

**BUCKMAN DIRECT DIVERSION**

**"REQUEST FOR PROPOSALS"**

**PROFESSIONAL SERVICES FOR  
THE BUCKMAN DIRECT DIVERSION BOARD**

**LEGAL SERVICES**

**RFP #'15/13/P**

**PROPOSAL DUE:**

**November 20, 2014**

**2:00 P.M.**

**PURCHASING OFFICE**

**CITY OF SANTA FE**

**2651 SIRINGO ROAD**

**BUILDING "H" SANTA FE,**

**NEW MEXICO 87505**

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## Attachments:

1. Instructions Relating to Local Preference Certification Form
2. Local Preference Certification Form
3. Resident Veterans Preference Form
4. Sample Contract
5. Minimum Wage Ordinance

**REQUEST FOR PROPOSALS  
PROPOSAL NUMBER '15/13/P**

Proposals will be received by the City of Santa Fe as the BDDB Project Manager and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, November 20, 2014**. Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

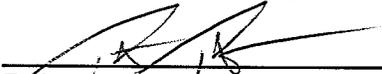
**Legal Services For Buckman Direct Diversion Board**

The Buckman Direct Diversion Board ("the Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("the City") and Santa Fe County ("the County"), dated March 7, 2005, requests proposals from qualified attorneys to serve as legal counsel for the Board on matters related to the Board's provision of regional water resources through the Buckman Direct Diversion ("BDD") Project. The required professional, legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.

  
\_\_\_\_\_  
Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: 10/14/14  
To be published on: 10/20/14

Received by the Albuquerque Journal Newspaper on: 10/14/14  
To be published on: 10/20/14

## PROPOSAL SCHEDULE

### RFP # '15/13/P

- |    |   |  |
|----|---|--|
| 1. | Advertisement   | October 20, 2014   |
| 2. | Issuance of RFP'S:  | October 20, 2014   |
| 3. | Receipt of proposals:   | November 20, 2014 at<br>2:00 p.m local prevailing time.<br>Purchasing Office 2651<br>Siringo Road Bldg., "H"<br>Santa Fe, New Mexico<br>87505 (505) 955-5711 |
| 4. | Evaluation of proposals:                                      | January 9, 2015  |
| 5. | Interviews:   | January 16, 2015   |
| 6. | Negotiation of Contract                                       | January 23, 2015   |
| 7. | Recommendation of award<br>to Buckman Direct Diversion Board: | February 5, 2015   |

**DATES OF CONSIDERATION BY BUCKMAN DIRECT DIVERSION BOARD ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.**

## **INFORMATION FOR PROPONENTS**

### **1. RECEIPT OF PROPOSALS**

The Buckman Direct Diversion Board (herein called "Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe and Santa Fe County, dated March 7, 2005, invites firms to submit eight (8) copies of the proposal. Proposals will be received by the Board, through its fiscal agent the Sangre de Cristo Water Division, at the City of Santa Fe Purchasing Office, until 2:00 p.m. local prevailing time November 20, 2014.

The packets shall be submitted and addressed to the Buckman Direct Diversion Board, C/O Sangre de Cristo Water Division as fiscal agent, City of Santa Fe Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '15/13/P  
Title of the proposal: **Buckman Direct Diversion Board Legal Services**  
Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

### **2. PREPARATION OF PROPOSAL**

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the Buckman Direct Diversion Board determines it is in the best interest of the BDDDB.

### **3. ADDENDA AND INTERPRETATIONS**

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given

consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The BDDB reserves the right not to comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the BDDB.

#### **4. LAWS AND REGULATIONS**

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

#### **5. METHOD OF AWARD**

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the Buckman Direct Diversion Board. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion, the BDDB reserves the right to alter the membership or size of the selection committee. The BDDB reserves the right to change the number of firms interviewed.

#### **6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

#### **1. RESIDENT, LOCAL OR VETERANS PREFERENCE**

INTENT AND POLICY

The City recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The City also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978).

To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico Taxation and Revenue Department.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

#### NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 5% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the City Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the City Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

## APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

New Mexico Resident Veteran Business Preference: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix E.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business preference.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposal are received from proponents in

the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

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

## **8. PROTESTS AND RESOLUTIONS PROCEDURES**

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days of the contract award. Requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

## **SPECIAL CONDITIONS**

**1. GENERAL**

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created (where applicable).

**2. ASSIGNMENT**

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

**3. VARIATION IN SCOPE OF WORK**

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the BDDB or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

**4. DISCOUNTS**

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The BDDB shall be the final determination of satisfactory receipt of goods or services.

**5. TAXES**

The price shall include all taxes applicable. The BDDB is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

**6. INVOICING**

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

**7. METHOD OF PAYMENT**

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

8. **DEFAULT**

The BDDB reserves the right to cancel all or any part of this order without cost to the BDDB if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the BDDB in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. **NON-DISCRIMINATION**

By signing this BDDB bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. **NON-COLLUSION**

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

## **SCOPE OF SERVICES '15/13/P**

### **1. BACKGROUND, PROJECT PURPOSE & GENERAL SCOPE**

The Buckman Direct Diversion Board (“the Board”), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe (“the City”) and Santa Fe County (“the County”), dated March 7, 2005, requests proposals from qualified attorneys to serve as legal counsel for the Board on matters related to the Board’s provision of regional water resources through the Buckman Direct Diversion (“BDD”) Project.

The required professional, legal services will cover, but are not limited to, general issues and concepts related to public body organizational powers and duties, public policy review, contracting, opinion and agreement drafting and negotiations, utility management and liability issues, and representation of the entity before federal and state courts and governmental agencies.

### **2. SCOPE OF WORK**

The Contactor shall perform the following under the professional services agreement contemplated by this Request for Proposals (“RFP”):

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

- 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;
- 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;
- Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- Perform other duties as may be directed by the BDD Board or PUD Director or designee.

### **3. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES:**

The contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

## **SUBMITTAL REQUIREMENTS**

### *I. HOURLY RATES AND PROFESSIONAL FEE PROPOSAL*

### *II. ERRORS AND OMISSIONS INSURANCE*

Proponents must provide evidence of Professional Errors & Omissions Insurance coverage in minimum limits of \$2,000,000 per occurrence. Insurance certificates shall be attached to Proposal. No additional direct or reimbursable expense is allowed under Professional Services Agreements for this standard coverage. Insurance certificates shall apply to prime consultants only and must be attached to the proposal.

### *III. STATEMENT OF QUALIFICATIONS*

Proponents shall provide responses to the following items to describe its organization, capabilities, experience, expertise and local knowledge as it specifically relates to the types of services requested.

#### **A. PROPONENT(S) FIRM DATA**

- 1) Official or Corporate name of company
- 2) Types of professional services provided
- 3) Legal form of business
  - a. Date established in current form
  - b. Former corporate names, locations, dates
  - c. Names, titles, professional affiliation/expertise of principals
- 4) Categories in which firm is legally qualified to do business in New Mexico.
- 5) Firm size, particularly in office where work proposed to be performed
- 6) If Joint Venture or Teaming Agreement, please provide this information for each entity and references for similar previous projects performed as a Team or joint venture.

#### **B. QUALIFICATIONS, CAPABILITY AND EXPERTISE**

- 1) Discuss specialized legal and technical competence of firm or joint venture, regarding the type of services required.
- 2) Describe the capacity and capability of firm, joint venture or Teaming Agreement, including special consultants, to perform the work, including any specialized services.
- 3) Describe the continuity of the company, particularly its capability to sustain loss of key personnel, or owner directed substitution of key personnel, without adversely affecting a client or the company
- 4) Discuss past record of performance on contracts with public agencies or private sector clients with respect to such factors as control of time, costs,

value, and quality of work ability to achieve schedules. Provide reference contacts.

- 5) Discuss knowledge and familiarity with Standard Legal Practices, costs, and procurement requirements and so forth in the region where the clients are located.
- 6) Discuss employee qualifications and competence in field of water law, public government, contracts and administration, intergovernmental agreements, and other relevant skills and experience
- 7) Discuss the legal firm's existing workload and its capacity to handle the requirements of the Buckman Direct Diversion.

**The Buckman Direct Diversion Board is seeking a firm that can clearly demonstrate they currently have the requisite staff and necessary expertise for this project. The BDDDB fully anticipates the consultant to immediately start work on this project with the notice to proceed.**

#### *C. WORKLOAD*

Describe the firm's current workload (particularly in the office that will provide this service). Provide names, locations, and clients for the firm. List those in your firm who are assigned to perform these services and the firm's capacity to perform these services.

#### *D. KNOWLEDGE OF LOCAL CONDITIONS*

Demonstrate recent knowledge and experience with City/County Public Works Department, City/County Public Utilities Department, neighborhoods, local boards and commissions, community awareness, historic sensitivity, and cost estimating in the general project area, i.e., Santa Fe Regional Area.

#### *E. EXPERIENCE*

Discuss recent experience of firm to provide services similar to this situation and list particular clients and references (including telephone numbers). Describe your firm's expertise and familiarity with procedural and regulatory requirements on these kinds of legal services.

#### *F. LEGAL TEAM AND RELATED EXPERIENCE*

- 1) Present the organizational chart for the legal firm for public involvement. List the names of the specific team members; with their assigned tasks; qualifications and percent of time they will be assigned to provide service.
- 2) Describe the client and consultant relationship the firm will establish for board meetings, document review, decision-making, and legal proceedings.
- 3) Should the firm be invited for personal interview, the BDDDB requires the principal and key design personnel, who will be assigned to the client, be

present, be introduced, make comment to the selection committee, and preferably be a participant in the interview.

#### *G. RESUMES*

For sake of uniformity, submit the resumes of key members, including subcontractors, using the following format:

- Name and Title
- Specialized Professional Competence
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background, Education

#### *IV. PROPOSAL FORMAT*

For uniformity of review and evaluation of proposals, please use the following format in preparing a response to this RFP:

- A. Table of Contents
- B. Statement of Qualifications and Team Description and identification
- C. Schedule of Hourly Rates & Costs
- D. Professional Fee Proposal
- E. Resumes of proposed project team
- F. Professional Errors & Omissions Insurance Certificate
- G. Any additional pertinent information

**The proposal is limited to 35 pages for items “A” through “G”. The smallest acceptable pitch is 12 point, with nominal 1” margins. Pages for resumes and additional pertinent information are not limited. As a practical matter, however, there is a limit as to how much material the Selection Committee members are able to read and absorb. Please clearly identify each proposal item.**

## **EVALUATION CRITERIA & WEIGHTED VALUES**

**Method of Award** - The contract will be awarded based upon the following criteria:

1. Ranking of qualified proposals by the Selection Committee as per the enclosed rating system.
2. Interviews
  - The scores from the Evaluation Criteria Form shall be utilized to determine the top ranked firm to be selected for the project.
  - Interviews will be conducted with the top ranked firms based on the score from the Evaluation Criteria Form if needed.
  - Only the scores from the Interview Evaluation Form will be utilized to select the top ranked firm. It is noted that the Proposed Fee score will carry over from Evaluation Criteria Form to the Interview Evaluation Form.
3. Consideration and approval of the Buckman Direct Diversion Board. The Board will make the final decisions as to award of contract.

**Selection Committee** - The selection committee may consist of representatives from the following departments:

- Buckman Direct Diversion Facility Manager
- City Purchasing Officer or Representative
- City Public Utilities Department Director or Representative
- County Public Utilities Department Director or Representative
- The City Attorney Designee or Representative
- The County Attorney or Representative

The Buckman Direct Diversion Board reserves the right to alter the size and membership of the Selection Committee.

**Interviews** - interviews will be scheduled by the Buckman Direct Diversion Board. They will consist of a 1-hr. presentation by the Proponents, including a question and answer period. At the Interview, firms are expected to introduce and involve the professionals who will be assigned to the project and make them available for questions by the Selection Committee.

**EVALUATION CRITERIA FORM**

RFP: '15/13/P

PROJECT: Buckman Direct Diversion Legal Services

NAME OF FIRM: \_\_\_\_\_

The consultant selection, or short listing for interviews, will be based upon evaluation of the proposal and the Firm's qualifications, relative to the evaluation criteria.

Proposal Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
Offeror's Direct Legal Experience in New Mexico, in administrative law and in municipal/local law	10			100
Prior experience as counsel for joint powers agencies, local government or government entities.	10			100
Knowledge of relevant issues, laws and regulations pertaining to the Buckman Direct Diversion.	10			100
Familiarity with state and local government entities	10			100
Qualifications and capabilities, licensures, area of law of legal certification specialization, level of experience and references.	10			100
Clarity of proposal concerning the firms approach for providing and managing the proposed services.	10			100
Ability to accomplish associated tasks on short notice, on a cost effective and timely basis.	10			100
Proposed Fees: <i>Offeror's proposed rates, fees and charges.</i>	30			300
<b>Total Score</b>	<b>100</b>			<b>1000</b>

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

**Local Preference Score, if applicable: Total Score x 1.10 = \_\_\_\_\_**

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**RFP '15/13/P**

**Buckman Direct Diversion Legal Services**

CONSULTANT FIRM: \_\_\_\_\_

**INTERVIEW EVALUATION CRITERIA**

<b>Criteria</b>	<b>Weighted Value</b>	<b>(1=low, 10=high)</b>	<b>Total Score</b>	<b>Max Score</b>
<b>1. Grasp of requirements and Presentation of Management Approach /Methodology:</b> evaluation of firm's discussion and analysis of local issues; evaluation of discussion of its control systems.	10			100
<b>2. Overall technical skills presentation skills:</b> evaluation of discussion of firm's capability to organize and present concepts and technical information with clarity, and credibility, supported by visual, aids. How well do you think the team will represent the BDDB in areas of legal service?	10			100
<b>3. Firm Management:</b> evaluation of firm's & specific team members' style & efficacy; evaluation of firm's intent to interact with and mentor to BDD professional staff; evaluation of firm's relevant experience & creativity; does this discussion tend to support firm's stated qualifications, experience and expertise?	10			100
<b>4. Responses to other relevant issues:</b> raised by Selection Committee evaluation of firm's responses to committee 's questions and issues.	10			100
<b>5. Proposed Fees:</b> Is fee reasonable for scope and schedule? A very low fee may reflect a narrow scope, missing scope or a reduced amount of qualified engineer time. A very High fee may reflect us paying firm's learning curve, higher than normal area pay rates or higher effort than is required.	20	Carry over Score from Evaluation Criteria Form  _____	_____	600
<b>Total Score</b>	<b>100</b>			<b>1000</b>

Multiply the Total Score by factor of 1.08 if company has an approved Local Preference Certification form included with proposal:

**Local Preference Score, if applicable: Total Score x 1.10 = \_\_\_\_\_**

Please do not minimize the importance of an adequate response in any area.

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

## INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.
4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition:** The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

**Additional Documentation:** If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.



**RESIDENT VETERANS PREFERENCE CERTIFICATION**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**REQUEST FOR PROPOSALS ONLY**

**BUCKMAN DIRECT DIVERSION BOARD**

**LEGAL SERVICES AGREEMENT**  
**WITH**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board (“BDDDB” or “Board”) and (the “Contractor”). The date of this Agreement shall be the date when it is executed by the Chair of the Board.

**1. SCOPE OF SERVICES**

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

A. The Contactor shall perform the following under the professional services agreement contemplated by this Request for Proposals (“RFP”):

- 1) Serve as legal counsel to the BDD Board at the direction of the BDD Board and/or management;
- 2) Provide legal support services to the BDD Board, with particular reference to matters of administrative law, at all public BDD Board meetings and hearings;
- 3) Represent the Board in litigation not covered by insurance and in administrative matters,
- 4) 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;
- 5) Advise and represent the BDD Project on the public procurement process, including but not limited to, review of procurement documents, participation in required negotiations, assistance with solicitations, review and preparation of contracts;
- 6) Advise and represent the BDD Board on legal matters related to Project funding, operations, construction, warranty, repairs and replacement, other residual issues on existing contracts, and management plans as directed by the Board;

- 7) Prepare written opinions, resolutions, contracts, and other documents necessary to assist the Board with implementation, operation and management of the BDD Project as directed by the Board;
- 8) Attend all Board meetings and relevant meetings of the Governing Body of the City of Santa Fe, the BDD Board of County Commissioners, and BDD Project Staff meetings;
- 9) Brief BDD Project Partners' officials and staff members, as directed by the BDD Board; and
- 10) Perform other duties as may be directed by the BDD Board or PUD Director or designee.

## **2. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES:**

A. The Contractor must possess the personnel, experience and knowledge necessary to perform the services described in the scope of work. Desired expertise includes a minimum of seven (7) years in the practice of law with practice area experience including, but not limited to, local government law or other agency representation, government contracting and transactional law, general litigation, and negotiations. Preferred expertise in areas of environmental, construction, corporate, employment and/or property law will be considered in the determination of qualifications. The Contractor must be licensed to practice law in the State of New Mexico, and must obtain and maintain all applicable business and professional license and registration required by law.

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

## **3. COMPENSATION**

A. The total compensation to be paid under this Agreement for the first year of the term shall be \_\_\_\_\_ plus New Mexico Gross Receipts Tax.

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

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

D. Payment to the Contractor will be made within thirty (30) days after the date of billing.

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

#### **4. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDDB 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 BDDDB to the Contractor. The BDDDB'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 the Board's Chair and terminate on \_\_\_\_\_. This Agreement may be extended in one (1) year increments by amendment to this Agreement in accordance with Paragraph 18, AMENDMENT, herein and contingent upon satisfactory performance and funding availability. In no event, however, shall the term of this Agreement, including any and all extensions, exceed four (4) years from the date of last signatory to this initial agreement.

#### **6. TERMINATION**

- A. This Agreement may be terminated by the Board upon 10 days written notice to the Contractor. In the event of such termination:
  - 1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Board original copies of all work product, research or papers prepared under this Agreement.
  - 2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

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

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

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

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

## **8. CONFIDENTIALITY**

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

## **9. CONFLICT OF INTEREST**

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

## **10. ASSIGNMENT; SUBCONTRACTING**

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

## **11. RELEASE**

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

## **12. INSURANCE**

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

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

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

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

General Annual Aggregate(other than Products/Completed Operation)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000.000

- 2) **Automobile Liability.** For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

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

whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

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

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

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, City of Santa Fe, County of Santa Fe, Las Campanas LLC and their respective elected officials, officers, employees, agents, volunteers and representatives.

#### **B. Cancellation.**

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

#### **C. 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 Board. The Board 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.

#### **D. Deductibles.**

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

Contractor.

**E. Specific Provisions Required.**

- 1) Each policy shall expressly provide, and an endorsement shall be submitted to the Board, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives.
- 2) All policies required herein are primary and non-contributory to any insurance that may be carried by the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the Board.
  - a. The Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Board's exposure to loss.
  - b. Before performing any Professional Services, the Contractor shall provide the Board with all Certificates of Insurance accompanied with all endorsements.
  - c. The Board reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Board. The Board will reimburse the Contractor for the cost of the additional premium for any coverage requested by the Board in excess of that required by this Agreement without overhead, profit, or any other markup.
  - d. The Contractor may obtain additional insurance not required by this Agreement.

**13. INDEMNIFICATION**

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

**Indemnification for Professional Acts, Errors or Omissions.** Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct

on the part of the Contractor, or its employees, agents, representatives or sub-consultants, the General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

#### **14. NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

#### **15. THIRD PARTY BENEFICIARIES**

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

#### **16. RECORDS, DOCUMENT CONTROL AND AUDIT**

- A. The Contractor shall conform with and participate in the Document Control policies of the Board or the City of Santa Fe. The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.
- B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The Board and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the Board or the City of Santa Fe to recover excessive or illegal payments.

#### **17. APPLICABLE LAW; CHOICE OF LAW; VENUE**

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Board. 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. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

#### **18. AMENDMENT**

This Agreement shall not be altered, changed or modified except by an amendment in

writing executed by the parties hereto.

## **19. SCOPE OF AGREEMENT**

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

## **20. NON-DISCRIMINATION**

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

## **21. SEVERABILITY**

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

## **22. NOTICES**

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

**BOARD:** Facility Manager  
Buckman Direct Diversion  
801 San Mateo  
Santa Fe, NM 87504

**CONTRACTOR:**

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 facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile 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: \_\_\_\_\_

Chairperson

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

**ATTEST:**

\_\_\_\_\_  
County Clerk

**APPROVED AS TO FORM:**

    KAB              9/24/14      
Kelley A. Brennan, City Attorney

**APPROVED:**

\_\_\_\_\_  
City Finance Director

\_\_\_\_\_  
Business Unit/Line Item

**ATTEST:**

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk  
File Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

NM Taxation & Revenue

CRS #

City of Santa Fe Business

Registration #

# Living Wage Ordinance

*Ordinance Number §28-1-28-1.12DSFCC 1987*

***Purpose:***

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wages.

***Who it affects:***

- All profit and nonprofit businesses required to have a business license or business registration with the City of Santa Fe.

***Compliance:***

- Affected businesses are required to pay employees an hourly wage of \$10.66 effective March 1, 2014.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited toward satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Nonprofit organizations whose primary source of funds is from Medicaid waivers are *exempt*.

***Prohibitions against retaliation and circumvention:***

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within 60 days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

***Enforcement and Remedies:***

- Administrative Enforcement—The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- Criminal Penalty—A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to whom any such violation occurred.
- Other Remedies—The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

***Nonexclusive Remedies and Penalties—The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.***

***Posting and Publication:***

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a City of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

***For more information, please contact: Constituent Services at 505-955-6949 Email: [constituentservices@santafenm.gov](mailto:constituentservices@santafenm.gov)***