearzi, BDDB Consultant/BRZ Consulting, jamespbearzi@gmail.com , 505-699-2136).

7. ACTION ITEMS: CONSENT

- a. Request for approval to award RFP 23/29P to Long, Komer & Associates, P.A. to provide legal services for the Buckman Direct Diversion Board and for a total amount of \$120,000.00 plus NMGR tax for the remainder of Fiscal year 2023. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 505-955-4507; Monique Maes,

BDD Contracts Administrator, mmmaes@santafenm.gov.)

8. ACTION ITEMS: DISCUSSION AND ACTION

- a. Discussion and Request for Approval of the Revised Major Repair and Replacement Fund Policy.(Nancy R. Long, BDD Legal Counsel, nancy@longkomer.com, 505-982-8405; Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 505-955-4507; and Antoinette Armijo-Rougemont, BDD Accounting Supervisor, amarmijo@santafenm.gov, 505-955-4506).

9. MATTERS FROM THE PUBLIC:

10. MATTERS FROM THE BOARD

11. NEXT MEETING: Thursday, April 6, 2023 at 4:00 PM

12. ADJOURN

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

February 2, 2023

1. CALL TO ORDER

This regular meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Councilor Carol Romero-Wirth, Chair, at approximately 4:07 p.m. in the Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

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

BDD Board Members Present:

Councilor Carol Romero-Wirth, Chair
Commissioner Anna Hamilton
Councilor Renee Villarreal
Commissioner Anna Hansen
Peter Ives, Alternate for Citizen Member

Member(s) Excused:

J.C. Helms, Citizen Member
Tom Egelhoff, Las Campanas [non-voting]

Others Present:

Rick Carpenter, BDD Facilities Manager
Nancy Long, BDD Legal Counsel
Kyle Harwood, BDD Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Monique Maes, BDD Contracts Administrator
Delfin Peterson, BDD Administrative Assistant
Jeff Young, County Attorney

[Chair Romero-Wirth read the agenda captions throughout the meeting.]

3. APPROVAL OF AGENDA

Chair Romero-Wirth noted that in the absence of BDD Operations Superintendent Randy Sugrue, Rick Carpenter will provide the BDD Monthly Operations Report.

There were no other changes to the agenda and Commissioner Hamilton moved to approve the agenda with that change. Commissioner Hansen seconded and the motion passed by unanimous [5-0] voice vote.

4. APPROVAL OF CONSENT AGENDA

Commissioner Hansen had a question regarding the one consent agenda item and thus there was no action necessary.

5. APPROVAL OF MINUTES: January 5, 2023

There were no changes to the January 5, 2023 BDD Board meeting minutes. Commissioner Hansen moved to approve as presented. Commissioner Hamilton seconded and the motion passed by [3-0] voice vote. Mr. Ives and Councilor Villarreal abstained.

6. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

RICK CARPENTER (Facilities Manager): Thank you, Madam Chair. So the monthly update on BDD operations raw water diversions averaged 3.44 million gallons per day. Onsite treated water storage averaged 1.42 million gallons per day and that's a little low, you may notice, but demand has been down quite a bit. BDD is providing approximately 32 percent of the overall water supply for the City and the County. Year-to-date monthly diversions are normal, nothing out of the ordinary and is tracking closely to previous months and years. Daily metered regional water demand is 6.3 mgd. Canyon Road storage and Nichols and McClure: Nichols is 65.7 percent; McClure is 33.3 percent, 38.8 combined. That's a little higher than I would like to see at this time of the year but they are working to vacate a little more space to make room for snowmelt runoff which is right around the corner.

SJC water stored in Heron and Abiquiu is 12,700 acre-feet. So that's good. That's a lot of water in storage. And with that, Madam Chair, I would stand for questions.

CHAIR ROMERO-WIRTH: Okay. Questions from the Board?
Commissioner Hamilton.

COMMISSIONER HAMILTON: I was going to – and I think you might have answered part of it but I was just going to ask – the 32 percent sounds a little lower than average and you even said that the withdrawals were lower but that the demand was down. Is that expected?

MR. CARPENTER: Demand is down. It's 6.3 million gallons per day. That's pretty low. It will start creeping back up. What I was referring to that was lower than we – higher than we like to see is the storage in the reservoirs at 38.8 percent. I would like to see that around 30 percent right now.

COMMISSIONER HAMILTON: So we have to use that water instead of BDD to –

MR. CARPENTER: That's right and that's why BDD has not been producing so much water because Canyon Road is treating a bunch to make room in the reservoirs.

COMMISSIONER HAMILTON: Got it. Thank you.

CHAIR ROMERO-WIRTH: Other questions – what do I call you? Councilor? Former Councilor? Counselor? Board member and Councilor Ives.

MR. IVES: Thank you, Madam Chair. Rick, a couple of questions and you sort of answered this but not specifically but with regards to the daily metered regional water demand, is that demand consistent with prior years for this time of year?

MR. CARPENTER: It's about – well, this time of year we should see that start to creep up. So it is a little low but it has been cold. And it's nothing too out of the ordinary.

MR. IVES: And just given all the, shall we say, reporting on the Colorado, I noted here that there has been no allocation of any of the City or County's acre-feet of this SJC water. At this point in the year what would the norm have been say in the past five or ten years in terms of allocations being made?

MR. CARPENTER: We have received close to our 5,230 which is what our contract stipulates. And the reason we haven't had any deliveries this year it's just that we're really early in the year. The next delivery I think is set for late March or early April.

MR. IVES: Yes, this says April 15th. And given what is happening on the Colorado, California just weighed in yesterday on their plans to reduce usage; any sense of what a conservative prediction might be?

MR. CARPENTER: I was wondering when he would show up –

KYLE HARWOOD (BDD Board Counsel): Good afternoon. My name is Kyle Harwood and I'm another one of your attorneys. I have the privilege of representing the San Juan-Chama Contractors Association which includes Santa Fe and other utilities that use water from the San Juan-Chama project. So the goings on on the Colorado are significant. The deadline to submit proposals on how to deal with the mega-drought are being developed. We don't know yet, Citizen Member Ives, how the sharing of shortages on the Colorado may affect the San Juan-Chama project yet. But there is a team of folks working primarily with the Interstate Stream Commission and you may recognize this name, Estevan Lopez is the Governor's appointee to what's called the UCRC, the Upper Colorado River Commission and he has been critical in monitoring how the agreements on the Colorado might affect New Mexico's share of the Colorado of which the San Juan-Chama project is a critical part.

So we're looking forward to learning more in the coming months and if this Board would like any kind of an update on that I can work with Rick to figure out an appropriate way to get that information to you.

MR. IVES: Personally, I would love to have an update as this develops. There seems to be some push by administrators involved in the Colorado to push for greater conservation measures. And that raises an issue in my mind – I can't remember what our, if you will, certified average daily usage is at this point in time. It had been vacillating between about 107 down to well below 100 at different points.

MR. HARWOOD: The way we've talked about it is from 1971 until approximately eight years ago, Heron always had sufficient water to make 96,400 acre-

feet of delivery to all of the 21 contractors. In the last eight years we've had years where that has dipped down to 85 percent including last year. That's a significant but not huge relatively speaking reduction. We are anxious about how the systemic drought and the sort of changing climate is going to affect deliveries in the Heron and then of course we have a set of agreements that regulate drawing water out of Heron.

I can say right now that the snowpack is remarkably good right this moment. Obviously the spring wind and summer temperatures have a huge impact on how much sublimates, how much is released to the stream system. So it's looking like this will not be one of the more dire years but we're obviously looking at the whole sequence because we're talking about reservoir – refilling the reservoirs, that's one of the biggest issues now with a year like this. And that's particular true for Powell which regulates so much of what's going on but it's obviously very important for Heron for all the San Juan-Chama contractors.

MR. IVES: Part of the reason I wondered about where we were on the daily average usage and our own conservation efforts is demanding on how – first, if that becomes part of the algorithms to determining water allocations from the Colorado, we should be in a good stead from the perspective of having implemented many conservation measures that ensure that we do use our water wisely. But I have no idea whether or not and I certainly be interested to see if that is part of the discussion by the people participating in what's going to happen on the Colorado because I would love to try and make sure that the City's good efforts in that regard are recognized and we're not penalized if that is part of the algorithm for making those decisions.

MR. HARWOOD: You raise some really good points. We should be penalized for our progressive conservation that we have done. As you can imagine, everyone who uses water on the Colorado has a talking point about how they should not be cut. One of the biggest strengths of the San Juan-Chama project is that it supplies cities, agriculture and several tribal water settlements. So it is a unique project even in the Colorado system. It's a huge complicated system given the number of beneficiaries and the silvery minnow really credits its current success, which we can talk about another day, but San Juan-Chama water has been critical to maintaining that environmental flow as well. So it's really a multi-sector use of water in New Mexico. And we're hoping that we can get the Heron Reservoir refilled for the future under the rule set that is coming.

But there is a lot of reconfiguring of the Colorado going on in people's minds right now trying to come up with agreements for the future and we are vigilant on that front.

MR. IVES: I recall that the Department of the Interior studying back probably about seven, eight years ago, maybe not even that long ago, on the Colorado and of course one of the propositions was pumping water from the Mississippi Basin across the Rockies using nuclear power plants. And, of course, that appeared miraculously again in the paper this morning. So it's fascinating what folks are coming back to.

MR. HARWOOD: And then the Mississippi has been unable to move its barge traffic because of low flows. So it's a system without a magic bullet is one observation. But a lot of hard work is going into managing it and it is something that I do talk to Rick about and mostly report Jesse and Bill on and of course the County as well about what to expect from San Juan-Chama water.

MR. IVES: Got you. Thank you.

CHAIR ROMERO-WIRTH: Thank you. Any other questions from the Board? All right we'll move on.

B. Report from the Facilities Manager

MR. CARPENTER: Thank you, Madam Chair. I have just a few items to update the Board on. One piece of good news we received just on Wednesday – I have been working for months to try and coordinate with Bureau of Land Management mostly out of their Taos office to see if or how the BDD might go about clearing some defensible space around some of our facilities in case there's a large wildfire. Currently, there are some places that it really does need to be cleared. Didn't make much progress for a long time but just found out that, yes, they're going to assign someone to this. He's going to drive down and we're going to do a site visit and proceed from there. So that's progress in part a long time coming.

One other thing I wanted to update the Board on is Daniela Bowman who was serving the BDD as our compliance officer has retired. So she has vacated that position and we'll be working hard to get it proactively filled. In the meantime, however, I have assigned several staff members to fill in those things that she would have been doing for us. It's not a permanent fix but we'll be okay in the near future.

Lastly, the Board has been hearing from time to time about the water quality memo. We had hoped maybe to bring it to the Board this month but it will definitely come to the Board in March and I just wanted to give that update as well. I don't know if there's any comments on that or questions. But as you know, Mr. Harwood is also in the room if you have any questions on that.

CHAIR ROMERO-WIRTH: Questions from the Board? Commissioner Hansen?

COMMISSIONER HANSEN: Mr. Harwood, where are we on the water quality –

MR. HARWOOD: Working hard on it.

COMMISSIONER HANSEN: Okay, that sounds good. Do you have more to say?

MR. HARWOOD: We're excited to present it in March. I think Jay will be helping with the presentation and we have a broad landscape of topics to update the Board on pursuant to the resolution that we all worked so hard on last year.

COMMISSIONER HANSEN: That's fantastic.

MR. HARWOOD: Yes, we are excited to do it.

COMMISSIONER HANSEN: Thank you.

CHAIR ROMERO-WIRTH: Other questions from the Board? Councilor – man of many hats, Mr. Ives.

MR. IVES: Thank you, Madam Chair. Rick, a number of months ago – and I wasn't sure if you were through with your report so forgive me if you have other subjects yet to cover that might –

MR. CARPENTER: My apologies to the Board, yes that concludes my report.

MR. IVES: And I had asked for just updates for what's happening with the settlement funds and the facility and one question that I think I asked four or five months ago was, do the things that are happening on the Colorado impact what our thinking is and if so how?

MR. CARPENTER: Board member Ives and members of the Board, that thinking is evolving. We have an RFP out on the street as we speak for the first phase of engineering and planning and some of that will be to address concerns like that. It is a little premature, but maybe in a month or two once they're up to speed and running whoever gets chosen, we can start giving more substantive reports to this Board on that topic.

MR. IVES: So what is the RFP seeking?

MR. CARPENTER: I didn't catch the question.

MR. IVES: What is the RFP asking for? Proposals to –

MR. CARPENTER: It's an engineering firm to help plan and initiate the larger scale which would be full scale design and construction. So this first phase is to plan, organize, coordinate, help with procurement, prioritize, make a preliminary schedule. Everything that any engineering firm or project manager would do in the initial phases of the project. Getting a \$70 million project designed and constructed is not a small feat.

MR. IVES: So have we given significant input on the guidelines for the design or is that going to be basically up to the firm?

MR. CARPENTER: That's to be determined. I have quite a few of my own ideas but I want them to weigh in as well.

MR. IVES: Got you. Thank you.

CHAIR ROMERO-WIRTH: Other questions from the Board?

7. ACTION ITEM: CONSENT

A. Request for Approval of Annual Payment to the Bureau of Land Management in the amount of \$70,372.56 Right-of-Way Rental Fees

CHAIR ROMERO-WIRTH: We don't have the person who is on the agenda but I am sure we have somebody who can answer Commissioner Hansen's question. Commissioner, you pulled this item.

COMMISSIONER HANSEN: Yes. I just wondered why it went up \$2,000.

MR. CARPENTER: Commissioner Hansen and members of the Board, that is based on an appraisal that the BLM will do from time to time. We're sort of at their mercy on what they say their land is worth and therefore what they charge us in rent. So it could go up. It could go down but that's just what their latest appraisal suggested.

COMMISSIONER HANSEN: We can blame it on inflation like everything else. Okay, that was my only question so I move to approve.

CHAIR ROMERO-WIRTH: Hold on. Is there a second?

COUNCILOR VILLARREAL: Second.

CHAIR ROMERO-WIRTH: Okay, we have a motion and a second. And further questions, Board member Ives.

MR. IVES: Thank you, Madam Chair. My recollection is that in the past the Board has wondered about the possibility of acquiring the property from the BLM to eliminate the need for annual payments. What happened with those discussions and are they still active and is there the possibility of that?

MR. CARPENTER: Board member Ives and members of the Board, those types of discussions were pretty significant and intense in the early years, as you're recalling. As time went on the BLM showed really not much interest in selling us the land. I think they prefer having a consistent revenue stream. That said, within a matter of days I will have one of their land managers in a pickup truck with me all day long and I will raise that topic and I will have a captive audience.

MR. IVES: I was going to say, if everything is relying on the rather political front it would appear to be a propitious time to pursue that. So, thank you for doing that.

COMMISSIONER HANSEN: So, Madam Chair.

CHAIR ROMERO-WIRTH: Hold on a second. Are you done, Board member Ives?

MR. IVES: Yes.

CHAIR ROMERO-WIRTH: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: I think this is an interesting concept to buy the right-of-way but, you know, there is a strong movement to try and protect the Caja which this runs through. Being out there the other day and looking at the issues with the shooting range it is very clear that Cochiti Pueblo and possibly some of the other pueblos really want protection out there and I don't think the pueblos would – and I can't speak for them of course – but they are very concerned about where things are put and I think they feel that they didn't have enough input when that easement was put through on the Caja. And now they are much more vocal, especially Cochiti.

CHAIR ROMERO-WIRTH: Okay. Other questions or comments from the Board? Okay we have a motion and a second. Can we get a roll call; do we need one?

NANCY LONG (BDD Counsel): You don't need one.

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

8. ACTION ITEMS: DISCUSSION AND ACTION

A. Election of Chair and Vice Chair of the Buckman Direct Diversion Board

CHAIR ROMERO-WIRTH: I, of course, am a City Councilor and per our rules we go back and forth between the Chair being a City Councilor or a County Commissioner. So we will be electing a County Commissioner as Chair. I guess I have one question, and we'll do these independently. We'll do the Chair and then the Vice Chair?

MS. LONG: Yes, Madam Chair.

CHAIR ROMERO-WIRTH: Okay. So I think we need a nomination for Chair. Is that how you would recommend moving forward?

MS. LONG: Yes, I would recommend nominations.

CHAIR ROMERO-WIRTH: Can we get a nomination for Chair and that would have to be a County Commissioner.

COUNCILOR VILLARREAL: But the nomination can come from anybody, correct?

CHAIR ROMERO-WIRTH: Yes.

COUNCILOR VILLARREAL: So I nominate for Chair Commissioner – I was trying to think of the feminine version of commissioner, but Commissioner Hamilton.

CHAIR ROMERO-WIRTH: I don't think it is gender specific.

COMMISSIONER HAMILTON: I don't think it is.

COMMISSIONER HANSEN: It is not gender specific. So I second that.

CHAIR ROMERO-WIRTH: Okay, I guess I need to ask Commissioner Hamilton if she is willing to accept that nomination.

COMMISSIONER HAMILTON: Yes I am. Thank you very much.

CHAIR ROMERO-WIRTH: Terrific and I don't think a nomination needs a second. It's not a motion. Now that you've made the nomination and she's accepted it, if we could get a motion to approve the Commissioner as the new Chair.

MR. IVES: Move to approve Commissioner Hamilton as the new Chair of the BDD.

COUNCILOR VILLARREAL: Second.

CHAIR ROMERO-WIRTH: All right. We have a motion and a second to elect Commissioner Hamilton as the new chair of the BDD for the next year. Do we need a roll call for this?

MS. LONG: You do not.

The motion to elect Anna Hamilton as BDD Board Chair passed by unanimous [5-0] voice vote.

CHAIR ROMERO-WIRTH: Then we are on to election of Vice Chair. I believe this goes back and forth too.

MS. LONG: Yes.

CHAIR ROMERO-WIRTH: So the Vice Chair has to be from among the City and we need a nomination for a Vice Chair. Commissioner Hansen.

COMMISSIONER HANSEN: I would like to nominate Councilor Villarreal and –

CHAIR ROMERO-WIRTH: City Councilor Villarreal, will you accept?

COUNCILOR VILLARREAL: I actually want to have a discussion about this. Carol and I, Councilwoman Romero-Wirth and I were talking about this and I'm new to BDD and I had some vacillations with this. I know it is not a major role like the Chairwoman but I do have very limited bandwidth in my two jobs and I have been struggling with this. We didn't get to talk about this and I know my contributions don't need to be in a vice chair position and I actually think that it would be best for all of you because of my bandwidth and I am dealing with some physical issues right now. And I don't know what this year how this year is unfolding but it hasn't unfolded well since the beginning. I had Covid. I injured myself and I'm just feeling really vulnerable right now. I hate to say that but a vice chair is just a title and I feel like I can contribute in other ways so I am going to decline as vice chair at this point and there's other opportunities potentially for next year.

So I will decline and nominate Councilwoman Carol Romero-Wirth. Especially because I just put this caveat, that there are more meetings that are going to be taking place other than this BDD Board. There are other meetings that you all will be starting to look at the planning and the RFPs and I have another job and it's very, very tight right now and it just seems to get tighter and tighter with just obligations.

Thank you for the nomination, I appreciate it. And I'll be contributing because my worth is not in a position title. I'll just leave it at that. Thank you.

CHAIR ROMERO-WIRTH: Thank you. Thank you for your vulnerability and for your honesty, honestly. And I would be honored to accept that and I also look forward to the contributions that we all make regardless of title because it does sort of take the whole board to make this work. So now I need a motion.

COMMISSIONER HANSEN: Madam Chair, I move to approve Councilwoman Carol Romero-Wirth for Vice Chair.

COMMISSIONER HAMILTON: Second.

CHAIR ROMERO-WIRTH: We have a motion and a second. All those in favor.

The motion to approve Councilor Romero-Wirth as Vice Chair passed by unanimous [5-0] voice vote.

CHAIR ROMERO-WIRTH: That motion passes.

9. MATTERS FROM THE PUBLIC – None were presented.

10. MATTERS FROM THE BOARD

COMMISSIONER HANSEN: Madam Chair.

CHAIR ROMERO-WIRTH: Commissioner Hansen.

COMMISSIONER HANSEN: I think everyone knows that J.C.'s wife passed away. I think it would be really good of us to send a card, to send something to him from the Board. I think this has been really rough for him as it was very unexpected. I just think it would be good if we did something in recognition.

CHAIR ROMERO-WIRTH: We can work on doing something.

BERNARDINE PADILLA (BDD Public Relations Coordinator): Sure we can circulate a card, definitely. We will figure that out and I'm not sure if you want to send flowers. I don't know the details; I'll have to look them up.

MS. LONG: I think he had told me the memorial would be delayed and maybe happen sometime in May when family could be here and that might be a good time to send something for that event.

COMMISSIONER HANSEN: I didn't know that but I agree that maybe at that time. But at the same time I do think we can send a card letting him know our concern for him.

CHAIR ROMERO-WIRTH: Thank you for bringing that up. I think it was unexpected and obviously has been difficult. I did speak with him earlier this week and I think it's a great idea, thank you.

Other matters from the Board?

11. NEXT MEETING: Thursday, March 2, 2023 at 4:00 p.m.

Commissioner Hamilton recognized Councilwoman Romero-Wirth for her "truly outstanding" job as Chair of the BDD Board this past busy year and she received a round of applause from those in attendance.

12. ADJOURN

Having completed the agenda and with no further business to come before the Board, Chair Romero-Wirth declared this meeting adjourned at approximately 4:40 p.m.

Approved by:

Carol Romero-Wirth, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

KRISTINE BUSTOS-MIHELIC
SANTA FE CITY CLERK

D R A F T

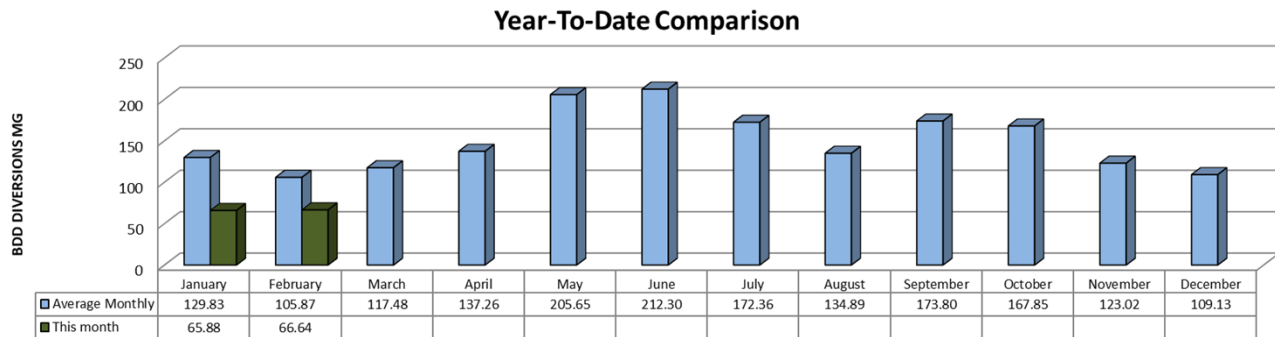
- subject to approval -



Date: March 2, 2023
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of February 2023

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of February 2023. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD), as follows:
 - a. Raw water diversions: 2.38 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 2.17 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.00 MG
 - d. Onsite treated and non-treated water storage: 0.21 MGD Average.
2. The BDD is providing approximately 35% percent of the water supply to the City and County for the month.
3. The BDD year-to-date diversions are depicted below:



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



Regional Water Overview

Daily metered regional water demand for the month of February 2023 is approximately 6.2 MGD.

Rio Grande flows for February 2023 averaged approximately 675 CFS (cubic feet per second.)

CRWTP reservoir storage: Nichols: 47.4%/McClure: 32.3% (34.9% combined) Watershed Inflow: 1.8 MGD

City/County/LC Storage- as updated by partners. As of Feb. 9, 2023 City of SF Abiquiu/Heron SJC storage is at about 12,700AF.

As of Jan. 1, 2023 the City of Santa Fe has been allocated 0.0AF of 5230AF and SF County 0.0AF of 375AF of SJCP water. April 15, 2023 is the next scheduled allocation.



ENSO Summary

Feb. 13, 2023

La Niña is present.

Equatorial sea surface temperatures (SSTs) are below average across most of the Pacific Ocean.

The tropical Pacific atmosphere is consistent with La Niña.

ENSO-neutral conditions are expected to begin within the next couple of months, and persist through the Northern Hemisphere spring and early summer.



Buckman Direct Diversion Monthly SJC and Native Diversions

Feb-23								
In Acre-Feet								
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-04842-A RG Native VIA SFC LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	202.766	170.639	0.000	32.127	32.127	0.000	0.000	0.316
FEB	204.580	204.580	0.000	0.000	0.000	0.000	0.000	0.000
MAR	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	407.346	375.219	0.000	32.127	32.127	0.000	0.000	0.316

In Million Gallons

Month	Native COUNTY	SFC Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions
JAN	55.583	0.000	10.347	10.347	0.000	0.000	65.930
FEB	66.638	0.000	0.000	0.000	0.000	0.000	66.638
MAR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	122.221	0.000	10.347	10.347	0.000	0.000	132.568



Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-22								
In Acre-Feet								
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	SP-2847-E SJC Undiverted CITY	All Partners Conveyance Losses
JAN	511.288	154.905	0.000	356.382	356.382	0.000	0.000	3.203
FEB	421.814	421.814	0.000	0.000	0.000	0.000	0.000	0.000
MAR	376.496	302.219	0.000	74.277	74.277	0.000	0.000	0.758
APR	538.222	408.237	0.000	129.985	129.985	0.000	0.000	1.327
MAY	596.137	596.137	0.000	0.000	0.000	0.000	0.000	0.000
JUN	660.831	300.636	0.000	360.194	360.194	0.000	0.000	2.397
JUL	582.150	122.961	0.000	459.189	459.189	0.000	0.000	2.232
AUG	166.030	0.000	0.000	221.847	221.847	0.000	55.818	1.067
SEP	439.944	30.356	0.000	409.588	383.240	26.348	0.000	1.982
OCT	505.999	25.135	0.000	480.864	456.039	24.825	0.000	4.780
NOV	263.142	0.000	0.000	270.146	259.271	10.875	7.004	2.699
DEC	177.158	9.051	0.000	168.107	168.107	0.000	0.000	1.650
TOTAL	5,239.210	2,371.451	0.000	2,930.579	2,868.532	62.047	62.821	22.095

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	SJC Undiverted CITY	All Partners Diversions
JAN	50.458	0.000	114.878	114.878	0.000	0.000	165.336
FEB	137.399	0.000	0.000	0.000	0.000	0.000	137.399
MAR	98.443	0.000	23.913	23.913	0.000	0.000	122.356
APR	132.976	0.000	41.848	41.848	0.000	0.000	174.825
MAY	194.181	0.000	0.000	0.000	0.000	0.000	194.181
JUN	97.927	0.000	115.951	115.951	0.000	0.000	213.878
JUL	40.052	0.000	147.861	147.861	0.000	0.000	187.914
AUG	0.000	0.000	71.472	71.472	0.000	18.182	71.472
SEP	9.888	0.000	131.951	123.448	8.503	0.000	141.839
OCT	8.187	0.000	154.855	147.123	8.009	0.000	163.042
NOV	0.000	0.000	86.992	83.484	3.508	2.281	86.992
DEC	2.948	0.000	54.143	54.143	0.000	0.000	57.092
TOTAL	772.460	0.000	943.866	924.123	20.020	20.463	1,716.326





Date: February 20, 2023

To: Buckman Direct Diversion Board

From: Rick Carpenter
Kyle S. Harwood
Jay Lazarus
James P. Bearzi

Subject: Rio Grande Water Quality Update pursuant to BDDDB Resolution No. 2022-2
Calendar Year 2023

This memorandum is provided pursuant to Buckman Direct Diversion Board (“BDDDB”) Resolution No. 2022-2, to review the water quality issues and BDDDB actions, and to present anticipated water quality issues for 2023 so the BDDDB can prioritize engagement with the issues.

A copy of Resolution No. 2022-2 is attached to this memo for reference.

1. **Memorandum of Understanding (“MOU”) with the U.S. Department of Energy (“DOE”)**

The BDDDB and DOE (collectively, “the Parties”) entered into a fourth MOU in February 2022 that addresses their respective commitments through 2024 concerning stormwater and sediment migration from the Los Alamos National Laboratory (“LANL”) to the Rio Grande above the BDD diversion. Issues addressed in 2022 include:

- Ongoing operation and maintenance of the Early Notification System (“ENS”), including resolution of data transmission issues.
- Installation of a new flow measurement station (known as E110.7) in lowermost Los Alamos Canyon in July 2022.
- Ongoing sampling, data collection and data sharing with DOE and the New Mexico Environment Department (“NMED”).
- Conducting an Annual Review meeting with the Parties in May 2022 to discuss issues including ENS operation, sediment and stormwater sampling studies conducted by DOE in the Los Alamos Canyon watershed, and sampling and analysis by the parties in the Rio Grande.
- Observation of DOE inspection activities of ENS stations in October 2022.
- Interaction with the Pueblo de San Ildefonso concerning monitoring and maintenance of existing ENS stations on Pueblo lands.

Recommendations for 2023: Continue to work with DOE in accordance with the terms of the MOU to monitor discharges of stormwater from the LANL property to the Rio Grande. Staff and consultants will



participate in the Annual Review (anticipated to occur in May). Staff and consultants will consider removal of E062 if requested by DOE. Staff will continue to work with DOE as operation, maintenance, and data transmission issues arise. The BDD Intake Sampling Program will continue.

2. **New Mexico's Triennial Review of State Surface Water Quality Standards**

The BDDB's consultant provided testimony in the hearing in front of the Water Quality Control Commission ("WQCC") held in July, 2021. The Commission's Statement of Reasons and Decision on the petition was issued on March 9, 2022. The WQCC adopted the amendments for state implementation purposes on September 24, 2022. U.S. Environmental Protection Agency ("USEPA") approval for Clean Water Act compliance purposes is pending.

Recommendations for 2023: The next Triennial Review process will begin this year, although the public may not be invited to review and comment until 2024 when the next hearing should occur. While no specific actions are anticipated in 2023, staff and consultants will monitor NMED rulemaking proceedings related to water quality issues, provide updates to the BDDB regarding significant developments, and engage in those proceedings as appropriate.

3. **Waters of the United States (WOTUS)**

The BDDB filed an amicus brief in 2021 in *State of California et al., v. Wheeler et al.*, Case No. 3:20-cv-03005 (N.D. Cal.) to support the plaintiff States in their litigation to stop the USEPA from adopting the Navigable Waters Protection Rule ("NWPR") adopted during the Trump administration. The Biden administration sought to repeal the NWPR, and on December 30, 2022, the USEPA and the U.S. Army Corps of Engineers announced the final "Revised Definition of 'Waters of the United States'" rule. The most significant change for the BDDB is that WOTUS will now cover – as it did under the rules adopted during the Obama administration – intermittent and ephemeral waters (such as those that drain the Pajarito Plateau where LANL resides) if they significantly affect a navigable waterway such as the Rio Grande. On January 18, 2023, the rule was published in the *Federal Register*; the rule will be effective on March 20, 2023.

Recommendations for 2023: No action is anticipated, but staff and consultants will continue to monitor rulemakings relating to WOTUS and related litigation to stay current on the legal and regulatory landscape affecting the BDD source water quality. See also Issue #8 below.

4. **CWA §303(d)/305(b) Integrated Report and List of Impaired Waters ("Integrated Report")**

NMED prepares an Integrated Report every two years in compliance with Sections 303(d) and 305(b) of the Clean Water Act. The Integrated Report serves as a source of information on water quality and pollution control programs as well as how NMED assesses surface water quality data against water quality standards. The BDDB has provided comments to NMED on the last two (2020 and 2022) Integrated Reports. The BDDB's comments on the 2022-2024 Integrated Report centered on NMED's delays in implementing Total Maximum Daily Loads ("TMDLs") to address impairment of the Rio Grande and streams on the Pajarito Plateau. NMED has issued the final Integrated Report and responded to the Board's comments, stating that eight assessment units within water quality standards segment 20.6.4.114 have an estimated 2021 TMDL date. NMED plans to address TMDL data needs for the Rio Grande (Cochiti Reservoir to San Ildefonso boundary) assessment unit during the 2023-2024 SWQB



Middle Rio Grande water quality survey, with TMDLs to follow the data assessments in 2027. The USEPA approved the 2022-2024 Integrated Report on April 26, 2022.

Recommendations for 2023: The 2024-2026 Integrated Report process will be initiated in 2023. The Assessment Methodology will likely be released for public comment this summer, and the draft List of Impaired Waters and Integrated Report released for a 45-day public comment period in December, 2023. Staff and consultants will closely monitor release of the draft Report and the BDDB should be prepared to comment as appropriate.

5. **LANL National Pollutant Discharge Elimination System (NPDES) Permits**

The BDDB provided comments to NMED in 2020 on the State certification of LANL's surface water permits for its industrial outfalls (NPDES Permit No. NM002835) and stormwater discharges (NPDES Permit No. NM0030759). The Board's comments centered on technical aspects of the permits, and how they relate to the cleanup activities for legacy pollution at LANL. The LANL operators petitioned for review of the State certification of the two permits and conditions imposed in the certification process, and hearings were granted although not scheduled. NMED and LANL have since entered into Settlement Agreements resolving the disputed issues for each of the certifications, and modified certifications of each of the NPDES permits were issued in 2022. Of particular interest to the Board is the per- and polyfluoroalkyl substances ("PFAS") monitoring requirements in the Agreement governing regulated stormwater discharges for the certification of NPDES Permit No. NM0030759. See also Issue #13.

Recommendations for 2023: No specific actions are anticipated. Staff and consultants will monitor these and other LANL permits, particularly when LANL is required to seek renewals or seeks to modify the existing permits. Staff and consultants will also acquire and assess monitoring results under the Agreement.

6. **NMED/LANL Consent Order**

The BDDB has submitted several sets of comments to NMED in the past four years regarding its concerns about cleanup and enforceability of the 2016 Compliance Order on Consent between NMED and DOE ("2016 Consent Order"). While NMED has not responded to these comments in writing, NMED did sue DOE to compel renegotiation of the 2016 Consent Order. The Board's comments have focused on its disapproval of the 2016 Consent Order as compared to the 2005 Consent Order, and the need for public engagement in the LANL clean-up process as the BDDB has recommended on several occasions. NMED is seeking, as part of the relief in its lawsuit, that a new Consent Order be developed under the supervision of the court. The Board has urged NMED to engage the public and seek public comment if a new draft Consent Order is an outgrowth of any agreement to settle the litigation. NMED



and DOE are in ongoing discussions about elements of the 2016 Order with which NMED is dissatisfied. To continue negotiations, the parties must seek stays from the court every 90 days by submitting a progress report. The last such report was submitted to, and an additional 90-day stay granted by, the court on January 11, 2023.

Recommendations for 2023: No specific action is anticipated, but staff and consultants will monitor the litigation between NMED and DOE and participate, if allowed and appropriate, in the development of a new Consent Order to ensure that Rio Grande water quality is a priority consideration in the cleanup of legacy waste at LANL.

7. **DOE’s Sitewide Environmental Impact Statement (“SWEIS”) for LANL**

On April 4, 2021, the BDDDB adopted Resolution 2021-2 requesting that DOE develop a new SWEIS under the National Environmental Policy Act (“NEPA”) instead of merely updating the existing SWEIS. DOE’s National Nuclear Security Administration (“NNSA”) agreed, and solicited comments from the public concerning the scope of a new SWEIS. The BDDDB provided formal scoping comments in September 2022. The NNSA expects the draft SWEIS to be released for public comment in mid-2023.

Recommendations for 2023: Staff and consultants will monitor notices for the SWEIS and be prepared to develop comments for the BDDDB’s consideration when the draft SWEIS is released.

8. **Los Alamos County Municipal Separate Storm Sewer System (“MS4”) Permit**

Prior to 2022, the USEPA was in the process of drafting a NPDES MS4 permit for Los Alamos County, the New Mexico Department of Transportation, and DOE to regulate stormwater discharges in Los Alamos County outside of LANL. A significant portion of these discharge locations are in the Los Alamos Canyon watershed. In January 2022 EPA put the draft permit development on hold in order to develop the required showing that the canyons are jurisdictional waters under the Clean Water Act. This effort may be further influenced by the WOTUS rule that will be effective in March 2023. See Issue #3 above.

Recommendations for 2023: Staff and consultants will monitor the development of this permit as it would cover numerous uncontrolled discharges that are in addition to those covered by the LANL stormwater NPDES permit. Staff and consultants should be prepared to develop comments on the draft permit, if released, for the BDDDB’s consideration.

9. **Natural Resources Damage Assessment (“NRDA”)**

BDD staff, consultants, and counsel met with the New Mexico Office of the Natural Resource Trustee (“ONRT”) in late 2021 to discuss the NRDA process, and how BDD’s steps to mitigate potential contamination from LANL (e.g., the ENS and treatment) via stormwater and sediment migration in Los Alamos Canyon could factor into the ONRT’s assessment of damages based on injury to state resources such as the Rio Grande. It was emphasized that the BDDDB expects the ONRT and other trustees to give appropriate weight to the surface water resources upon which the BDD relies.



Recommendations for 2023: No specific action is anticipated, but staff and consultants will continue to monitor progress of ONRT evaluation of NRDA and incorporation of LANL impacts on the Rio Grande.

10. **NukeWatch New Mexico LANL Consent Order Litigation**

Nuclear Watch New Mexico (“NukeWatch”) sued the DOE under the citizen suit provisions of the Resource Conservation and Recovery Act (“RCRA”) alleging noncompliance with the 2005 Consent Order. The parties have reached an agreement to settle NukeWatch’s remaining claims, which included a requirement for DOE to install a flow measurement station in lowermost Los Alamos Canyon to be a component of the BDD’s ENS. This provision has since been satisfied by installation of ENS station E110.7.

Recommendations for 2023: No specific action is anticipated. The Settlement Agreement has been accepted by the court, and with establishment of E110.7 the portions of the Settlement Agreement pertinent to the BDDDB are complete.

11. **Hexavalent Chromium (“Cr-VI”) Water Rights Protest**

DOE and Los Alamos County filed an application (“the Application”) with the New Mexico Office of the State Engineer (“NMOSE”) to move water rights from existing points of diversion to extraction wells used in the remediation Interim Measure (“IM”) for the Cr-VI groundwater plume. In 2020 the BDDDB protested the application asserting that, among other deficiencies, DOE failed to provide information about impacts to the Rio Grande. Although two settlement conferences occurred in 2022, the protest is still pending. Also in 2022, NMED took several regulatory actions that could affect the factual basis of the Application, including directives to cease injection of treated water at the current locations under the IM, and to consider land application of treated water under strict conditions. The outcome of these directives could affect the factual basis of the Application, potentially leading to its modification or even withdrawal.

Recommendations for 2023: Staff and consultants will monitor the regulatory actions and, if appropriate, engage with the applicants and NMED in their resolution. The BDDDB will continue participation in protest of this application in an effort to resolve the issues to the BDDDB’s satisfaction by ensuring appropriate information is provided demonstrating that the proposed diversions will not impact the Rio Grande.

12. **New Mexico NPDES Primacy**

New Mexico is one of three states that does not have authority from the federal government to implement the NPDES permitting program under the Clean Water Act. Currently NPDES permits are



issued by the USEPA. The BDDDB has from time to time expressed its support for state primacy, including in a meeting with NMED leadership in 2022. NMED subsequently provided to the BDDDB a study it commissioned examining the state’s capacity to implement such a program and the additional resources and revenue required to sustain it.

Recommendations for 2023: No specific action is anticipated.

13. **PFAS Monitoring**

In January 2023, the LANL permittees submitted the first Annual Data Report for per- and polyfluoroalkyl substances (“PFAS”) under the settlement agreement of their petition to review State certification of the LANL Stormwater NPDES Permit (NM0030759). Three of the 15 locations proposed to be sampled were in the Los Alamos Canyon watershed, none of which were sampleable. Three locations – all outside of the Los Alamos Canyon watershed – were sampled, with various PFAS detected.

Recommendations for 2023: No specific action is anticipated, although staff and consultants will interface, as appropriate, with the LANL permittees regarding PFAS detections in surface water, stormwater, and groundwater.

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**THE BUCKMAN DIRECT DIVERSION BOARD
RESOLUTION NO. 2022-2**

**A RESOLUTION
OF THE BUCKMAN DIRECT DIVERSION BOARD CONCERNING
THE MISSION, GOALS AND VALUES OF THE BOARD REGARDING
RIO GRANDE WATER QUALITY**

WHEREAS, the Buckman Direct Diversion Board (“BDDDB”) was formed in 2005 pursuant to a Joint Powers Agreement executed by the City of Santa Fe and Santa Fe County;

WHEREAS, the Joint Powers Agreement (“JPA”) delegated to the BDDDB all powers necessary to plan for, finance, design and construct the Buckman Direct Diversion Project (“Project”) and to operate and manage the Project in all aspects;

WHEREAS, the JPA states that “the Board may adopt By-Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this Agreement.” JPA, Article 5;

WHEREAS, the BDDDB's core purpose is to provide the City of Santa Fe and Santa Fe County a safe and reliable source of drinking water that meets or exceeds regulatory requirements by diverting and treating surface water from the Rio Grande;

WHEREAS, the BDD Project, a critical component of regional Santa Fe conjunctive water resource management, diversifies the regional water supply under both normal and drought conditions, decreases reliance on non-sustainable groundwater pumping, and thereby allows for the provision of a regional drought reserve;

WHEREAS, the quality of water that is diverted is of paramount importance and priority to the BDDDB;

WHEREAS, the BDDDB seeks to monitor, protect, and positively affect the water quality of the Rio Grande and its tributaries to ensure that the BDD Project continues to produce safe drinking water for the Santa Fe service area; and

WHEREAS, the BDDDB's proactive water quality initiatives also provide for wise management of the costs and the technical challenges of treating Rio Grande water at the BDD Water Treatment Plant.

NOW, THEREFORE, BE IT RESOLVED BY THE BUCKMAN DIRECT DIVERSION BOARD that the BDDDB hereby adopts the following goals and values with respect to its water quality objectives:

- 1) Focus resources on specific Rio Grande segments and their tributaries that have the greatest potential to affect the water quality at the BDD Project intake.
- 2) Foster the BDDDB’s engagement with key partners, stakeholders and regulators including the U.S. Department of Energy, the U.S. Environmental Protection Agency, Los Alamos County, and the New Mexico Environment Department.
- 3) Monitor and ensure adequate surveillance of the Rio Grande and its tributaries to promptly identify and address possible sources of pollution, contamination, and treatment challenges.

1 4) Maintain the capacity to substantively address unforeseen water quality issues as
2 they might arise, including those related to pollution, contamination, fire, climate change, and
3 drought.

4
5 5) Manage public funds responsibly, fairly, and with integrity to continuously
6 improve and enhance the value of our service to the public.

7
8 6) Support federal, state, regional, and local efforts to manage the water quality of the
9 Rio Grande.

10
11 7) Foster public confidence through clarity, honesty, and transparency, particularly
12 with respect to communication of Rio Grande water quality sampling and monitoring; and

13
14 8) Sustain the highest possible water quality of the Rio Grande above and at the BDD
15 intake, by appropriately monitoring BDD source waters that may be affected by upstream
16 discharges, climate change, fire and drought.

17
18 9) Implement its water quality work by:

19
20 i. In the first calendar quarter of each year, review the prior year's water quality
21 issues and BDDB actions.

22
23 ii. In the first calendar quarter of each year, receive a staff presentation of anticipated
24 water quality issues for the current calendar year so the BDDB may prioritize its
25 engagement with those issues.

26
27 iii. Periodically receive updates at appropriate milestones or when new issues arise,
28 such as new permit applications, new litigation, policy initiatives of other
29 stakeholders, or requests from the public.

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32 PASSED, APPROVED, and ADOPTED this 1 day of December, 2022.

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36 Carol Romero-Wirth
37 Chairperson


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40 ATTEST:

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42 Kristine Bustos-Mihelcic
43 City Clerk

44 Date:

1-31-2023

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47 APPROVED AS TO FORM:

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49
50 
51 Nancy R. Long
52 BDDB Counsel

01/31/2023

Date:



Date: March 2, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, BDD Contracts Administrator
Via: Rick Carpenter, BDD Facilities Manager
Subject: Request to Award RFP 23/29/P

ITEM:

Request for approval to award RFP 23/29/P to Long, Komer & Associates, P.A to provide legal services for the Buckman Direct Diversion Board for a total amount of \$120,000.00 plus NMGRT for the remainder of Fiscal year 2022-2023.

BACKGROUND:

On January 27, 2023 the Evaluation Committee for RFP 23/29/P met and evaluated (2) two proposal submissions for Legal Services for BDD. Based on the Evaluation Criteria set forth in the RFP, it was determined that Long Komer and Associates P.A.'s proposal submission ranked higher. See evaluation report attached. Upon approval, the award term will be a four year contract and will be extended in annual increments at the start of each fiscal year.

The general scope of services for this contract is to provide representation and legal support services to the BDD board and staff.

Action Requested:

Staff recommends award approval to Long, Komer, and Associates P.A. Funding is available within our approved FY2022-2023 operating budget.

ORG & OBJ: Legal Service # 8000801.510200
MUNIS Contract# 3203896

Approved by BDDDB March 2, 2023

BDD Chair





City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

Alan Webber, Mayor

Councilors:

Signe I. Lindell, Mayor Pro Tem, District 1
Renee Villarreal, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Lee Garcia, District 3
Chris Rivera, District 3
Jamie Cassutt, District 4
Amanda Chavez, District 4

DATE: 2/6/2023

TO: JoAnn D. Lovato, Interim Chief Procurement Officer
City of Santa Fe

FROM: Monique M. Maes – Procurement Manager for BDD

SUBJECT: Evaluation Committee Report, Legal Service for BDD, RFP# 23/29/P

Overview

In accordance with the Buckman Direct Diversion's (BDD) Request for Proposals # 23/29/P for Legal Service issued 12/20/22, two (2) timely responses were submitted from the following Offeror/Respondent's; Response #1, Long Komer and Associates (LKA) and Response #2, Kaplan Kirsch Rockwell (KKR). These two (2) responses/proposals were evaluated by three (3) individual Committee Members and their evaluations are represented in this document. This Evaluation Committee Report summarizes all criteria used in scoring the responses.

The Evaluation Committee Members are listed as follows:

Maya Martinez, Fiscal Administrator
Antoinette Armijo-Rougemont, Accounting Manager
Jessica Chavez, Procurement Specialist

Procurement Manager:

Monique M. Maes, Contracts Administrator

Summary of Evaluation, Committee Activity

- January 20th, 2023: Central Purchasing Office sent out technical proposals, and Procurement Manager forwarded it to the Evaluation Committee members with the RFP for review.
 - January 24th, 2023: Procurement Manager sent out the proposal responses and score sheets for Responder #1 (LKA) and Responder #2 (KKR) to the Evaluation Committee members and advised them to review the proposals individually and to complete the two separate score sheets for each proposal.
 - January 26th, 2023: Procurement Manager contacted the Evaluation Committee members and requested a status update and provided a meeting reminder.
 - January 27th, 2023, Procurement Manager, and Purchasing Representative met to discuss the technical proposal for LKA & KKR.
 - January 27th, 2023: The Evaluation Committee, received the cost proposal after the technical proposal was reviewed and scored independently.
 - On January 27th, 2023, the Evaluation Committee concluded its discussions.
 - January 30th, 2023: All scores sheets and notes were submitted and incorporated into a draft proposal evaluation report.
-

B.1. Organizational Experience (400 Total Points)

Specifications Criteria:

- a) Provide a statement of interest outlining experience, qualifications and resources of the firm/individual and subcontractors to include governmental experience as described in the Scope of Work and any other description of areas of practice or relevant experience that may benefit the BDDB.
- b) The successful applicant must be an attorney licensed to practice law in the State of New Mexico and must maintain all applicable business and professional licenses and registration required by law. 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. Qualification consideration will include Litigation experience in the areas of environmental, construction, corporate, employment and/or property law and related benefits to the BDDB.
- c) Provide a detailed resume or bio of all key personnel Offeror/Respondent proposes to use in performance of the resulting contract. Key personnel are identified as a licensed attorney in good standing by a state agency with extensive knowledge in legalities concerning water. Offeror/Respondent **must** include key personnel education, work experience, certifications, and licenses. Offeror/Respondent **must** include Organizational Chart.
- d) Describe litigation experience as described in the Scope of Work involving the representation of local governments demonstrating areas of practice which illustrate candidates' ability to provide services in the areas identified.

Evaluation Factors:

Points will be awarded based on the thoroughness and clarity of Offeror response in this section. The Evaluation Committee will also weigh the relevancy and extent of Offeror/Respondent experience, expertise, and knowledge; and of personnel education, experience, and certifications/licenses. In addition, points will be awarded based on Offeror/Respondent candid and well-thought-out response to successes and failures, as well as the ability of the Offeror/Respondent to learn from its failures and grow from its successes.

Evaluation of Experience Point Summary:

Offeror/Respondent	<u>RESPONDER</u> #1 (LKA)	<u>RESPONDER</u> #2 (KKR)
Max points 400	350	316.67

Offeror/Respondent #1 (LKA)

Of a maximum score rating of 400 points, Responder #1 (LKA) received a score rating of 350 points. In regards to LKA's proposal, the committee weighed their scoring according to the relevancy of experience in examples given such as, serving as BDD counsel since 2007, stating that they attended all meeting drafted and reviewed board agreements and policies and provide general legal resupination. The thoroughness of examples and specificity to the scope of work included their involvement in representation of a successful litigation matter in a claim against the design construction entity that resulted in a \$70,000,000.00 settlement for BDD, was noted. Other successful outcomes listed were defending an appeal of the Record of Decision to the Interior Board of Land Appeals, and a proceeding before the Public Regulation Commission resulting in a favorable renewal energy credit for BDD's solar facility. Furthermore, LKA listed their representation for other entities of comparable size and complexity to the BDD Board, such as the Santa Fe Solid Waste Management Agency (SFSWMA) and Santa Fe County Regional Emergency Communications Center (RECC) in which they have represented and advised in addressing procurement matters and contractual issues.

Offeror/Respondent #2 (KKR)

Of a maximum score rating of 400 points, Respondent #2 (KKR) received a score rating of 316.6 points. In regards to respondent #2's proposal, the committee weighed their scoring according to the relevancy of experience, noting their localized specialization was focused in aviation and transit services. The thoroughness of examples included a wide range of legal coverage in utilities in the state of California. However, their experience in New Mexico highlighted legal services unrelated to utilities. The committee weighed value on KKR's proposed teams experience on the basis from the RFP stating, "The successful applicant must be an attorney licensed to practice law in the State of New Mexico." The committee noted, KKR's proposed team for BDD had three (3) out of eleven (11) associates with admissions to the New Mexico State Bar. The resumes from the three (3) associates holding a NM State Bar admission did not fit the scope of work needed at BDD. The committee also noted the organization is of an overwhelming scale and the local outside legal counsel lacked the specific expertise to demonstrate their experience in water litigation.

B.2. Organizational References (300 Total Points)

Organizational References Criteria:

Provide a minimum of three (3) references relevant to the Scope of Work as listed above in which legal service, and contracts have been provided for private, city, state, or large government clients within the last three (3) years.

Offeror/Respondent shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

Offeror/Respondent is required to submit APPENDIX E, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX E. The business references must not return the completed Questionnaire to the Offeror/Respondent.** It is the Offeror/Respondent’s responsibility to ensure the completed forms are submitted on or before the date indicated in Section II. A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror/Respondent score in the evaluation process. Offeror/Respondent are encouraged to specifically request that their Organizational References provide detailed comments.

Evaluation Factors:

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix E). Offeror/Respondent will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the City reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror/Respondent responsibility per Section II.C.18.

Evaluation of References Point Summary:

Offeror/Responder	<u>RESPONDER</u> #1 (LKA)	<u>RESPONDER</u> #2 (KKR)
Max Points 300	180	300

Offeror/Respondent#1 (LKA)

Of a maximum score rating of 300 points, Response #1 (LKA) received a score rating of 180 points. The committee discussed the weight of points given for the references received. Two (2) out of three (3) references were received, this led to a deduction of points for a lack of three references. Also, points were deducted because feedback from the reference questionnaire gave LKA a "satisfactory" rating on a total of 3 questions.

Offeror/Respondent#2 (KKR)

Of a maximum score rating of 300 points, Response #2 (KKR) received a score rating of 300 points. The committee agreed that three (3) references were received. Of the references received, ratings for KKR were high and achieved the maximum number of points available from the Evaluation Committee. For example one vendor reference stated, "Vendor is extremely knowledgeable about state and federal environmental regulation, litigation, and strategy. Vendor also has deep knowledge about the science as it relates to environmental compliance and advocacy".

C.3. Letter of Transmittal Form (Pass/Fail)

Business Specifications:

The Offeror/Respondent's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX D. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX D, and to return a signed, unaltered form will result in Offeror/Respondent's disqualification.**

Evaluation Factors:

Pass/Fail only. No points assigned.

Committee Evaluation of Letter of Transmittal Form (Pass/Fail):

Offeror/Respondent	<u>RESPONSE</u>	<u>RESPONSE</u>
	#1 LKA	# KKR
Pass/Fail	Pass	Pass

Offeror/Respondent#1

LKA submitted a completed Letter of Transmittal Form as required by the RFP. LKA received a "Pass".

Offeror/Respondent#2

KKR submitted a completed Letter of Transmittal Form as required by the RFP. LKA received a "Pass".

C.4. Signed Campaign Contribution Disclosure Form (Pass/Fail)

Specifications:

The Offeror/Respondent must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror/Respondent’s proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror/Respondent’s disqualification.**

Evaluation Factors:

Pass/Fail only. No points Assigned.

Committee Evaluation of Signed Campaign Contribution Disclosure Form (Pass/Fail):

Offeror/Respondent	<u>RESPONSE</u> #1 (LKA)	<u>RESPONSE</u> #2 (KKR)
Pass/Fail	Pass	Pass

LKA submitted a signed Campaign Contribution Form as required by the RFP. LKA received a “Pass”.

KKR submitted a signed Campaign Contribution Form as required by the RFP. LKA received a “Pass”.

C.5. Cost (300 Total Points)

Specifications:

Offeror/Respondents must complete the Cost Response Form in APPENDIX C. Cost will be measured by the gross lump sum price submitted to meet the stated scope of work listed in the RFP. All charges listed on APPENDIX C must be justified and evidence of need documented in the proposal.

Evaluation Factors:

The evaluation of each Offeror/Respondent’s cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offeror/Respondent's Cost}}{\text{Each Offeror/Respondent's Cost}} \times \text{Available Award Points}$$

Committee Evaluation of Cost Summary:

Offeror/Respondent	<u>RESPONSE</u> #1 (LKA)	<u>RESPONSE</u> #2 (KKR)
Max Points 300	300	144

Offeror/Respondent #1 (LKA)

Lowest Cost

(LKA) \$110.75 Lowest cost x 300 points = 300 awarded points

÷ divided by (LKA cost) \$110.75

Offeror/Respondent #2 (KKR)

Lowest Cost

(LKA) \$110.75 Lowest cost x 300 points = 144 awarded points

÷ divided by (KKA's cost) \$232.14

The Evaluation committee confirmed that both offeror/responder’s calculations were correct and accurate.

Section C.C.4, NM Preferences Preference Points 30/60

To qualify for a local preference, a vendor must attach a state of New Mexico Taxation and Revenue Department-issued, Resident Business certification of eligibility to its bid or proposal, showing that the business is located within the Santa Fe municipal limits. If an offer is received without a copy of the appropriate State of New Mexico Taxation and Revenue Department issued Business Registration Certificate, the preference will not be applied. A valid resident business certificate is issued by the Taxation and Revenue Department pursuant to NMSA 1978 §13-1-22.

- A. The City shall award additional 3% of the total weight of all the factors used in evaluating the proposal to a local resident business. The City shall award an additional 3% of the total weight of all the factors used in evaluating the proposal to a non-local resident business who has hired all local resident business subcontractors.

- B. When the City makes a purchase using a formal request for proposal process and the contract is awarded based on a point-based system, the City shall award additional point's equivalent to 3% of the total possible points to a local resident business. The City shall award an additional 3% of the total possible points to a business who has hired all local resident business subcontractors.

The maximum available local preference shall be 6%.

Evaluation Committee Local Preference Summary:

Offeror/Respondent	<u>RESPONSE</u> #1 (LKA)	<u>RESPONSE</u> #2 (KKR)
30/60 Points	0	0

Offeror/Respondent #1 LKA

Of a maximum score rating of 60 points (LKA) received 0 points. They included a City of Santa Fe Business License, however, to qualify for a local preference, a vendor must attach a state of New Mexico Taxation and Revenue department-issued, Resident Business Certification

Offeror/Respondent #2 KKR

Of a maximum score rating of 60 points (KKR) received 0 points. They did not provide a state of New Mexico Taxation and Revenue Department-issued, resident Business certification.

Both responders received 0 points.

Evaluation Points Summary:

LEGAL SERVICES FOR BDD RFP # 23/29/P

Evaluation Factors	<u>RESPONSE</u> #1 (LKA)	<u>RESPONSE</u> #2 (KKR)
B.1. Organizational Experience (400 Points)	350	316.66
B.B 2. Organizational References (300 Points)	180	300
C.3. Letter of Transmittal (Pass/Fail)	Pass	Pass
C.4. Campaign Disclosure Form (Pass/Fail)	Pass	Pass
C.C.5. Cost (300 Points)	300	143
Section C.C 4. Business Specifications New Mexico Resident Business Preference 3%	0	0
Section C.C 4. Business Specifications New Mexico Resident Subcontractors 3%	0	0
TOTAL POINTS AWARDED	830	759.66

Evaluation Committee Recommendations:

After a thorough review and evaluation process, the results are represented in the Evaluation Point Summary as showing Offeror/Respondent #1 LKA with the highest score. The committee reported that a fair and equitable scoring process took place for both proposals.

Based on the evaluation of proposals submitted, as detailed above, the committee recommends awarding one (1) Professional Legal Service contract with Long Komer and Associates, which had the highest cumulative score from the Evaluation Point Summary.

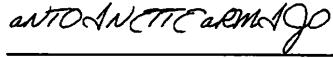
Committee Signature Approval



Maya Martinez
Evaluation Committee Member

Feb 7, 2023

Date



Antoinette Armijo-Rougemont
Evaluation Committee Member

Feb 7, 2023

Date



Jessica Chavez (Feb 7, 2023 1:11 MST)
Jessica Chavez
Evaluation Committee Member

Feb 7, 2023

Date



Monique Maes (Feb 7, 2023 15:36 MST)

Monique Maes
Procurement Manager/BDD

Feb 7, 2023

Date

Chief Procurement Officer Signature Approval



JoAnn D. Lovato
Interim Chief Procurement Officer
City of Santa Fe

Feb 7, 2023

Date



CITY OF SANTA FE PROCUREMENT CHECKLIST

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

Procurement Title: RFP 23/29/P Legal Services for BDD

Procurement Method: State Price Agreement Cooperative Sole Source Other RFP _____

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 BDDDB Buckman Direct Diversion Board
<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 Contracts, 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 BDDDB
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Monique Maes Contracts Administrator 03/02/2023
 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.

*



Buckman Direct Diversion Board

Real Estate Summary of Contracts, Agreements, Amendments & Leases



Section to be completed by department

1. Munis Contract # 3203896

Contractor: Long, Komer, & Associates P.A

Description: Legal Counsel for the Buckman Direct Diversion Board.

Contract Agreement Lease / Rent Amendment

Term Start Date: 03/02/2023 Term End Date: 06/30/2023

Approved by BDDDB or Approved by BDD Facilities Manager Date: 03/02/2023

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by BDDDB or Approved by BDD Facilities Manager Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)
New Contract via RFP 23/29/P, Approved 3/2/2023 \$120,000.00 plus tax, Date end term 6/30/2023

3. Procurement History: _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. Funding Source: _____ Org / Object: 8000801.510200

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

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

Email: mmmaes@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

BUCKMAN DIRECT DIVERSION BOARD
LEGAL SERVICES AGREEMENT
LONG, KOMER, & ASSOCIATES, P.A

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board, herein after referred to as the “BDDB” and Long, Komer & Associates, P. A. herein after referred to as the “Contractor”.

1. Scope of Services.

Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;

A. Provide legal services and support to the BDD Board, with particular reference to matters of administrative law and any other applicable law, at all public BDD Board meetings and BDDB hearings, or in court if required.

B. Represent the Board in litigation and administration matters.

C. Providing 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;

D. 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;

- E. Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;
- F. 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;
- G. Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- H. Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- I. Perform other duties as may be directed by the BDD Board or (PUD) Public Utilities Department Director or designee.

2. Standard of Performance; Licenses.

- A. Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.
- B. 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 BDDDB shall pay to the Contractor in full payment of services rendered, a sum not to exceed one hundred and twenty thousand dollars.(\$120,000.000), plus New Mexico Gross Receipts Tax based on the Rate Schedule attached.

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

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

D. Filing fees, services and statutory fees shall be charged at actual rate charged by court. All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A

4. Term and Effective Date.

The contractual agreement will commence when all parties sign and upon approval of the BDDDB. The Term will be (4) years based on the final signature date of all parties.

5. Termination.

A. This Agreement may be terminated by the BDDDB upon 30 days written notice to Contractor. In the event of such termination:

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

- 2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

6. 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.

7. Status of Contractor; Responsibility for Payment of Employees and Subcontractors.

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

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

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

8. Assignment; Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Conflict of Interest.

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

12. Amendment.

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

13. Merger.

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

14. Penalties for violation of law.

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

15. Non-Discrimination; Equal Opportunity Compliance.

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.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental

handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

16. Applicable Law; Choice of Law; Venue.

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

17. Workers Compensation.

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

18. Insurance.

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDDB's request provided to the BDDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (ii) obtained BDDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's

liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDDB.

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

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

1) **Commercial General Liability.** Commercial General Liability (CGL)

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

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

- 2) **Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the BDDDB that reflects coverage for any automobile [any auto].
- 3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.
- 4) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

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

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

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

E. Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated “A-” and “V” or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDDB. The BDDDB will accept insurance

provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

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

G. **Specific Provisions Required.**

- 1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.
- 2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDDB.
 1. 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.
 2. Before performing any Professional Services, Contractor shall provide the BDDDB with all Certificates of Insurance accompanied with all endorsements.
 - i. The BDDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to

determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

3. Contractor may obtain additional insurance not required by this Agreement.

4. Contractor may obtain additional insurance not required by this Agreement.

19. Third Party Beneficiaries.

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

20. 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.

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. Records, Document Control and Financial Audit.

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

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

23. INDEMNIFICATION.

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

Indemnification for Professional Acts, Errors or Omissions. Except for professional

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

24. 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.

25. Invalid Term or Condition.

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

26. 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:

Rick Carpenter
Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road Santa Fe, NM 87506
Email: rrcarpenter@ci.santa-fe.nm.us
With a copy to: City of Santa Fe Attorney
PO Box 909 Santa Fe, NM 87504

CONTRACTOR:

Long, Komer & Associates, P. A
1800 Old Pecos Trail #A
Santa Fe, NM 87505

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

CONTRACTOR:

By: _____
BDDDB Chair

By: _____
Nancy Long

Title: President/Partner

Date: _____

Date: _____

ATTEST:

Kristine Bustos Mihelcic, City Clerk

File Date: _____

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Feb 17, 2023 13:57 MST)
Senior Assistant City Attorney

APPROVED FOR FINANCES:

Emily Oster, City Finance Director

Org/Object Code:

ATTEST:

Santa Fe County Clerk

**EXHIBIT A
Fee Schedule**

Description	Quantity	Unit	Cost per Item
Senior Partner (or equivalent)	2	Hourly Rate	\$225.00
Partner (or equivalent)	1	Hourly Rate	\$225.00
Associate (or equivalent)	1	Hourly Rate	\$225.00
Law Clerk (or equivalent)	N/A	Hourly Rate	\$
Paralegal (or equivalent)	2	Hourly Rate	\$100.00
Administrative Staff (or equivalent)	2	Hourly Rate	no charge
Paper Copies	1	Per Page	no charge unless large
			jobs done out of house.
			then at cost

Note:

Filing fees, services and statutory fees shall be charged at actual rate charged by court. All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A.



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: 1800 OLD PECOS TRL STE. A
SANTA FE , NM 87505

CRS Number: 02075049008

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

License Number: 58116

License Type: Business License - Renewable

Issued Date: July 18, 2022

Classification: Business Registration - Standard

Expiration Date: July 18, 2023

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



LONGKOM-01

MFAVA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/23/2023

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

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

PRODUCER Blue Chip Insurance Agency, Inc. PO Box 5355 Santa Fe, NM 87502	CONTACT NAME: PHONE (A/C, No, Ext): (505) 988-4425 FAX (A/C, No): (505) 988-7454 E-MAIL ADDRESS: bluechip@bluechipnm.com														
INSURED LONG, KOMER & ASSOCIATES P.O. Box 5098 Santa Fe, NM 87502	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : American Hallmark Insurance Co</td> <td></td> </tr> <tr> <td>INSURER B : New Mexico Premier</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : American Hallmark Insurance Co		INSURER B : New Mexico Premier		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		X	44-PB-407497-26	2/3/2023	2/3/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ \$																
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			44-PB-407497-26	2/3/2023	2/3/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$																
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			44-PB-407497-26	2/3/2023	2/3/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ \$ 2,000,000																
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below			19745.125	2/3/2023	2/3/2024	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%;">PER STATUTE</td> <td style="width: 10%;">OTH-ER</td> <td style="width: 20%;"></td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td></td> <td></td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td></td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td></td> <td>\$ 500,000</td> </tr> </table>		PER STATUTE	OTH-ER		E.L. EACH ACCIDENT			\$ 500,000	E.L. DISEASE - EA EMPLOYEE			\$ 500,000	E.L. DISEASE - POLICY LIMIT			\$ 500,000
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E.L. DISEASE - POLICY LIMIT			\$ 500,000																				

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

CERTIFICATE HOLDER**CANCELLATION**

Buckman Direct Diversion Board
 City of Santa Fe
 P.O. Box 909
 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



Date: March 2, 2023
To: Buckman Direct Diversion Board
From: Nancy R. Long via Rick Carpenter and Antoinette Armijo-Rougemont
Subject: Revised Major Repair and Replacement Fund Policy

ITEM AND ISSUE:

Request for the Approval of the Revised Major Repair and Replacement Fund Policy ("MRRF Policy").

BACKGROUND AND SUMMARY:

In line with the requirements of the Project Management Fiscal Services Agreement between the Buckman Direct Diversion Board ("BDDDB") and the City of Santa Fe, the BDDDB's yearly budget shall include annual Operations, Maintenance, Repair and Replacement costs and provide for a major repair and replacement fund.

In 2014, the BDDDB approved the MRRF Policy to address the details of the fund including contributions, the definition of a major repair or replacement and how the funds could be accessed. Annual contributions to the fund have been provided for in the annual budget since 2014.

The policy has been revised to address ambiguous language in the existing policy regarding annual contributions and to link the contributions and the MRRF balance to a plan for necessary or recommended repairs and replacement of equipment.

The proposed Revised MRRF Policy is attached.

ACTION REQUESTED:

It is recommended that the BDDDB approve the Revised Major Repair and Replacement Fund Policy.





Revised Buckman Direct Diversion Board Major Repair and Replacement Fund Policy

This revised Major Repair and Replacement Fund Policy ("MRRF Policy") amends and replaces the MRRF Policy approved by the Buckman Direct Diversion Board ("BDDDB") in 2014 in order to clarify the language regarding annual contributions to the Major Repair and Replacement Fund ("MRR Fund") established pursuant to this policy. This policy is adopted in accordance with the BDDDB's intergovernmental agreements and in order to secure resources assuring the BDDDB's ability to cover the repair and replacement cost of capital assets within the Buckman Direct Diversion Facility ("BDD Facility"). The MRRF Policy provides for annual contributions to ensure funding is available to repair and/or replace capital equipment when the capital equipment has reached the end of its effective useful life or requires repair before that time. Capital equipment is defined as any equipment costing more than five thousand dollars (\$5,000.00) and with a life expectancy of more than three (3) years ("Equipment"). Replacement prioritization for the Equipment is generally related to a specific time or duration of service identified as the Equipment's life cycle. Typical examples of such Equipment include: SCADA system hardware, vehicles and heavy equipment, variable speed drives, raw and finished water pumps, solids handling process equipment and other related equipment.

The purpose of the MRRF Policy is to define what constitutes a major repair or replacement, how annual contributions to the MRR Fund are determined and how access to the MRR Fund is obtained.

Definition of a Major Repair or Replacement:

A major repair or replacement is defined as a repair, or replacement which is infrequent in nature, and which meets one or both of the following conditions:

- a. is to Equipment where failure of the Equipment will significantly affect performance and/or operation of the BDD Facility or;
- b. where the complexity of the repair or replacement of Equipment may significantly affect performance and/or operation of the BDD Facility.

Annual Contributions to the Major Repair and Replacement Fund

The annual contribution amount from the BDD partners shall be set forth in each year's BDDDB annual approved budget and is subject to change annually, as approved by the BDDDB. This annual contribution amount will be informed by and consistent with available funds in the MRR Fund and



an asset management and capital improvement spend plan developed and updated annually by the BDD Facility Manager and available to the BDD partners upon request. Contributions to the MRR Fund shall be made in accordance with the cost sharing principles contained in the Fiscal Operations and Procedures Agreement.

Access to the MRR Fund:

The MRR Fund shall be designated as a restricted reserve fund. The purpose of the MRR Fund is to provide available cash flow to ensure that major repair and replacement of Equipment can be expeditiously accomplished without having to first secure funding from the BDD partners. To access the necessary funds for a major repair or replacement, the following steps shall be followed:

1. The BDD Facility Manager and Equipment Maintenance Superintendent will identify and evaluate all major repairs and replacements.
2. The BDD Facility Manager and Equipment Maintenance Superintendent will develop an initial plan of action.
3. After the initial plan of action is developed, the BDD Facility Manager shall notify the BDD partners.
4. The BDD Facility Manager will access the MRR Fund in accordance with procurement policy.
5. Upon resolution of the major repair or replacement, the BDD Facility Manager and BDD Financial Manager shall provide a written report to the BDDDB at the next regularly scheduled BDD meeting.

The MRRF will be monitored by the BDD Financial Manager and may earn interest income on cash balances as provided in the adopted BDD Working Capital and Billing Policy.

Approved by the Buckman Direct Diversion Board at its Meeting of March 2, 2023.

Anna Hamilton, BDDDB Chair

ATTEST:

Katharine E. Clark, Santa Fe County Clerk