



**INCORPORATED COUNTY OF LOS ALAMOS
MEMORANDUM OF UNDERSTANDING**

This **Memorandum of Understanding** (this "MOU") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Comcast, Inc** a **Pennsylvania** corporation ("Comcast"), to be effective for all purposes November 28, 2018.

WHEREAS, the County of Los Alamos Department of Public Utilities will be offering an Invitation for Bid (IFB) as part of the New Mexico Department of Transportation (DOT) Project CN 5100650 NM 502/Trinity Drive ("Project"), which will include utility replacements and road reconstruction; and

WHEREAS, the County Board of Public Utilities approved this MOU at a public meeting held on November 20, 2018; and

WHEREAS, the County Council approved this MOU at a public meeting held on November 27, 2018.

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

1. **PURPOSE.** It is the purpose of this MOU to memorialize the agreement of the parties and to clearly define the duties and obligations of the parties to permit the efficient, cost effective and timely removal, construction and relocation of Comcast facilities and infrastructure made necessary as a result of the Project.
2. **SCOPE OF AGREEMENT.**
 - A. County shall:
 - (1) Include in the IFB, a bid item for installation of a service duct bank for the CN 5100650 NM 502/Trinity Drive Project including the installation of 2" PVC Schedule 40 communication conduits and 2" Conduit 90° Elbow Offset Turn Ups for Comcast's use as a franchisee in the County.
 - (2) Confer with and submit to Comcast plans of the conduit installation before advertising the IFB.
 - (3) Proceed with construction, in conformity with design specifications approved by Comcast, of the conduit duct bank bid items in the event of, and in reliance upon, Comcast's agreement in writing to pay the fair market value to the County for such costs.
 - (4) Permit Comcast representatives, agents or employees access to the construction site for the purpose of inspecting and insuring construction in conformity with the approved design and specifications.
 - (5) Within thirty (30) days after completion of the conduit and appurtenance installations and payment for installations at the fair market value by Comcast of the conduit installations, transfer ownership of such conduit and appurtenances to Comcast.

- (6) Execute all necessary and proper documents to transfer ownership of the conduits and attendant appurtenances to Comcast.

B. Comcast shall:

- (1) Begin installation within **7 (seven) days** of notification by the County that the conduits for Comcast have been completed, and
 - i. install its communication cable within the conduits, make all necessary connections and set pedestals;
 - ii. remove its existing cables that are in conflict within the Project;
 - iii. remit payment to County for the accepted fair market costs of the Project within thirty (30) days after receipt by Comcast from the County of the bill including applicable New Mexico Gross Receipts Tax.
 - (2) At its own cost and expense, and no later than **thirty (30) days after completion of the conduits**, replace and relocate Comcast's existing underground facilities and activate its system.
 - (3) Attend and participate in project pre-bid and pre-construction meetings. Coordinate the scheduling of Comcast work with the County's Project Manager and Contractor, where applicable.
3. **TERM.** The term of this Agreement shall commence November 28, 2018 and shall continue until January 1, 2021, or until the obligations of the parties described herein are fully and completely discharged, whichever occurs later.
4. **COSTS.** Comcast shall reimburse County for the fair market costs of the portion of the duct bank bid items within thirty (30) days after completion of the work. The fair market costs as agreed upon are in "Exhibit A" attached and made part of this MOU.
5. **MODIFICATION.** Modification to this Memorandum shall be made by mutual consent of the parties by the issuance of a written modification, signed, and dated by both parties, prior to any changes being performed, provided however, that no such modification shall be construed to relieve Comcast of its obligation to reimburse County for the fair market conduit installation cost detailed in "Exhibit A". County will provide the conduit to County's contractor for installation at the price agreed upon by County and Comcast.
6. **PARTICIPATING IN SIMILAR ACTIVITIES.** This MOU in no way restricts County or Comcast from participating in similar activities with other public or private agencies, organizations, or individuals.

7. PRINCIPAL CONTACTS.

COUNTY: Incorporated County of Los Alamos
Department of Public Utilities
Attention: Dennis Segura
1000 Central Avenue, Suite 130
Los Alamos, NM 87544
(505) 662-8215

COMCAST: Comcast, Inc
ATTENTION: David Aiken
2534 Camino Entrada
Santa Fe, NM 87507
(505) 780-1348

8. **TAXES.** Comcast shall pay the County for the fair market value for the conduit and appurtenance installations and New Mexico gross receipts.
9. **IMMUNITY.** The participation of County in the activities required by this MOU shall not be construed as a waiver of any immunity from liability for damage to personal property, personal injury or death or any other claim, under the New Mexico Tort Claims Act, NMSA Section 41-4-1 *et. seq.*, 1978 Comp.
10. **INDEMNIFICATION.** Except for the County's own acts of negligence, Comcast shall indemnify and hold harmless and defend County from all claims, demands and actions, legal or equitable, arising from Comcast's performance of its duties and obligations under this MOU.
11. **FORCE MAJEURE.** Neither County nor Comcast 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.
12. **NON-ASSIGNMENT.** This Agreement or any privileges or obligations herein shall not be assigned.
13. **THIRD PARTY BENEFICIARIES.** By entering into this MOU, the parties do not intend to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the MOU to maintain a suit, whether in contract or tort including but not limited to wrongful death, bodily and/or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this MOU. No person shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third-party beneficiary of this MOU.
14. **APPLICABLE LAW.** The County and Comcast shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the duties and obligations required by this MOU in accordance with all applicable laws, regulations, and policies during the term of the MOU. In any lawsuit or legal dispute arising from the operation of this MOU, the County and Comcast agree that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.
15. **INVALIDITY OF PRIOR AGREEMENTS:** This MOU supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the duties and obligations described herein and expresses the entire agreement and understanding between the parties with reference to said duties and obligations. This MOU cannot be modified or changed by any oral promise made by any person, officer, or employee.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date(s) set forth opposite the signatures of their representatives fully authorized to enter into and bind the parties hereto to be effective for all purposes on the date last shown below.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
TIMOTHY GLASCO, PE **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

COMCAST, INC., A PENNSYLVANIA CORPORATION

BY: _____
NAME: _____ **DATE**
TITLE: _____

Exhibit "A"

Comcast Cable Conduit Price List

Price includes labor and materials:

1-2" Conduits	\$8 per foot
2-2" Conduits	\$12 per foot
3-2" Conduits	\$16 per foot
4-2" Conduits	\$20 per foot
5-2' Conduits	\$24 per foot
Turn Up's into Ped Locations	\$28 each (36' sweeps)

Prices may be adjusted with the written consent and authorization of the parties. Any other costs, expense, or fees related to construction of the Project shall be at costs approved by Comcast and paid by County.