

Memorandum



Buckman Direct Diversion

Date: August 1, 2024
To: Finance Department
From: Monique Maes, Contracts Administrator
Via: Rick Carpenter, Facilities Manager
Re: PSA with Wright Water Engineers, Inc.

ITEM

Request for approval and processing of Amendment No. 1 to the (PSA) with Wright Water Engineers, Inc in an amount up to \$150,000.00 plus NMGR to extend term to June 30, 2025, and process BAR in the amount of \$150,000.00

BACKGROUND

On June 6, 2024 the Buckman Direct Diversion Board approved an Amendment to the Professional Services Agreement with Wright Water Engineers, Inc. in an amount up to \$150,000.00. for engineering services in a redesign project. The term will be extended in annual increments base on our needs and budget. The procurement method for this was RFP 23/28/P.

Procurement Method: RFP 23-28-P
Munis Contract Number: 3204015
Funding Source: Settlement Fund Account
ORG/OBJ: #8000825.510300
PL Code: BDD2222

ACTION

Staff recommends, processing and routing the attached. Thank you.



BUCKMAN DIRECT DIVERSION PROCUREMENT CHECKLIST



Contractor Name: Wright Water Engineering, LLC

Procurement/contract Title: Engineer for Redesign and Rehabilitation

Procurement Method/Vehicle: ☐ Sole Source ☐ State Price Agreement/Existing ☐ Cooperative ☒ Request For Proposals(RFP) ☐ Invitation To Bid (ITB) ☐ Exempt:

☐ Small Purchase (Contract Under \$60,000) ☐ Other: _____

Requesting Department: Buckman Direct Diversion

Staff Name: Monique Maes

Procurement Requirements:

Procurement files shall be maintained for all purchases and contracts, regardless of the method of procurement. The procurement files shall contain the basis on which the awards are made, all submitted bids/proposals, all evaluation materials (bid tabs or Evaluation Committee Reports), scoresheets, quotations, and all other documentation related to or prepared in conjunction with evaluations, negotiations, and the award processes. The procurements shall contain written determinations from the Requesting Departments, signed by the Chief Procurement Officers (this document), setting forth the reasoning for the contract award decisions before submitting them to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING (CPD)

YES	N/A		YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Written Determination (srvs)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quote(s) (3 Valid & Current for Over 20k)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	RFP - Confidential info to be provided to GB by CPD Buyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB (include bid tab)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance (srvs)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreements and GSAs and Statewide Price Agreements (include the cover page to show valid date, page, and items to be purchased)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Horizon Declination or Screenshot of horizonsofnewmexico.org/services.html (srvs)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contract (only on contracts)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Santa Fe Business Registration (or Exemption if no tax)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract or Price Agreement (legal and contractor must sign before purchasing approves)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chief Procurement Officer (or designee) Approval for Exempt from Procurement (use memo on our site)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Evaluation Committee Report (RFPs only)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Signed Sole Source Determination, Vendor Written Quote, SS Letter from Contractors, and 30 Days Email			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	>20k = Memo addressed to City Manager (Under 150K) Committees/City Council (Over 150K)			

Monique Maes Contract Admin.

Department Point of Contact

Title

7/25/24

Date

John Dupuis

Department Director

Date

John Dupuis

Chief Procurement Officer

Aug 16, 2024

Date

ITT Representative

Title

Date



City of Santa Fe

Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract: 3204015 Procurement # (RFP/ITB# If any):

Contractor: Wright Water Engineers, Inc.

Procurement Method/Vehicle: Small Purchase ☐ RFP ☒ ITB ☐ Sole Source ☐ GSA ☐ Cooperative ☐ Exempt ☐ SWPA/Existing ☐

Description/Title: Engineer for Redesign and Rehabilitation

Contract: ☐ Agreement: ☐ Lease/Rent: ☐ Amendment: ☒

Term Start Date: 07/01/2024 Term End Date: 6/30/2025 Total Contract Amount:

☐ Approved by Council (If over the City Manager's approval threshold, you must go through GB) BDDDB Chair

Contract / Lease:

1.b Amendment #: 1 to the Original Contract/Lease # 3204015

Increase/(Decrease) Amount \$: 150,000.00

Extend Expiration Date to: 06302025

☐ Approved by Council (If the original went through GB, all amendments must go through GB regardless of the amendment reason) Date: 06/07/2024

Amendment is for: To extend term and increase compensation

2. HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

Item #23-0206 in the amount of \$250,000 for an end term date of 6/30/2024

Amendment 1: to increase compensation by \$150,000. and extend term 6/30/2025 (year 2 of 4)

3. Procurement History:

John J. [Signature]

Purchasing Officer Review:

Aug 16, 2024

Date:

Comment & Exceptions: procured via RFP# 23/28/P

4. Funding Source:

Andy Hopkins

Budget Officer Approval:

Org / Object: 80000825.510300

Aug 16, 2024

Date:

Comment & Exceptions:

5. Grant History (if applicable):

Grants Administrator Approval: Date

Staff Contact who Completed This Form: Monique Maes Phone #: 505-955-4508

To be recorded by City Clerk: Email:

Clerk #

Date of Execution:

ITT Representative (attesting that all information is reviewed)

Title

Date



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: WRIGHT WATER ENGINEERS, INC.

Business Location: 2490 W TWENTY-SIXTH AVE STE. 100A
DENVER, CO 80211

CRS Number: 03617589007

Owner: WRIGHT WATER ENGINEERS, INC.

License Number: 234772

Issued Date: July 19, 2024

Expiration Date: July 19, 2025

License Type: Business License - Renewable

Classification: Out of Jurisdiction Business License

Fees Paid: \$20.00

WRIGHT WATER ENGINEERS, INC.
2490 W TWENTY-SIXTH AVE STE. 100A
DENVER, CO 80211

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

Client#: 1083345

WRIGHWAT

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/22/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC 4600 S. Ulster Street, Suite 1200 Denver, CO 80237 800 873-8500		CONTACT NAME: PHONE (A/C, No. Ext): 800 873-8500 FAX (A/C, No): E-MAIL: den.certificate@usi.com ADDRESS:															
INSURED Wright Water Engineers, Inc. 2490 W. 26th Ave., Suite 100a Denver, CO 80211		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Hartford Casualty Insurance Company</td> <td>29424</td> </tr> <tr> <td>INSURER B : Hartford Ins Co of the Southeast</td> <td>38261</td> </tr> <tr> <td>INSURER C : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER D : Hartford Underwriters Insurance Company</td> <td>30104</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hartford Casualty Insurance Company	29424	INSURER B : Hartford Ins Co of the Southeast	38261	INSURER C : XL Specialty Insurance Company	37885	INSURER D : Hartford Underwriters Insurance Company	30104	INSURER E :		INSURER F :	
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	34SBAPN5697	12/31/2023	12/31/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PO/ AGG \$2,000,000 \$
D	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	34UECIE8064	12/31/2023	12/31/2024	COMBINED SINGLE LIMIT (EA accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10000	X	X	34SBAPN5697	12/31/2023	12/31/2024	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	34WECBG0Y2B	05/07/2024	12/31/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liab Incl Pollution Claims Made		X	DPR5021449	12/31/2023	12/31/2024	\$2,000,000 per claim \$4,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insured under Umbrella / Excess Liability but only with respect to liability arising out of the Named Insured's work performed on behalf of the certificate holder and owner. (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Buckman Direct Diversion 341 Caja Del Rio Road Santa Fe, NM 87506	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

The General Liability, Automobile Liability, Umbrella/Excess Insurance policies applies on a primary and noncontributory basis. A Blanket Waiver of Subrogation applies for General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation. The Umbrella / Excess Liability policy provides excess coverage over the General Liability, Automobile Liability and Employers Liability. Please note that Additional Insured status does not apply to Professional Liability or Workers' Compensation.

Additional Insured Includes: Buckman Direct Diversion., BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative, and the Club at Las Campanas; their respective elected officials, officer, employees, agents, volunteers, and representatives.



Date: March 31, 2023
To: Buckman Direct Diversion Board
From: Monique Maes, Contracts Administrator
Via: Rick Carpenter, Facilities Manager
Subject: Request to Award RFP # 23/28/P, PSA, and to Utilize Settlement Funds

ITEM:

Request for approval to award RFP # 23/28/P, Engineering Services for Redesign and Rehabilitation for BDD to the recommended Proposer, Wright Water Engineers, Inc.

1. Approval request for Professional Service Agreement ("PSA") for a total amount of \$250,000.00 plus NMGR, for the remainder of FY 2023 and for FY 2024 to Wright Water Engineers, Inc. to provide engineering services for the Buckman Direct Diversion and
2. Request for authorization to utilize Settlement Funds for this expense.

BACKGROUND:

On March 10, 2023 the Evaluation Committee met and evaluated proposal submissions from three (3) engineering service Offerors, responding to RFP # 23/28/P, titled, Re-design and Rehabilitation Plan for BDD. The Evaluation Report is attached providing a recommendation.

In compliance with the evaluation criteria set forth in the RFP, it was determined that the proposal from Wright Water Engineers, Inc. received the highest score. Upon Board approval, the award term will be a four-year contract and will be extended in annual increments at the start of each fiscal year, based on budget projections and project development. The contract will begin once the contract is fully executed, and the budget will be expensed as we are billed for the duration of the project. Currently, we estimate that the total four-year contract amount is not to exceed \$250,000.00 plus NMGR, however this is only an estimate of initial completion in the first year.

In the coming year, we will assess the budget and progress of the development in this Redesign and Rehabilitation Plan and amend the second year of the contract if needed. We are also requesting to access the Settlement Funds to cover this expense in full as this is the first step related to the repairs that are needed.



The RFP can be found in the city of Santa Fe Procurement Library at:

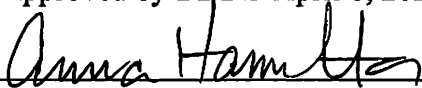
<https://santafenm.gov/solicitations/engineer-for-redesign-and-rehabilitation-plan-for-bdd-23-28-p?category=request-for-proposal>

Action Requested:

Approve recommendation for RFP # 23/28/P, PSA with WWE in the amount of \$250,000.00, and authorize the use of the Settlement Funds to cover this expense in full.

Approval:

Approved by BDDDB April 6, 2023


BDD Chair

BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT
WITH WRIGHT WATER ENGINEERS, INC.
ITEM #23-0206

This AMENDMENT No. 1 (the "Amendment") to the Professional Services Agreement, dated April 6, 2023 (the "Agreement"), is made between the Buckman Direct Diversion Board (the "BDDDB") and Wright Water Engineers, Inc. ("Contractor"). The date of this Amendment shall be the date when it is executed by the BDDDB Chair.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide Engineering Services for redesign and rehabilitation for the Buckman Direct Diversion Facility.

B. Pursuant to Article 18 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDDB and Contractor agree as follows:

1. **COMPENSATION.**

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of \$150,000.00 so that Article 3, paragraph A reads in its entirety as follows: Compensation under this Agreement shall not exceed Four-Hundred Thousand Dollars (\$400,000.00) plus applicable New Mexico Gross receipts tax.

2. **TERM.**

Article five (5) of the Agreement is amended to extend the term to terminate on June 30, 2025. Notwithstanding the foregoing, Contractor may terminate this Agreement upon thirty (30) written notice to BDDDB.

3. **CONTRACT 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 Agreement as of the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD



Carol Romero-Wirth, BDDB CHAIR

DATE: 6/6/24

CONTRACTOR:

WRIGHT WATER ENGINEERING, INC.



Wayne F. Lorenz, Chief Design Engineer
TITLE

DATE: 7/23/2024

CRS# 03617589007

Registration # 234772 (License Number)

ATTEST:



CITY CLERK



APPROVED AS TO FORM:



Nancy R. Long, BDDB COUNSEL

APPROVED FOR FINANCES:



ALEXIS LOTERO (Aug 23, 2024 14:55 MDT)

Emily K. Oster, Finance Director

**BUCKMAN DIRECT DIVERSION BOARD
PROFESSIONAL SERVICES AGREEMENT
WITH
WRIGHT WATER ENGINEERS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Wright Water Engineers, Inc. ("Contractor"). The effective date of this Agreement shall be the date when it is executed by the BDD Chair.

1. SCOPE OF SERVICES

Contractor shall provide services for the BDDDB as fully described in the attached Exhibit A.

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.

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. Compensation under this Agreement shall be up to Two Hundred and Fifty-Thousand Dollars, (\$250,000.00) plus applicable New Mexico gross receipts tax.

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

C. 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 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, this Agreement shall terminate upon written notice being given by the BDDDB to Contractor. The BDDDB'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 BDDDB and terminate June 30, 2024.

6. TERMINATION

A. This Agreement may be terminated by the BDDDB upon 30 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 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 agents and employees are independent contractors performing professional services for the BDDDB and are not employees of the BDDDB. 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 City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by 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 subcontract any portion of the services to be performed under this Agreement 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 BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; 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 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: (i) 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; (ii) obtained BDDDB 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 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)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

(2) **Automobile Liability.** For all of 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, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate. 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, 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, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; 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 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 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 "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 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, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; 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, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective

elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDDB.

(a) 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.

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

(c) 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.

(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 the BDDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; 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 BDDDB 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 BDDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD-PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the 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 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 City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDDB and 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 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. 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: Rick Carpenter
Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: rrcarpenter@ci.santa-fe.nm.us

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

BUCKMAN DIRECT DIVERSION BOARD

By: *Anna Hamilton*
Anna Hamilton, BDDDB Chair,

Date: 4/6/23

APPROVED AS TO FORM

Nancy R. Long
BDDDB Counsel, Nancy R. Long, Esq.

ATTEST

Katharine Clark
County Clerk, Katharine Clark

Date 4/13/2023

APPROVED

Emily K. Oster
Emily K. Oster / May 3, 2023 13:36 MDT

City Finance Director

ATTEST

Kristine Bustos-Mihelcic
City Clerk, Kristine Bustos-Mihelcic XIV

File Date: May 3, 2023

**CONTRACTOR:
WRIGHT WATER ENGINEERS, INC.**

Signature: *Wayne F. Lorenz*

Printed Name: Wayne Lorenz, P.E.

Title: Chief Design Engineer

Date: April 4, 2023

NM Taxation & Revenue

CRS # 03617589007-GRT

City of Santa Fe Business

Registration # Submitted payment, application
sent 3/31/23



EXHIBIT A

Scope of Work

Contractor shall:

1. Plan and attend a kick-off meeting with BDD management and operation staff.
2. Prepare an executive summary of the previous work performed by WWE that addresses the remedies that were proposed for the BDD Facility in the legal proceedings.
3. Conduct interviews with key BDD staff (initially and as-needed thereafter) to analyze operational and system failures and issues.
4. Analyze existing conditions of the Rio Grande River and provide analysis of the current challenges with the objectives of successful, optimal performance and operation of the BDD Facility. WWE may include sub-consultants in this effort for peer review and professional opinion.
5. Develop a Work Plan to include: a conceptual redesign plan to optimize performance and operation of the BDD Facility; prioritization and sequencing of the necessary reconstruction, including estimated costs; and an estimated draft schedule of the overall work to be accomplished by design/construction professionals.
6. Prepare a permitting plan for the reasonably anticipated permits that will be needed and an estimated schedule for permit acquisition. Actual permit acquisition would be the responsibility of the design/construction professionals.
7. Analyze and recommend the most appropriate project delivery method for the redesign and reconstruction of the BDD Facility.
8. Develop preliminary budgets and schedules for the redesign and reconstruction of the BDD Facility and recommend planning and scheduling methods to minimize shutdowns to the BDD Facility.
9. Assist with development of a redesign and reconstruction procurement plan. The procurement plan will include, but will not be limited to, a detailed scope of work for the redesign and reconstruction and a project implementation plan.
10. Assist with preparation of procurement documents and subsequent contract(s) negotiations, which may also include an "engineer's estimate."
11. Consult with the BDD's Technical Committee and report to the Committee on work progress and analyses.
12. Other tasks as assigned by the BDD Facilities Manager.




24-0524 Wright Water Engineers Inc.

Final Audit Report

2024-08-27

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