

**MEMORANDUM OF AGREEMENT MOA17-40
BETWEEN THE REDI NET BOARD OF DIRECTORS AND THE INCORPORATED
COUNTY OF LOS ALAMOS**

THIS **MEMORANDUM OF AGREEMENT** (hereafter "MOA"), is made and entered into by and between the REDI Net Board of Directors (hereafter "REDI Net") and the Incorporated County of Los Alamos (hereafter the "County") to be effective for all purposes as of April 1, 2017. REDI NET and the County are sometimes referred to in this MOA individually as a "Party" and collectively as the "Parties."

WHEREAS, REDI Net is a public organization cooperatively established by Joint Powers Agreement among the Incorporated County of Los Alamos, New Mexico, Santa Fe County, New Mexico, the City of Española, New Mexico, Rio Arriba County, New Mexico, Ohkay Owingeh, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque and the North Central New Mexico Economic Development District (each a "Local Party" and together, the "Local Parties"), for the purpose of operating and managing an open access middle mile broadband network in Northern New Mexico; and,

Whereas, REDI net has its roots in the 2008 Northern New Mexico Regional Economic Development Initiative, which identified high-speed broadband as the region's number one infrastructure priority, resulting in an application for American Recovery and Reinvestment Act funding; and,

Whereas, REDI Net is a middle-mile network using fiber optic technology to connect and provide broadband services to community anchor institutions such as schools, libraries, colleges, hospitals, government offices, public utilities, fire and police departments; and,

Whereas, REDI Net and the Local Parties have a vested interest in the continued success of the network; and,

Whereas, REDI Net has operated without a General Manager for the last year due to organizational changes.

NOW, THEREFORE, for good and valuable consideration including the funding by County for the operation of the REDI Net middle-mile network, and mutual covenants hereinafter set forth, the parties do hereby agree as follows:

A. PURPOSE.

It is the purpose of this MOA to memorialize the agreement of the Parties that County shall provide SIXTY-SEVEN THOUSAND DOLLARS (\$67,000.00) to REDI NET for defraying some of the costs of operating a middle-mile network.

B. SCOPE OF MOA.

1. REDI Net shall:

a. Hire or contract with an individual or entity to serve as the General Manager to

implement policies and strategies approved by the Board of Directors while overseeing the day-to-day operations of REDI Net.

- b. Contribute an additional SIXTY-EIGHT THOUSAND DOLLARS (\$68,000.00) towards the total cost of securing the services of the General Manager.
- c. The selected General Manager and/or representatives of the Board of Directors shall provide the following deliverable:

Present to the County, covering the one-year term of the Agreement, financial information describing REDI Net use and expenditures of County funding within thirty days of the end of the agreement. At a minimum, items included should cover summary information for the following:

- i. Financial standing of the organization;
 - ii. Overview of new business opportunities generated by the efforts of the General Manager;
 - iii. Current status including growth of the network; and,
 - iv. Review of how the General Manager's leadership has led to new organizational structure and operations;
 - d. If REDI Net contracts for the performance of these services, REDI Net warrants and agrees that the procurement of the services shall be in strict compliance with the New Mexico Procurement Code, §§13-1-1, et. seq., NMSA 1978.
2. Los Alamos County shall:
- a. Review and process all invoices and supporting documentation submitted by the REDI Net related to this MOA.

C. TERM AND EFFECTIVE DATE.

This term of this MOA shall commence on April 1, 2017 and shall continue until March 31, 2018 unless sooner terminated as provided herein.

D. COSTS.

- 1. Funding by County for services will not exceed SIXTY-SEVEN THOUSAND DOLLARS (\$67,000.00) and will be paid quarterly upon receipt of an invoice.

E. TERMINATION.

The MOA may be terminated in its entirety if any party materially breaches any term of the MOA, and does not cure the material breach within THIRTY (30) days of receipt of notice from the other party that a material breach has occurred. This termination provision described herein shall not nullify obligations already incurred for performance or failure to perform prior to the date of termination.

F. LIABILITY.

Each Party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOA. Each Party shall be liable for its own actions or inactions in accordance with state law and nothing herein shall be deemed a waiver, indemnity or to otherwise create or affect liabilities between the parties. No Party to this MOA shall be responsible for the liability incurred as a result of the other Party's acts or omissions in connection with this MOA or in performance under this MOA. This MOA contains the understanding between the County and REDI Net only and shall not create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against the named parties, their officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, consultants, or advisors. By entering into this MOA, neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this MOA. Any liability incurred in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1. et. seq., NMSA 1978 as amended. This paragraph is intended only to define the liabilities between the Parties hereto and it is not intended to modify, in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act. No provision in this MOA modifies and/or waives any provision of the New Mexico Tort Claims Act.

G. INSURANCE.

REDI NET shall maintain in full force and effect a general comprehensive liability insurance policy during the term of this MOA in an amount equal to or exceeding that required under the New Mexico Tort Claims Act at N.M. Stat. Ann. § 41-4-19 (2004) as amended or recodified in the future.

H. NOTICES.

Any notices required to be given under this MOA shall be in writing and served by personal delivery or by mail, postage prepaid, to the Parties at the following addresses:

REDI Net
P.O Box 2583
Española, NM 87532

COUNTY
County Manager's Office
1000 Central Ave., STE 350
Los Alamos, NM 87544

J. MISCELLANEOUS PROVISIONS.

1. This MOA is made under and shall be governed by the laws of the State of New Mexico, without regard to any conflicts of law principles that would require the application of the law of any other jurisdiction.
2. In the event that any of the terms and conditions of this MOA, or the application of any such term or condition to any person or circumstance, shall be held invalid by any court having jurisdiction in the premises, the remainder of the MOA and the application of such terms or conditions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

3. This MOA shall be subject to filing with, and to such changes or modifications as may from time-to-time be directed, by competent regulatory authority, if any, in the exercise of its discretion.
4. This MOA constitutes the entire MOA and understanding of the Parties with respect to the subject matter herein. The parties agree that no modification of this MOA shall be binding unless such modification is in writing and is duly executed by authorized representatives of the Parties.
5. Each Party represents and warrants to the other Party that it has the requisite power and authority to execute this MOA and to perform the obligations set out in the MOA. The execution and delivery of this MOA and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions herein except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at law.
6. Each Party represents and warrants to the other Party that the execution and delivery of the MOA by such Party does not violate any applicable law or regulation by which the Party is bound, by any applicable court or administrative order or decree, or any MOA or contract to which it is a party.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date(s) set forth below.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

By: _____
NAOMI D. MAESTAS
COUNTY CLERK

By: _____
HARRY BURGESS
COUNTY MANAGER **DATE**

APPROVED AS TO FORM:

ALVIN LEAPHART, IV
COUNTY ATTORNEY

REDI NET

By: _____
GABRIEL MONTOYA
BOARD CHAIR **DATE**