

**SANTA FE COUNTY
PRICE AGREEMENT
MISCELLANEOUS HEATING, VENTILATION, REFRIGERATION, AND AIR
CONDITIONING SERVICES**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, (hereinafter referred to as the "County") and B&D Industries, Inc., whose address is 9720 Bell Avenue SE, Albuquerque, New Mexico 87123, authorized to do business in the State of New Mexico (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. **"County"** shall mean the County of Santa Fe, New Mexico.
- B. **"Using Department or Department"** shall mean a Department, Commission or Board of Santa Fe County.
- C. **"Purchase Order"** shall mean a fully executed Purchase Order issued by the County Purchasing Department that specifies the items and services to be provided by the Contractor.
- D. **"Price Agreement"** means this indefinite quantity Price Agreement which requires the Contractor to provide Heating, Ventilation, Refrigeration, and Air Conditioning Services to the Using Department when issued a Purchase Order.
- E. **"Price"** means the fixed prices paid by the County and its departments for the Heating, Ventilation, Refrigeration, and Air Conditioning Services described on Attachment A.

2. GOODS TO BE PROVIDED

- A. **Purchase.** Attachments A of this Price Agreement are the prices for the Contractor's tangible goods and services. Attachment A also indicates any specifications required for the tangible goods and services that are subject of this Price Agreement.
- B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any item ordered by the County must be a service described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2013-0186-A-PW/MS.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the item(s) or services listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Price Agreement. The Contractor is required to accept the Purchase Order and furnish the item(s) and service.

- D. Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in this IFB# 2013-0186-PW/MS including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s).
- E. Delivery and Billing Instructions.**
1. The Contractor shall deliver the items and services in accordance with the County's instructions. The Contractor shall also deliver, with the services ordered, an invoice listing the order number and the Price Agreement number.
 2. Whenever the Using Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
 3. A Using Department will inform the Contractor within five (5) business days that a deliverable is unacceptable by the Using Department.
- F. Price.** Prices listed in Attachment A for each item shall be the fixed prices and rates for the items and services.

3. PAYMENT

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

- A. Inspection.** Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Contractor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
- D. Invoices.** The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of item(s), quantities, unit prices, extended totals, delivery tickets and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Using Department and not the Purchasing Division.
- E. Payment of Invoices.** Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the

Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on any unpaid balance due, for the items and services delivered, on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.

- F. Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this Price Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be four (4) years on the same prices and rates as indicated on Attachment A and so stated in this Price Agreement.

5. CANCELLATION

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the items or deliverables fail to meet the requirements of this Price Agreement.
- B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County 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.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION

- A. For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.
- B. For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may only be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

8. ASSIGNMENT

Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

9. NON-COLLUSION

In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

10. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to

audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. CONFLICT OF INTEREST

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

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

14. SCOPE OF AGREEMENT, MERGER

This Price 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 Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. NOTICE

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

16. INDEMNIFICATION

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost 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 sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. NEW MEXICO TORT CLAIMS ACT.

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

19. INSURANCE.

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.
- D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW

This Price Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT

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

24. SURVIVAL

The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

25. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. 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 County:

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

B&D Industries, Inc.
9720 Bell Avenue SE
Albuquerque, NM 87123

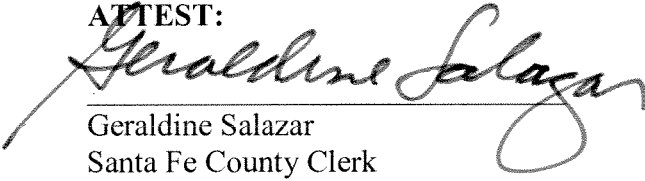
IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY


Kathy Holian, Chair
Board of County Commissioners

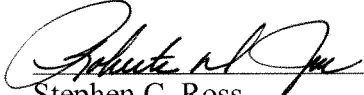
3/26/2013
Date

ATTEST:


Geraldine Salazar
Santa Fe County Clerk

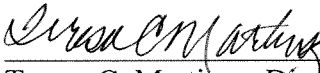
4/1/2013
Date

APPROVED AS TO FORM


Stephen C. Ross
Santa Fe County Attorney

2/28/13
Date

FINANCE DEPARTMENT APPROVAL


Teresa C. Martinez, Director
Finance Department

3/5/2013
Date

CONTRACTOR


Signature

3/7/13
Date

John Espindola - Division Manager
Print Name and Title

FEDERAL TAX I.D. NUMBER: 850196391

BID SHEET CONTINUED**1. Journeyman, regular work hours (per hour)**Projects under \$60,000 62.00Projects over \$60,000 60.00**2. Journeyman, work hours, after 5:00 PM – 8:00 AM**Projects under \$60,000 85.00Projects over \$60,000 80.00**3. Journeyman, weekend work hours**Projects under \$60,000 85.00Projects over \$60,000 80.00**4. Journeyman, holiday work hours**Projects under \$60,000 120.00Projects over \$60,000 120.00**5. Apprentice, regular work hours (per hour)**Projects under \$60,000 35.00Projects over \$60,000 35.00**6. Apprentice, work hours, after 5:00 PM – 8:00 AM**Projects under \$60,000 55.00Projects over \$60,000 55.00

7. Apprentice, weekend work hoursProjects under \$60,000 55.00Projects over \$60,000 55.00**8. Apprentice, holiday work hours**Projects under \$60,000 65.00Projects over \$60,000 65.00**9. Laborer, regular work hours (per hour)**Projects under \$60,000 35.00Projects over \$60,000 35.00**10. Laborer, work hours, after 5:00 PM – 8:00 AM**Projects under \$60,000 55.00Projects over \$60,000 55.00**11. Laborer, weekend work hours**Projects under \$60,000 55.00Projects over \$60,000 55.00**12. Laborer, holiday work hours**Projects under \$60,000 65.00Projects over \$60,000 65.00

13. Diagnosis, project estimates, troubleshooting, regular work hoursHourly Rate: 60.00**14. Diagnosis, project estimates, troubleshooting work hours after 5:00 PM-8:00 AM**Hourly Rate: 80.00**15. Diagnosis, project estimates, troubleshooting, weekend work hours**Hourly Rate: 80.00**16. Diagnosis, project estimates, troubleshooting, holiday work hours**Hourly Rate: 120.00**17. Discount given on all RETAIL parts and materials**

Major Manufacturer	Discount
MSRP	15 percent

Use additional sheet for more manufacturers

18. One way per mile costs, per services

Vehicle required, measured from Contractor's office/job to the requested job site, for travel in excess of 50 miles one-way (based on mapquest.com)

Mileage Rate 1.00