

City of Santa Fe Contract
Services

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. Products and Services Schedule

The complete list of products and services offered under this Agreement is detailed in the attached and incorporated **EXHIBIT A**, Project Manual / Detailed Scope / Project Timeline & Schedule. 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.

B. "Business Hours" means 7:00 a.m. to 4:00 p.m. Mountain Time.

D. "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 Contractor shall perform the following work:

(1) Work with Heatizon Systems™ supplier to design a radiant heat trace for the Santa Fe Railyards parking garage entrance. Heat Trace unit must operate and utilize six of the available circuits.

(2) Saw cut and groove 1500sqft of existing concrete for Tuff Cable© - Snow Melt, Roof Deicing & Floor Warming installation.

- a. B&D to coordinate with City of Santa Fe for proper flagging.
- b. Heat Trace to be installed at 5" spacing.
- c. Heat cable and saw cutting of 6ea loops approximately at: 450' 498' 546' 396' 428' 480'
- d. Cold cable and saw cutting of 6ea runs of: 30' 34' 38' 42' 46' 50'
- e. Concrete cuttings to be cleaned and sealed.
- f. THHN/THWN/TWN75/T90 #12 cable shall be utilized for power.
- g. Wall cores to be drilled to accommodate conduit and wire run.
- h. Heatizon Systems™ CBX7 control unit, M329 Selection Box, M326A24 Aerial Snow Switch, and Transformers to be installed with unit.

i. Project to be completed in 2 parts, to allow for traffic flow in and out of parking garage. (See **EXHIBIT "A"**, Project Manual / Figure 1: Construction zones)

B. Please see the detailed and accompanying information as provided in the attached and incorporated **EXHIBIT "A"**, Project Manual.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed in the attached and incorporated **EXHIBIT "A"**, Project Manual / Final Estimate.

The total compensation under this Agreement shall not exceed \$58,100.14 excluding 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. 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, 2020. 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 Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

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**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

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.

To the City: City of Santa Fe Parking Division, Attn: Contracts Analyst, P.O. Box 909, Santa Fe, NM 87504-0909.

To the Contractor: B&D Industries, Inc., Attn: Calvin Shrader, 9720 Bell Ave SE, Albuquerque, NM 87123 and kalvin@banddindustries.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 the Contractor: B&D Industries, Inc., Attn: Calvin Shrader, 9720 Bell Ave SE, Albuquerque, NM 87123 and kalvin@banddindustries.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.

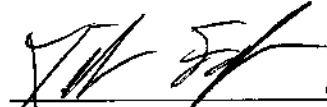
CITY OF SANTA FE:


ERIK J. LITZENBERG, CITY MANAGER

DATE: 7/29/18

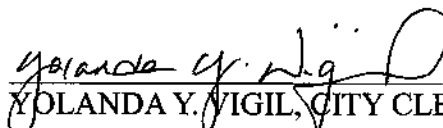
CONTRACTOR:

B & D INDUSTRIES, INC.

 on behalf of Calvin Shrader
KALVIN SHRADER

DATE: 9/4/19
CRS#01-716872-00-4
Registration #19-00110523

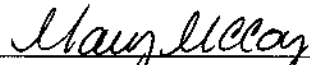
ATTEST:


YOLANDA Y. VIGIL, CITY CLERK 

APPROVED AS TO FORM:

 7/10/17
ERIN K. MCSHERRY, CITY ATTORNEY

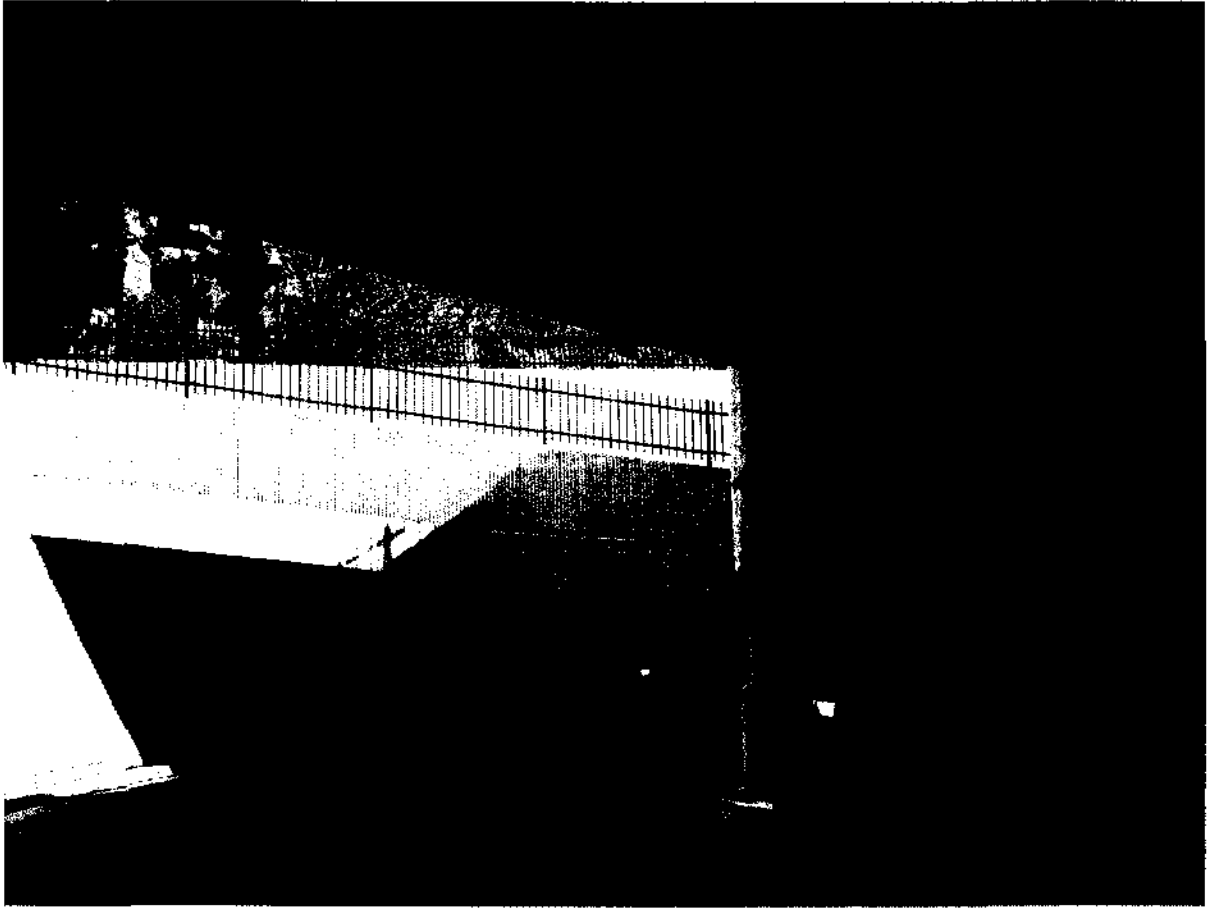
APPROVED:


MARY MCCOY, FINANCE DIRECTOR

52154.570500
Business Unit Line Item

org 5336454

EXHIBIT A



City of Santa Fe

RAILYARDS – RADIANT HEAT SNOW MELT PROJECT

B&D INDUSTRIES, INC. | JIM TAPIA / DAVID MUELLER | FEB 12, 2018

Contact information:

Mueller, David
Project Engineer / Project Manager
B&D Industries, Inc.
(505) 299-4464 ext. 574 (work)
(505) 205-5110 (mobile)
dmueller@banddindustries.com

Tapia, Jim
Sr. Foreman / Estimator
B&D Industries, Inc.
(505) 991-3626 (mobile)
jimt@banddindustries.com

Contents

Contact information:	1
Project Overview	1
Detailed Scope.....	1
B&D Industries, Inc. to provide the following services:.....	2
B&D Industries assumes and excludes the following services:.....	2
Project Timeline & Schedule:	3
Warranties:.....	7
Appendixes.....	9

Project Overview

The project features the installation of a Heatizon Radiant Heating Snow Melt system. The system is designed to be bespoke for the entrance to the Santa Fe Railyard's garage parking. Installation of the equipment is conducted by grooving the existing concrete. A Heat Tracing system is placed in the concrete. The Heatizon Snow Melt System utilizes Radiant Heating; which is a form of heat transfer in which electromagnetic radiation (EMR) similar to how microwaves emit energy between a system and its surroundings. The system, being the Heat Trace, and the surrounding being the concrete. As the surrounding concrete freezes its energy state reduces. A thermostat receives a signal that the concrete is below set point; which activates the Snow Melt System. As the system heats up from the EMR waves it increases its energy; which diffuse to the surrounding

concrete. As the concrete increases in energy state it warms to above freezing, melting any snow or ice on the surface.

Detailed Scope

B&D Industries, Inc. to provide the following services:

Work with Heatizon Systems™ supplier to design a radiant heat trace for the Santa Fe Railyards parking garage entrance. Heat Trace unit must operate and utilize six of the available circuits.

Saw cut and groove 1500sqft of existing concrete for Tuff Cable® - Snow Melt, Roof Deicing & Floor Warming installation.

- B&D to coordinate with City of Santa Fe for proper flagging.
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- THHN/THWN/TWN75/T90 #12 cable shall be utilized for power.
 - Wall cores to be drilled to accommodate conduit and wire run.
- Heatizon Systems™ CBX7 control unit, M329 Selection Box, M326A24 Aerial Snow Switch, and Transformers to be installed with unit (See appendix C).
- Project to be completed in 2 parts, to allow for traffic flow in and out of parking garage. (See figure 1)

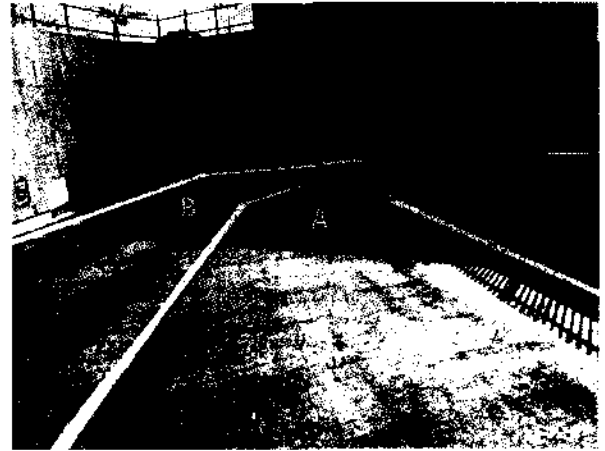


Figure 1: Construction zones

B&D Industries assumes and excludes the following services:

- Exclusions:
 - Payments and performance bonds.
 - Existing code violations or any unforeseen conditions.
 - Plan Review and utility fees.
 - Seismic Bracing.
 - Fire Watch and traffic control.
 - Third Party Testing.
 - X-ray or scanning required for layout of core drilling or saw cutting.
- Assumptions:
 - B&D to have unrestricted access to work during this scope.

- All work to take place during standard working hours.

Project Timeline & Schedule:

The following supporting documents include a pending Gantt Chart, Milestone Timeline, and Pull Plan.

- The project Timeline assumes that the City of Santa Fe Purchase Order will be issued March 1st
- Other assumptions:
 - Design phase to take (2 weeks)
 - Plan Review approval (2 weeks)
 - Equipment shipment (4 weeks).

The project schedule is to be broken into two consecutive construction sections as shown in figure 1. This is to allow flow of traffic through garage during construction.

Milestones: “*area 1 construction to start*” and, “*area 2 construction to start*” to be coordinated with City of Santa Fe for proper flagging.

Figure 2 Project Gantt Chart

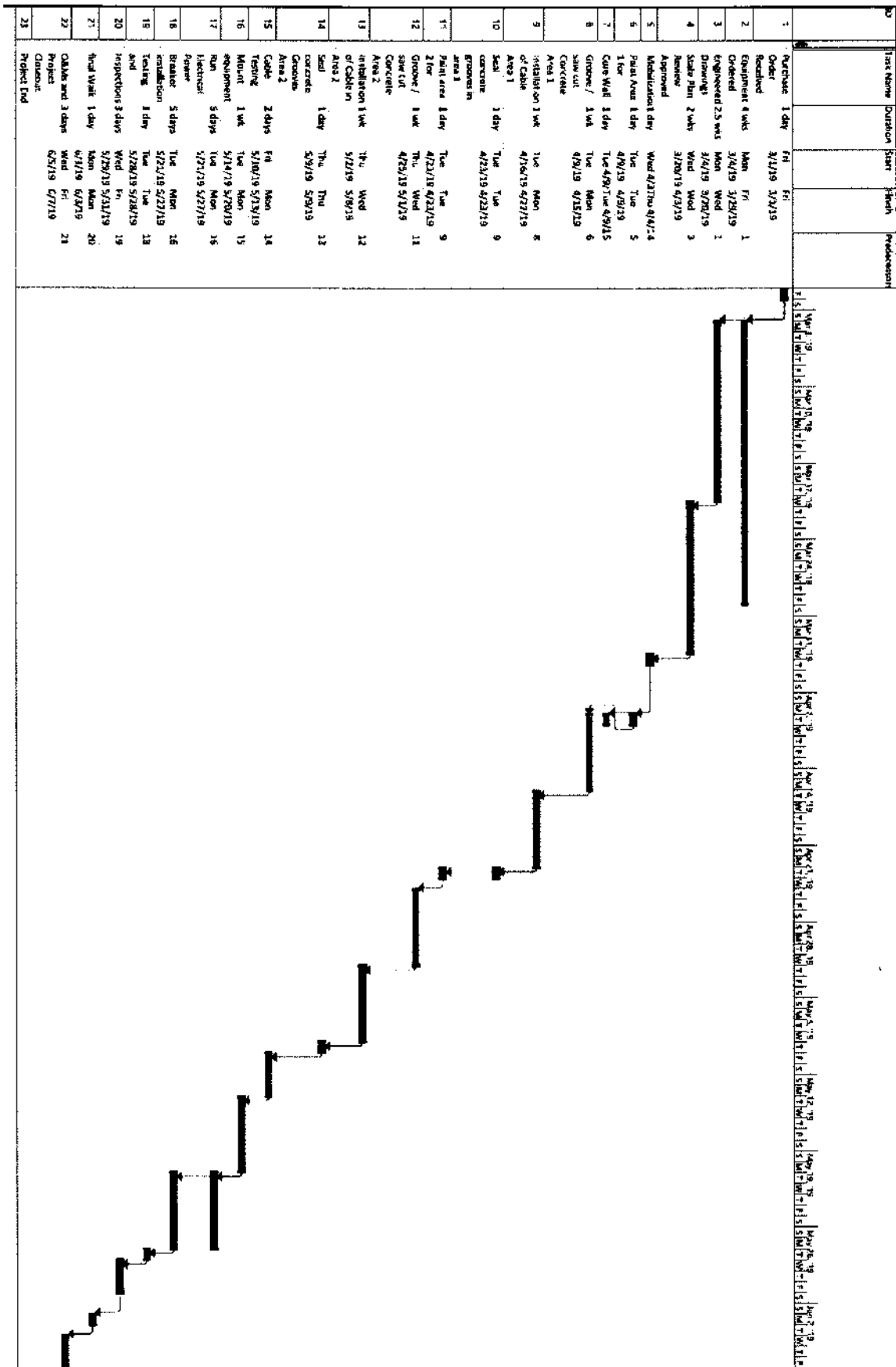
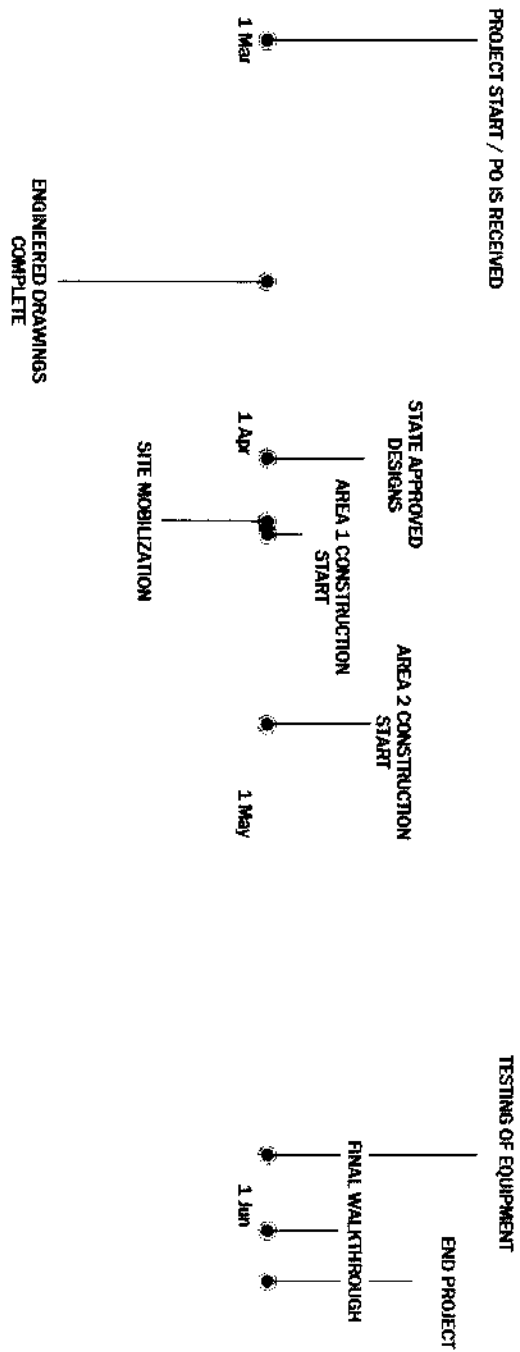


Figure 3: Project Milestones



	WEEK 1 25-Feb	WEEK 2 4-Mar	WEEK 3 11-Mar	WEEK 4 18-Mar	WEEK 5 25-Mar	WEEK 6 1-Apr	WEEK 7 8-Apr	WEEK 8 15-Apr	WEEK 9 22-Apr
Monday							MATERIALS ON SITE		
Tuesday							MATERIALS ON SITE		
Wednesday	EXHIBIT AREA 2 FROM CUTTINGS						EXHIBIT AREA 2 FROM CUTTINGS		
Thursday							EXHIBIT AREA 2 FROM CUTTINGS		
Friday	PO RECEIVED						PO RECEIVED		
Saturday							PO RECEIVED		
Sunday							PO RECEIVED		
							PO RECEIVED		

PAGE 6

Warranties:

B&D Industries, Inc. to warranty all material and labor for 1-year following official project end date. Official Warranty agreement to be presented with closeout documents and *Operations & Manuals Handbook* (O&Ms).

Heatizon Systems™ Limited Warranty:

- Radiant Panel Heating Components, Z-Mesh, and Tuff Cable: 25-year warranty
- Power transformer: 5-years.
- Control Unit and activation devices: 1-year

Figure 5: Manufacturer Warranty

HEATIZON SYSTEMS LIMITED WARRANTY



Twenty-five Year Limited Warranty for Heatizon Systems "Tuff Cable" Element (E101), "Z Mesh" Screen Element (E102) and Specified Radiant Panel Heating Components

Heatizon Systems warrants to the original purchaser/end user of the following products that for the periods noted such products shall be free from defects in material and workmanship: Tuff Cable (E101) Heating Element and ZMesh (E102) Heating Element for a period of twenty-five (25) years, the Control Unit for a period of one (1) year, power Transformer for a period of five (5) years, and Activation Device(s) for a period of one (1) year. Such warranty periods shall commence on the date of shipment by Heatizon Systems. If any parts are found to be defective in manufacture during such time period, Heatizon Systems will, at its sole option, replace or repair defective parts.

This Limited Warranty applies only if articles sold hereunder (a) are selected, designed, and installed according to instruction and operation manuals furnished by Heatizon Systems and installed in a "workmanlike manner" according to the building association standards adopted by Heatizon Systems, (b) remain in their originally installed location, (c) are connected to proper power supplies, (d) are not misused or abused, (e) show no evidence of tampering, mishandling, neglect, damage (accidental or otherwise), modifications or repair without the approval of Heatizon Systems, or damage done to the product by anyone other than Heatizon Systems, and (f) are installed in accordance with applicable code requirements. Any warranty claims must be made in writing, no later than one (1) month following expiration of the warranty period, and must be accompanied by the warranted part or component. Any claim not made in such manner shall not be honored by Heatizon Systems.

This Limited Warranty does not cover:

1. The workmanship of any installer of Heatizon Systems radiant panel heating products.
2. Any Heatizon Systems radiant heating products that have a failure or malfunction resulting from improper or negligent operation, accident, abuse, misuse, unauthorized alteration or improper repair or maintenance.
3. Any Heatizon Systems radiant heating products that have had components not purchased from Heatizon Systems integrated into or connected to them.
4. Any labor costs for removal of alleged defective part(s) and/or reinstallation of replacement part(s), transportation to and from Heatizon Systems (if necessary) and any other material necessary to perform the exchange or repair.
5. Any Heatizon Systems heating products that have not been properly registered by completion and return of the Warranty Registration Card attached hereto.

DISCLAIMER OF WARRANTIES:

This warranty described above is in lieu of all other warranties, express or implied, including but not limited to any implied warranties of fitness for a particular purpose and merchantability. Heatizon Systems expressly disclaims and excludes any liability for losses, expenses, inconveniences, consequential, incidental, indirect, or punitive damages for breach of any express or implied warranty. By installing and/or purchasing Heatizon Systems products, you accept the terms of this limited warranty.

Some states do not allow the exclusion or limitation of incidental or consequential damages, or limitations on how long an implied warranty lasts, so the above limitations and exclusions may not apply to you. This Limited Warranty gives you specific legal rights, and you may also have other rights which may vary from state to state.

Appendixes

- A) B&D Industries, Inc Submitted proposal
- B) RSMeans JobWorks® Proposal
- C) Equipment Spec Sheets