



**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 04/30/14**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 04/21/14**

**ISSUE:**

12. Request for Approval of **Amendment No. 2** to Legal Services Agreement – Legal Services for the City’s Application to Re-Permit the City’s Northwest Well and Return Flow/Discharge Credit; Stein & Brockmann, P.A. (Marcos Martinez and Nick Schiavo)
- A. Request for Approval of Budget Increase – Water Fund

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

Requested approval of amendment no. 2 to legal services agreement for legal services for the City’s application to re-permit the City’s Northwest Well and Return Flow/Discharge Credit with Stein & Brockmann, P.A. in the amount of \$100,000 not to exceed the amount of \$250,000 plus gross receipts tax.

**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	X		
CHAIRPERSON DOMINGUEZ			

3-17/14/FCMissue

# City of Santa Fe, New Mexico

## memo

April 4, 2014

To: Finance Committee

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

Re: Amendment & BAR to the Legal Services Agreement with Stein & Brockmann

The City Attorney's Office is requesting a budget adjustment request (BAR) and 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 BAR and the amendment to the Legal Services Agreement.

At present, a hearing on the protested application is scheduled for a week in July, 2014.

**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.

Copy

**CITY OF SANTA FE  
AMENDMENT No. 2 TO  
LEGAL SERVICES AGREEMENT**

AMENDMENT No. 2 (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 two hundred fifty thousand dollars (\$250,000), plus gross receipts tax, in total for the term of this Agreement.

2. TERM.

Article 5 of the Agreement is deleted. A new article 5 of the Amendment is inserted to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2016, unless terminated sooner pursuant to Article 6 below.

3. AGREEMENT IN FULL FORCE.

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

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

CITY OF SANTA FE:

CONTRACTOR:

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

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

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

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

ATTEST:

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

APPROVED AS TO FORM:

 FOR  
\_\_\_\_\_  
KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR

52300.510200  
Business Unit/Line Item





# 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

6 Procurement History: Exempt from procurement.  
example: (First year of 4 year contract)

7 Funding Source: \_\_\_\_\_ BU/Line Item: 52300.510300.

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 # 955-6512

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:



CITY OF SANTA FE

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Stein & Brockmann, P.A. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor agrees to represent the City in following matters: i) the City's Application to re-permit the City's Northwest Well, and ii) the City's Application for a Return Flow/Discharge credit with the Office of the State Engineer ("OSE").

i) The City's Application to re-permit the Northwest Well. The application process includes any administrative hearings held before the OSE, subsequent appeals, any settlement discussions, or any other assignments made by the City in relation to the Northwest Well Application. In addition, the City may ask the Contractor to prepare legal opinions on issues related to the re-permitting of the Northwest Well. The Contractor shall regularly consult and communicate with the City Attorney's Office regarding the status of the matter. Both the Contractor and the City Attorney's Office shall enter an appearance in any administrative or judicial proceeding.

ii) The City's Application for a Return Flow/ Discharge Credit. The application process includes any administrative hearings held before the OSE, subsequent appeals, settlement discussions, or any other assignments made by the City in relation to return flow/discharge credit. In addition, the City may ask the Contractor to prepare legal opinions on issues related to return-flow/discharge credits. The Contractor shall regularly consult and communicate with the City Attorney's Office regarding the status of the matter. Both the

Contractor and the City Attorney's Office shall enter an appearance in any administrative or judicial proceeding.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

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 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 fifty-thousand dollars (\$50,000), plus gross receipts tax, in total for the term of this Agreement.

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

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

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by both parties and terminate on June 30, 2014, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by either party upon 10 days written notice to the other party.

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

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date of notice of such termination.

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

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

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

The Contractor represents that it has no interest that conflicts with the Scope of Work under this Agreement. The City understands that the Contractor may have in the past represented other clients adverse to the City in matters unrelated to the Scope of Work. The City agrees that such past and current representation will not require the disqualification of Contractor in such other matters. The Contractor represents that it will not, during the term of this Agreement, represent new clients in any future matter whose interests are adverse to the City in matters related to the Scope of Work without the City's consent.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other

interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor shall maintain adequate legal malpractice insurance. It is the sole responsibility of the Contractor to be in compliance with the law. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Agreement. Upon request, Contractor shall provide the City with evidence of its compliance with such requirement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the

performance of Contractor's employees, agents, representatives and subcontractors, including payments of all attorneys' fees and costs.

14. 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 City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

15. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

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 City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District.

17. AMENDMENT

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

18. 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.

19. NON-DISCRIMINATION

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

20. 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.

21. NOTICES

Any notices required to be given under this Agreement shall be in writing and

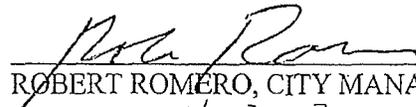
served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

CITY OF SANTA FE:  
CITY ATTORNEY'S OFFICE  
P.O. BOX 909  
SANTA FE, NM 87504

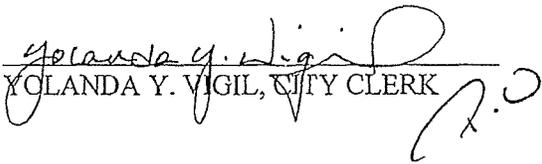
CONTRACTOR:  
STEIN & BROCKMANN, P.A.  
P.O. BOX 2067  
SANTA FE, NM 87504

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

CITY OF SANTA FE:

  
ROBERT ROMERO, CITY MANAGER  
11-2-12  
DATE

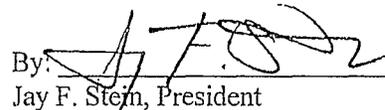
ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

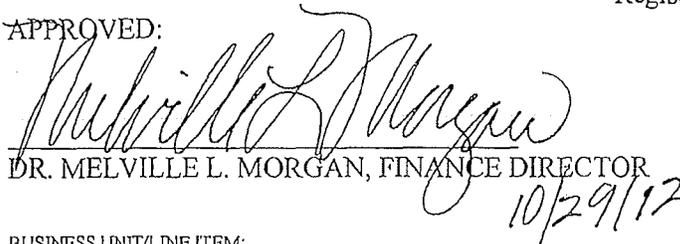
  
GENO ZAMORA, CITY ATTORNEY

CONTRACTOR:

By:   
Jay F. Stern, President  
11/14/2012  
DATE

N.M. Taxation & Revenue  
CRS #02-130722-009  
City of Santa Fe Business  
Registration #12-0070821

APPROVED:

  
DR. MELVILLE L. MORGAN, FINANCE DIRECTOR  
10/29/12

BUSINESS UNIT/LINE ITEM:  
52300.510200

**CITY OF SANTA FE  
AMENDMENT No. 1 TO  
LEGAL SERVICES AGREEMENT**

AMENDMENT No. 1 (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 one hundred fifty-thousand dollars (\$150,000), 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.

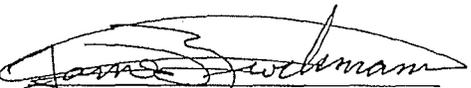
IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Legal Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

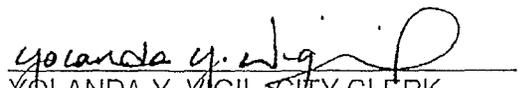
By:   
DAVID COSS, MAYOR

Date: 9-3-13

  
NAME & TITLE

Date: 9/10/13

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
certified 8-27-13

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GENO ZAMORA, CITY ATTORNEY 6/28/13

APPROVED:

  
\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR 8/29/12

52300.510200  
Business Unit/Line Item