

AGR24-956



**INCORPORATED COUNTY OF LOS ALAMOS  
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Dismuke Construction Company**, a New Mexico corporation ("Contractor"), collectively (the "Parties") to be effective for all purposes March 27, 2024 ("Effective Date").

**WHEREAS**, County is in need of On-Call Services for Pavement Preservation for Public Works Traffic and Streets Division ("Facility"); and

**WHEREAS**, Section 31-3(b)(4) of the County Code of Ordinances allows procurement of services and construction with a person that has a contract with the State of New Mexico or any other New Mexico governmental entity, for the item, services or construction meeting the same standards and specifications as the items to be procured; and

**WHEREAS**, Contractor is a party to the State of New Mexico's General Services Department Purchasing Statewide Price Agreement 20-80500-22-16972; and

**WHEREAS**, the County Council approved this Agreement at a public meeting held on March 26, 2024; and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

**SECTION A. SERVICES:**

**1. General.**

- a. Contractor shall supply on-call crack sealing of hot mix asphalt and joint and crack sealing of asphalt and concrete pavements. Work shall consist of cleaning and preparing cracks and joints in the existing pavement surface and sealing these cracks and joints with hot-poured sealant to prevent water from entering the underlying materials which may cause striping, pumping sub-grade and base failure ("Services"). All work shall include materials, labor and equipment.
- b. All work performed under this Agreement shall conform to the New Mexico Department of Transportation ("NMDOT") Standard Specifications for Highway and Bridge Construction, special provisions, standard drawings and supplemental specifications (current editions), which are available on the NMDOT website, at the following link: <http://dot.state.nm.us/content/nmdot/en/Standards.html>.
- c. Contractor shall ensure that the products used in conjunction with this Agreement have been submitted and approved through the NMDOT Product Evaluation Program prior to placement on a project.
- d. Contractor shall provide competent supervision and skilled personnel to perform all work covered by this Agreement.

- e. Contractor shall be responsible for all cleanup work on the project site and at the equipment storage areas prior to the final inspection and acceptance.
- f. Mobilization shall be in conformance with the rates in the Compensation Rate Schedule, Exhibit A, attached hereto and made a part hereof for all purposes, and shall be on a per mile basis. Mileage shall be measured and paid from the Contractor's designated base station to the job site or when applicable mileage will be measured from an existing job site to the new job site and payment shall be for whichever distance is less. No payment shall be made for the Contractor's return to their designated base station. Traffic and Streets Manager or their designee shall approve the distance used for payment and their decision shall be final.
- g. Projects requiring traffic control must conform to the Manual of Uniform Traffic Control Devices and must be approved by Los Alamos County Traffic Division staff prior to work commencing. If a single traffic control plan can be used for multiple areas, the County may approve this practice. If appropriate and acceptable, the traffic control plan should list each area covered by the single plan that applies. Traffic permit fees shall be waived by the County, for County projects.
- h. Contractor shall furnish to County a five (5) year warranty from the manufacturer of the crack/joint sealant material which shall read as follows:  
*"We hereby warrant that our crack/joint material used to seal the cracks/joints in the pavement (location) \_\_\_\_\_ shall prevent infiltration of water and/or foreign material through the joint under normal usage, shall not flow, have loss of bond or cohesive failure, blister, bubble or crack, or lose resilient rubber-like properties. This warranty is for a period of five (5) years from the date of placement and any defective material shall be replaced and new sealant applied at no cost to the County."*

## 2. Task Order Process

- a. All Services shall be performed by Task Order. County will generally provide at least two (2) business days' notice, to alert and request Contractor to perform the Services required under any Task Order. Task Orders shall be scheduled for work around a regular five (5) day work week, Monday through Friday, forty (40) hours per week, unless otherwise agreed by both Parties.
- b. County's Project Manager shall request the Services of Contractor for individual or multiple projects through a written Request for Quote(s). Each written Request for Quote(s) shall identify the work and Services to be performed and a timeline for completion. A written Request for a Quote(s) may be as detailed or may include plans and specifications for the purpose of defining the specific Scope of Services within a Task Order, as County finds necessary to assure appropriate oversight of the Services to be performed.
- c. Upon the County's issuance of a written Request for Quote(s), Contractor shall provide a written, itemized quote for the task(s), work, and/or Services requested by Project Manager ("Quote"). The Quote shall provide, in writing, the proposed material costs, labor hours, and labor type necessary to complete the Services. Costs shall conform to the rates described in the Compensation Rate Schedule, Exhibit A, as a fixed price. Any proposed progress billing and payment shall be provided by Contractor in the Quote and is subject to approval by County's Project Manager. Preparation and work performed to prepare Quotes shall be considered incidental to the awarded Task Order and not compensable. A sample Task Order is provided in Exhibit B, attached hereto, and made a part hereof for all purposes.
- d. If Contractor's Quote is signed by Contractor and acceptable to County, County's Project Manager shall provide Contractor with written approval ("Approved Task Order"). After

receipt of the Approved Task Order, County and Contractor shall schedule the Services. Contractor is authorized to begin Services only upon receipt of the Approved Task Order.

- e. The Approved Task Order shall be adjusted only upon the written agreement of the County after a finding that a change to the Approved Task Order is necessary and justifiable. Contractor's failure to reasonably estimate the cost of completing the Services in the first instance, shall not be a justification for modifying the Approved Task Order. Modifications to the maximum amount for the Approved Task Order must be agreed upon by County prior to Contractor continuing the performance of Services. Amended Task Orders shall be identified with letters following the Task Order number, i. e. (TO1A, TO1B, etc.). In no event shall the total of the maximum amount for all Approved Task Orders exceed the maximum aggregate amount of compensation set forth herein unless modified in writing and mutually agreed upon by the Parties. Unanticipated events shall not necessarily form the basis for additional compensation to Contractor.
- f. Contractor shall take any and all actions to timely complete the Services agreed to in the Approved Task Order.
- g. This Agreement shall not provide Contractor with a guarantee that County will accept Contractor's Quotes or award Contractor Approved Task Orders. County reserves the right, at its sole discretion, to separately quote or bid any project. County's issuance of a written Request for Quote(s) is not a guarantee of work to Contractor. County, at its sole discretion, shall determine when Contractor's Services are required and shall issue written Request for Quote(s) as needed.

### **3. Pay of Prevailing Wages and Bond Requirements**

- a. Individual Task Orders which exceed the state prevailing wage threshold shall be subject to a Wage Rate Decision. County shall obtain and provide the Wage Rate Decision and inform the Contractor prior to the preparation of the Task Order.
- b. Contract Performance Bonds and Payment Bonds: When an individual Task Order is awarded in excess of the state prevailing wage threshold, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the individual Task Order. A sample Performance Bond and Payment Bond are attached hereto as Exhibit C, and made a part hereof for all purposes:
  - i. A performance bond satisfactory to the County, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the individual Task Order; and
  - ii. A payment bond satisfactory to the County, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the County, 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 individual Task Order. The bond shall be in an amount equal to 100 percent of the price specified in the individual Task Order.

**SECTION B. TERM:** The term of this Agreement shall commence March 27, 2024 and shall continue through July 10, 2026, unless sooner terminated, as provided herein.

### **SECTION C. COMPENSATION:**

- 1. County shall pay compensation for performance of the Services in accordance with the Rate Schedule set out in Exhibit A. Compensation for this Agreement shall not exceed TWO MILLION DOLLARS (\$2,000,000.00) over the entire Term of this Agreement and which

amount does not include applicable New Mexico gross receipts taxes (“NMGR”<sup>T</sup>). There shall be no reimbursable expenses (e.g., printing, travel, lodging, food, entertainment, etc.) allowed under this Agreement.

- 2. Invoices.** Contractor shall submit itemized invoices to County’s Traffic and Streets Manager or designee showing amount of compensation due, amount of any NMGR<sup>T</sup>, and total amount payable. The invoice shall include a copy of the agreed upon and accepted pricing based on the attached Exhibit A. Payment of undisputed amounts shall be due and payable thirty (30) days after County’s receipt of the invoice. Itemized invoices shall be submitted at the completion of Task Order/s unless the Traffic and Street Manager or their designee specifies differently in writing to the Contractor.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR<sup>T</sup> levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County’s name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold

harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. DUTY TO ABIDE:** Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

**SECTION M. CHOICE OF LAW:** The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

**SECTION N. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION:** County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to

any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

**SECTION O. WAIVER OF JURY TRIAL:** In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

**SECTION P. INDEMNITY:** Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

**SECTION Q. FORCE MAJEURE:** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION R. NON-ASSIGNMENT:** Contractor shall not assign this Agreement or any privileges or obligations herein, and shall not novate this Agreement to another without the prior written consent of the County Manager.

**SECTION S. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION T. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION U. TERMINATION:**

- 1. Generally.** The County Manager may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C above. Contractor shall render a final report of the Services performed to the date of termination, and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION V. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Traffic and Streets Manager  
Incorporated County of Los Alamos  
101 Camino Entrada, Building 1  
Los Alamos, New Mexico 87544

Contractor:

Mark Dismuke, President  
Dismuke Construction Company  
P.O. Box 30354, Station D  
Albuquerque, New Mexico 87190

With a copy to:

County Attorney's Office  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544

**SECTION W. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

**SECTION X. NO IMPLIED WAIVERS:** The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

**SECTION Y. SEVERABILITY:** If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

**SECTION Z. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form is attached as Exhibit D. Contractor must submit this form with this Agreement, if applicable.

**SECTION AA. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES:** Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

**SECTION AB. DUPLICATE ORIGINAL DOCUMENTS:** This document may be executed in two (2) counterparts, each of which shall be deemed an original.

**SECTION AC. CONFIDENTIAL INFORMATION:** Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit E. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

**SECTION AD. NEGOTIATED TERMS:** This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**



*Naomi D. Maestas*

**NAOMI D. MAESTAS  
COUNTY CLERK**

**INCORPORATED COUNTY OF LOS ALAMOS**

BY: *Anne Laurent*

3/28/2024

**ANNE W. LAURENT  
COUNTY MANAGER**

**DATE**

**Approved as to form:**

*Thomas Wyman*

for

**J. ALVIN LEAPHART  
COUNTY ATTORNEY**

**DISMUKE CONSTRUCTION COMPANY, A NEW MEXICO  
CORPORATION**

BY: *Mark Dismuke*

3/29/2024

**MARK DISMUKE  
PRESIDENT**

**DATE**

**Exhibit A**  
**Compensation Rate Schedule**  
**AGR24-956**

**UNITS ACRONYMS:**

Lbs. = Pounds

Hr. = Hour

Sq. Yd. = Square Yard

LF – Linear Foot (Feet)

Items	Unit	Description	Price
1	Lbs.	Routed Joint and Crack Sealing Type I (ASTM D6690) - Hot applied, for concrete and asphalt pavements. Statewide 1 to 15,000 lbs.	\$1.77
2	Lbs.	Routed Joint and Crack Sealing Type I (ASTM D6690) - Hot applied, for concrete and asphalt pavements. Statewide Greater Than 15,000 to 50,000 lbs.	\$1.77
3	Lbs.	Routed Joint and Crack Sealing Type I (ASTM D6690) - Hot applied, for concrete and asphalt pavements. Greater Than 50,000 lbs.	\$1.77
4	Lbs.	Routed Joint and Crack Sealing Type II (ASTM D6690) - Hot applied, for concrete and asphalt pavements. Statewide 1 to 15,000 lbs.	\$1.77
5	Lbs.	Routed Joint and Crack Sealing Type II (ASTM D6690) – Hot applied, for concrete and asphalt pavements. Statewide Greater Than 15,000 to 50,000 lbs.	\$1.77
6	Lbs.	Routed Joint and Crack Sealing Type II (ASTM D6690) - Hot applied, for concrete and asphalt pavements. Statewide Greater Than 50,000 lbs.	\$1.77
7	Lbs.	Non-Routed Crack Sealing Type I (ASTM D6690)- Hot applied, for concrete and asphalt pavements. Statewide 1 to 15,000 lbs.	\$1.77
8	Lbs.	Non-Routed Crack Sealing Type I (ASTM D6690)- Hot applied, for concrete and asphalt pavements. Statewide Greater Than 15,000 to 50,000 lbs.	\$1.77
9	Lbs.	Non-Routed Crack Sealing Type I (ASTM D6690)- Hot applied, for concrete and asphalt pavements. Statewide Greater Than 50,000 lbs.	\$1.77
10	Lbs.	Non-Routed Crack Sealing Type II (ASTM D6690) – Hot applied, for concrete and asphalt pavements. Statewide 1 to 15,000 lbs.	\$1.77
11	Lbs.	Non-Routed Crack Sealing Type II (ASTM D6690) – Hot applied, for concrete and asphalt pavements. Statewide Greater Than 15,000 to 50,000 lbs.	\$1.77
12	Lbs.	Non-Routed Crack Sealing Type II (ASTM D6690) – Hot applied, for concrete and asphalt pavements. Statewide Greater Than 50,000 lbs.	\$1.77
13	Miles	Mobilization Statewide – One way per mile (mi) as defined within Agreement	\$1.00
14	Hr.	Traffic Control – Per Approved TCP	\$50.00
15	Hr.	Traffic Control Nighttime Hours – When Traffic control is required between the hours of 8:00 pm. To 5:00 a.m. per approved TCP	\$100.00

**Exhibit B  
SAMPLE TASK ORDER  
AGR24-956**

**AGR24-956 TASK ORDER #1 Dismuke Construction Company – On-Call Services for Pavement Preservation**

**DATE PREPARED:** April 20, 2024

**CHARGE:** XXXXXXXXX-XXXX

**CONTRACT MANAGER:** Name, Phone. All changes in scope, budget or schedule (extensions) need to be approved in advance by Project Manager.

**COUNTY REQUESTOR/CONTACT:** Name, Phone. All changes in scope, budget or schedule (extensions) need to be approved in advance by Name, Phone.

**ATTACHMENTS:**

1. Proposal from Dismuke Construction Company dated March 31, 2024, in the amount of \$XX,XXX.00 plus NMGRT.

**COMMENCE WORK DATE:** Upon issuance of Purchase Order

**REQUESTED DELIVERY DATE:** All work on this Task Order to be complete as soon as possible.

**SCOPE OF WORK REQUESTED:**

*This is usually a list of line items from the contract or new items required specific to the individual task. In a spreadsheet / table format similar to the "Total Cost" spreadsheet below*

**DELIVERABLE:**

1. Completed project.

**ESTIMATED COST:**

1. Cost \$XX,XXX.00 plus NMGRT.

**ESTIMATED VALUE OF ALL TASK ORDERS TO DATE INCLUDING THIS TASK ORDER (not including Reimbursable Expenses): \$XXX,XXX.00**

**CURRENT CONTRACT VALUE (not including Reimbursable Expenses or GRT): \$ XX,XXX.00**

**Estimated Balance Included in this Task Order: \$ XX,XXX.00**

Exhibit C  
AGR24-956  
Administrative Forms  
**Performance Bond**



LOS ALAMOS

**Bond No.** \_\_\_\_\_

We as Principal, hereinafter referred to as Contractor, and \_\_\_\_\_ a corporation organized and existing under and by the virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Mexico, hereinafter called Surety, are held and firmly bound unto the Incorporated County of Los Alamos, hereinafter referred to as County, in the penal sum of one hundred percent (100%) of the Contract Price of \_\_\_\_\_ dollars (\$\_\_\_\_\_), as may be adjusted by Change Order, inclusive of applicable gross receipts taxes in lawful money of the United States of America, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are such that, whereas, Contractor has been awarded and has agreed to enter into a certain Contract with the Incorporated County of Los Alamos, to which this Performance Bond shall be attached and incorporated therein, for performance of Work or services on Project specifically described in the Contract document for:

**Incorporated County of Los Alamos**  
**Agreement No. – AGR24-956 Dismuke Construction Company**

and if Contractor shall perform and complete all of the undertakings, covenants, terms, and obligations of said Contract during the original term thereof, and any extensions which may be granted by County with or without notice to the Surety, and if Contract shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless County from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay County all outlay and expenses which County may incur in making good any default, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Performance Bond Continued

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due, except that, with respect to express guarantees of a longer term, a suit thereon must be initiated within six (6) months following the expiration of said express guarantees, if any.

The Surety acknowledges that said Contract may contain express guarantees and agrees that said guarantees, if any, are covered by the Surety's obligation hereunder.

Right of action with respect to any express guarantees, if any, in said Contract shall accrue following completion and formal acceptance of the work under said contract.

The right to sue on this bond accrues only to the contracting agency and the parties to whom New Mexico Statutes Annotated, 1978 Comp. 13-4-18 through 13-4-20, as amended, grant such right; and such right shall be exercised only in accordance with the provisions and limitation of said statutes.

PROVIDED, FURTHER, that Surety, for value received hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of Contract. The Agreement, including all Exhibits and Attachments, or the work to be performed thereunder accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alternation or addition to the terms of the Contract.

PROVIDED, FURTHER, that no final settlement between County and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument may be executed in two counterparts, each one of which shall be deemed as an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The undersigned state that they have the authority to enter into said Contract.

CONTRACTOR AS PRINCIPAL:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SURETY:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Exhibit C  
AGR24-956  
Administrative Forms  
**Payment (Labor and Materials) Bond**



LOS ALAMOS

Payment (Labor and Materials) Bond for the Protection of all Persons Supplying Labor and Material to the Contractor or its Sub-contractors

Bond No. \_\_\_\_\_

We \_\_\_\_\_ as Principal, hereinafter called Contractor, and \_\_\_\_\_, a Corporation organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, and authorized to do business in the State of New Mexico, hereinafter called the Surety, are held and firmly bound unto the Incorporated County of Los Alamos as Obligee, hereinafter County , in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in the penal sum of one hundred percent (100%) of the Contract Price of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), as may be adjusted by Change Order, inclusive of applicable gross receipts taxes in lawful money of the United States of America, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

Payment (Labor and Materials) Bond is for the Protection of all Persons Supplying Labor and Material to the Contractor or its Sub-contractors.

WHEREAS, Contractor has agreed to enter into the Contract:

**Incorporated County of Los Alamos  
Agreement No. – AGR24-956 Dismuke Construction Company**

NOW, THEREFORE, the condition of this obligation is such that if Contractor shall pay as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under said contract, whether said labor be performed and materials and supplies be furnished under the original contract or any contract thereunder, then this obligation shall be null and void; otherwise, it shall remain in full force and effect, subject, however to the following conditions:

**Exhibit D**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**  
**AGR24-956**

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Contract”** means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

**“Family member”** means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:  
(a) a prospective contractor, if the prospective contractor is a natural person; or  
(b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Person”** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**“Prospective contractor”** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following - COUNTY COUNCILORS: Theresa Cull; Denise Derkacs; Melanee Hand; Susie Havemann; Keith Lepsch; David Reagor; and Randal Ryti.)

<b>Contribution Made By:</b>			
<b>Relation to Prospective Contractor:</b>			
<b>Name of Applicable Public Official:</b>			
<b>Contribution(s) Date(s)</b>	<b>Contribution Amount(s):</b>	<b>Nature of Contribution(s):</b>	<b>Purpose of Contribution(s):</b>
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Please check the box next to the applicable statement.

	<b>CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE</b> to an applicable public official by me, a family member or representative, and I have disclosed those contributions.
X	<b>NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE</b> to an applicable public official by me, a family member or representative.

*Mark Dismuke* \_\_\_\_\_ 3/29/2024  
 Signature \_\_\_\_\_ Date \_\_\_\_\_  
 President  
 \_\_\_\_\_  
 Title (position)

**Exhibit E**  
**Confidential Information Disclosure Statement**  
**AGR24-956**

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement (“Statement”) defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

**Contractor:** Mark Dismuke, President  
Dismuke Construction Company  
P.O. Box 30354, Station D  
Albuquerque, New Mexico 87190  
Email: [dismukeconstruction@aol.com](mailto:dismukeconstruction@aol.com)

**County:** Traffic and Streets Manager  
Incorporated County of Los Alamos  
101 Camino Entrada, Building 1  
Los Alamos, New Mexico 87544

2. Definitions:

- a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
- b) **Discloser** - the party disclosing Confidential Information.
- c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient’s possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser’s prior written approval.
- d) **Recipient** – the party receiving Confidential Information.

3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.