

City of Santa Fe Contract
Genoveva Chavez Community Center Munters Unit Furnace Installation

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **B&D Industries, Inc** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Agreement Administrator" means the individual appointed by the City to administer the Price Agreement.

B. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

C. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

D. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

F. "You" and "your" refers to **B&D Industries, Inc**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The purpose of this Contract is for the installation of furnaces in the existing Munters units at the Genoveva Chavez Community Center.

B. See the attached proposal marked "Exhibit A" attached hereto and made a part thereof from **B&D Industries, Inc** to include the following, but is not necessarily inclusive to the items listed below:

1. Crane on and Install (4) 600,000 MBH Heaters in existing Munters units. (2) heaters in each Munters unit.
2. Each unit includes:
 - i. Qty (1) Modulating 600k BTU heater including: mounting sheet metal brackets, and ventilated burner enclosure panel.
 - ii. Qty (1) Single stage 600k BTU heater including: mounting sheet metal brackets, and ventilated burner enclosure panel.

- iii. Qty (1) By pass damper per unit supplied to balance airflow for heater performance.
- 3. Extend existing gas line to gas fired units
- 4. Adjust controls sequence of operations.
- 5. Run power to new heating units from existing panels.

C. See the attached tentative Schedule marked "Exhibit B" attached hereto and made a part thereof from **B&D Industries, Inc.**

D. See the attached Furnace Cut Sheet and Specifications marked "Exhibit C" attached hereto and made a part thereof from **B&D Industries, Inc.**

E. See the attached Warranty marked "Exhibit D" attached hereto and made a part thereof from **B&D Industries, Inc.**

F. See the attached CES Documentation marked "Exhibit E" attached hereto and made a part thereof from **B&D Industries, Inc.**

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Mechanical Labor		\$37,050.00
02 Electrical Labor		\$4,560.00
03 Munters Lot		\$176,509.73
04 Installation Material		\$34,075.00
05 Test and Balance		\$7,150.00
06 Controls		\$5,850.00
07 Equipment Rental/Crane		\$8,025.00
08 Roofing		\$4,488.00
09 Bond		\$5,554.15
10 NMGRT (8.4375%)		\$24,002.20
11 Grand Total:		\$307,264.08

The total compensation under this Agreement shall not exceed **\$307,264.08 - including New Mexico gross receipts tax.**

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City

shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for the City issuing Contract Orders under this Price Agreement.

C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 30, 2019. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of FOUR years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or 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 City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Vendor to meet the

required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. **Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. **Notice; City Opportunity to Cure.**

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

8. **Amendment**

A. This Price Agreement may be amended by mutual Agreement of the City and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the bid and contract documents.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of

receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

A. Neither this price Agreement nor any orders placed under this price Agreement, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 10B below or as expressly authorized in writing by the City. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this bid are hereby assigned to the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of any services to be performed under this Agreement without written approval from the City. The following sub-contractor(s) have been approved to supply resources for this Agreement <NA>.

12. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the 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 prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe 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 City 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.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the

purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance,

epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret

Indemnification; Indemnification; and Limit of Liability” shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor’s disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor’s responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

J. Sam Burnett Project Administrator
City of Santa Fe
jsburnett@santafenm.gov
505-955-5933
2651 Siringo Road, Building E
Santa Fe, New Mexico 87504

To Contractor:
B&D Industries, Inc
9720 Bell Ave SE
Albuquerque, New Mexico 87123
505-299-4464 – Office
505-991-0282 –Cell
kfindell@dandindustries.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To Contractor:
B&D Industries, Inc
9720 Bell Ave SE
Albuquerque, New Mexico 87123
505-299-4464 – Office
505-991-0282 –Cell
kfindell@dandindustries.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 40. The carrier for mail delivery and notices shall be the agent of the sender.


42. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:



ALAN WEBBER
MAYOR

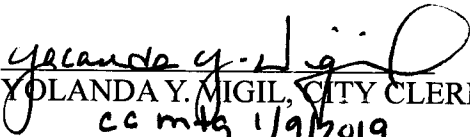
See attached

JAY ESPANDOLA
DIVISION MANAGER B&D INDUSTRIES

DATE: 1.22.2019

DATE: _____
CRS#01-716872-004
Registration #18-00110523

ATTEST:



YOLANDA Y. MIGIL, CITY CLERK
cc mtg 1/9/2019

APPROVED AS TO FORM:

 11/6

ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:

 M

MARY MCCOY
FINANCE DIRECTOR

Business Unit Line Item: 52722.572970

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 40. The carrier for mail delivery and notices shall be the agent of the sender.

42. **Succession**

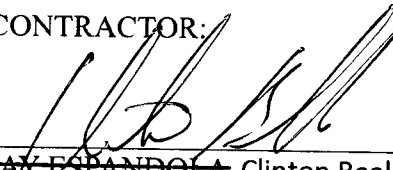
This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:

ALAN WEBBER
MAYOR



JAY ESPANDOLA Clinton Beall
DIVISION MANAGER B&D INDUSTRIES
Senior Vice President

DATE: _____

DATE: 1, 21, 19
CRS#01-716872-004
Registration #18-00110523

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

 11/6

ERIN K. MCSHERRY
CITY ATTORNEY

APPROVED:

MARY MCCOY *MM*
FINANCE DIRECTOR

Business Unit Line Item: 52722.572970

NEW MEXICO

9720 Bell Ave SE
 Albuquerque, NM 87123
 Phone: (505) 299-4464
 (866) 315-8349
 Fax: (505) 298-2114

BRANCH OFFICES
NEW MEXICO

101 DP Rd
 Los Alamos, NM 87544
 Phone: (505) 661-8336
 Fax: (505) 661-8337

TEXAS

2118 E. 8th St
 Odessa, TX 79762
 Phone: (432) 653-5178
 Fax: (432) 653-5179

3928 Business Park Dr.
 Amarillo, TX 79110
 Phone: (806) 367-8041
 Fax: (505) 298-2114

ARIZONA

3454 N. San Marcos Pl,
 Bldg B, Suite 3A
 Chandler, AZ 85225
 Phone: (480) 632-4002
 Fax: (505) 298-2114

NEW YORK

15 Wood Rd. Space 100
 Round Lake, NY 12151
 Phone: (518) 400-7412
 Fax: (518) 400-7415

 October 24th, 2018

EXHIBIT A

J. Sam Burnett
 Project Administrator
 City of Santa Fe Public Works
 (505) 955-5933 - Office
jsburnett@santafenm.gov

Quote# 10.24.18

Re: Genoveva Chavez Munters Heaters

Sam Burnett,

Thank you for the opportunity to provide this quote.

Subtotal:	\$ 277,707.73
Bond:	\$ 5,554.15
Tax @ 8.4375%:	\$ 24,002.20
Grand Total:	\$ 307,264.08

***Pricing Breakdown*.**

Mechanical Labor	\$ 37,050.00
Electrical Labor	\$ 4,560.00
Munters Lot	\$176,509.73
Install Material	\$ 34,075.00
Test and Balance	\$ 7,150.00
Controls	\$ 5,850.00
Equipment Rental/Crane	\$ 8,025.00
Roofing	\$ 4,488.00

Scope: B&D will provide labor and material to perform the following services:

- Crane on and Install (4) 600,000 MBH Heaters in existing Munters units. (2) heaters in each Munters unit.
- Each unit includes;
 - Qty (1) Modulating 600k BTU heater including: mounting sheet metal brackets, and ventilated burner enclosure panel.
 - Qty (1) Single stage 600k BTU heater including: mounting sheet metal brackets, and ventilated burner enclosure panel.
 - Qty (1) By pass damper per unit supplied to balance airflow for heater performance.
- Extend existing gas line to gas fired units
- Adjust controls sequence of operations.

NEW MEXICO

9720 Bell Ave SE
Albuquerque, NM 87123
Phone: (505) 299-4464
(866) 315-8349
Fax: (505) 298-2114

BRANCH OFFICES

NEW MEXICO

101 DP Rd
Los Alamos, NM 87544
Phone: (505) 661-8336
Fax: (505) 661-8337

TEXAS

2118 E. 8th St
Odessa, TX 79762
Phone: (432) 653-5178
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- Run power to new heating units from existing panels.

Exclusions:

- Any and all cost associated with unforeseen site conditions or delays not caused by B&D Industries
- Exterior or interior work not included in the above scope / Correcting existing code violations.
- Temporary HVAC, Plumbing, Power, Lighting or Facilities, UEC Charges,
- Any other major components not identified in the above scope or attached documents

Assumptions:

- All existing utilities, services, and structural supports will accommodate the new install
- B&D will have full unrestricted access to work area
- All work will be performed during standard working hours

Please contact me should you have questions or concerns.

Best Regards,

Dillon Farfan
505 252-8589 (cell)
dfarfan@banddindustries.com

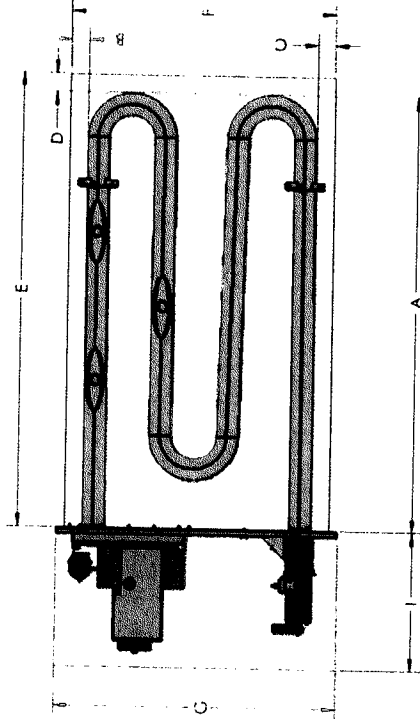
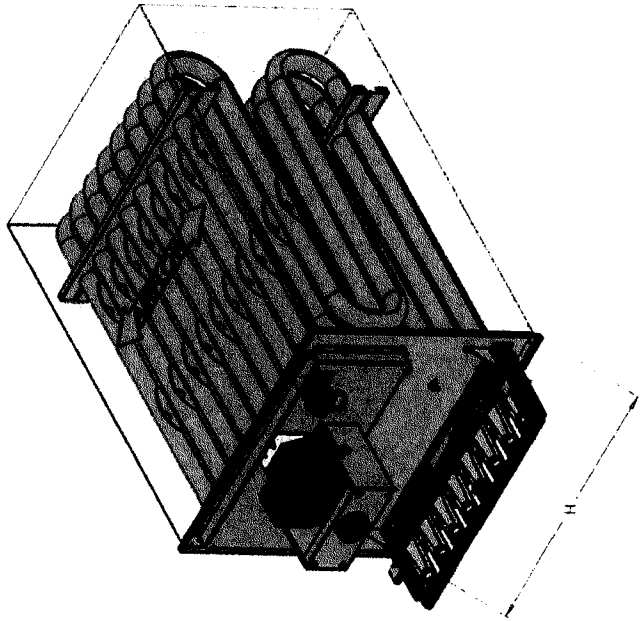
This cost proposal is valid for 30 days following issuance by B&D Industries, Inc. If the proposal is accepted after 30 days, B&D reserves the right to revise the price in accordance with commodity pricing changes including, but not limited to, copper, conduit and steel materials. If awarded, B&D reserves the right to review all contract documents associated with the project.

ID	Task Name	Start	Duration	Task Mode	Nov 4, '18	Nov 11, '18	Nov 18, '18	Nov 25, '18	Dec 2, '18	Dec 9, '18	Dec 16, '18	Dec 23, '18	Dec 30, '18	Jan 6, '19	Jan 13, '19	Jan 20, '19	Jan 27, '19	Feb 3, '19
1	Contract Award	Mon 11/5/18	0 days	☑														
2	Munters Engineering	Mon 11/5/18	41 days	☑														
3	Munters Lead Time	Mon 11/5/18	31 days	☑														
4	Mobilization	Tue 1/1/19	2 days	☑														
5	Gas/Electrical Piping	Thu 1/3/19	10 days	☑														
6	Crane Day	Thu 1/17/19	1 day	☑														
7	Munters Installation	Fri 1/18/19	8 days	☑														
8	Controls	Wed 1/30/19	2 days	☑														
9	Clean/Demobilize	Fri 2/1/19	3 days	☑														

EXHIBIT B

Task	Summary	Inactive Milestone	Duration-only	Start-only	External Milestone	Manual Progress
Task Split	Project Summary	Inactive Summary	Manual Summary Rollup	Finish-only	External Milestone	Manual Progress
Milestone	Inactive Task	Manual Task	Manual Summary	External Tasks	Deadline Progress	

Heater Cut sheet for Genevieve Chavez Community Center – Natatorium



Model No.	Input Rate	Min. Clearances			Nominal Duct		Nominal Duct		Tube		Nominal Duct		Vestibule		Output		Temp		Air Flow		Face		Weight		Weight						
		BTUH	W	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm	in	mm		
(No. of Tubes)																															
H(D M)A600	600,000																														
(12)	175,842																														
H(D M)A500	500,000																														
(10)	746,535																														
H(D M)A400	400,000																														
(8)	717,228																														

Dimensions for the 600 500 and 400 are the same.



BASIC PRODUCT LIMITED WARRANTY 12 MONTH PLAN

Munters Corporation warrants that the Products shall be free from defects in workmanship and materials for the lesser of fifteen (15) months from the date of shipment of the Product by Munters; or twelve (12) months from the date that such Product becomes operational (collectively, the “warranty”).

The Warranty applies only to Products that are properly installed, maintained and operated under normal conditions with competent supervision in accordance with the instruction manual, good maintenance practice and Munters recommendations, if any, made by Munters in writing. Without limiting the foregoing, the Warranty shall be void, and Munters shall have no liability for, in the case of any Products that: (a) have been disassembled, repaired or tampered with in any way, except when such work has been done with Munters’ prior written approval, (b) have been damaged by use or operation in excess of any maximum pressures, temperatures or rated capacities as specified by Munters in writing, (c) have been damaged by corrosion, or have degradation in performance as a result of dirt, dust, or other foreign material, or (d) are considered consumable.

Munters’ obligation, and Purchaser’s sole and exclusive remedy, under the Warranty is limited to repair or replacement at Munters’ facility, at Munters’ option, of any Products (or parts thereof) determined to be defective in workmanship or material during the applicable warranty period. The Warranty is a parts only warranty, and except as may be provided in “Additional Terms and Conditions – Service Plans,” if these Additional Terms are applicable, the Purchaser’s remedy under the Warranty does not include services or labor. The warranty period shall not be extended by the performance of warranty repairs or replacements.

The Warranty shall be voided if payment is not made in accordance with the terms set forth in Munters’ standard terms and conditions of sale.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO THE PRODUCTS, ANY RELATED SERVICES OR LABOR OR THEIR CHARACTERISTICS, QUALITY OR PERFORMANCE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, AND ANY AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. NO AGENT, REPRESENTATIVE, OR DEALER, OR ANY OTHER PERSON OR ENTITY, IS AUTHORIZED TO GIVE ON MUNTERS’ BEHALF ANY REPRESENTATION OR WARRANTY AS TO PRODUCT(S) OR TO ASSUME FOR MUNTERS ANY LIABILITY PERTINENT TO PRODUCT(S) UNDER ANY CIRCUMSTANCES.

Munters Responsibility:

- Munters Corporation shall maintain a Service Department to handle all warranty claims, and shall make every provision to resolve warranty claims quickly.
- Munters Corporation shall ship parts or products (equipment) repaired or replaced under this warranty to the customer F.O.B. Munters Corporation factory. Method of shipment shall be standard ground transportation at Munters Corporation expense. Munters Corporation shall not bear the cost of expedited delivery.
- Munters Corporation’s obligation under this warranty is limited to repair or replacement, at its sole discretion, of warranted products which Munters Corporation’s examination shall disclose to its satisfaction to be defective.

Customer Responsibility:

- To adhere to the requirements set forth in Munters Corporation Terms of Sale, including timely and full payment.
- Purchase factory supplied Startup Services, PrimaCaire and/or CommercialCaire Warranty Plan as an acknowledged line item on the original purchase order to Munters for the equipment to extend Munters Product Warranty as noted in scope above.
- The customer must contact Munters Corporation Service Department at the Products’ manufacturing location.
 - provide model, serial number and part number of product or part and a description of failure
 - to obtain warranty service or written authorization to repair or replace defective products; and
 - to obtain written authorization to return products believed to be defective
- Issue a Purchase Order for product shipment in advance of warranty determination for 1) new parts needed; 2) expedited delivery charges; 3) returned goods charges; 4) labor; and 5) warranty claim processing fees if requested.

Munters Corporation – Air Treatment Division Corporate Offices

79 Monroe Street, Amesbury, MA 01913 USA
Tel: 888-DH-WHEEL or (888) 349-4335

To Order Parts: <https://www.munters.com/en/service/parts/>



- Defective products must be returned within 30 days to receive credit.
- This warranty does not include labor. The customer shall pay all charges and costs associated with expedited delivery and all labor and equipment charges (such as crane, lifting devices, rigging, etc.) for removal or replacement of defective components. If the customer requires expedited delivery, the customer must inform Munters Corporation Service Department of the requirement.
- To keep this warranty in full effect, the customer must:
 - maintain the product according to Munters Corporation Products' written instructions;
- Munters Corporation shall in no way be prevented from providing warranty service using its employees or contractors.

Exclusions:

This warranty does not cover:

- Physical damage resulting from accident, or improper transportation, handling, or installation;
- Damage or operational problems caused by corrosion, or excessive dirt, dust or other foreign material;
- Damage or operational problems caused by lack of proper care or maintenance, negligence, or improper application or use of the equipment
- Installation or connection of power supply and signals, external ductwork, piping or charging by others
- Components supplied or installed by the customer or others including but not limited to valves, filters, driers, accumulators and program based controllers;
- Labor charges associated with removal or replacement of warranted components;
- Any Munters Corporation Products which:
 - has been repaired or altered in any manner without express written permission from Munters Corporation Service Department; or
 - has been operated in any manner contrary to Munters Corporation Products' written instructions.

In such cases that Munters Corporation is prevented from providing service through its employees or contractors, the Customer accepts full responsibility for any warranty claim and Munters Corporation shall be absolved of any and all responsibility or liability for the repair.

SUPPORT:

Technical troubleshooting and product support are available via phone on a twenty-four hour basis. Please contact the original equipment manufacturing facility or our Munters website.

UPGRADING TO AN EXPANDED OR EXTENDED WARRANTY PLAN:

Munters offers expanded or extended Warranty Plans. Such plans could increase the labor coverage and/or extend the timeframe of the warranty. Such an extension could include:

- Labor coverage for technician travel time
- Coverage for travel and living expenses
- Equipment repairs or modifications from original design
- Full labor warranty
- Extended duration of coverage

UPGRADING TO INCLUDE A MAINTENANCE PLAN:

Munters also offers a full Maintenance Plan to our customers for maximization of uptime and highest performance of equipment. This plan extends the time spent on site and increases the frequency of filter changes, belt and drive inspections, and seal maintenance. The Maintenance Plan covers:

- Preventive and routine maintenance
- Minor equipment repairs or modifications
- Installation of spare or replacement parts

For further information, please email one of our Service Representatives at:

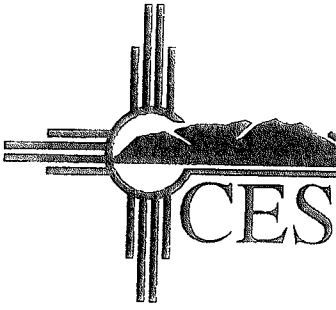
ServiceAirTUSA@Munters.com

Munters Corporation – Air Treatment Division Corporate Offices

79 Monroe Street, Amesbury, MA 01913 USA
Tel: 888-DH-WHEEL or (888) 349-4335

To Order Parts: <https://www.munters.com/en/service/parts/>

Document No. BP0317 Edition: 2 Approval Date: 11/1/17



DEC 07 2015

EXHIBIT E

COOPERATIVE EDUCATIONAL SERVICES

December 01, 2015

Contract Award Letter

Nikki Parson
B&D INDUSTRIES, INC.
9720 Bell Ave SE
Albuquerque, NM 87123

Re: ACCEPTANCE OF OFFER and CONTRACT AWARD

16-02DB-R123-ALL RSMears - JOC Plumbing and HVAC Services (Heating, Cooling, Air Conditioning, Radiant Heat, Chillers, Boilers, Cooling Towers, and Pumps) Including Design, Installation and Maintenance Regions 1 through 8
16-02DB-G113-ALL Gordian - JOC Plumbing and HVAC Services (Heating, Cooling, Air Conditioning, Radiant Heat, Chillers, Boilers, Cooling Towers, and Pumps, Including Design, Installation and Maintenance Regions 1 through 8

Dear Ms. Parson,

On behalf of Cooperative Educational Services (CES), I thank you for responding to our 2016-002D solicitation. The responses have been reviewed and it is my pleasure to inform you that you have been selected to provide the products and services indicated in your response.

The enclosed Acceptance of Offer and Contract Award is from the cover sheet that you submitted in your bid. I suggest that you take this award and place it with your copy of the bid that you submitted. Please read carefully the paragraph above the authorized signature. It outlines the agreement and specifies the term of the award.

We would like to include information concerning your company in our procurement directory called the Blue Book. Each of our members and participating entities receives a copy of this Blue Book. It enables their staff to look up important information concerning each vendor before placing an order. Although space is limited, the description below is intended as a quick reference of your company. If you would like to revise the description, please provide any changes in writing to CES' procurement office.

B&D is a full service contractor offering general contracting, electrical, mechanical and HVAC services. They are highly qualified to assist CES Members and Participating Entities in obtaining and completing Job Order Contracting projects in a timely and cost effective manner.

On CES' website (www.ces.org), you can download contact information for all of CES' members and participating entities. You are invited to send marketing materials directly to these institutions.

We look forward to working with you. Please let us know if you have questions or if we can be of any further assistance.

Sincerely yours,

Cooperative Educational Services

David Chavez,
Executive Director
Ofc: 505.344.5470
Fax: 505.344.9343

◦Your New Mexico Purchasing Cooperative Since 1979◦