BUCKMAN DIRECT DIVERSION

"REQUEST FOR PROPOSALS"

Litigation Counsel for the BDD Board on matters related to construction and design

RFP #'16/12/P

PROPOSAL DUE:

October 6, 2015
2:00 P.M.
PURCHASING OFFICE
CITY OF SANTA FE
2651 SIRINGO ROAD
BUILDING "H" SANTA FE,
NEW MEXICO 87505

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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 '16/12/P

Proposals will be received by the City of Santa Fe as the BDDB Support Entity 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, October 6, 2015.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

Litigation Counsel Services
For
Buckman Direct Diversion Board

The Buckman Direct Diversion Board (BDDB) requires services consisting of counsel to and representation of the entity in case evaluation, litigation before federal or state courts (if required and as appropriate), and alternative dispute resolution related to design, inspection, manufacturing and construction issues existing in the Buckman Direct Diversion Project.

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.

Shirley Rodriguez for
Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: 09/18/15
To be published on: 09/23/15

Received by the Santa Fe New Mexican Newspaper on: 09/18/15
To be published on: 09/23/15

PROPOSAL SCHEDULE

RFP # '16/12/P

1.	Advertisement	September 23, 2015
2.	Issuance of RFP'S:	September 23, 2015
3.	Receipt of proposals:	October 6, 2015 at 2:00 p.m. local prevailing time. Purchasing Office 2651 Siringo Road Bldg., "H" Santa Fe, New Mexico 87505 (505) 955-5711
4.	Evaluation of proposals:	October 8, 2015
5.	Interviews:	October 13, 2015
6.	Negotiation of Contract	October 14, 2015
7.	Recommendation of award to Buckman Direct Diversion Board:	October 21, 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 "BDDB"), 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 one original and seven (7) copies of their proposal. Proposals will be received by the by the Board, through the City of Santa Fe at the City's Purchasing Office, until 2:00 p.m. local prevailing time, October 6, 2015.

The packets shall be submitted and addressed to the Buckman Direct Diversion Board, City of Santa Fe Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand-delivered, mailed or sent special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. 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: '16/12/P
Title of the proposal: **Litigation Counsel Services for Buckman Direct Diversion Board**

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

Proponents 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 BDDB.

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 the proposals.

Every request for such interpretation should be in writing and 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 governing board 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.

7. 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 and 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.

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 city 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 City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The city 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 BDD FINANCE MANAGER 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 entity 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
'16/12/P

1. BACKGROUND, PROJECT PURPOSE & GENERAL SCOPE

The Buckman Direct Diversion Board ("the Board") is 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. The Board oversees the Buckman Direct Diversion Project (the "BDD Project") which diverts water from the Rio Grande for delivery to the City and County and the Las Campanas development.

The BDD Project includes a surface water intake on the Rio Grande, three raw water pumping stations (with a static lift of approximately 1,064 ft.) , and three 24 to 18-in. diameter raw water pipelines that carry water from the diversion to the water treatment plant approximately 11 miles away. .

On April 15, 2005, CDM Smith (p/k/a Camp Dresser & McKee, Inc.) was retained as the Owners Consultant for the Board to provide general oversight and inspection services for the BDD Project and to ensure the design builder's full performance under the design/build contract.

On March 6, 2008, a Design Build Contract was executed with CH2M Hill/Western Summit Constructors Joint Venture for the design and construction of the BDD Project, including all matters attendant thereto.

The BDD Project began delivering drinking water to the City and County in January 2011 and the BDD Board assumed responsibility for operations in May 2011.

The Board requests proposals from qualified attorneys who will serve as litigation counsel for the Board on matters related to construction and design issues that have arisen at the BDD Project.

The required professional services will cover, but are not limited to representation of the entity in case evaluation, mediation proceedings and before federal and state courts (if required) related to design and possible construction defects existing in the Project.

2. SCOPE OF WORK

Contractor shall perform the following under the professional services agreement contemplated by this Request for Proposals ("RFP"):

- Represent the Board in litigation related to design, inspection, manufacturing and construction issues;

- Evaluation of the design-build and construction issues at the BDD Project, evaluation of the operative documents pertaining to the construction of the Project,

retaining and/or working with experts regarding potential contractual, warranty, insurance and tort liability and damage issues, evaluation of case strength and advice regarding insurance and bonding;

- Attend Board meetings, as needed, and relevant meetings of the Governing Body of the City, the Board of County Commissioners, and BDD Project staff meetings to provide legal advice and updates related to the BDD Project defects and legal proceedings; and

- Brief Board Project Partners' officials and staff members, as directed by the Board

- Contractor must verify and certify that it has no conflicts of interest that would prevent it from performing the Scope of Work, including, but not limited to, no conflicts with:

    - the Board
    - City of Santa Fe
    - Santa Fe County
    - CDM Smith (p/k/a Camp, Dresser & McKee, Inc.)
    - CH2M Hill Engineers, Inc.
    - HDR Engineering
    - Western Summit Constructors, Inc.

3. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES

Contractor must possess the personnel, experience and knowledge necessary to perform the services described in the Scope of Work. Desired expertise includes demonstrated experience in successfully litigating against a national engineering firm and design build contractor in the areas of design defects, construction defects, inspection failures, engineering oversight failures, breach of contract, and negligence. Preferred litigation involving governmental design/build defect cases will be considered in the determination of qualifications. Contractor must be licensed to practice law but is not required to be licensed to practice law in the State of New Mexico, as local counsel association will be made available through the Board's general counsel.

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) Firm size, particularly in office where work proposed to be performed

5) 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, and whether the primary attorney will have support by another attorney or attorneys in your firm.

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 desired results. Provide reference contacts.

5) Discuss employee qualifications and competence in construction and design defect cases, and other relevant skills and experience as described in the Scope of Work above.

6) Discuss the legal firm's existing workload and its capacity to handle the requirements of the Buckman Direct Diversion Board.

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 BDDB 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. EXPERIENCE AND REFERENCES

Discuss recent experience of the firm to provide the services described in the Scope of Work. Please include at least four cases with the case outcomes and client names. Also, please list four client references (including telephone numbers), preferably from the cases you have described.

E. LEGAL TEAM AND RELATED EXPERIENCE

Present the organizational chart for the law firm. List the names of the specific team members; with their assigned tasks; qualifications and percent of time they will be assigned to provide service.

F. 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. If your firm is outside of Santa Fe, NM, please provide specifics as to how the firm will manage the project (minimize costs) from a remote location.
D. Resumes of proposed project team
E. Professional Errors & Omissions Insurance Certificate
F. Any additional pertinent information

The proposal is limited to 35 pages for items "A" through "F." 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

EVALUATION COMMITTEE MEMBERS

At its discretion, the BDDB reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

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 attorney

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

Interviews – If interviews are conducted, they will consist of a 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: '16/12/P

PROJECT: Litigation Counsel Services for Buckman Direct Diversion Board

NAME OF FIRM: _____

The contractor 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**
Specific prior experience representing clients in multi-party complex litigation, with emphasis on experience litigating manufacturing, design, or construction defect cases, preferably as plaintiff's attorney, involving large public works projects. Please include at least four cases and their outcomes.	30			300
Representation of state and local government in state and federal courts.	10			100
Unique qualifications, capabilities, licensures, certifications, specializations, etc., that would enable proponent to provide superior services in the areas requested. Please include at least four references along with contact information.	20			200
Clarity of proposal concerning the firm's approach for providing the requested services, including client communication, budgeting and cost management, expert witnesses, document management, discovery, and trial.	20			200
Proposed Fees: Offeror's proposed rates, fees and charges. Include travel time and per diem and expense proposals. If your firm is outside of Santa Fe, please provide specifics as to how the firm will manage the project (minimize costs) from a remote location.	20			200
Total Score	**100**			**1000**

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

SELECTION COMMITTEE
EVALUATOR SIGNATURE:_____ Date:_____

RFP '16/12/P

Litigation Counsel Services for Buckman Direct Diversion Board

CONTRACTOR FIRM:_____

INTERVIEW EVALUATION CRITERIA

Criteria	**Weighted Value**	**(1=low, 10=high)**	**Total Score**	**Max Score**
1. Grasp of requirements and Presentation of Management Approach/Methodology: evaluation of the firm's experience and approach to the case.	20			200
2. Overall technical skills presentation skills: evaluation of discussion of firm's capability to organize and present concepts and technical information with clarity, and credibility, How well do you think the firm will represent the BDD?	20			200
3. Firm Management: Evaluation of firm's & specific team members' style & efficacy; evaluation of firm's intent to interact with BDD professional staff; evaluation of firm's relevant experience; does this discussion tend to support firm's stated qualifications, experience and expertise?	20			200
4. Responses to other relevant issues: raised by Selection Committee evaluation of firm's responses to Committee 's questions and issues.	20			200
5. Proposed Fees: Is fee reasonable for scope? A very low fee may reflect an unqualified attorney time. A very high fee may reflect a higher than normal pay rate or higher effort than is required.	20	Carry over Score from Evaluation Criteria Form _____	_____	200
Total Score	**100**			**1000**

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.

LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: _____

Business Name: _____

Principal Office: _____
Street Address City State Zip Code

City of Santa Fe Business License #_____ (Attach Copy to this Form)

Date Principal Office was established: _____ (Established date must be six months before date of Publication of this RFP or RFB).

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: _____

Printed Name: _____

Title: _____ Date: _____

Subscribed and sworn before me by_____ this____, day of _____

My commission expires_____ _____
Notary Public

SEAL

YOU MUST RETURN THIS FORM WITH YOU OFFER

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:

_____

Sample Contract

BUCKMAN DIRECT DIVERSION BOARD
LEGAL SERVICES AGREEMENT
WITH

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

1. SCOPE OF SERVICES

Contractor shall perform the following under this agreement:

- Represent the Board in litigation related to design, inspection, manufacturing and construction issues;

- Evaluation of the design-build and construction issues at the BDD Project, evaluation of the operative documents pertaining to the construction of the Project, retaining and/or working with experts regarding potential contractual, warranty, insurance and tort liability and damage issues, evaluation of case strength and advice regarding insurance and bonding;

- Attend Board meetings, as needed, and relevant meetings of the Governing Body of the City, the Board of County Commissioners, and BDD Project staff meetings to provide legal advice and updates related to the BDD Project defects and legal proceedings; and

- Brief Board Project Partners' officials and staff members, as directed by the Board

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor must possess the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor must be licensed to practice law and must obtain and maintain all applicable business and professional license and registration required by law.

B. 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 compensation to be paid under this Agreement is contained in the fee schedule attached hereto.

B. Contractor shall be responsible for making the payment of gross receipts taxes, if applicable, to 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 Contractor will be made within thirty (30) days after the date of billing.

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB'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 BDDB upon 10 days written notice to Contractor. In the event of such termination:

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

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

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

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

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

C. Contractor shall comply with the City of Santa Fe Minimum Wage Ordinance,

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

9. CONFLICT OF INTEREST

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

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

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement,

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

12. INSURANCE

A. Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (ii) obtained BDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

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

C. **Types of Insurance.** At all times during the term of this Agreement, 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)	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000
Personal Injury Limit	$2,000,000
Each Occurrence	$2,000,000

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

3. **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, 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 $2,000,000 per claim and $2,000,000 annual aggregate. Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement, whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

4. **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, 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	$1,000,000	Each Accident

Bodily Injury by Disease	$1,000,000	Each Employee

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

D. **Cancellation.**

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

E. **Insurer Requirements.**

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

F. **Deductibles.**

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

G. **Specific Provisions Required.**

1. Each policy shall expressly provide, and an endorsement shall be submitted to the BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, the City of Santa Fe, Santa Fe County 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 BDDB, the City of Santa Fe, Santa Fe County and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

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

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

    c. The BDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self insured retentions to determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

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

13. INDEMNIFICATION

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

or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

Indemnification for Professional Acts, Errors or Omissions. Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of 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 no waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Trot Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and 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. Contractor shall conform with and participate in the Document Control policies of the BDDB or the City of Santa Fe. The Contractor shall maintain, throughout the term of this

Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

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

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses

the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

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

BOARD: Charles Vokes, Facilities Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R. Long, BDDB Counsel
Long, Komer & Associates
P.O. Box 50968
Santa Fe, NM 87502-5098

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 o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Liz Stefanics, BDDB Chair

Date: _____

ATTEST

_____
Geraldine Salazar, County Clerk

APPROVED AS TO FORM

Nancy R. Long
_____
Nancy R. Long, BDDB Counsel

APPROVED

_____
Oscar S. Rodriguez, City Finance Director

ATTEST

_____
Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration # PENDING

City of Santa Fe Living Wage Ordinance

PURSUANT TO THE CITY OF SANTA FE LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987 EFFECTIVE MARCH 1, 2015 ALL WORKERS WITHIN THE CITY OF SANTA FE SHALL BE PAID A LIVING WAGE OF

$10.84 PER HOUR

Santa Fe's Living Wage

- The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
- The March 1, 2015 Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
- All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted 2015 Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

- The City to all full-time permanent workers employed by the City;
- Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
- Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars ($25,000) for the duration of the City grant or subsidy;
- Businesses required to have a business license or registration from the City; and
- Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
- For workers who customarily receive more than one hundred dollars ($100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living 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.

More Information, including the Living Wage Ordinance, is available at
http://www.santafenm.gov
(Click on Hot Topics/Living Wage)

Ordenanza de Salario Mínimo
Para la ciudad de Santa Fe

EFECTIVO DESDE EL DÍA PRIMERO DE MARZO DE 2015 PARA TODOS LOS TRABAJADORES QUE LABOREN DENTRO DE LOS LÍMITES DE LA CIUDAD DE SANTA FE EL SALARIO MÍNIMO ESTABLECIDO QUE DEBERÁ SER PAGADO ES DE

$10.84
POR HORA

Salario Mínimo para la ciudad de Santa Fe

- **La ciudad de Santa Fe establece salario mínimo por hora.**
- **Desde el 01 de Marzo de 2015 el incremento de salario, corresponde con el aumento en el índice de precios al consumidor (IPC).**
- **Todos los empleadores requieren, por ley, tener una licencia o registro de la ciudad de Santa Fe, deben pagar al menos el salario ajustado de 2015 a los empleados de todas las horas trabajadas dentro de los límites de la ciudad de Santa Fe.**

¿Quién está obligado a pagar el salario?

- **La ciudad a todos los trabajadores a tiempo completo permanentes contratados por la ciudad;**
- **Contratistas para la ciudad, tiene un contrato que requiere la prestación de un servicio, pero excluyendo las compras de mercancías;**
- **Empresas reciben asistencia en relación con el desarrollo económico en forma de becas, subsidios, garantías de préstamos o bonos industriales de ingresos superiores a 25 mil dólares ($25,000) para la duración de la beca de ciudad o de subvención;**
- **Empresasrequieren contar con la licencia o el registro de la ciudad; y**
- **Organizaciones sin fines de lucro, con excepción de aquellos cuya principal fuente de fondos es de exenciones de Medicaid.**
- **Para los trabajadores que habitualmente reciben más de cien dólares ($100) por mes en consejos o comisiones, consejos o comisiones recibidas y retenida por un trabajador serán contados como salarios y acreditados hacia la satisfacción de los salario siempre que, para los trabajadores reciben propinas, todos los consejos recibidos por estos trabajadores son retenidos por los trabajadores, salvo que se permitirá la puesta en común de consejos entre los trabajadores.**

Más información, incluyendo la ordenanza del salario, está disponible en
http://www.santafenm.gov
(haga clic en Hot Topics/Living Wage)