



AGR11-3778

INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Crestino, LLC**, a New Mexico corporation ("Contractor" or "Crestino"), with principal offices located at 610 Gold Ave. SW, Suite 222, Albuquerque, New Mexico 87102, to be effective for all purposes April 20, 2011.

WHEREAS, the County Purchasing Agent agreed that use of Statewide Pricing Agreement SPD-80-361-00697 was practical and advantageous to County for procurement of the Services for Design and Consulting, as referenced herein, for the Phase 2 Community Broadband Network (CBN) study;

WHEREAS, Contractor provided a timely proposal ("Contractor's Response") under the pricing terms specified in SPD-80-361-00697, including the ability to build upon work already completed in the Phase 1 CBN study incorporated herein by reference for all purposes;

WHEREAS, Contractor included the ability to design detailed connections between the Regional Economic Development Infrastructure Network (REDI Net) and CBN, Contractor was the successful offeror for the services listed in the RFP;

WHEREAS, the County Council approved this Agreement at a public meeting held on April 19th, 2011; and

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

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

SECTION A. SERVICES:

- 1. Contractor Services.** Contractor shall provide a complete detailed design for the project, including design of the fiber to the premises within Los Alamos County, revealing and developing solutions to roadblocks for implementation, and completing phased-in approach with budget considerations. Included and developed in parallel with the design will be a business plan. The business plan will provide the direction for a viable network design, and sustainable operational method for continuing to provide services. The business plan will include assisting with market research, partnership possibilities, pricing models, options for funding structures, operational, staffing and maintenance plans. Specification attached hereto as Exhibit "A" incorporated herein and made a part hereof for all purposes.
- 2. Fees.** Fees are established as specified in the Price Schedule, Exhibit "B," attached hereto and made a part hereof for all purposes.

3. **Terms and Conditions.** County desires to use and Crestino agrees to provide the Services upon the terms and conditions contained in this Agreement.
4. **Right to use Detailed Designs and Business Plan.** Crestino grants County a transferable, exclusive right to use the Detailed Designs, Business Plans and any work produced as part of the work performed under this Agreement, subject to the terms and conditions of this Agreement.

SECTION B. TERM: This Agreement shall be effective upon execution of this Agreement, and the term of Service shall begin upon that date. The term of Service shall be completed by June 30, 2012.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed **FIVE HUNDRED ELEVEN THOUSAND SIX HUNDRED NINETY DOLLARS (\$511,690.00)**, which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the Crestino pricing schedule set out in Exhibit "B," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit monthly invoices to County's Information Technology Manager showing Services provided, dates Services were provided, amount of compensation due, amount of any New Mexico gross receipts taxes, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be responsible for payment of the State of New Mexico Gross Receipts Taxes levied on the amounts payable under this Agreement, which amounts shall be added to the Monthly Recurring Fees, invoiced to County as specified in Section C above.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:

Independent Contractors. This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will 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 the 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 will maintain the personnel, experience and knowledge necessary to qualify it for the

particular duties to be performed under this Agreement. Contractor shall perform the work described herein in accordance with a standard that exceeds the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: Deliverables under this Agreement are listed under Deliverables in Exhibit C. 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 the 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 the 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: With regard to Contractor personnel providing services on County site, 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 that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured and provide that County will be notified no less than thirty (30) days in advance of cancellation.

1. **General Liability Insurance:** \$1,000,000 combined single limit per occurrence.
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:** \$1,000,000 combined single limit per occurrence 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. 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 L. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof or the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION M. 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 N. ASSIGNMENT: Neither Party's rights and obligations hereunder shall be assignable without prior written consent of the other Party, provided, however, that either Party has the right to assign this Agreement in whole or in part to an entity acquiring all or substantially all of the business assets of the Party and which entity agrees to be bound by the provisions hereof, upon and no less than thirty (30) days notice to the other Party.

SECTION O. 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 P. 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 provided however, that it is not the intention of County that this section will impair Contractor's ability to provide solutions to other Market Entities that may interact and compete with Los Alamos during the normal course of marketing activities. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official in County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 20-282 of the Los Alamos County Code.

SECTION Q. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon thirty (30) 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. 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. Default.** Either Party has the right, without prejudice to any other available rights or remedies, to terminate this Agreement and any user right granted, on written notice to the other Party if such other Party (a) materially fails to perform any of its obligations under this Agreement or Attachment, which failure has not been corrected within a reasonable time after receipt of written notice thereof, or (b) takes action to liquidate and dissolve, becomes insolvent, suffers the appointment of a receiver, assigns all or part of its assets for the benefit of creditors, or is involved in any proceeding (voluntary or involuntary) under any bankruptcy or insolvency laws. In the event of termination under this section, Crestino shall release County from any obligations that become due after the date of termination.
- 3. Funding.** This Agreement shall terminate on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the 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 R. 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:

IT Manager
Incorporated County of Los Alamos
2400 Central Avenue
Los Alamos, New Mexico 87544

Contractor:

Herman Baca, President
Crestino, LLC
610 Gold Ave. SW #222
Albuquerque, New Mexico 87102

SECTION S. ENTIRE AGREEMENT AND INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes any prior agreements and contains the entire agreement of the Parties and all representations with respect to the subject matter hereto. Any prior correspondence, memoranda or agreements, except those specifically attached hereto and incorporated herein, are replaced in total by this Agreement and the attachments hereto. The schedules and attachments to this Agreement form an integral part of this Agreement and contain obligations and remedies which are part of this Agreement. The attachments are as follows:

Service Specification
Pricing Schedule
Deliverables

Exhibit "A"
Exhibit "B"
Exhibit "C"

SECTION T. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached as Exhibit "D." Contractor must submit this form with this Agreement, if applicable and in accordance with Chapter 81 of the laws of 2006 of the State of New Mexico.

SECTION U. 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 the prior written approval of the County. Upon

termination of this Agreement, Contractor shall deliver all confidential material in its possession to the County within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the County shall result in direct, special and incidental damages.

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

INCORPORATED COUNTY OF LOS ALAMOS

JANET FOSTER
COUNTY CLERK

BY: _____
RANDY M. AUTIO **DATE**
ACTING COUNTY ADMINISTRATOR

Approved as to form:

OFFICE OF THE COUNTY ATTORNEY

CRESTINO, LLC, A NEW MEXICO CORPORATION

BY: _____
HERMAN BACA **DATE**
PRESIDENT

Exhibit "A"
AGR11-3778

SERVICE SPECIFICATION

Introduction

Los Alamos County has been a leader in providing the services necessary for its residences, and to further enhance economic development for the business community. To this end, LAC is embarking on the next phase of these services, an open high speed, multi-optional fiber optic network for delivering multiple IP or Internet based services.

Crestino will provide a comprehensive detailed design for the project, which includes the design of the fiber to the premise, revealing and developing solutions to roadblocks for implementation; a complete phased-in approach with budget considerations. Crestino will review and take input from multiple entities through meetings and surveys to provide input on the best solution for the County.

The focus will be to provide an unrivaled level of professionally managed, technically competent and client-centered consulting, engineering, integration and business plan services available.

Business Plan

Included and developed in parallel with the design will be a business plan. The business plan will provide the direction for a viable network design, and sustainable operational method for continuing to provide services.

The business plan will include assisting with market research, partnership possibilities, pricing models, options for funding structures, operational, staffing and maintenance plans.

Crestino will tie the business model to policy and governance, to technology and infrastructure and to financing. Crestino will also provide recommendations on the optimal funding strategy and options.

Crestino will formulate and execute a strategy which will specifically include federal loan/grant programs, current capital budgets, municipal bonds, financial guarantees (back-stops), construction financing or other types of bank/non-bank lending programs. Crestino will assist in drafting key residential and business survey questions to address the design/engineering effort, so that the most suitable infrastructure architecture will support the service delivery needs, and to establish the revenue model for the business plan, based on the market size, forecasted take rates, intended service offerings and wholesale pricing models for the service providers.

Crestino will utilize the results of the market research and consult with identified service providers to formulate the wholesale services model and pricing. This will help to ensure that the service and pricing assumptions make sense for the public and private sector partners, and that the business plan is based on solid assumptions. These baseline figures will be incorporated into the financial models of the business plan, to demonstrate a conservative and well thought out methodology for revenue forecasting. The CBN business plan will also develop a network operations and maintenance strategy, based on variables including utilizing Los Alamos County staff vs. 3rd party

contractors, potential impacts on quality, response time and budgetary considerations. These various scenarios will be modeled and assessed, with the outcome being a preferred approach.

Within the financial model itself, Crestino will produce a clear projection of the financial performance of the proposed Los Alamos County CBN. We will develop a comprehensive set of pro-forma financial models, projecting at least five years of the:

- ☐ Income Statement
- ☐ Balance Sheet
- ☐ Cash Flow Analysis
- ☐ Internal Rate of Return (IRR)
- ☐ Financial Charts and Graphs
- ☐ Market Assumptions
- ☐ Infrastructure Build Out Phases
- ☐ Project Implementation Budget
- ☐ Capital Expenditures
- ☐ Operations and Maintenance Expenditures
- ☐ Consumer Service Descriptions and Pricing Models
- ☐ Service Penetration Rates and Revenue Projections
- ☐ Average Revenue Per Customer
- ☐ Potential Funding Model and Cost of Capital
- ☐ Depreciation Schedule

The results will be utilized to assess the overall financial viability of the CBN, recommend preference approaches, and present the projections and assumptions to various funding sources, in an effort to secure project capital.

Network Functional Requirements

Crestino will develop the functional requirements through both the design and business aspects of the project. Some of the considerations will be: the service needs for businesses or residences, the priority of services, how Public Safety will integrate, Utility integration, how security will be managed, how users will interface and provision services, and the reliability of each connection, and the network.

Crestino will review and research best-practice methods for implementing this network and encourage equipment vendors to present their views of what may be in the future for these fiber optic networks.

Crestino will conduct a review, evaluation and report of the Comcast infrastructure to determine the viability for a County purchase. If this infrastructure is usable and fits the technical considerations of the project, it could be a tremendous benefit.

Network and Outside Plant Design

Crestino will research and review equipment that can provide the service requirements for the network. The considerations will encompass usability, security, environmental, installation and integration with different types of networks. Crestino will also review alternate solutions with the County, in order to progress to a final solution.

Concurrently, the Fiber Route will be designed by determining the best method for construction through the streets of Los Alamos County. Considerations will be made for

right-of-way issues and solutions to these issues will be developed. Crestino will verify the aerial and underground solutions possibilities and create drawings to show how the individual locations will be accessed. Typical entrance drawings will be created to show how the entrance will be made on an individual location. The design requirements will follow local requirements, as well as National Electrical Safety Code (NESC) rules and BICSI best practices. The project team will investigate and implement alternate, or enhanced technical approaches, as the design proceeds.

Exhibit "B"
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PRICING SCHEDULE

PHASE I - 30% - 31-Aug-2011		% complete
Survey Assistance	\$1,300	100%
Design Fiber Routes	60,640	100%
Fiber Cable & Building Termination Design	19,600	100%
Functional Requirements	\$12,200	100%
30% LAC Review	5,000	100%
Equipment Research	39,300	72%
Vendor Evaluation	2,300	13%
Partnership Evaluations (public/private sector entities)	6,500	100%
Comcast Due Diligence	4,400	67%
Service Provider Recruitment & Pricing Models	4,400	34%
Operations Plan	2,600	100%
Modeling Plan: point-to-point, portal/customer, service provider	2,600	100%
Provide different funding structures	13,000	100%
Provide different capital expenditure models	13,000	100%
TOTAL LINE ITEM COST	\$186,840.00	
EXPENSES	\$5,350.00	
GRT	\$13,078.80	
TOTAL	\$205,268.80	

PHASE II - 60% - 30-Dec-11		% complete
Verify Aerial Lines & Pole Review	\$39,120	100%
Verify Buried Routes	\$39,120	100%
Verify Community Locations & Detail Entrance Requirements	\$27,050	49%
Identify Right of Way property issues	\$3,430	66%
Permitting Within LAC: Land Use, Utilities, Environmental	\$2,600	100%
Permitting Outside of LAC: NMDOT, State Land Office, BLM, Forest	\$2,600	100%
Create Prints for Aerial Routes	\$10,380	100%
Create Prints for Buried Routes	\$6,780	66%
60% LAC Review	\$5,000	100%
Equipment Research	\$15,620	100%
Vendor Evaluation	\$14,700	100%
Design	\$21,800	100%
Comcast Due Diligence	\$2,100	100%
Service Provider Recruitment & Pricing Models	\$8,600	100%

Staffing Plan	\$2,600	100%
Network Operations Strategy (in-house vs. 3rd Party)	\$6,500	100%
Outside Plant Maintenance (in-house vs. 3rd Party)	\$3,900	100%
Initial Network Presentation	\$5,000	100%
TOTAL LINE ITEM COST	\$216,900.00	
EXPENSES	\$13,625.00	
GRT	\$15,183.00	
TOTAL	\$245,708.00	

PHASE III - 90% - 2-Apr-12		% complete
Verify Community Locations & Detail Entrance Requirements	\$28,310	100%
Identify Right of Way property issues	\$1,770	100%
Create Prints for Buried Routes	\$3,470	100%
90% LAC Review	\$5,000	100%
County Council Review	\$5,200	100%
Develop Detailed Schedule	\$9,600	100%
Develop Detailed Cost Estimate	\$9,600	100%
Update on Network design	\$2,400	100%
Community Presentation	\$5,000	100%
Final Design Approval	\$5,000	100%
TOTAL LINE ITEM COST	\$75,350.00	
EXPENSES	\$13,625.00	
GRT	\$5,274.50	
TOTAL	\$94,249.50	

PROJECT TOTALS	
TOTAL LINE ITEM COST	\$479,090.00
EXPENSES	\$32,600.00
GRT	\$33,536.30
TOTAL	\$545,226.30

Exhibit "C"
AGR11-3778

DELIVERABLES

Business Plan detailing Operations, Modeling, Staffing, Network Operations Strategy, Outside Plant Maintenance, Financial Model, Funding Structures and Capital Expenditures.

Physical Network Design document incorporating Outside Plant, including fiber routes, cable, building termination, identification of property issues, permitting requirement definition as well as network equipment evaluation, schedule and cost estimates.

Exhibit "D"
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CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the 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 and fifty dollars (\$250) over the two 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 spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"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 made to the following - COUNTY COUNCILORS: Sharon Stover, Jim Hall, Frances M. Berting, Vincent Chiravalle, Geoff Rodgers, Ronald Selvage, Michael E. Wismer)

Contribution Made by: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)