



Buckman Direct Diversion Project

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

Memo

Date: July 25, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, BDD Interim Facility Manager *af*

ITEM AND ISSUE:

Request approval of a Profession Service Agreement with Automation Electric in the amount of \$30,000.00 plus NMGRT.

BACKGROUND AND SUMMARY:

The Buckman Direct Diversion currently utilizes a Supervisory Control and Data Acquisition (SCADA) system to monitor and control automated functions of the facility and for reporting. The SCADA system is a Ci-tech product that interfaces with operational software such as Op-10 and Water Information Management System (WIMS). SCADA also serves as the Human and Machine Interface (HMI) allowing operators and/or preset parameters to control starting and stopping of equipment and water quality monitoring.

DISCUSSION

In order to operate and maintain this system, staff requires maintenance service to be performed by a contractor consisting of periodic calls to the Buckman Direct Diversion Facilities, to perform routine inspection, checking software upgrades and annual fees, calibration troubleshooting and other SCADA adjustments of the equipment. The contractor also provides upgrade, calibration and performs maintenance on the Buckman Direct Diversion Facilities SCADA instrumentation.

ACTION REQUESTED:

Staff recommends approval of a Profession Service Agreement with Automation Electric in the amount of \$30,000.00 plus NMGRT. Funding for this work is available in the 2014/2015 budgeted fiscal year in business unit #7280000.



**BUCKMAN DIRECT DIVERSION BDDB
PROFESSIONAL SERVICES AGREEMENT
WITH AUTOMATION ELECTRIC, LLC**

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

1. SCOPE OF SERVICES

A. Maintenance service to be performed by Contractor under this Agreement shall consist of periodic calls to the Buckman Direct Diversion Facilities by Contractor's representatives. Such performance shall consist of routine inspection, checking software upgrades and annual fees, calibration troubleshooting and other SCADA adjustments of the equipment covered by this Agreement. Contractor shall upgrade, calibrate and perform maintenance on the Buckman Direct Diversion Facilities SCADA instrumentation.

B. Such maintenance service shall include scheduled and emergency service calls. The contract includes the labor for such maintenance, parts and software upgrades required for SCADA control instrumentation.

C. Contractor shall furnish the BDDB with a written report from Contractor after each service call.

D. The BDDB shall supply a list of any devices to be maintained by Contractor.

E. Maintenance service calls to the Buckman Direct Diversion Facilities will be scheduled at the convenience of both parties unless considered an emergency by the BDDB.

Contractor must report to the job site within 48 hours of an emergency call.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The BDDDB shall pay to Contractor in full payment for services rendered, a sum not to exceed thirty thousand dollars (\$30,000.00), plus applicable gross receipts taxes. The City shall pay to the Contractor the following rates for services rendered:

- (1) \$225.00 per day for estimated expenses for site visits based on the following:
 - a. Hotel - \$65.00-\$100.00 per day – estimate to be billed at best available accommodation rate;
 - b. Meals - \$45.00 per day;
 - c. Car Rental - \$70.00 per day – estimate to be billed at best rate available;
 - d. Fuel - \$15.00 – estimate to be billed at actual rate;
- (2) \$100.00 per hour for phone support – 24 hour service, 7 days a week;
- (3) \$100.00 per hour for site visits – any day of week;
- (4) The parts supplied by vendor shall be billed at cost plus 10%.

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

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

4. APPROPRIATIONS

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

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB Facilities Manager and terminate on June 30, 2015, unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 10 days written notice to Contractor. In the event of such termination:

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

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

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

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

A. Contractor and its agents and employees are independent contractors performing professional services for the 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 subcontractors retained by Contractor in the performance of the services under this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the 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 BDDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, the City of Santa Fe and Santa Fe County, their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the BDDDB to any obligation not assumed herein by the BDDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

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

to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the BDDB.

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

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

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

General Annual Aggregate (other than Products/Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence	\$2,000,000

(2) **Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$2,000,000 per accident. An insurance certificate shall be submitted to the 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 \$2,000,000 per claim and \$2,000,000 annual aggregate. Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, 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 BDDB, City of Santa Fe and Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDB is entitled to thirty (30) days prior

written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. 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 Contractors’ insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDDB within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

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

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of the 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, their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDB, City of Santa Fe, Santa Fe County, their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

(3) 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.

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

(5) The BDDB reserves the right, from time to time, to review the 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.

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

13. INDEMNIFICATION

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

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

B. **INDEMNIFICATION FOR PROFESSIONAL ACTS, ERRORS OR OMISSIONS.** Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of Contractor or its employees, agents, representatives or Sub consultants, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Professional Liability insurance required in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the 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.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

A. Contractor shall conform with and participate in the Document Control policies of the BDDDB or the City of Santa Fe. Contractor shall maintain, throughout the term of this

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

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

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

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

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

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

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

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

CONTRACTOR: Automation Electric, LLC
304 South Brassie, Drive
Payson, AZ 85541

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

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

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Joseph M. Maestas, Board Chair

Date: _____

APPROVED AS TO FORM



Nancy R. Long, BDDDB Counsel

APPROVED

Marcos A. Tapia, City Finance Director

Business Unit/Line Item

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR

Automation Electric, LLC
304 S. Brassie, Drive
Payson, AZ 85541

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue

CRS # _____

City of Santa Fe Business

Registration # _____



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

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

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

2 Name of Contractor Automation Electric LLC

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$30,000.00

Termination Date: 06/30/2014

Approved by BDDB Date: _____

or by Project Manager Date: Pending

Contract is for: Scada

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by BDDB Date: Pending

or by Project Manager Date: _____

Amendment is for: _____

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

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

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: Term



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

Total of Original Contract plus all amendments: \$ 30,000

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

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other Exempt Procurement

6 Procurement History: _____

example: (First year of 4 year contract)

7 Funding Source: bdd **BU/Line Item:** 72410

8 Any out-of-the ordinary or unusual issues or concerns:
none

(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

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

To be recorded by City Clerk:

Contract # _____

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

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

Comments: