



**ACTION SHEET  
CITY COUNCIL COMMITTEE MEETING OF 10/08/14  
ITEM FROM FINANCE COMMITTEE MEETING OF 09/29/14**

**ISSUE:**

6. Request for Approval of Amendment No. 3 to Legal Services Agreement – Representation of the City Concerning the Northwest Well Application and Return Flow/Discharge Credit Application; Stein & Brockman, P.A. (Marcos Martinez and Nick Schiavo)

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

Requested approval of amendment no. 3 to legal services agreement for presentation of the City concerning the Northwest Well application and return flow/discharge credit application with Stein & Brockman, P.A. in the amount of \$100,000. Budget is available in water fund.

**FUNDING SOURCE: 52300.510200**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	Chair		
CHAIRPERSON DOMINGUEZ	Excused		

3-17-14

# City of Santa Fe, New Mexico

## memo

September 19, 2014

To: Finance Committee

From: Marcos D. Martínez, Assistant City Attorney *MDM*  
Nick Schiavo, Acting Public Utilities and Water Division Director *NS*

Re: Amendment #3 the Legal Services Agreement with Stein & Brockmann

The City Attorney's Office is requesting an amendment for \$100,000 to the Legal Services Agreement with Stein & Brockmann, LLC for work on two applications before the Office of the State Engineer (OSE) that the City Council has approved: 1) the Northwest Well Application, and 2) a Return Flow/Discharge Credit Application.

### **NW Well Application**

At the September 27, 2011 City Council meeting, the City Council approved a "Request for Approval of the Northwest Well Permit Application." In October 2011 the City filed an application with the Office of the State Engineer to permanently re-permit the Northwest Well. Numerous persons objected to the granting of the application.

The parties extended the hearing deadlines in an attempt to resolve the protests with the OSE and the Protestants. Unfortunately, the parties were unable to resolve their differences. Consequently, Stein & Brockmann and the City Attorney's Office have been engaged in pre-trial litigation regarding the application with both the Protestants and the State Engineer's Office. The City is actively defending its right to permanently re-permit the NW Well and to develop and perfect its water rights in the City well-field.

The Northwest Well is a crucial component of the City's water supply, therefore we recommend approving the amendment to the Legal Services Agreement.

The City, the Protestants, and the State have been attempting to mediate a settlement in order to avoid protracted litigation.

**Return Flow/Discharge Credit Application**

At the same September 27, 2011 City Council Meeting, the City Council approved a "Request for Approval of Discharge Credit Application to Offset Buckman Well Impacts in the La Cienega Area". Stein & Brockmann has advanced the discussion with the OSE on how the OSE may recognize the City's effluent as a discharge credit for pumping the Buckman Wells. However, many details on a discharge credit remain unresolved.

Stein & Brockman has had experience in pursuing return-flow credits for municipalities with the OSE.

The Business Unit and Line Item for this contract is: 52300.510200.

**CITY OF SANTA FE  
AMENDMENT No. 3 TO  
LEGAL SERVICES AGREEMENT**

AMENDMENT No. 3 (the "Amendment") to the CITY OF SANTA FE LEGAL SERVICES AGREEMENT, dated November 2, 2012 (the "Agreement"), between the City of Santa Fe (the "City") and Stein & Brockmann, P.A. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

**RECITALS**

A. Under the terms of the Agreement, Contractor has agreed to provide legal services to the City.

B. Pursuant to Article 17 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of one hundred thousand dollars (\$100,000) so that Article 3, paragraph A reads in its entirety as follows:

A. The City shall pay to Contractor the following hourly rates: \$180/hour for Seth Fullerton's time, \$200/hour for Jay Stein or Jim Brockmann's time, \$160/hour for junior associates, and \$125/hour for paralegal time.

In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Agreement such as copying, telephone and computer

research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act. Said services shall not exceed three hundred fifty thousand dollars (\$350,000), plus gross receipts tax, in total for the term of this Agreement.

2. AGREEMENT IN FULL FORCE.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 to the City of Santa Fe Legal Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
STEIN & BROCKMAN, P.A.

By: \_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

\_\_\_\_\_  
NAME & TITLE

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

MDM 7/23/14  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

TERESITA GARCIA, ASSISTANT FINANCE DIRECTOR

52300.510200  
Business Unit/Line Item



**City of Santa Fe  
Summary of Contracts, Agreements, & Amendments**

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

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

2 Name of Contractor Stein & Brockman, P.A.

3 Complete information requested Plus GRT

Inclusive of GRT

Original Contract Amount: \$50,000.00

Termination Date: June 30, 2014

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: November 2, 2012

**Contract is for:** Represent City concerning an Application to re-permit the City's Northwest Well

Amendment # 3 to the Original Contract# 12-0953

Increase/(Decrease) Amount \$ 100,000

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: \_\_\_\_\_

**Amendment is for:** Compensation

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

Inclusive of GRT

Amount \$ 50,000.00 of original Contract# 12-0953 Termination Date: 06/30/2014

Reason: Compensation

Amount \$ 100,000.00 amendment # 1 Termination Date: \_\_\_\_\_

Reason: Compensation

Amount \$ 100,000.00 amendment # 2 Termination Date: 06/30/2016

Reason: Compensatin and Term

Amount \$ 100,000.00 amendment # 3 Termination Date: \_\_\_\_\_

Reason: Compensation

Total of Original Contract plus all amendments: \$ 350,000



# City of Santa Fe Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# \_\_\_\_\_ Date: \_\_\_\_\_

RFQ \_\_\_\_\_ Date: \_\_\_\_\_

Sole Source \_\_\_\_\_ Date: \_\_\_\_\_

Other Exempt from Procurement (18.1 - i) \_\_\_\_\_

6 Procurement History: Three of four years  
example: (First year of 4 year contract)

7 Funding Source: Water Division BU/Line Item: 52300/510200

8 Any out-of-the ordinary or unusual issues or concerns:  
\_\_\_\_\_  
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Irene Romero

Phone # \_\_\_\_\_ -6512

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature  
Forward to Finance Director for review/signature  
Return to originating Department for Committee(s) review or forward to City Manager for review  
and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

Note: If further information needs to be included, attach a separate memo.

Comments:



# PURCHASING MANUAL

## PURCHASING PROCEDURES

Effective Date July 2008

### 18. EXEMPTIONS

The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

#### 18.1 All procurement shall be achieved by competitive sealed bids or formal proposals, except as follows:

1. Section 6, SMALL PURCHASES: PURCHASES OF TANGIBLE PERSONAL PROPERTY UNDER \$30,000.
2. Section 11, COOPERATIVE PROCUREMENT.
3. Section 12, PROCUREMENT BY THE CITY ON BEHALF OF OTHER GOVERNMENTAL ENTITIES.
4. Section 16, SOLE SOURCE PROCUREMENTS.
5. Section 17, EMERGENCY PROCUREMENTS.
6. Section 24, PROCUREMENT OF PROFESSIONAL SERVICES UNDER \$30,000.
7. Procurements exempted from competitive procurement are as follows:
  - a. Printing and duplicating contracts required in connection with court proceedings;
  - b. Purchases of publicly provided utilities such as: gas, electricity, water, telephone, cable TV;
  - c. Purchases of books, periodicals, films, training materials, subscriptions, on-line information services, or advertising from the publishers and distributors or agents thereof;
  - d. Travel, shipping, meals and lodging (Per Diem and Mileage Act applies to employee travel;)
  - e. Purchases of magazine subscriptions, conference registration, membership dues, or any other similar issues which are administrative in nature and are determined to be non-competitive by the City Purchasing Officer.
  - f. The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute with the exception of bond attorneys and general financial consultants;
  - g. Contracts entered into with a private independent contractor for the operation of a jail;
  - h. Bond attorneys, if approved by the City Council as part of the underwriting team involved in the issuance, sale and delivery of public securities for City bonds or City-issued bonds; and
  - i. Legal services for advice, consultation, and representation of the City.
  - j. Purchase of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency or costly condition to exist and where the machinery or equipment is in immediate danger of failure;
  - k. Purchase of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.
  - l. Purchases of computer software including ancillary services, where such is required to match other software in use or where a unique or novel application (available from only one provider) is required to be used in the public interest. This will include applicable initial and subsequent licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider.
  - m. Purchase, lease, rental or any other financial arrangement for the acquisition of art, artifacts, or other items for the purpose of exhibition in a public facility or area.