Item# **22-0474**
Munis Contract# 3203275

CITY OF SANTA FE
AMENDMENT No. 1 TO
GENERAL SERVICES AGREEMENT
ITEM# 22-0205

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE CONTRACT AGREEMENT, dated May 5, 2022 (the "Agreement"), between the City of Santa Fe (the "City") and B&D Industries, Inc., (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to perform work at Ft Marcy Recreation Center, as described in Article 2 of the Agreement and as described in the amended Scope of Services, the proposal, and the plans.

B. Pursuant to Article 8 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SCOPE OF SERVICES

Article 2 of the Agreement is amended to B&D Industries, Inc, so that Article 2 reads as follows:

2) Provide labor, Materials, and equipment to remove pool deck complete and replace per design drawings (Exhibit “B” attached hereto) titled Fort Marcy Recreation Complex Pool Sidewalk Repairs dated 8/15/22 and specifications 07 18 13 titled pedestrian traffic coatings.

2. COMPENSATION.

Article 3 of the Agreement is amended to increase the amount of compensation by a total of $257,622.08 so that Article 3 reads in its entirety as follows:

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

Deliverable item:	Price
01 Labor, Materials, Equipment and Pool Protection	$119,363.20
02 Labor, Materials, Equipment, Engineering and Bond	$219,936.22

Unanticipated Cost Overruns:	Price
01 8% Unanticipated Cost Overrun*	$32,072.19

*In the event the project exceeds the deliverable amount, the City, at its discretion, may agree to pay additional compensation to the contractor in an amount not to exceed $32,072.19, including NMGRT.

The total compensation under this Agreement shall not exceed $400,000.00 including New Mexico gross receipts tax.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: Oct 3, 2022

CONTRACTOR:
B&D Industries, Inc.

CLINTON BEALL, PRESIDENT

DATE: 08.29.2022
CRS#01-715872-004
Registration # 224955

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK
GB MTG 09/28/2022

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 26, 2022 13:12 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Oct 2, 2022 22:20 MDT)

EMILY OSTER, FINANCE DIRECTOR

3209980.572970 AH
AH
Org and Object

B&D Industries, Inc.
Whatever it takes.

PRICE PROPOSAL

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

Exhibit "B"

August 22nd, 2022

Attn:
Josh Bohlman
Project Administrator
City of Santa Fe • Public Works • Facilities Division
Office: 505 955 5932
Mobile: 505 469 2807
jbohlman@santafenm.gov

Re: Fort Marcy Pool Deck Replacement Change Order

Thank you for the opportunity to provide a price for this project.

Pool Deck replacement:	**$ 215,623.75**
Bond Increaser	**$ 4,312.48**
Tax @ 8.4375	**$ 18,557.12**
Grand Total	**$ 238,493.34**

Priced according to SPA#90-000-18-00073

Scope:

Provide labor, Materials, and equipment to remove pool deck complete and replace per design drawings titled Fort Marcy Recreation Complex Pool Sidewalk Repairs dated 8/15/22 and specifications 07 18 13 titled pedestrian traffic coatings.
Please note, estimated timeline of 3 months for completion

Inclusions:

- Demo existing pool deck at roughly 1,800sqft
- Remove 8”-10” of subgrade sand
- Backfill after drain lines are replaced
- Poor flow fill lightweight concrete per drawings
- Place #4 rebar per drawings
- Pour concrete deck per drawings
- Seal concrete per revised specifications 8/15/22
- Temporary chain link fence near courtyard for staging
- 30yd dumpster for concrete and rubble disposal
- Removal of all debris
- Permits

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

- Bond
- Tax

Exclusions:

1. Plan review, and utility fees
2. BIM, CAD, or 3D modeling
3. Pool structure repairs, draining, and filling if needed
4. Repairs or modifications to existing pool piping to include water treatment
5. Sump pump
6. Electrical
7. Drywall
8. Sanitary facilities to be provided by the others
9. Temporary utilities to be provided by the by others
10. Construction water to be provided by the by others
11. Painting and patching of any walls, ceiling, sheetrock, and/or any other surface
12. Patching of any block or concrete
13. Repair of existing code violations, or upgrades other than those mentioned here-in

Assumptions:

1. We will have free and clear access to the entire area needed for deck replacement
2. All work will be done during normal business hours

If you have any questions or concerns, please feel free to email or call.

Best Regards,

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

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.

NOTICE: *THIS PROPOSAL IS CONTINGENT ON A LACK OF IMPACT BY THE CORONAVIRUS NATIONAL EMERGENCY. Given the existence of the coronavirus pandemic, B&D Industries, Inc. will use its best efforts to staff and supply this project to meet the scheduled completion date. However, B&D Industries, Inc. reserves its right to seek an excusable extension of time if B&D Industries, Inc. or its subcontractors and suppliers are unable to maintain planned crew sizes due to the*

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

illness, supply shortages or governmental restraints on business, travel and/or assembly. To the extent that the project is suspended pursuant to the terms of the proposed Subcontract, we intend to seek additional costs associated with the suspension.

Item# 22-0205
Munis Contract# 3203275

CITY OF SANTA FE
GENERAL SERVICES 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. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

B. "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) Per Price Proposal dated March 18, 2022, for Ft Marcy Pool Drains, labeled as "Exhibit A," attached hereto and made a part thereof, at Fort Marcy Recreation Center, located at 490 Bishops Lodge Road, Santa Fe, NM 87501, provide labor, materials, equipment and pool protection to replace the existing drains around the pool.

3. **Compensation**

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

Deliverable item:		Price
01	Labor, Materials, Equipment and Pool Protection	$119,363.20

Unanticipated Cost Overruns:		Price
01	10% Unanticipated Cost Overrun*	$11,936.32

*In the event the project exceeds the deliverable amount, the City, at its discretion, may agree to pay additional compensation to the contractor in an amount less than or equal to 10% of the project cost, $11,936.32, excluding NMGRT.

The total compensation under this Agreement shall not exceed $142,377.92 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. 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, 2023.** 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 Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor 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 Contractor; 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 Contractor 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 Contractor/Contractor certifies the Contractor/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 Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor 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. Contractor 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, § 38-3-2.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. Commercial General Liability insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than $2,000,000 per occurrence and $2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than $1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. 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:

1) give the Contractor prompt written notice within 48 hours of any claim;
2) allow the Contractor to control the defense of settlement of the claim; and
3) 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:

1) 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;

2) replace or modify the product or service so that it becomes non-infringing; or,

3) 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:
Caryn Grosse, Project Administrator
City of Santa Fe
2651 W. Siringo Road, Building E
PO Box 909
Santa Fe, NM 87504-0909
o. 505-955-5938, m. 505-795-2471
clgrosse@santafenm.gov

To the Contractor:
Kris Trujillo, Project Manager
B&D Industries, Inc.
9720 Bell Avenue SE
Albuquerque, NM 875123
o. 505-299-4464, m. 505-379-1760
krist@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.

42. **Construction Contract Performance and Payment Bond.**

A. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars ($125,000) or more.

43. **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:

John Blair
John Blair (May 5, 2022 09:00 MDT)

JOHN BLAIR, CITY MANAGER

DATE: May 5, 2022

CONTRACTOR: B&D Industries, Inc.

Clinton Beall (Apr 18, 2022 16:23 AKDT)

CLINTON BEALL, PRESIDENT

DATE:

CRS# 01-715872-004
Registration # 224955

ATTEST:

KRISTINE BUSTOS MIHELCIC, CITY CLERK XIV
XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Alexis Lotero
Alexis Lotero (May 2, 2022 15:15 MDT)

MARY MCCOY, FINANCE DIRECTOR
Alexis Lotero, Interim Finance Director

3209980/572970 AH
Org.Name/Org.# AH

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

March 18th, 2022

Attn:
Caryn Grosse, PMP
Project Administrator Sr
City of Santa Fe • Public Works • Facilities Division
Office: 505 955 5938
Mobile: 505 795 2471
clgrosse@santafenm.gov

Re: Fort Marcy Pool Drains Rev 3

Thank you for the opportunity to provide a mechanical price for this project.

Price: $119,363.20 plus applicable gross receipts tax

Priced according to SPA#90-000-18-00073

Scope:

Provide labor, Materials, equipment, and pool protection to replace the existing drains around the pool. Pricing is based on the drawings provided along with job walk information. The duration of this project will be 5 weeks. We will require that the pool be shut down for the duration of the project. Once the concrete has cured for 48 hours the pool will be available to re-open. After a 28-day cure on the concrete the pool will have to be closed for 2 days for the concrete finishing to match existing floor finish.

Inclusions:

1. Concrete cutting (24" wide by approximately 244" long)
2. Removal and disposal of demoed concrete
3. Add #4 rebar dowels into existing concrete
4. Re-pour concrete and grind to match existing
5. Removing old cast iron drain lines
6. Supply and install new PVC drain lines (approximately 260')
7. Supply and install 13 new floor drains
8. Supply and install new floor cleanouts
9. Hand excavate and backfill for the drain lines
10. Drain lines will be run to the sand interceptor

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

11. Bond, permits, inspection fees

Exclusions:

1. Gross receipts tax
2. Plan review, and utility fees
3. General site conditions
4. BIM, CAD, or 3D modeling
5. Pool repairs, draining, and filling if needed
6. Sump pump
7. Electrical
8. Drywall
9. Sanitary facilities to be provided by the others
10. Temporary utilities to be provided by the by others
11. Construction water to be provided by the by others
12. Painting and patching of any walls, ceiling, sheetrock, and/or any other surface
13. Patching of any block or concrete
14. Architect design and engineering services
15. Repair of existing code violations, or upgrades other than those mentioned here-in

Assumptions:

1. All pool maintenance will be by others
2. We will have free and clear access to the entire area needed for drain replacement
3. All work will be done during normal business hours

If you have any questions or concerns, please feel free to email or call.

Best Regards,

Brian Calder
Estimator
bcalder@banddindustries.com
(505) 225-6012

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

303 Texas Ave.
Eunice, NM 88231
Phone: (575) 394-1182
Fax: (505) 298-2114

2885 Industrial Rd.
Santa Fe, NM 87505
Phone: (505) 559-2585
Fax: (505) 559-2589

ARIZONA
3001 South 35th
Street #C10
Phoenix, AZ 85034
Phone: (480) 632-4002

NEW YORK
65 Washington Street
Rensselaer, NY 12144
Phone: (518) 400-7412

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.

NOTICE: *THIS PROPOSAL IS CONTINGENT ON A LACK OF IMPACT BY THE CORONAVIRUS NATIONAL EMERGENCY. Given the existence of the coronavirus pandemic, B&D Industries, Inc. will use its best efforts to staff and supply this project to meet the scheduled completion date. However, B&D Industries, Inc. reserves its right to seek an excusable extension of time if B&D Industries, Inc. or its subcontractors and suppliers are unable to maintain planned crew sizes due to the illness, supply shortages or governmental restraints on business, travel and/or assembly. To the extent that the project is suspended pursuant to the terms of the proposed Subcontract, we intend to seek additional costs associated with the suspension.*