

EASEMENT FOR FIBER OPTIC LINE

BETWEEN

**THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH
THE DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION**

AND

LOS ALAMOS COUNTY (LAC)

FOR

LOS ALAMOS FIBER OPTIC LINE

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**DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
EASEMENT FOR FIBER OPTIC LINE**

The **UNITED STATES OF AMERICA**, acting by and through the **U.S. DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION (DOE/NNSA)**, hereby known as the “**Grantor**”, under and by virtue of the authority granted under Title 40 United States Code 1314, having determined that the granting of this instrument on the terms and conditions herein stated is not adverse to the interests of the Government, subject to reservations, exceptions, limitations, benefits, burdens, terms, or conditions, hereby grants to the **INCORPORATED COUNTY OF LOS ALAMOS (LAC)**, its successors and assigns, hereby known as the “**Grantee**”, an Easement subject to the following terms and conditions:

RECITALS

WHEREAS; the Grantor and the Grantee, entered into the Comprehensive Agreement for the Transfer of Los Alamos Water Production System (LAWPS) by the United States of America Acting by and through the United States Department of Energy to the Incorporated County of Los Alamos, Los Alamos, New Mexico, Contract No. DE-RE32-98AL79408 dated June 30, 1998, as amended; and

WHEREAS; the Grantor retained the authority to grant non-exclusive Easements in perpetuity, together with ingress and egress, to the Grantee, its successors and assigns, which easements shall run with the land and be in full force and effect where a water production device lies across, on, over, or under the Grantor’s property in connection with the LAWPS; and

WHEREAS; the Grantor and the Grantee executed Amendment No. 1 to the Comprehensive Agreement on September 8, 1998, to clarify the property description of the LAWPS based upon a recent Title Report; and

WHEREAS, the Grantor granted a non-exclusive easement in perpetuity, together with ingress and egress, to the Grantee, its successors and assigns, which easements shall run with the land and be in full force and effect where a water production device lies across, on, over, or under the Grantor's property in connection with the Los Alamos Water Production System (Otowi Well No. 4 Site, Pajarito Well No. 1 Site and electric line to Otowi Well No. 1 Site); and

WHEREAS; the Grantor retained the authority to grant non-exclusive Easements in perpetuity, together with ingress and egress, to the Grantee, its successors and assigns, which easements shall run with the land and be in full force and effect where a water production device lies across, on, over, or under the Grantor’s property in connection with the LAWPS; and

WHEREAS, the Grantor granted a Permanent Public Utility Easements to the Incorporated County of Los Alamos, Los Alamos, New Mexico, Contract No. DE-RE52-M15NA70123 dated July, 15, 2015, as amended; and

WHEREAS, the Grantor granted a Permanent Public Utility Easements for right-of-way across Government-owned facilities, together with ingress and egress, for the purpose of construction, installation, operation, maintenance, and repair or replacement of Pajarito Well No. 6 Site (now referred to as Otowi Well No. 2 Site); and

WHEREAS; the Grantor desires to allow the installation of a fiber line on the Grantor existing electric line to, Otowi Well No. 4 Site, Otowi Well No. 2 Site and Pajarito Well 1 Site; and on the Grantee owned electric line easement for Otowi Well No. 1.

NOW THEREFORE, In consideration of the foregoing and the respective representations, warranties, agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee hereby agree as follows:

1. PREMISES

The Project is in Los Alamos Canyon, and the fiber optic line will be placed on:

- The overhead electric line (EA-04) owned by the Grantor starting from pole 1166 to pole 1380 then running west along State Road 4 to East Jemez Road from pole 1380 to pole 1393, including the installation of guy wires at various locations. This section of the fiber optic will connect to Otowi Well No 4, Otowi Well No. 2 and Pajarito Well No. 1 using existing infrastructure at each well locations; and
- The overhead electric line (EA-04) owned by the Grantee starting from pole 1380 running east to pole 1370, including the installation of guy wires and an underground vault. This section of the fiber optic line will connect to Otowi Well No. 1 using existing infrastructure at the well location.

in Los Alamos, New Mexico hereby known as the "Premises". The Premises contains approximately 19.4 acres perpetual non-exclusive easement which is further described in Exhibit A.

2. TERM/TERMINATION RIGHTS

The 50 ft. (25 ft. centerline) wide non-exclusive easement shall be effective upon execution by the Grantor and shall be granted in perpetuity but is revocable at any time by either Party by giving ninety (90) days written notice. This Easement may be terminated by the Grantor if the Grantor determines that the right-of-way granted interferes with the interests of the United States, use or disposal of a portion or all of the Premises by the Grantor, or it may be terminated by the Grantor for failure, neglect, or refusal by the Grantee to fully and promptly comply with

any and all of the conditions of this Easement, or for nonuse for a two-year period, or for abandonment.

Grantor grants to Grantee this easement for right-of-way across Government-owned facilities, together with ingress and egress, for the purposes of installation, operation, maintenance, and repair or replacement of a fiber optic line to be mounted on DOE/NNSA owned electric line poles.

3. CONSIDERATION

The consideration for this Easement is the construction, operation and maintenance of the Premises by the Grantee for the benefit of the United States and the general public in accordance with the conditions set forth herein.

4. AUTHORIZED REPRESENTATIVES

The Grantor's Representative shall be the Real Estate Contracting Officer. The Grantor's local representative shall be the NA-LA Real Estate Group, Los Alamos Field Office.

The Grantee's representative shall be Philo Shelton, Utilities Manager, Incorporated County of Los Alamos. Any changes in the designated representatives or in their respective addresses shall be given in writing to the other.

5. NOTICE

No notice, order, direction, determination, requirement, consent, or approval under this Easement shall be of any effect, within the restriction of this Easement, unless provided in writing. Any notice given by the Grantee to the Grantor shall be addressed to the Real Estate Contracting Officer, National Nuclear Security Administration Real Estate Division (NA-913), P.O. Box 5400, Albuquerque, New Mexico 87185, realestate@nnsa.doe.gov; with a copy to NA-LA Real Estate Group, Los Alamos Field Office, 3747 West Jemez Road, Los Alamos, New Mexico 87544, dl-na-larealestate@nnsa.doe.gov. Any notice given by the Grantor to the Grantee shall be addressed by the Real Estate Contracting Officer to Philo Shelton, Utilities Manager, philo.shelton@lacnm.us.

6. PROJECT

The Project will include the installation of new fiber optic line, to serve four existing wells located in Los Alamos Canyon, and along the State Road 4 alignment between the East Jemez Road and NM-502.

7. OPERATION AND MAINTENANCE

The Grantee's Work, operation and maintenance of the Premises shall be accomplished without cost or expense to the Grantor under the general supervision and subject to the approval of the representative having immediate jurisdiction over the property, designated as the Utilities and Sustainability Program Manager, Los Alamos Field Office. The Project shall be accomplished in such a manner as not to conflict with the rights of the Grantor or Grantee nor to endanger personnel or property of the Grantor or Grantee on Government-owned land.

8. PROTECTION OF PROPERTY

The Premises shall at all times be protected and maintained in good order and condition by and at the sole expense of the Grantee. Any property of the Grantor damaged or destroyed by the Grantee incident to the use, purpose, and occupation of the Premises shall be promptly repaired or replaced by the Grantee to the satisfaction of the Grantor. Or in lieu of such repair or replacement, the Grantee shall, if so required by the Grantor, and only if so authorized by the County taxpayers at a general election, by vote of approval, pay to the Grantor money in an amount sufficient to compensate for the loss sustained by the Grantor by reason of damages to or destruction of the Grantor's property.

9. TRANSFER/ASSIGNMENTS

The conditions of this Easement shall extend to and be binding upon and shall inure to the representatives, successors, and assigns of the Grantee. The Grantee shall neither transfer nor assign this Easement or any property on the Premises, nor sublet the Premises or any part of the Premises, nor grant any interest, privilege, or license whatsoever in connection with this Easement without the express and prior written permission of the Grantor.

10. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Easement or to any benefit arising from it. However, nothing contained within this Easement shall be construed to extend to any incorporated company if the Easement be for the corporation's general benefit.

11. NON-DISCRIMINATION

Usage of the Premises will be operated in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, sex, age, handicap, or national origin, be excluded from using the Premises under this Easement.

12. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Grantor shall have the right to annul this Easement without liability or, in its discretion, to require the Grantee to pay the full amount of such commission, percentage, brokerage, or contingent fee. Licensed Real Estate agents or brokers having listings on property for rent, in accordance with general business practices and who have not obtained such licenses for the sole purpose of affecting this Easement, may be considered as bona fide employees or agencies with the exception contained in this Paragraph.

13. GRATUITIES

The right of the Grantee to proceed may be terminated by written notice, if after notice and hearing, Grantor determines that the Grantee, agents, or representatives offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of Grantor and intended, by the

gratuity to obtain favorable treatment under this Easement. If this Easement is terminated as set forth within this Paragraph, Grantor is entitled to pursue the same remedies as in a breach of this Easement. The rights and remedies of Grantor provided in this Paragraph shall not be exclusive and are in addition to any rights and remedies provided by law or under this Easement.

14. ENVIRONMENT

a. The Grantee shall not unlawfully pollute the air, ground or water or create a public nuisance. The Grantee shall use all reasonable means available to protect the environment and natural resources from damage arising from this Easement or activities incident to it and, where damage nonetheless occurs, the Grantee shall be liable to repair the damaged resources.

b. The Grantee shall promptly comply with all Federal, State, and local laws, ordinances, and regulations applicable to the Grantee's operations on the Premises controlling the quality of the environment. If the Grantee discovers contamination on the premises, the Grantee shall immediately cease all activities and notify the Grantor's representative. The Grantee shall be solely responsible for the costs, claims, and damages arising from the release or spill of any toxic or hazardous waste, substance, or materials caused by Grantee, its employees, agents, or contractors during its activities on the Premises or arising from any neglect or fault of the Grantee its employees, agents, or contractors, in using the Premises, or arising from the failure of the Grantee to comply and conform with all Federal and State Laws and the terms of this Easement.

15. CULTURAL ITEMS

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains or objects of antiquity. If such items are discovered on the Premises, the Grantee shall immediately notify the Grantor's representative and protect the site and the material from further disturbance until the Grantor gives clearance to proceed. The Grantee must coordinate and schedule with the Grantor's representative, a walkdown of the premises with the cultural monitor, prior to the start of their work.

16. LAWS, ORDINANCES, REGULATIONS

Grantee shall comply with all applicable laws, ordinances, and regulations of the State, county and municipality wherein the Premises are located with regard to construction, sanitation, licenses or permits to do business, and all other matters affecting the Premises. The terms and conditions of the easement are subject to Federal law and preemption of New Mexico State law.

17. GRANTEE RESPONSIBILITY

The Grantee shall supervise the Premises, inspect it at reasonable intervals and shall use reasonable efforts to immediately repair any damage found as a result of the inspection or when requested by the Grantor's representative to repair any defects. Upon completion of the installation of the improvements, the Grantee, at the Grantee's own expense shall remove construction debris, re-vegetate for erosion control, and grade to the original contour of the land. Grantee shall comply with such rules and regulations regarding Government security, ingress, egress, safety, sanitation, etc. as may be prescribed from time to time by the Grantor. The

Grantee shall not remove, relocate or damage any existing utilities and/or associated facilities belonging to Grantor. Grantee shall be liable for any damages or repair or replacement of existing utilities. Grantee shall coordinate with Grantor's Utility Operations on (1) the clearance requirements for their fiber line to ensure it meets NESC 2023 and (2) on de-energizing or disabling of circuits when working within 10 feet of the existing equipment. The Grantor shall comply with these two requirements for the installation and long-term operation and maintenance of their equipment.

18. GRANTOR RESERVATIONS

The Grantor reserves to itself the right to construct, use, and maintain across, over and/or under the right-of-way granted any necessary electric transmission, telephone, telegraph, water, gas, gasoline, oil, sewer lines, broadband, and other facilities in such manner as not to create any unreasonable interference with the use of the right-of-way granted within this Easement.

19. RIGHT TO ENTER

It is the Grantor's right to enter upon the Premises at any time and for any purpose necessary or convenient in connection with Government purposes, to make inspections, to remove timber or other material, except the Grantee's property, to flood the Premises and/or to make any other use of the lands as may be necessary in connection with Government purposes. The Grantee shall have no claim for damages on account thereof against the Grantor.

20. ACCESS TO SITE

Access to the Premises is subject to Grantor's security regulations. Grantee agrees to comply and to have its awardee comply with any and all applicable Grantor security regulations including, but not limited to, requirements for obtaining access authorization for personnel working at the Premises. All Grantee personnel and their subcontractor requiring access to the Premises shall acquire and wear at all times, badges authorized through the security badging process at the LANL badging office and shall stay within the boundaries of the said Premises with the exception of access to and from the Premises. Access may be denied at times due to programmatic security requirements, but arrangements will be made to escort the Grantee personnel to and from the Premises within a reasonable amount of time.

21. THIRD-PARTY RESERVATIONS

a. This Easement is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this Easement does not eliminate the necessity of obtaining any other agreement for performance of the Project.

b. This Easement is granted subject to such other rights that may be outstanding to third parties in, on, over, and/or across the Premises.

22. HOLD HARMLESS AND INDEMNITY

a. The Grantor shall not be responsible for damages or property or injuries to persons which may arise from or be incident to the use and occupation of the Premises nor shall it be

responsible for damages to the property or injuries to the persons of the Grantee, its agents, employees, or representative or others who may be on the Premises at their invitation, arising from Grantee activities.

b. The Grantor shall be solely responsible for the claims or damages arising from injury to persons or property caused by the action of the Grantor, its employees, agents, or contractors during its activities on the Premises or arising from any neglect or fault of the Grantor or the agents and the employees of the Grantor in using the Premises or arising from the failure of the Grantor to comply and conform with all Federal and State Laws.

c. The Grantee agrees that to the extent authorized by the New Mexico Tort Claims Act ("Act"), NMSA 1978, Sections 41-4-1 through 41-4-27, the Grantee will be responsible for related claims and damages arising from injury to persons or property caused solely by the actions of the Grantee, its employees, agents, or contractors during its operation on the Premises. Grantor recognizes that the Act prohibits Grantee from indemnifying Grantor.

d. The Grantee does not assume any liability or responsibility for environmental remediation, impacts and damage caused by the Grantor's use of toxic or hazardous waste, substances or materials on any portion of the Premises. Grantee has no obligation under this Easement to undertake the defense of any such claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage arising out of the use of or release of any toxic or hazardous waste, substance, or materials caused by Grantor. The Grantor shall retain liability for damages for exposure and responsibility for remediation which is caused by or arises from the presence of any hazardous waste in, on or under the Premises on or prior to time Grantee first began operations on the property.

23. GRANTOR POSTING OF SIGNS

The Grantor reserves the right, with the agreement of the Grantee, to erect and maintain on the public road right-of-way signs, or posters relating to safety and security of the Grantor. The size and location of such signs will be subject to agreement of the Grantor and Grantee consistent with traffic safety, local zoning requirements, and other requirements of law.

24. GRANTOR CLOSURE/REGULATION RIGHTS

The Grantor reserves the right to close or regulate traffic over the Premises whenever the Grantor deems such actions necessary in the interest of public health, safety, and national security and defense, and that such right is exercisable in times of perceived, threatened, or actual emergency, and that such right does not extend to the routine day-to-day operation, regulation, and control of traffic over the Premises, such being the right of the Grantee.

25. BOUNDARY OR SURVEY MONUMENTATION

The Grantee shall not disturb, obliterate or destroy any land boundary or survey monument on the Premises without prior approval from the Grantor.

26. WETLANDS AND FLOODPLAINS

All activity within any flood plain or jurisdictional wetlands must comply with applicable Federal, State, and local laws, rules or ordinances governing land use in flood plains or wetlands.

27. TIMBER

a. The Grantee shall notify and obtain written approval from the Grantor prior to cutting any trees within the right-of-way easement area on the Premises and will remove and dispose of any trees that it cuts on the Premises. Tree and shrub removal must not occur between May 15 and July 31 to protect nesting birds under the Migratory Bird Treaty Act.

b. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any active nests, eggs or nestlings in trees, shrubs, under eaves or within man-made structures. In the event such items are discovered on the Premises, the Grantee shall immediately notify the Grantor and protect the site and the material from further disturbance until the Grantor gives clearance to proceed.

28. GRANTEE'S PLANS AND SPECIFICATIONS

The Grantee shall submit plans and specifications to the Local Representative for approval before beginning installation and shall comply with the approved plans. Grantee shall submit any changes to the approved plans for approval before undertaking any changes.

29. RESTORATION

Upon termination of any portion of this Easement, the Grantee shall, without expense to the Grantor and within such time as the Grantor may reasonably indicate, restore the Premises to a condition reasonably satisfactory to the Grantor. In the event the Grantee shall fail, neglect, or refuse to restore the Premises, the Grantor shall have the option either to take over the improvements as the property of the Grantor, without compensation therefore, or to remove the improvements and perform the restoration work. In no event shall the Grantee have any claim for damages against the Grantor or its officers or agents on account of the taking over of the improvements or on account of its abandonment or removal.

30. GRANTEE PERFORMANCE

The failure of the Grantor to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Easement shall not be construed as a waiver or relinquishment of the Grantor's right to the future performance of any such terms, covenants, or conditions and the Grantee's obligations with respect to any such future performance shall continue in full force and effect.

31. GRANTOR'S LIMITATIONS TO GRANT

It is understood that this instrument is effective only insofar as the rights of the Grantor in the Premises are concerned and that the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

32. AMENDMENT

This Easement contains the entire agreement between the Parties hereto, and no modification of this Easement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the Parties to be bound or by a duly authorized representative.

33. ELECTRONIC SIGNATURES

Pursuant to the Uniform Electronic Transactions Act and the federal E-SIGN Act, the undersigned Signatory agrees that any and all signatures required on this Easement required or permitted to be given hereunder may be in electronic form ("Electronic Signature").

Any Electronic Signature submitted shall constitute a representation by the Signatory that (i) his/her signature is authentic, (ii) the Signatory has the authority to execute such record, and (iii) the Electronic Signature is binding on the Signatory.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, all parties accept the terms and conditions of this Easement and cause this Easement to be signed on their behalf by their duly authorized representatives.

GRANTEE: INCORPORATED COUNTY OF LOS ALAMOS

By: _____ Date: _____
Theresa Cull
Chair of the County Council
Incorporated County of Los Alamos

ACKNOWLEDGEMENT:

State of NEW MEXICO
County of LOS ALAMOS

On this _____ day of _____ 20____, before me the undersigned Notary Public,
personally appeared _____, Incorporated County of Los Alamos,
known to me to be the person described in the foregoing instrument, who acknowledged that she
executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANTOR: UNITED STATES OF AMERICA

BY: Department of Energy/National Nuclear Security Administration (DOE/NNSA)

By: _____ Date: _____

Monica B. Gastelum
Real Estate Contracting Officer
National Nuclear Security Administration

ACKNOWLEDGEMENT:

State of NEW MEXICO
County of BERNALLILO

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared Monica B. Gastelum, Real Estate Contracting Officer, Department of Energy/National Nuclear Security Administration (DOE/NNSA), known to me to be the person described in the foregoing instrument, who acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____



Legend

- Fiber Cable Segment
- Slack Point
- Pole
- WP Water Wells

