

**BUCKMAN DIRECT DIVERSION BOARD  
SERVICES AGREEMENT  
WITH  
Wunderlich-Malec Systems, Inc.**

**ITEM #** 18-0960

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDDB") and Wunderlich-Malec Systems, Inc. ("Contractor"). The effective date of this Agreement shall be the date when it is executed by the Facilities Manager.

**1. SCOPE OF SERVICES**

Contractor shall provide services for the BDDDB as described:

A. Contractor shall provide qualified and competent technical support staff on an on-call, as needed basis to provide such services, including, but not limited to:

(1) Emergency and Non-Emergency SCADA support services:

Response onsite will be expected within 2 hours for Emergency and 12 hours for Non-Emergency.

(2) Professional Engineering services: Provide process and Automation engineering solutions to better optimize the efficiency of the water treatment facility automation control. Provide plan review and recommendations on new project integrations or process implementation involving SCADA and process changes.

(3) System Software Updates: Keep the BDDDB informed of all applicable software and firmware updates that would benefit or improve the SCADA system or other related software.

(4) Software Programming: Execute any new software or programming modifications, improvements or additions identified to improve operations.

(5) Telemetry Radio Network: Provide complete system support for existing radio telemetry in addition to providing solutions to upgrading to an Ethernet radio system.

(6) Computer support: Provide network and IT support solutions for SCADA computers and associated components. Keep the BDDDB informed on all necessary updates, upgrades, patches and firmware necessary to maintain the highest level of security.

(7) Preventative Maintenance Plan: Assist the BDDDB in the development of a 10-year preventative maintenance plan to upgrade and/or replace critical SCADA components.

(8) Documentation: Provide documentation in AutoCAD and PDF format for any and all changes to process and automation.

**B. Deliverables by Contractor:**

(1) Contractor shall purchase and install necessary software and hardware components as directed by authorized personnel.

(2) Contractor shall maintain and secure any documentation, PLC programs and any critical related SCADA information for the term of this Agreement. Upon termination of the Agreement, the listed items shall be turnover to 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 Fifteen thousand dollars (\$15,000) plus applicable gross receipts tax.

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 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, 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 and terminate June 30, 2019.

### **6. TERMINATION**

A. This Agreement may be terminated by the BDDB 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 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 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, 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 BDDB. The BDDB 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 BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, 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.

(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, 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 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, 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 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.

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

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

#### **15. THIRD PARTY BENEFICIARIES**

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

#### **16. RECORDS, DOCUMENT CONTROL AND AUDIT**

A. Contractor shall conform with and participate in the Document Control policies of the BDDDB or 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, 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 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. 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:** Charles Vokes  
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

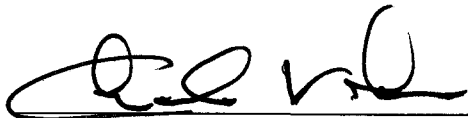
**CONTRACTOR:** Wunderlich-Malec  
8804 Washington St., Suite B  
Albuquerque, NM 87113  
Contact: Sebastian Rabo  
Email: Sebastian.rabo@wmeng.com

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.

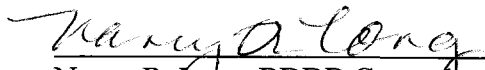
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SIGNATURE PAGE FOLLOWS]***

**BUCKMAN DIRECT DIVERSION BOARD**

By:   
Charles Vokes, BDD Facilities Manager

Date: 02/22/2018

**APPROVED AS TO FORM**

  
Nancy R. Long, BDDDB Counsel

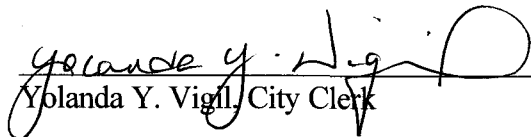
**APPROVED**

  
Mary McCoy  
City Finance Director

*mm*

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**ATTEST**

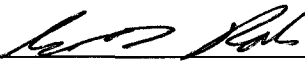
  
Yolanda Y. Vigil, City Clerk

*all*

File Date: 8-23-18

**CONTRACTOR:**

**Wunderlich-Malec Systems, Inc.**

Signature: 

Printed Name: Sebastian Rabe

Title: Project mgr

Date: 5/25/2018

NM Taxation & Revenue

CRS # 02-303182-004

City of Santa Fe Business

Registration # 18-00123371