



Buckman Direct Diversion

"REQUEST FOR BIDS"

BDD ON-CALL HVAC MAINTENANCE & MANAGEMENT

RFB #19/05/B

BID DUE:

October 31, 2018

2:00 P.M.

PURCHASING OFFICE

CITY OF SANTA FE

2651 SIRINGO ROAD

BUILDING "H" SANTA FE,

NEW MEXICO 87505

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1. Minimum Wage Ordinance
2. BDD Service Agreement

ADVERTISEMENT FOR BIDS
BID NO. '19/5/B

Bids will be received by the City of Santa Fe as the fiscal agent for the Buckman Direct Diversion Board and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, October 31, 2018. Any bid received after this deadline will not be considered.** This bid is for the purpose of procuring the following:

BDD On-Call HVAC Maintenance & Repair

The Buckman Direct Diversion Board requires a contractor to provide on-call installation, replacement and repair of the heating, ventilation and air conditioning systems.

The bidder's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the bid throughout, and they will be deemed to be included in the bid document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration without regard to race, color, religion, sex, sexual orientation or national origin. The successful bidder will be required to conform to the Equal Opportunity Employment regulations.

Bids may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all bids in part or in whole. Bid packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.

Shirley Rodriguez
Shirley Rodriguez, Interim Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: October 12, 2018
To be published on: October 17, 2018

Received by the Albuquerque Journal Newspaper on: October 12, 2018
To be published on: October 17, 2018

BID SCHEDULE

BID # '19/5/B

- | | | |
|----|---|--|
| 1. | Advertisement | October 17, 2018 |
| 2. | Issuance of bid's: | October 17, 2018 |
| 3. | Receipt of bids: | October 31, 2018 at 2:00 p.m.
local prevailing time.
Purchasing Office 2651
Siringo Road Bldg., "H"
Santa Fe, New Mexico
87505 (505) 955-5711 |
| 4. | Recommendation of award
to Buckman Direct Diversion Board: | December 6, 2018 |

DATES OF CONSIDERATION BY BUCKMAN DIRECT DIVERSION BOARD ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR BIDDERS

1. RECEIPT AND OPENING OF BIDS

The Buckman Direct Diversion Board (herein called "BDDDB"), invites bids on the form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the City Purchasing Office until 2:00 P.M. local prevailing time, , 2018. At this time the City Purchasing Director will publicly open and read bid(s) aloud.

Two bids shall be submitted in a sealed envelope, addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late bids will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Bid number: '19/5/B

Title of the bid: BDD On-Call HVAC Maintenance & Repair

Name and address of the proponent:

Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

2. PREPARATION OF BID

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your bid. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the bid.

This request for bid may be canceled or any and all bids may be rejected in whole or in part, whenever the Buckman Direct Diversion determines it is in the best interest of the BDDDB.

3. BID SECURITY

None required.

4. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

Liquidated damages are not applicable to this bid.

ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the bid documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. **ANY QUESTIONS CONCERNING THE BID SHOULD BE ADDRESSED PRIOR TO BID OPENING DATE.**

Every request for such interpretation should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least (5) days prior to the date set for the receiving of bids.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be delivered to all prospective bidders not later than three days prior to the date fixed for the opening of the bids. Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

The BDDDB reserves the right to not comply with these time frames if a critical addendum is required or if the bid deadline needs to be extended due to a critical reason in the best interest of the BDDDB.

6. POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

7. LAWS AND REGULATIONS

The bidders attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the bid throughout, and they will be deemed to be included in the bid document the same as though herein written out in full. In particular bidder is notified that criminal laws shall apply prohibiting bribes, gratuity and kick-backs.

8. METHOD OF AWARD

The award of the purchase agreement may be made to multiple vendors who meet or exceeds all specifications and provides the lowest total bid amount. However, delivery date, availability of stock, and complete analysis and comparison of specification details along with past experience of the BDDDB with similar or related units, will be weighed in making a final decision of award.

If a bid item has been discontinued substitutions may be made only with the approval of the Purchasing Officer.

No important deviation from the terms of this specification is acceptable. It is understood and agreed that the BDDB reserves the right to reject any and all bids, as authorized by law, and to award to other than the lowest bidder at its discretion, provided that it is in the best interest of the BDDB and the City of Santa Fe, if the CITY PURCHASING MANUAL and pertinent State Statutes are thereby served.

9. PUBLIC INFORMATION

All portions of the bid submittals will become public information. Proprietary information may be marked confidential, however, the City Purchasing Officer will make the final determination as to whether the portion of the bid is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from rest of the bid. In no case will a request for the entire bid to be confidential be considered.

10. BRAND NAMES

All brand names specified in this bid are to imply “or equal.” Bidder should include enough information with the bid submitted so this determination can be made. The determination of the Purchasing Officer will make the final determination as to whether the portion of the bid is legitimately confidential information. Sections to be confidential should be clearly marked as such and readily separable from the rest of the bid. In no case will a request for the entire bid to be confidential be considered.

11. TAX EXEMPT

The City of Santa Fe is tax exempt for state gross receipts taxes for the procurement of tangible personal property, but not for labor or services. A tax exempt certificate will be issued upon written request to the Purchasing Office.

12. COMPLIANCE WITH CITY’S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

13. MINIMUM WAGE RATES

The Bidder’s attention is directed to the fact that wages to be paid on this project shall not be less than the prevailing wage rates as listed by the New Mexico State Labor & Industrial Commission. It shall be the successful Bidder’s responsibility to inform themselves thoroughly of all state, federal and local laws and statutes pertaining to the employment of

labor, the freedom of organization and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

13.1 As an addendum to the above statement, this project is subject to Minimum Wage Rates as determined by the New Mexico State Labor & Industrial Commission pursuant to Chapter 13, Section 13-14-11, NMSA 1978 only if **any** event under this bid **exceeds \$60,000**. Once the value of the Event has been determined, if necessary, the appropriate steps will be taken to contact the New Mexico State Labor & Industrial Commission, by the Bidder, to obtain a Minimum Wage Rate Decision which will govern the wage payments under this bid.

APPLICATION OF PREFERENCES IN PROCUREMENT

Resident Business Preference: To receive a Resident Business Preference pursuant to Section 13-1-21 NMSA 1978 the Bidder **must** submit with its bid, a copy of a valid Resident Business certificate issued by the New Mexico Department of Taxation and Revenue.

If a Bidder submits a copy of a valid Resident Business certificate with its bid, the bid shall be five (5) percent lower than the bid actually received.

Certification by the New Mexico Department of Taxation and Revenue for the resident business takes into consideration such activities as the business or contractor's payment of property taxes or rent in the state.

Resident Veteran Business Preference: To receive a Resident Veteran Business Preference pursuant to Section 13-1-22 NMSA 1978 the Bidder must submit with its bid, a copy of a valid Resident Veteran Business certificate issued by the New Mexico Department of Taxation and Revenue.

If a Bidder submits a copy of a valid Resident Veteran Business certificate with its bid, the bid shall be ten (10) percent lower than the bid actually received.

Certification by the New Mexico Department of Taxation and Revenue for the resident veteran business requires the Bidder to provide evidence including, but not limited to, of gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

A resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on more than one business concurrently.

A Bidder may not receive both the resident business preference and the resident veteran business preference.

Local Preference: Local preference is not applicable.

SPECIAL CONDITIONS

1. GENERAL

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the BDDDB or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to BDD FINANCE MANAGER and NOT THE CITY PURCHASING AGENT.

7. METHOD OF PAYMENT

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby

contracted or as otherwise specified in the compensation portion of the contract documents.

8. DEFAULT

The BDDB reserves the right to cancel all or any part of this order without cost to the BDDB if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the entity due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the BDDB in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the BDDB shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the BDDB are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. NON-DISCRIMINATION

By signing this BDDB bid or bid submittal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. NON-COLLUSION

In signing this bid or bid submittal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or bid submittal to the City of Santa Fe.

SPECIFICATIONS

‘19/5/B

1. BACKGROUND, PURPOSE & GENERAL SCOPE

The Buckman Direct Diversion Board (“BDDDB”) is an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe (the “City”) and Santa Fe County (the “County”), dated March 7, 2005. The Board oversees the Buckman Direct Diversion Project (the “BDD Project”) which diverts water from the Rio Grande for delivery to the City and County and the Las Campanas development.

The BDD Project has several facilities throughout the water treatment plant. These facilities have heating and cooling systems at all the buildings that include:

Raw Water Facilities:

1. Raw Water Lift Station
2. Booster Station 1A
3. Booster Station 2A

Water Treatment Plant Facilities:

1. Operations Building
2. ATF/Membrane/Ozone/GAC building
3. Switch Gear building
4. Booster Station 4A/5A
5. Membrane Feed Pump building
6. Chemical building
7. Centrifuge building
8. Maintenance building
9. Flash Mix building

The Raw Water Facilities have refrigerated air in the electrical rooms and evaporative cooling in the pump rooms. They have electric heaters in all rooms.

The Water Treatment Plant site has refrigerated air in the electrical rooms and evaporative cooling in the pump rooms. They have gas fired heaters in all buildings.

The refrigerated air units range in size from 1.5 Ton up to 20 Ton units.

The majority brands of the A/C units are Carrier and Sanyo Mini Split units.

2. SCOPE OF WORK

Description of Work

Contractor will provide all necessary labor tools, equipment and materials needed to provide on-call repair, replacement and installation of the BDD Project's heating, ventilation and air conditioning systems.

The work shall include all preparation work needed to properly install new HVAC work or to repair or upgrade the existing HVAC systems. Work to include, but not limited to installation of new or relocation of existing diffusers, grilles and registers; installation of all new or relocation of existing vents, flues, make-up and outside air ducts; installation of new or relocation of existing thermostats; installation of new or relocation of supply and return air ducts; installation of new or relocation of existing heating and/or cooling units; and similar, related HVAC work. Work to include balancing of HVAC systems, including heat loss/ heat gain calculations needed to provide the CFM deliveries for the areas served by the HVAC system. Furnishing of submittal data for any/all new equipment.

Replacement systems and related equipment shall meet current minimum state mandated "Energy Star" energy conservation standards.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractors work, to other areas, the contractor will be held responsible for repairing any damage done by his employees, subcontractors and vendors. The Contractor shall restore any damage to existing, adjacent finishes damaged as a result of performing its work. The Contractor shall provide all clean-up for its operations and control of all construction debris. All work areas shall be maintained in a neat and workmanlike manner. All construction debris shall be removed from the work areas and disposed of at an approved waste disposal site. The owner's trash container for the building shall not be used for disposal of any construction debris.

Contractor shall respond to service requests within 48 hours Monday-Friday (8:00 a.m. to 5:00 p.m.).

Authorization for Work

All labor and replacement parts delivered will be authorized in writing by a work order signed by the BDD Maintenance Superintendent.

Each Work Order will set forth:

- (i) The Work to be performed by the Contractor
- (ii) The period of performance
- (iii) The hourly rate and service time
- (iv) Fixed Price for materials and equipment
- (v) Other data as necessary

3. STANDARDS OF PERFORMANCE; EXPERTISE; LICENSES

Contractor must possess the personnel, experience and knowledge necessary to perform the services described in the Scope of Work.

All work shall be in strict compliance with the NATIONAL ELECTRICAL CODE, SMACNA, and ASHRAE standards. Any work involving disconnects or switching of electrical service to a work area shall utilize LOCKOUT/TAGOUT identification practices.

All work shall be installed in strict compliance with national and state building, mechanical and electrical codes. SAFETY shall be of main concern and enforced by the Contractor on site and will be periodically inspected by the BDD's qualified safety personnel. The BDD/Owner/User shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site.

Warranty:

The Contractor shall warranty its work for new mechanical systems, appliances and related work, for materials and for workmanship furnished and performed for a period of one (1) year minimum from the date of acceptance for new installations. The Contractor shall warranty its work for repairs or restoration of existing mechanical systems, appliances and related work for ninety (90) days from the date of acceptance of repair, restoration, replacement or upgrade work for existing systems.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work. Journeymen level personnel shall have the ability and necessary skills to diagnosis problems and to make the appropriate decisions needed to provide these services.

Any technician servicing EPA regulated refrigerants in HVAC units MUST have a valid EPA Section 608 Certification covering the applicable refrigerant. The Contractor/subcontractor will assume responsibility for all EPA fines including those attributable to the owner if the Contractor/subcontractor is found to be illegally, intentionally, or accidentally releasing any regulated refrigerant. Prior to working on any regulated refrigerant-containing equipment, the Contractor/subcontractor shall provide a written statement certifying that they will use EPA-certified refrigerant recovery and recycling equipment when applicable.

Contractor's price shall include all labor costs, tools, equipment, materials, permits, overhead, profit, insurance and any other fees necessary to perform the work called for in the owner's scope of work and drawings for this project. Any equipment required to have licensed operators shall be the responsibility of the Contractor before any equipment is turned on at the jobsite.

**BUCKMAN DIRECT DIVERSION
BID FORM
BID # '19/5/B**

EXCEPTIONS TO SPECIFICATIONS

Bidder is required to return **two (2) complete copies** of these specifications, completely furnishing all information requested. All requested information, data, literature, drawings, etc. must be included with the bid submitted.

Bidder must check one of the following:

- a. All specifications, terms and conditions are met.
- b. Exceptions have been taken and noted on attached sheet (s).

All variations and/or exceptions to the specifications must be documented, referencing applicable paragraph (s) and explained in detail. Attach as many pages as necessary. If no exceptions are taken, it will be assumed that the bid meets all specifications and terms and conditions as stated in this complete bid package. Failure to list exceptions may disqualify bid. Delivery of non-conforming goods is at the expense of the bidder and/or other penalties.

All other specifications not detailed herein shall be as listed in the manufacturer's printed literature for the current standard model. Manufacturer's printed literature and specifications sheets shall be submitted with the bid.

Exceptions will not necessarily eliminate the bid. BDD staff shall determine acceptance or non-acceptance of exceptions. Unless otherwise noted and approved, it is assumed that delivery of the unit shall be as stated.

Signed submission of this bid represents that the bidder has accepted all terms, conditions and requirements of the bid unless a written exception is made and, if awarded, the bid will represent the agreement between the parties. Additionally, by signing this bid, the bidder warrants that there was no collusion of any kind in submission of this bid.

WARRANTIES

Warranty required for material and workmanship for minimum of one year unless otherwise stated in the bid. Warranties shall begin when the BDD accepts satisfactory delivery of equipment from the bidder. The warranty contract shall be solely with the bidder and the bidder shall be responsible for ensuring all warranty work is satisfactorily completed on any component of the unit. All details of warranties shall be included with the bid.

State name, address and phone number of nearest authorized maintenance representative:

The term of this agreement shall be for one (1) year from the date of award with the option to extend for a period of three (3) additional years, on a year-to-year basis, by mutual agreement of all parties, not to exceed four (4) years.

The BDD reserves the right to alter quantities based on availability of budget. If this will alter the bid amount, the bidder must note the percent increase for lesser quantities.

Service Labor Rates		
Service Labor Class	Rate	Unit
Field Service Technician	\$	Per Hour
Journeyman	\$	Per Hour
Laborer	\$	Per Hour
Emergency Call/Weekends*	\$	Per Hour
Other Labor Required by Bidder		
	\$	Per Hour
	\$	Per Hour

Parts	
Pricing Basis	Percentage
Cost Plus X %	%
OR	
List Price Minus X%	%

*Emergency Call/Weekends is defined as any services provided other than between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday (non-holidays).

BIDDER'S:

Firm

Address

Authorized Signature

Print Name

Position

Phone Number

Fax Number

DATE

N.M. RESIDENT PREFERENCE NUMBER (if applicable): _____
TWO COMPLETE COPIES OF THE BID SUBMITTAL IS REQUIRED






City of Santa Fe Living Wage Ordinance







PURSUANT TO THE CITY OF SANTA FE
LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987
EFFECTIVE MARCH 1, 2018 ALL WORKERS WITHIN THE
CITY OF SANTA FE
SHALL BE PAID A LIVING WAGE OF

\$11.40 PER HOUR

Santa Fe's Living Wage

-  The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
-  The March Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
-  All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

-  The City to all full-time permanent workers employed by the City;
-  Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
-  Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars (\$25,000) for the duration of the City grant or subsidy;
-  Businesses required to have a business license or registration from the City; and
-  Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
-  For workers who customarily receive more than one hundred dollars (\$100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living Wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

More Information, including the Living Wage Ordinance, is available at
<http://www.santafenm.gov>
(Click on Hot Topics/Living Wage)

**BUCKMAN DIRECT DIVERSION BDDDB
SERVICES AGREEMENT
WITH**

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board (“BDDDB”) and _____ (“Contractor”). The effective date of this Agreement shall be the date when it is executed by the _____.

1. SCOPE OF SERVICES

Contractor shall provide services for the BDDDB described as follows:

Contractor shall provide on-call repair, replacement and installation services of the BDD’s heating, ventilation and air condition systems as described in Exhibit A attached hereto and as directed by the BDD Maintenance Superintendent. Contractor shall furnish all necessary supervision, labor, materials and facilities required to accomplish the Scope of Services set forth by this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

A. 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 such 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 _____ plus applicable gross receipts tax, as described in Exhibit B attached hereto.

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

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

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, 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, 2019. The term of this agreement shall be for one (1) year from the date of award with the option to extend for a period of three (3) additional years, on a year-to-year basis, by mutual agreement of all parties, not to exceed four (4) years.

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 to the date of termination and refund all amounts received for any months after the termination date.

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

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

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or 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 BDDB.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDDB, 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 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 BDDDB that reflects coverage for any automobile [any auto].

(3) **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 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 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, hold harmless and defend the BDDB, 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 Contractor's 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.

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 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:

Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: cmvokes@ci.santa-fe.nm.us

With a copy to:

Nancy R. Long, Esq.
BDDDB Independent Counsel
Long, Komer & Associates, P.A.
2200 Brothers Road
P. O. Box 5098
Santa Fe, NM 87502-5098
Email: nancy@longkomer.com

CONTRACTOR:

Email: _____

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: _____
BDD Board Chair

Date: _____

APPROVED AS TO FORM


Nancy R. Long, BDDDB Counsel

APPROVED

City Finance Director

Business Unit/Line Item

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

CONTRACTOR:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS # _____

City of Santa Fe Business
Registration # _____

Exhibit A

Scope of Services

Description of Work

- Contractor will provide all necessary labor tools, equipment and materials needed to provide on-call repair, replacement and installation of the BDD's Project's heating, ventilation and air conditioning systems.

- The work shall include all preparation work needed to properly install new HVAC work or to repair or upgrade the existing HVAC systems. Work to include, but not limited to installation of new or relocation of existing diffusers, grilles and registers; installation of all new or relocation of existing vents, flues, make-up and outside air ducts; installation of new or relocation of existing thermostats; installation of new or relocation of supply and return air ducts; installation of new or relocation of existing heating and/or cooling units; and similar, related HVAC work. Work to include balancing of HVAC systems, including heat loss/ heat gain calculations needed to provide the CFM deliveries for the areas served by the HVAC system. Furnishing of submittal data for any/all new equipment.

- Replacement systems and related equipment shall meet current minimum state mandated "Energy Star" energy conservation standards.

- Contractor shall respond to service requests within 48 hours Monday-Friday (8:00 a.m. to 5:00 p.m.).

Authorization for Work

- All labor and replacement parts delivered under this Agreement will be authorized in writing by a work order signed by the BDD Maintenance Superintendent.

Each Work Order will set forth:

- (i) The Work to be performed by Contractor
- (ii) The period of performance
- (iii) The hourly rate and service time
- (iv) Fixed Price for materials and equipment
- (v) Other data as necessary

Exhibit B Compensation

Compensation under this Agreement for labor, materials and equipment shall not to exceed _____ (plus applicable NM Gross Receipts Tax) to be billed as follows:

Service Labor Rates		
Service Labor Class	Rate	Unit
Field Service Technician	\$ ¹⁴	Per Hour
Journeyman	\$	Per Hour
Laborer	\$	Per Hour
Emergency Call/Weekends*	\$	Per Hour
Other Labor Required by Bidder		
	\$	Per Hour
	\$	Per Hour

Parts	
Pricing Basis	Percentage
Cost Plus X %	%
or	
List Price Minus X%	%