



**Date:** June 6, 2024  
**To:** Finance Department  
**From:** Monique Maes, BDD Contract Administrator  
**Via:** Rick Carpenter, BDD Facilities Manager  
**Subject:** Request and Authorization of Amendment 1, for Snell & Wilmer, LLP,

### ITEM

Request for the approval of Amendment 1, to extend the term date to June 30, 2025 to the Professional Services Agreement, and increase compensation in an amount not to exceed \$200,000.00 plus applicable tax for legal service with Snell & Wilmer, LLP. for FY24/25

1. Request for approval of amendment 1 to the Professional Service Agreement in the total amount of \$200,000.00 plus NMGRS for Snell & Wilmer LLC
2. Request for authorization to utilize Settlement Funds for this expense (BAR attached)
3. To extend end term date to June 30, 2025

### BACKGROUND

On June 1, 2023, a service agreement with Snell & Wilmer, LLP, was approved for legal services, advice, and consultation for the Buckman Direct Diversion Board. Currently, the BDD has several on-going projects that will require the unique services that Snell & Wilmer can provide. This vendor has been used extensively, especially during a multi-year litigation case resulting in a settlement in favor of BDD, and their work and financial obligations will continue past a four year period. The procurement method determination is that of Sole Source. It is most beneficial to continue utilization of this partnership to ensure a smooth transition with the large scale repair projects at the BDD. This amends the compensation to increase by \$200,000.00 for fiscal year '24-25. Funding will be utilized from the Settlement Funds, per the authorization of the BDD board.

The cumulative total contract amount is not to exceed \$400,000.00 for fiscal year 2024-2025.

### ACTION REQUESTED

Staff recommends approval and processing of Amendment 1, with Snell & Wilmer, LLP.

ORG/OBJ: Legal Service #8000825.510200

MUNIS Contract # 3204037 PL Code: BDD2222

Approved By BDDB June 7<sup>th</sup>, 2024



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

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 type="checkbox"/>	<input checked="" 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 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, s			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Horizon Declination or Screenshot of <a href="http://horizonsofnewmexico.org/services.html">horizonsofnewmexico.org/services.html</a> (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 checked="" type="checkbox"/>	<input type="checkbox"/>	Chief Procurement Officer (or designee) Approval for Exempt from Procurement (use memo on our site)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report (RFPs only)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Signed Sole Source Determination, Vendor Written Quote, SS Letter from Contractors, and 30 Days Email			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	>20k = Memo addressed to BDDDB (Under 150K) Committees/BDDDB (Over 150K)			

Version 3 12.1.2023



Log # {Finance use <u>only</u> }:	
Journal # {Finance use <u>only</u> }:	

## City of Santa Fe, New Mexico

### BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME PUD/Buckman Direct Diversion	DATE 5/31/2024
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ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				{enter as <u>positive</u> #}	{enter as <u>negative</u> #}
Legal Services	8000825	510200	BDD2222	200,000	
Interfund transfer out to 800	8010816	755800		200,000	
<b>REVENUES</b>				{enter as <u>negative</u> #}	{enter as <u>positive</u> #}
Interfund transfer in from 801	8000825	655801		(200,000)	
<b>JUSTIFICATION:</b> (use additional page if needed) –Attach supporting documentation/memo				\$ 200,000	\$ -

To authorize funds from the Settlement Funds to cover litigation services with Snell & Wilmer.	<b>{Complete section below if BAR results in a net change to ANY Fund}</b>												
	<table border="1" style="width: 100%;"><tr><td style="width: 60%;">Fund(s) Affected</td><td style="width: 40%;">Fund Balance Increase/(Decrease)</td></tr><tr><td style="text-align: center;">801</td><td style="text-align: right;">(200,000)</td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td><b>TOTAL:</b></td><td style="text-align: right;"><b>(200,000)</b></td></tr></table>	Fund(s) Affected	Fund Balance Increase/(Decrease)	801	(200,000)							<b>TOTAL:</b>	<b>(200,000)</b>
Fund(s) Affected	Fund Balance Increase/(Decrease)												
801	(200,000)												
<b>TOTAL:</b>	<b>(200,000)</b>												

Monique Maes for Valerie Romero Prepared By {print name}	Date	{Use this form for Finance Committee/ City Council agenda items ONLY}	Andy Hopkins Budget Officer	Date
		<b>CITY COUNCIL APPROVAL</b>		
		City Council	Emily K. Oster	Sep 8, 2024
Division Director Signature {optional}	Date	Approval Date	Finance Director {≤ \$5,000}	Date
		Agenda Item #:		
John D. Luis (Aug 28, 2024 14:41 MDT)	Aug 28, 2024		City Manager {≤ \$60,000}	Date
Department Director Signature	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: 3204037

Procurement # (RFP/ITB# If any):

Contractor: Snell & Wilmer LLP.

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

Description/Title: To provide legal advice and consultation services for the Buckand Direct Diversion Board

Contract: ☐

Agreement: ☐

Lease/Rent: ☐

Amendment: ☒

Term Start Date: 07/01/2024

Term End Date: 06/30/2025

Total Contract Amount: \$300,000.00

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

Contract / Lease: 23-0440

1.b Amendment #: 1 to the Original Contract/Lease # 23-0440

Increase/(Decrease) Amount \$: \$300,000

Extend Expiration Date to: June 30, 2025

☐ Approved by Council (If the original went through GB, all amendments must go through GB regardless of the amendment reason) Date: 06/6/2024

Amendment is for:

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

Sole Source Procurement issued (#30-M0087-23-CP090) 4/28/23

Item 23-0440 in the amount of \$200,000.00

Amendment approved 6/6/24 by BDDB

### 3. Procurement History:

*Shirley*

Purchasing Officer Review:

Aug 29, 2024

Date:

Comment & Exceptions: BDD Board approved prior to contract expiring.

### 4. Funding Source: Settlement Fund Account BDD2222

Org / Object: 8000825.510200

*Andy Hopkins*

Aug 28, 2024

Budget Officer Approval:

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



# Memorandum



## Buckman Direct Diversion

**Date:** June 6, 2024  
**To:** The Buckman Direct Diversion Board  
**From:** Monique Maes, BDD Contract Administrator  
**Via:** Rick Carpenter, BDD Facilities Manager  
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ORG/OBJ: Legal Service #8000825.510200

MUNIS Contract # 3204037 PL Code: BDD2222

Approved By BDDDB June 7<sup>th</sup>, 2024

BDDDB Chair Carol Romero-Wirth



Buckman Direct Diversion 341 Caja del Rio Santa Fe, NM 87506



**BUCKMAN DIRECT DIVERSION BOARD  
AMENDMENT No. 1 TO THE  
PROFESSIONAL SERVICES AGREEMENT WITH  
SNELL & WILMER, LLP  
ITEM# 23-0540**

This AMENDMENT No. 1 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated June 1, 2023, (the "Agreement"), is made between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, LLP ("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 perform services related to the redesign and reconstruction of the Buckman Direct Diversion Project and as further stated in the Scope of Services of the Agreement.

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:

**3. COMPENSATION.**

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of \$200,000.00 so that Article 3, paragraph A reads in its entirety as follows:

A. Compensation under this Agreement shall not exceed Four-Hundred Thousand Dollars (\$400,000.00) plus applicable gross receipts tax, as described in Exhibit A of the Agreement.

**5. TERM AND EFFECTIVE DATE:**

Article 5 of the Agreement is amended to extend the term to terminate on June 30, 2025.



**6. TERMINATION CLAUSE**

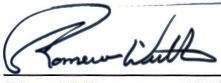
Either party may terminate this Agreement by providing the other party with at least fourteen (14) days' written notice.

**7. 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 to the Agreement as of the dates set forth below.

**BUCKMAN DIRECT DIVERSION BOARD:**

  
\_\_\_\_\_  
Carol Romero-Wirth  
BDDDB CHAIR

DATE: 6/7/24

ATTEST:

\_\_\_\_\_  
CITY CLERK XIV

APPROVED AS TO FORM:


  
\_\_\_\_\_  
NANCY R. LONG, BDDDB COUNSEL

APPROVED FOR FINANCES:

  
\_\_\_\_\_  
EMILY OSTER, FINANCE DIRECTOR

**CONTRACTOR:**

Snell & Wilmer, LLP

  
\_\_\_\_\_  
NAME

Daniel R. Frost  
TITLE: Of Counsel

DATE: 8/21/2024  
CRS# 03-359454-00-6  
Registration # 18-00150945



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

## BUSINESS REGISTRATION

**Business Name:** SNELL & WILMER L.L.P.  
DBA: SNELL & WILMER L.L.P.

**Business Location:** 1 E WASHINGTON ST STE. 2700  
PHOENIX, AZ 85004

**Owner:** SNELL & WILMER, L.L.P.

**License Number:** 231149

**Issued Date:** August 23, 2024

**Expiration Date:** August 23, 2025

**CRS Number:** 03359454006

**License Type:** Business License - Renewable

**Classification:** Out of Jurisdiction Business License

**Fees Paid:** \$10.00

SNELL & WILMER L.L.P.  
1 E Washington ST STE. 2700  
PHOENIX, AZ 85004-2202

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**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/21/2024

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 rights to the certificate holder in lieu of such endorsement(s).

PRODUCER N/A Insurer: Attorneys' Liability Assurance Society Ltd., A Risk Retention Group (ALAS) 311 S. Wacker Drive, Suite 5700 Chicago, IL 60606	CONTACT NAME: Nancy J. Montroy PHONE (A/C No. Ext): (312) 697-6900 FAX (A/C No.): E-MAIL ADDRESS: njmontroy@alas.com
INSURED Snell & Wilmer L.L.P. One East Washington Street Suite 2700 Phoenix, AZ 85004-2202	INSURER(S) AFFORDING COVERAGE INSURER A: Attorneys' Liability Assurance Society Ltd., A Risk Retention Group (ALAS) INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 15445

## 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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Lawyers' Professional Liability	N	N	LPL-1229-2024	1/1/2024	1/1/2025	\$60M per claim/ \$120M annual aggregate

(ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

Buckman Direct Diversion Board 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 <i>Nancy J. Montroy</i> Nancy J. Montroy, Vice President - Director of Underwriting, ALAS Ltd., RRG
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**BUCKMAN DIRECT DIVERSION BOARD  
PROFESSIONAL SERVICES AGREEMENT  
WITH SNELL & WILMER, L.L.P.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Snell & Wilmer, LLP ("Contractor"). The effective date of this Agreement shall be the date when it is executed by the BDDDB.

**1. SCOPE OF SERVICES**

Contractor shall perform the following Scope of Services under this Agreement if and as requested by the BDDDB:

- Evaluation of the re-procurement issues for the Buckman Direct Diversion Project ("BDD Project"): evaluation of potential project delivery methods for redesign and reconstruction of the BDD Project; working with consulting engineers regarding potential RFPs and scope of work for engineers and contractors; and advice regarding contract forms.
- Attend BDDDB meetings, as needed and requested, and relevant meetings of the Governing Body of the City, the Board of County Commissioners and BDD project staff meeting to provide legal advice and updates to BDDDB related to re-procurement of BDD Project, also as needed and requested.
- Brief BDD Project Partners' officials and staff members as directed by the BDDDB.

**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 an amount up to Two-Hundred, Thousand Dollars (\$200,000.00) plus applicable gross receipts tax, as described in the attached Exhibit A.

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. 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 thirty (30) days written notice to Contractor and by Contractor where necessary under the applicable rules of professional conduct. 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 BDDDB vehicles, or any other benefits afforded to employees of the BDDDB as a result of this Agreement.

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

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



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

## **12. INSURANCE**

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

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, or equivalent coverage, 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

**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 or equivalent standard 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, with the exception of professional liability coverage, are primary and non-contributory to any insurance that may be carried by the BDDB and its respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.**

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

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

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

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



### **13. INDEMNIFICATION**

**General Indemnification.** To the greatest extent permitted by law, Contractor shall indemnify and hold harmless the BDDB, City of Santa Fe and 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 Contractor's fault or negligence under this Agreement as well as the performance or non-performance of Contractor's employees and those directly under Contractor's control.

**Indemnification for Professional Acts, Errors or Omissions.** The General Indemnification shall apply only to professional acts, errors or omissions covered by Contractor's Professional Liability insurance.

**Limitations.** The terms of this General Indemnification shall not apply to the actions of any of Contractor's independent contractors, nor shall it apply to any claims relating to the fault or negligence of the BDDB, City of Santa Fe or Santa Fe County.

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

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

**15. THIRD-PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the 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 (3) 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 the following addresses:

**BDDDB:** Rick Carpenter  
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.  
1800 Old Pecos Trail, Ste. A.  
P. O. Box 5098  
Santa Fe, NM 87502-5098  
Email: nancy@longkomer.com

**CONTRACTOR:** Snell & Wilmer, LLP  
Daniel R. Frost  
1200 Seventeenth Street, Suite 1900  
Denver, CO 80202-5854  
Email: dfrost@swlaw.com

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 email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the email 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: *Anna Hamilton*  
BDDDB Chair, Anna Hamilton

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

**APPROVED AS TO FORM**

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

**ATTEST**

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

**APPROVED FOR FINANCES**

*Emily K. Oster*  
Emily K. Oster (Jun 28, 2023 12:17 MDT)  
City Finance Director

**ATTEST**

*Kristen Miller*  
City Clerk

File Date: Jun 28, 2023

**CONTRACTOR:**

**Snell & Wilmer, LLP**

Signature: See Attached

Printed Name: Daniel R. Frost

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

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

NM Taxation & Revenue

CRS # \_\_\_\_\_

City of Santa Fe Business

Registration # \_\_\_\_\_



**BUCKMAN DIRECT DIVERSION BOARD**

By: Anna Hamilton  
BDDDB Chair, Anna Hamilton

Date: 6/1/23

**APPROVED AS TO FORM**

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

**ATTEST**

Katharine E. Clark  
County Clerk, Katharine E. Clark

**APPROVED FOR FINANCES**

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

**ATTEST**

\_\_\_\_\_  
City Clerk

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

**CONTRACTOR**

Snell & Wilmer, LLP

Signature: [Signature]

Printed Name: Daniel R. Frost

Title: Partner

Date: 6/16/23

NM Taxation & Revenue

CRS # \_\_\_\_\_

City of Santa Fe Business

Registration # \_\_\_\_\_



## EXHIBIT A

Daniel R. Frost  
(303) 634-2038  
dfrost@swlaw.com

May 16, 2023

### VIA E-MAIL

Monique Maes Contracts  
Administrator Buckman Direct  
Diversion (BDD) 341 Caja Del Rio  
Road Santa Fe, NM 87506

**Re: Buckman Direct Diversion Board v. CDM Smith, et  
al. Sole Source Procurement for FY 2024**

Dear Monique:

This letter is in reference to the May 12, 2022, memorandum captioned: "Sole Source Procurement for FY 2023" ("Memo") for the Buckman Direct Diversion Board. This is to acknowledge that because of its extensive past background in the Board's counsel in the litigation with the owner's consultant and the design-builder, and its understanding of the issues with the Buckman Direct Diversion Project, Snell & Wilmer LLP is the only source for the services referred to in the Memo.

Snell & Wilmer L.L.P worked for over four years and devoted thousands of hours to the investigation, documentation, litigation and settlement of the problems with and claims over the Project's Failures. As a result, Snell & Wilmer L.L.P has a unique knowledge and understanding of the Board's legal needs for the redesign and reconstruction of the project. Continuing with Snell & Wilmer L.L.P. as the Board's outside counsel in this endeavor will provide a continuity of legal expertise and a smooth transition from investigation and litigation to redesign and repair.

Our budget for those services is \$200,000 for FY 2024. It is anticipated that those services would be provided by Daniel Frost, and others as necessary, at the rate of \$560 per hour.

Please let me know if you have questions. We very much appreciate the continued opportunity to be of service. Very truly yours,

Very truly yours,

cc: Nancy Long  
Rick Carpenter

Daniel R. Frost  
Snell & Wilmer

4866-9429-4614

ALBUQUERQUE BOISE DENVER LAS VEGAS LOS ANGELES LOS CABOS ORANGE COUNTY PHOENIX PORTLAND  
RENO SALT LAKE CITY SAN DIEGO SEATTLE TUCSON WASHINGTON, D.C.  
*Snell & Wilmer, L.L.P., Professional Services Agreement - 2023/2024*