



Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager 

ITEM AND ISSUE:

Request approval of Profession Service Agreement with Alpha Southwest, Inc in the amount not to exceed \$50,000 plus GRT

BACKGROUND AND SUMMARY:

On June 17, 2014 the City of Santa Fe's Water Division solicited and received seal bids (RFB # '14/42/B) for on-call services for mechanical and electrical repair. The intent of this contract is strictly an as-needed, on-call contract, with no guaranteed minimum. Alpha Southwest was the selected bidder and was awarded the contract. On July 30, 2014 the City of Santa Fe City Council approved this contract including the term of the contract through June 30, 2015.

Discussion

The Buckman Direct Diversion requires services from a licenses firm to provide on-call repair, replacement, fabrication, and modification services for mechanical and electrical equipment, piping, valves, instrumentation, pumps, and motors. This service would be utilized to supplement current BDD maintenance resources in the repair and maintenance of the Buckman Direct Diversion's facilities and equipment. The Scope of Services includes, but is not limited to, providing license technicians for both mechanical and electrical work, with the ability to;

- Perform repairs on booster stations including; site security, sanitary protection and disinfection.
- Providing specialized equipment such as crane services.
- Provide repairs, parts, materials and replacement of equipment.



Evaluation

For FY14/15, staff will utilize this contract to complete the following work.

Project	Total Cost
BS1A Pump # 1	\$13,000.00
BS2A Pump # 3	\$14,000.00
RWLS Pump # 2	\$23,000.00
TOTAL	\$50,000.00

ACTION REQUESTED:

Staff recommends approval of a Professional Services Agreement with Alpha Southwest, Inc. in the amount not to exceed \$50,000.00 plus NMGR. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit # 7280000.

**BUCKMAN DIRECT DIVERSION BDDB
PROFESSIONAL SERVICES AGREEMENT
WITH
ALPHA SOUTHWEST, INC.**

THIS AGREEMENT is made and entered into by and between the BUCKMAN DIRECT DIVERSION BDDB ("BDDB") and Alpha Southwest Inc., ("Contractor"). The date of this Agreement shall be the date when it is executed by the BDDB Chair.

1. SCOPE OF SERVICES

Contractor shall provide the following on-call repair and replacement services for the BDDB: all work involved in the installation, replacement, or repair of Buckman Direct Diversion's Water Treatment Plant Process Equipment and Control Systems as directed by the BDD Maintenance Superintendent. Contractor shall furnish all necessary supervision, labor, materials, and facilities, required to accomplish the scope of services set forth by this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The BDDB shall pay to the Contractor in full payment for services rendered, a sum not to exceed fifty thousand dollars (\$50,000), plus applicable gross receipts taxes, in accordance with the "Fixed Unit Price Schedule" provided in Exhibit "B" attached hereto.

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

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

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 by the BDDDB, 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 BDDDB and terminate on June 30, 2015, unless terminated sooner pursuant to Article 6 below. The term may be extended for three (3) additional twelve (12) month periods not to exceed 4 years, by the written agreement of the Parties amending this Contract.

6. TERMINATION

A. This Agreement may be terminated by the BDDDB 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 BDDDB original copies of all work product, research or papers prepared under this Agreement.

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

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

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

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

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under 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 BDDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, 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. Contractor agrees not to purport to bind the BDDDB to any obligation not assumed herein by the BDDDB 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: (a) obtained, and upon the BDDDB's request provided to the BDDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDDB; (b) obtained BDDDB approval of each company or companies as required

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

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

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

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

General Annual Aggregate (other than Products/Completed Operation)	\$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 \$2,000,000 per accident. An insurance certificate shall be submitted to the BDDDB that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For Contractor and all of Contractor's employees who are to perform professional services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) 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, Contractor's policy shall not contain exclusions for those activities.

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

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

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDDB, City of Santa Fe, Santa Fe County 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 BDDDB is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. 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, Contractor will provide written notice to the BDDDB within four working days of Contractor’s receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

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

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

G. Specific Provisions Required.

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDDB, City of Santa Fe, Santa Fe County 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 BDDDB, 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 BDDDB.

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

(4) Before performing any Professional Services, Contractor shall provide the BDDDB with all Certificates of Insurance accompanied with all endorsements.

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

(6) Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

A. GENERAL INDEMNIFICATION: To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDB, 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.

B. INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of Contractor or its employees, agents, representatives or Sub consultants, the General Indemnification shall not apply to professional acts, errors or omission 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, Section 41-4-1, et. seq. NMSA 1978, as amended. The BDDB and its "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 BDDDB 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 BDDDB or the City of Santa Fe. Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration and the State Auditor. The BDDDB 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 BDDDB 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 BDDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern.

The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District 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:

BDDDB: Shannon Jones, Facility Manager
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

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

CONTRACTOR: Alpha Southwest, Inc.
Attn: Warner Ellis
205 Rossmoor Ave SW
Albuquerque, NM 87105

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

By: _____
Joseph M. Maestas, BDDDB Chair

Date: _____

APPROVED AS TO FORM


Nancy R. Long, BDDDB Counsel

APPROVED

Marcos A. Tapia, City Finance Director

72410.510300
Business Unit/Line Item

ATTEST

Yolanda Y. Vigil, City Clerk
File Date: _____

CONTRACTOR:

Alpha Southwest, Inc.

Signature: _____

Printed Name: Warner Ellis

Title: _____

Date: _____

NM Taxation & Revenue
CRS #03-185297-00-1

City of Santa Fe Business
Registration #

“Exhibit A”

Scope of Services

Field Service Technicians/Engineers

- A. The Contractor will provide all necessary tools, equipment and materials needed to provide on-call repair, replacement, fabrication, modification, rehabilitation, abandonment, and demolition services for mechanical and electrical equipment, piping, instrumentation, water pumps and tubing, electric motors, and buildings associated with the Buckman Direct Diversion Project.
- a. Field Service Technicians will provide the installation, commissioning, troubleshooting and training for the hardware field components comprising the Water Treatment Plant Process Instrumentation and Control Systems. These services and components include, but are not limited to the following, pumps, Flowmeters, Level Transmitters, Pressure Transmitters, Position Indicators, Pressure switches, Level Switches, Pilot devices, Interconnected wiring, 600 Volt and below Power System Components, Motors, Motors Controllers, Motor Operated Valves, Isolation and Control valves, Piping and related functions.
 - b. Field Service Engineers will provide the programming, development, commissioning, troubleshooting and training for the hardware and software components comprising the Water Treatment Plant Process Instrumentation and Control Systems. These service and components include, but are not limited to the following, Programmable Logic Controllers, Communications Networks, Operator Interface Systems, Operator Interface Panels, Autodialers, Annunciators, Report Generation software and related functions.

Repairs and Replacement

- A. All repairs performed under this Contract will be authorized in writing by a Work Order signed by the BDD Maintenance Superintendent.

Each Work Order will set forth

- (i) the Work to be performed by the Contractor
- (ii) the period of performance,
- (iii) the fixed unit prices per “Exhibit B,” as applicable
- (iv) the ceiling price
- (v) other data as necessary.

Reporting

- A. The Contractor will provide a written report indicating all test results.
 - i. To ensure consistency, maintain a reasonable standard of quality, and facilitate the screening of tests submitted, the work will be submitted on a standardize report form created by the contractor and approved by the BDD Maintenance Superintendent.
 - ii. All information on this report will be provided to the BDD Maintenance Superintendent for each instrument or equipment tested.
 - iii. If the test equipment provides a printout of inputted data this will be submitted with the report.



Buckman Direct Diversion Board Summary of Contracts, Agreements, & Amendments

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

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

2 Name of Contractor Alpha Southwest

3 Complete information requested ☒ Plus GRT
☐ Inclusive of GRT

Original Contract Amount: \$50,000.00

Termination Date: June 30, 2015

☒ Approved by BDDB Date: Pending

☐ or by Project Manager Date: _____

Contract is for: _____

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for: _____

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

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



Buckman Direct Diversion Board Summary of Contracts, Agreements, & Amendments

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

RFP# Piggy back of City's RFP Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 Procurement History: _____
example: (First year of 4 year contract)

7 Funding Source: _____ **BU/Line Item:** 7280000

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract) ☐

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

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

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

Comments: