

**BUCKMAN DIRECT DIVERSION BOARD  
AMENDMENT No. 3 TO THE  
AGREEMENT WITH ALPHA SOUTHWEST, INC  
19-0301**

THIS AMENDMENT No. 3 (the "Amendment") to the Agreement, between Owner and Contractor dated April 4, 2019 and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDB") and Alpha Southwest Inc. ("Contractor"). The effective date of this Amendment shall be the date it is executed by the BDDB.

**RECITALS**

A. WHEREAS, under the terms of the Agreement, Contractor agreed to provide on-call emergency repair for operations and maintenance to the BDD.

B. Pursuant to Article 7 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDB and Contractor agree as follows:

**1. COMPENSATION.**

Article 2, paragraph B of the Agreement is amended to increase the amount of compensation by a total of Sixty Thousand Dollars (\$60,000.00) plus applicable gross receipts tax, so that Article 2, paragraph B reads in its entirety as follows:

A. The total compensation under this Agreement shall not exceed Five Hundred Eighty-Seven Thousand, Six Hundred Seventy-Seven and .76/100 Dollars (\$587,677.76) plus applicable gross receipts tax.

**2. TERM AND EFFECTIVE DATE**

Article 4, of the Agreement is amended to extend the term to terminate on April 04 2023. The BDDB reserves the right to renew the contract on an annual basis by mutual agreement not to

exceed a total of four (4) years in accordance with NMSA 1978, 13-1-150 through 152.

**3. AGREEMENT IN FULL FORCE**

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

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


***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]***

BUCKMAN DIRECT DIVERSION BOARD

By:   
BDD Chair, Carol Romero-Wirth

Date: Jul 11, 2022

CONTRACTOR:  
Alpha Southwest Inc.

Signature:   
Printed Name: Meghan L. Sanchez  
Title: Operations Manager  
Date: 6/15/22

APPROVED AS TO FORM

  
Nancy R. Long, BDDDB Counsel

New Mexico Tax & Revenue

CRS# 01-711081-05

APPROVED

  
Alexis Lotero (Aug 8, 2022 15:11 MDT)  
City Finance Director

City of SF Business

Registration # 225207

ATTEST

  
Kristine Bustos-Mihelcic, City Clerk *XIV*

File Date: Aug 10, 2022

ITEM # 19-0301

**BUCKMAN DIRECT DIVERSION BOARD  
ON CALL EMERGENCY REPAIR SERVICES WITH  
ALPHA SOUTHWEST, INC.**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board, herein after referred to as the "BDDDB," and Alpha Southwest, Inc. herein after referred to as "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the BDDDB. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to Alpha Southwest, Inc. "We," "us" or "our" refers to the BDDDB and whose accounts are created under this Agreement.

**1. Scope of Work**

A. This Contract is for the for Buckman Direct Diversion Project, Emergency Repair for Operations and Maintenance and consists of, but is not limited to: Professional Services for repairs, installation, replacement, fabrication, modification, rehabilitation, abandonment, and demolition services or spot repair of water distribution system facilities such as water mains, valves, fire hydrants, metered water service installations, pressure regulating stations, and for mechanical and electrical equipment, piping instrumentation and buildings in accordance with the drawings, specifications and other contract documents. The location of the project is in buildings and various sites of the Buckman Direct Diversion Project consisting of but not limited to:

1. BDD Water Treatment Plant Site
2. Booster Station 1A and 2A
3. Booster Station 4A/5A
4. Raw Water Lift Station and
5. Diversion Site

B. Cost is at the fixed unit prices set forth in Exhibit A – Fixed Unit Price Schedule.

C. Contractor shall furnish all necessary supervision, labor, materials, and facilities, required to accomplish the work set forth in the applicable work order (WO), and in Exhibit A-Fixed Unit Price Bid Schedule – Bid Form attached hereto.

D. Work performed under this Contract shall be authorized in writing by a WO signed by the following BDDDB authorized representatives (hereafter "Authorizing Representative"): for all WOs, the BDD Facilities Manager, or his/her designee. A WO signed by other than BDDDB Authorizing Representative shall not be honored. Each WO shall set forth (i) the Supervising Engineer and shall set forth the Work to be Performed by Contractor, (ii) the period of

performance, (iii) the fixed unit prices per Exhibit A, as applicable, (iv) the ceiling price, and (v) other data as necessary. Contractor shall, upon acceptance of the WO, provide applicable Payment and Performance Bonds and all supervision, labor, supplies, materials, and facilities, including all vehicles and transportation, except as may be provided by the BDDDB Authorizing Representative, for the performance of the Work authorized therein. Verbal authorizations may be given by the BDDDB in emergency situations but shall be confirmed in writing by the BDDDB within five (5) days of the verbal authorization to Contractor.

E. The BDDDB may at any time, without notice to sureties, if any, make changes in a WO; if any such change requires the inclusion of additional provisions, or otherwise affects any other provision of a WO as initially set forth or previously amended, an equitable adjustment shall be made in such provision of the WO as may be so affected, and the WO shall be modified in writing accordingly. Any claim by Contractor for adjustment under this article must be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change; provided, however, that if the BDDDB decides that the facts justify such action, it may receive and act upon such claim asserted at any time prior to final payment under a WO. However, nothing in this article shall excuse Contractor from proceeding with the WO as changed.

## **2. Compensation**

A. The BDDDB shall pay to Contractor based upon fixed prices for each deliverable item as listed in Exhibit "A" attached hereto and incorporated herein.

B. The total compensation under this Agreement shall not exceed Four Hundred Sixty-Seven Thousand Six Hundred Seventy-Seven and 76/100 Dollars (\$467,677.76) excluding New Mexico gross receipts tax, from the following BDDDB funds:

- Multi-Year Funding – Major Repair & Replacement Fund \$367,677.76
- FY 2018-2019 – BDD Operating Fund \$40,000.00
- FY 2019-2020 – BDD Operating Fund \$60,000.00

## **3. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the BDDDB shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the BDDDB, the BDDDB shall not pay for any products or services. Unless otherwise agreed upon between the BDDDB and Contractor, within thirty (30) days from the date the BDDDB receives written notice from Contractor of the receipt of products, or completion of services the BDDDB shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the BDDDB gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. **Payment of Invoice** - Upon certification that the products or services have been received and accepted, Contractor shall issue an invoice. Payment is due thirty (30) days after receipt of the invoice. After the thirtieth day from the date that the invoice is issued, late payment charges shall be paid on the unpaid balance due on the contract to Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to Contractor's designated mailing address.

4. **Term**

This Agreement shall commence on the date it is approved by the BDDB and terminate on June 30, 2020. The BDDB reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

5. **Default and Force Majeure**

The BDDB reserves the right to cancel all or any part of any orders placed under this contract without cost to the BDDB, if Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold Contractor liable for any excess cost incurred by the BDDB due to Contractor's default. Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or 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 BDDB shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery scheduled. The rights and remedies of the BDDB provided in this paragraph shall not be exclusive and are in addition to any other rights allowed by law or under this contract.

6. **Termination**

A. **Grounds**. The BDDB may terminate this Agreement for convenience or cause. Contractor may only terminate this Agreement based upon the BDDB's uncured, material breach of this Agreement.

B. **Notice; BDDB Opportunity to Cure**.

1. Except as otherwise provided in Paragraph 16, the BDDB shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give BDDB written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the BDDB's material breaches of this Agreement upon which the termination is based and (ii) state what the BDDB must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the BDDB does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot

be cured within thirty (30) days, the BDDDB does not, within the thirty (30) day notice period, notify Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor (i) if Contractor becomes unable to perform the services contracted for, as determined by the BDDDB; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the BDDDB; or (iii) the Agreement is terminated pursuant to Paragraph 16, "Appropriations," of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the BDDDB's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE BDDDB'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

#### 7. **Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the BDDDB proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 6 herein, or to agree to the reduced funding.

#### 8. **Status of Contractor**

Contractor, and Contractor's agents and employees, are independent contractors for the BDDDB and are not employees of the BDDDB. Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDDB vehicles, or any other benefits afforded to employees of the BDDDB as a result of this Agreement. Contractor acknowledges that all sums received hereunder are personally reportable by Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. Contractor agrees not to purport to bind the BDDDB unless Contractor has written authority to do so, and then only within the strict limits of that authority.

#### 9. **Assignment**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the BDDDB.

10. **Subcontracting**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the BDDB.

11. **Non-Collusion**

In signing this Agreement, Contractor/Contractor certifies Contractor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the BDDB.

12. **Inspection of Plant**

The BDDB may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. **Commercial Warranty**

Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided therein shall extend to the BDDB and are in addition to and do not limit any rights afforded to the BDDB by any other provision of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

14. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

15. **Records and Audit**

During the term of this Agreement and for three years thereafter, Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the BDDB, the State Auditor and other appropriate state and federal authorities. The BDDB shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the BDDB to recover excessive or illegal payments.

16. **Appropriations**

The terms of this Agreement, and any orders placed under it, 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 by the BDDB, this Agreement, and any orders placed under it, 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. If the BDDB proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**17. Release**

Contractor, upon final payment of the amount due under this Agreement, releases the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDB, unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

**18. 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 prior written approval by the BDDB.

**19. Conflict of Interest**

A. Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the BDDB relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the BDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 19 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 19 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the BDDB and notwithstanding anything in the Agreement to the contrary, the BDDB may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning when utilized in this section.

20. **Approval of Contractor Representative(s)**

The BDDDB reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the BDDDB, adequately serving the needs of the BDDDB.

21. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

23. **Equal Opportunity Compliance**

Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the term of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

24. **Indemnification**

Contractor shall hold the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; and its employees harmless and shall indemnify the BDDDB and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of Contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the BDDDB, its officers or employees.

25. **New Mexico Tort Claims Act**

Any liability incurred by the BDDDB 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 BDDDB 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.

**26. Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in the First Judicial District, Santa Fe County, State of New Mexico. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**27. Limitation of Liability**

Contractor's liability to the BDDb, for any cause whatsoever shall be limited to the purchase price paid to Contractor for the products and services that are the subject of the BDDb's, claim. The foregoing limitation does not apply to paragraph 24 of this Agreement or to damages resulting from personal injury or death caused by Contractor's negligence.

**28. Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any BDDb response to questions); (2) Contractor's best and final offer; and (3) Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) Contractor's best and final offer if such has been made and accepted by the BDDb; and (5) Contractor's response to the request for proposals.

**29. Workers' Compensation**

Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the BDDb.

**30. Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at the destination. Tangible personal property rejected at destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

**31. Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply:

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. Contractor shall provide and maintain an inspection system acceptable to the BDDB covering the services under this Agreement. Complete records of all inspection work performed by Contractor shall be maintained and made available to the BDDB and for as long thereafter as the Agreement requires. The BDDB has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The BDDB shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the BDDB performs inspections or tests on the premises of Contractor or a subcontractor, Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services does not conform with the requirements of this Agreement, the BDDB may require Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the BDDB may:

1. require Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
2. reduce the contract price to reflect the reduced value of the services performed.

E. If Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the BDDB may:

1. by contract or otherwise, perform the services and charge to Contractor any cost incurred by the BDDB that is directly related to the performance of such service; or
2. terminate the contract for default.

**32. Insurance**

If the services contemplated under this Agreement will be performed on or in BDDB facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the BDDB as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$500,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability Contractor has assumed under this contract). Limits shall not be less than the following:

1. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
2. Property damage or combined single limit coverage: \$1,000,000.
3. Automobile liability (including non-owned automobile coverage): \$1,000,000.
4. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the BDDDB as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

33. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

34. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

35. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

36. **Patent, Copyright and Trade Secret Indemnification**

A. Contractor shall defend, at its own expense, the BDDDB against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the BDDDB based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, Contractor agrees to reimburse the BDDDB for all costs,

attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the BDDB shall:

1. Give Contractor prompt written notice within ten (10) days of any claim;
2. Allow Contractor to control the defense of settlement of the claim; and
3. Cooperate with Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in Contractor's opinion is likely to become the subject of a claim of infringement, Contractor shall at its option and expense:

1. provide the BDDB the right to continue using the product or service and fully indemnify the BDDB against all claims that may arise out of the BDDB's use of the product or service;
2. replace or modify the product or service so that it becomes non-infringing; or,
3. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to Contractor. Contractor's obligation will be void as to any product or service modified by the BDDB to the extent such modification is the cause of the claim.

**37. Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**38. Disclosure Regarding Responsibility**

A. Contractor and any of its Principals, or any principal of Contractor's company, is presently not debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. Contractor shall provide immediate written notice to the BDDB if, at any time during the term of this Agreement, Contractor learns that Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of Contractor's responsibility and ability to perform under this Agreement. Failure of Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 6 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses, Contractor must provide immediate written notice to the BDDDB. If it is later determined that Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the BDDDB, the BDDDB may terminate the Agreement for cause. Still further the BDDDB may suspend or debar Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the BDDDB.

**39. Suspension, Delay or Interruption of Work**

The BDDDB may, without cause, order Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the BDDDB may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by any contract remedy. Any change in total compensation must be reflected in an Amendment executed pursuant to Section 7 of this Agreement.

**40. Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

**BDDDB:** Rick Carpenter  
Interim Facilities Manager  
Buckman Direct Diversion  
341 Caja Del Rio Road  
Santa Fe, NM 87506  
Email: rrcarpenter@santafenm.gov

**With a copy to:** Nancy R. Long, Esq.  
BDDDB Independent Counsel  
Long, Komer & Associates, P.A.  
P. O. Box 5098  
Santa Fe, NM 87502-5098  
Email: nancy@longkomer.com

**Contractor:** Alpha Southwest Inc.  
205 Rossmoor Rd SW  
Albuquerque, NM 87105

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.


41. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.




**BUCKMAN DIRECT DIVERSION BOARD:**

  
Councilor Peter Ives, BDDDB Chair  
Date: 4-4-19

**CONTRACTOR:**

Alpha Southwest Inc.

  
Signature  
Warren Ellis  
Printed Name  
Operations Manager  
Title

Date: 4/12/19

CRS# 002328120110926

Registration # 19-00110357

**APPROVED AS TO FORM:**

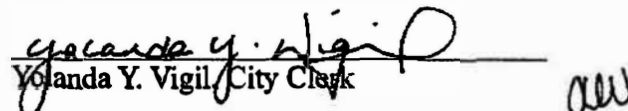
  
Nancy R. Long, BDDDB Counsel

**APPROVED:**

  
Mary T. McCoy, City Finance Director

7280000.520150.930020 & 07420.570550.130025  
Business Unit Line Item

**ATTEST:**

  
Yolanda Y. Vigil, City Clerk  
File Date: 4-29-19

### Exhibit A – Fixed Unit Price Schedule

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
<b>TS-1 Shop Drawings, Reports, O&amp;M Manuals, Calculation, Permits, Scheduling and CMMS Database</b>			
100	Production of Required reports, Calculations and Drawings, etc.	HR	\$ 60.00
<b>TS-2 Work Site Protection, Cleanup and Disinfection</b>			
200	Sanitary Protection and Disinfection of the System and Aquifer	HR	\$ 65.00
300	Work Site Cleanup	HR	\$ 65.00
<b>TS-3 Pull and Install Well Pump Equipment</b>			
400	Typical well is 750-ft of 8-in column with 2-1/2 x 1-1/2-in rods	LF	\$ 7.50
<b>TS-4 Lower Well Pump</b>			
500	Lower Pump Per TS-4	LF	\$ 16.00
<b>TS-5 Well Abandonment and Rehabilitation</b>			
600	Job-hour rate bid as specified in TS-5	HR	\$ 220.00
<b>TS-6 Well Inspection Video Surveys and Logs</b>			
700	Production of one (1) Well Inspection Video Survey Log per TS-6	LS each	\$ 1,250.00
<b>TS-7 Repair/Replacement of Well, Booster Station and Reservoir Equipment</b>			
800	Repair/Replace/Modify per TS-7	HR	\$ 65.00
<b>TS-8 Fabrication and Machine Shop Work</b>			
900	Fabrication and Machine Shop Work per TS - 8	HR	\$ 75.00
<b>TS-9 Contractor Owned Equipment</b>			
	Mark-up on Current "Blue Book" rate for Crane, Boom Truck, Backhoe, or		
1000	Tank Truck per TS - 9	%	100.00%
<b>TS-10 Inspection of Work</b>			
1100	All Equipment & Labor as Applied to Inspection as Covered in TS - 10.	HR	\$ 75.00
<b>TS-11 Repair Parts, Materials and Replacement Equipment</b>			
1200	Percent Over Invoice for Repair Parts per TS - 11.	%	132.00%
<b>TS-12 Well Test Pumping</b>			
1300	Operation of Contractor Provided Test Pumping Equipment per TS - 12	HR	\$ 80.00
<b>TS-13 Job Site Security</b>			
1400	Complete Security Package	HR	\$ 22.50
<b>TS-14 Rental Equipment</b>			
1500	Rental Mark-up Over Invoice	%	110.00%
1600	"Bobcat" with Auger Attachment	\$/Day	\$ 455.00
<b>TS-15 Subcontract Work</b>			
1700	Subcontractor Mark-up Over Invoice	%	110.00%
<b>TS-16 On-Call Labor</b>			
1800	Electrician	HR	\$ 100.00
1900	Electrical Journeyman	HR	\$ 100.00
2000	Field Laborer	HR	\$ 65.00
2100	Field Labor Supervisor	HR	\$ 65.00
2200	Site Preparation	HR	\$ 65.00
2300	Diver(s)	HR	\$ 170.00
<b>TS-17 Per Diem</b>			
2400	Travel time cost	HR	\$ 65.00
2500	Daily Per Diem Cost ( no overnight)	Days	\$ -
2600	Daily Per Diem Cost Overnight	Days	\$ 160.00

Tax Rate = 8.4375%

# Item # 20-0413

**BUCKMAN DIRECT DIVERSION BOARD  
AMENDMENT No. 1 TO THE  
AGREEMENT  
WITH ALPHA SOUTHWEST, INC  
19-0301**

THIS AMENDMENT No. 1 (the "Amendment") to the Agreement, between Owner and Contractor dated April 4, 2019 and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDB") and Alpha Southwest Inc. ("Contractor"). The effective date of this Amendment shall be the date it is executed by the BDDB.

## **RECITALS**

A. WHEREAS, under the terms of the Agreement, Contractor agreed to provide on-call emergency repair for operations and maintenance services to the BDD.

B. Pursuant to Article 7 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Board and the Contractor agree as follows:

1. **COMPENSATION.**

Article 2, paragraph B of the Agreement is amended to increase the amount of compensation by a total of Thirty Thousand Dollars (\$30,000.00) plus applicable gross receipts tax, so that Article 2, paragraph B reads in its entirety as follows:

B. The total compensation under this Agreement shall not exceed Four Hundred Ninety-Seven Thousand Nine Hundred Seventy-Seven Dollars and Seventy-Six Cents (\$497,977.76) excluding New Mexico gross receipts tax, from the following BDDB funds:

- Multi-Year Funding – Major Repair & Replacement Fund \$367,677.76
- FY 2018-2019 – BDD Operating Fund \$40,000.00

- FY 2019-2020 – BDD Operating Fund \$60,000.00
- FY 2020-2021 – BDD Operating Fund \$30,000.00

**2. TERM AND EFFECTIVE DATE.**

Article 4, of the Agreement is amended to extend the term to June 30, 2021. The BDDDB reserves the right to renew the contract on an annual basis by mutual agreement not to exceed a total of four (4) years in accordance with NMSA 1978, 13-1-150 through 152.

**3. AGREEMENT IN FULL FORCE.**

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

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

***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]***

BUCKMAN DIRECT DIVERSION BOARD

By: JoAnne Vigil Coppler  
JoAnne Vigil Coppler, BDDDB Chair

Date: 07/02/2020

APPROVED AS TO FORM

Nancy R. Long  
Nancy R. Long, BDDDB Counsel

APPROVED

Mary McCoy  
Mary T. McCoy, City Finance Director

ATTEST

Yolanda Y. Vigil  
Yolanda Y. Vigil, City Clerk

File Date: 8/21/2020

CONTRACTOR:  
Alpha Southwest Inc.

Signature: [Signature]

Printed Name: David M. Yates

Title: Vice President

Date: 3 Aug 20

New Mexico Tax & Revenue

CRS# 01-711081-00-5

City of SF Business

Registration # 225207

**BUCKMAN DIRECT DIVERSION BOARD  
AMENDMENT No. 2 TO THE  
AGREEMENT  
WITH ALPHA SOUTHWEST, INC  
19-0301**

THIS AMENDMENT No. 2 (the "Amendment") to the Agreement, between Owner and Contractor dated April 4, 2019 and as subsequently amended (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDDB") and Alpha Southwest Inc. ("Contractor"). The effective date of this Amendment shall be the date it is executed by the BDDDB.

**RECITALS**

A. WHEREAS, under the terms of the Agreement, Contractor agreed to provide on-call emergency repair for operations and maintenance services to the BDD.

B. Pursuant to Article 7 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Board and the Contractor agree as follows:

**1. COMPENSATION.**

Article 2, paragraph B of the Agreement is amended to increase the amount of compensation by a total of Thirty thousand dollars (\$30,000.00) plus applicable gross receipts tax, so that Article 2, paragraph B reads in its entirety as follows:

A. The total compensation under this agreement shall not to exceed five hundred twenty-seven thousand, six hundred seventy-seven dollars and seventy six cents. (\$527,677.76) plus applicable gross receipts tax, from the following BDDDB Operating funds:

- Multi-Year Funding-Major Repair & Replacement Fund \$367,677.76
- FY 2018-2019- BDD Operating Fund \$40,000.00
- FY 2019-2020-BDD Operating Fund \$60,000.00

- FY 2020-2021 BDD Operating Fund \$30,000.00
- FY2022-2023 BDD Operating Fund \$30,000.00

**2. TERM AND EFFECTIVE DATE**

Article 4, of the Agreement is amended to extend the term to terminate on June 30, 2022. The BDDDB reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of four (4) years in accordance with NMSA 1978, 13-1-150 through 152.

**3. AGREEMENT IN FULL FORCE**

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

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

***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]***

BUCKMAN DIRECT DIVERSION BOARD

By: *Anna C. Hansen*  
Commissioner Anna C. Hansen

Date: 7/6/21



*Katharine E. Clark*  
Katharine E. Clark, Santa Fe County Clerk

APPROVED AS TO FORM

*Nancy R. Long*  
Nancy R. Long, BDDDB Counsel

APPROVED

*Mary T. McCoy*  
Mary T. McCoy, City Finance Director

ATTEST

*Kristine Mihelcic*  
Kristine Mihelcic (Aug 23, 2021 18:22 MDT)  
Kristine Bustos-Mihelcic, City Clerk

File Date: Aug 23, 2021

Signature: *Monique Maes*  
Monique Maes (Jul 11, 2022 12:01 MDT)  
Email: [mmmaes@santafenm.gov](mailto:mmmaes@santafenm.gov)

Signature: *amarmijo*  
Email: [amarmijo@santafenm.gov](mailto:amarmijo@santafenm.gov)

CONTRACTOR:

Alpha Southwest Inc.

Signature: *David M. Yates*  
Printed Name: DAVID M. YATES  
Title: VICE PRESIDENT  
Date: 17 Aug 2021

New Mexico Tax & Revenue

CRS# 81-711081-C05

City of SF Business

Registration # 2252017

*XIV*  
XIV

Signature: *Rick Carpenter*  
Rick Carpenter (Jul 12, 2022 13:12 MDT)  
Email: [rrcarpenter@santafenm.gov](mailto:rrcarpenter@santafenm.gov)