

**AMENDMENT NO. 2
INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT NO. 16-057d**

This **AMENDMENT NO. 2 ("Amendment")** is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("**County**"), and **BSN Santa Fe Enterprises, Inc.**, a New Mexico corporation ("**Assignee**" or "**Contractor**"), to be effective as provided herein on June 15, 2021.

WHEREAS, County and BSN Santa Fe, Inc., ("Assignor"), entered into Agreement No. AGR16-057d on June 15, 2016, through Request for Proposals ("RFP") No. 16-057, dated April 17, 2016, and Amendment No. AGR16-057d-A1 dated June 15, 2020 (as amended, the "Agreement") for Geotechnical and Construction Materials Testing; and

WHEREAS, Assignor desires to assign and transfer the Agreement to Assignee, and Assignee wishes to accept the transfer, assignment, and assumption of all the rights, interests, covenants, obligations, and liabilities of Assignor under this Agreement, under the terms and conditions of this Amendment.

WHEREAS, Assignor has requested County's consent to the Assignment and to accept the Assignee as a party to the Agreement in the place of Assignor for all purposes, including but not limited to all past, current and future obligations and liabilities of Assignor, including all terms, and conditions, created by the Agreement.

WHEREAS, on August 24, 2020, the Office of the Secretary of State of New Mexico approved and filed the Articles of Incorporation for Assignee; and

WHEREAS, on October 29, 2020, Assignor entered into a Bill of Sale with Assignee for the purchase of BSN Santa Fe, Inc.; and

WHEREAS, Assignee agrees to the Assignment and agrees to honor the Agreement, its obligations, terms and conditions originally awarded to Assignor, and all past, current, and future liabilities, hereby assigned to Assignee in order to continue to provide County Geotechnical and Construction Materials Testing in accordance with the Agreement; and

WHEREAS, in accordance with the terms and conditions noted herein, County hereby agrees to this Assignment; and

WHEREAS, the County Council approved this Amendment at a public meeting held on June 8, 2021; and

NOW, THEREFORE, for good and valuable consideration, County and Assignee agree to amend the Agreement as follows:

- I. Assignee hereby agrees to and shall assume, be bound by, observe, and perform, at all times, all of the terms and conditions to be observed and performed by the Assignor under the Agreement, to the same extent as if the Assignee had been originally named as a party under the Agreement.

- II. Assignee agrees to assume all obligations and liabilities of Assignor under the Agreement by virtue of this Amendment.
- III. County hereby agrees to the Assignment by the Assignor to the Assignee of the Agreement, as described in this Amendment, and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits to the same extent as though the Assignee had been a party thereto in the place and stead of the Assignor, and accepts the Assignee as a party to the Agreement.
- IV. Assignee is bound by all obligations, terms and conditions including all past, current, and future liabilities created by Agreement No. AGR16-057d, dated June 15, 2016, between Assignor and County and by Amendment No. AGR16-057d-A1, dated June 15, 2020, between Assignor and County.
- V. All payments previously made by County to the Assignor, and all other previous actions taken by County under this Agreement, shall be considered to have discharged those parts of the County's obligations under the Agreement.
- VI. This Amendment shall come into effect and be effective when the conditions precedent identified herein are satisfied:
- a. Assignee shall obtain and maintain insurance of the types and in the amounts set out in **SECTION I. INSURANCE** of the Agreement with an insurer acceptable to County. Assignee shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this provision is a condition precedent to County's obligation to pay compensation for the Services, and Assignee shall not provide any Services under this Agreement unless and until it has met the requirements of this provision.
 - b. Assignee shall obtain and maintain all required licenses, without limitation, all necessary professional and business licenses. Compliance with the terms and conditions of this provision is a condition precedent to County's obligation to pay compensation for the Services, and Assignee shall not provide any Services under this Agreement unless and until it has met the requirements of this provision.
 - c. Assignee must submit a Campaign Contribution Disclosure Form with this Agreement, attached as Exhibit "C."
- VII. Following the effective date of this Amendment, the term "Contractor," as used in the Agreement, as amended, shall refer to the Assignee.
- VIII. Delete **SECTION B. TERM** in its entirety and replace it with the following:

SECTION B. TERM: The term of this Agreement shall commence June 15, 2016, and shall continue through June 14, 2022, unless sooner terminated, as provided herein. At County's sole option this Agreement may be renewed for up to an additional one (1) year period.

- IX. Delete **SECTION S. NOTICE** in its entirety and replace it with the following:

SECTION S. 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:
Project Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 160
Los Alamos, New Mexico 87544

Contractor:
Jeffrey J. Romanowski, P.E. President
BSN Santa Fe Enterprises Inc.
28 Bisbee Court, Suite B-10
Santa Fe, NM 87508

- X. Delete **SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM** in its entirety and replace it with the following:

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached with this Amendment as Exhibit "C" and is incorporated herein by reference for all purposes. Contractor must submit this form with this Agreement.

- XI. Add two (2) new Sections titled "X." and "Y."

SECTION X. NO IMPLIED WAIVERS: The failure of the County to enforce any provision of this Agreement is not a waiver by the 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 will be reformed only to the extent necessary to make the intent of the language enforceable; and (ii) all other provisions of this Agreement will remain in effect.

Except as expressly modified by this Amendment, the terms and conditions of the Agreement remain unchanged and in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 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

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____ **DATE**
STEVEN LYNNE
ACTING COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

BSN, SANTA FE ENTERPRISES, INC.

BY: _____ **DATE**
JEFFREY ROMANOWSKI
PRESIDENT

Exhibit "C"
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
AGR16-057d-A2

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: Denise Derkacs; David Izraelevitz; David Reagor; James Robinson; Randal Rytj; Sara Scott; and Sean Williams.)

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor _____	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (position)