

AGR24-46a-A1

**AMENDMENT NO. 1
INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT NO. 24-46a**

This **AMENDMENT NO. 1** is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Bonfire Engineering & Construction LLC**, a Colorado limited liability company ("Contractor"), collectively (the "Parties") to be effective for all purposes January 7, 2026.

WHEREAS, County and Contractor entered into Agreement No. AGR24-46a dated November 20, 2024 (the "Agreement") for the Design, Construction and Operation of a Community Broadband Network; and

WHEREAS, County has provided approval to Contractor for the broad High Level Design (HLD), and early purchase of materials for use in the project, prior to full development of the detailed Low Level Design (LLD), would be beneficial to the Project; and

WHEREAS, County Council approved an Ordinance for Bond funding for the Community Broadband Network (CBN) project on November 18, 2025, a condition precedent for construction activities and material purchase for the CBN to commence; and

WHEREAS, both Parties wish to amend the requirements for approval by County Council to allow for materials purchases ahead of final detailed LLD approval; and

WHEREAS, the Parties wish to amend the list of units to be utilized in the construction of the CBN, as proposed in the Preliminary Cost Estimate based on the HLD; and

WHEREAS, the County Council approved this Amendment at a public meeting held on January 6, 2026.

NOW, THEREFORE, for good and valuable consideration, County and Contractor agree as follows:

- I. Delete Section **D. SERVICES, 2. Design Phase, b. Design Development and Construction Document Phase** in its entirety and replace it with the following:
 - b. Design Development and Construction Document Phase.** The following detailed LLD design requirements shall apply to all phases of the project; approval of the design and approval for construction of phases shall require County approval as further described in SECTION D(3) below. Continuity of the Baseline Schedule for Construction provided by the Contractor may necessitate multiple approvals depending on the timing of any given phase of Construction. A construction phase may consist of a single Distribution Area (DA) or multiple DAs.
 - i. Design Development Drawings.** Civil, landscape, architectural, structural mechanical, electrical, technology, and equipment packages shall be developed as applicable.
 1. Prepare geographic information system (GIS)-based designs and computer aided design (CAD) construction prints of final designs, any new assets documented with "as-built" drawings utilizing GIS, and provided digitally in an Environmental Systems Research Institute, Inc., (Esri) file geodatabase format. All splices must be documented by type of splice, method, material used, date, location, and mapped



LOS ALAMOS COUNTY, NM
MICHAEL D. REDONDO COUNTY CLERK
LACF26-1263 Pages: 7
01/09/2026 02:38:00 PM
Allison Collins

Attachment B

accurately to show which strands connect to which continuing strands and also detailed in Microsoft Excel format. All GIS data must include complete Federal Geographic Data Committee (FGDC)-compliant metadata. Horizontal accuracy must be six (6) inches or better.

2. The Design shall provide service for all 10,090 passings identified by County and, County reserves the right to amend the number of passings.
- ii. **Permitting Discovery.** Contractor shall conduct a comprehensive review of permitting requirements during the LLD process, identifying permitting requirements from all applicable authorities.
- iii. **Field Verification.** Contractor shall deploy engineering resources to verify field fiber route(s) in their entirety and conduct field verification for new aerial and underground placement and fiber overpull locations. Collected data shall be recorded, used and transferred for use in the creation of permissible construction prints. Contractor shall perform field verification of any County owned assets to be utilized in the design.
- iv. **Cost Estimate Based on the LLD.** Contractor shall prepare and submit audio-visual explanatory presentation materials for the County Council's consideration and approval of pre-construction purchases of materials and supplies based on the County Approved HLD and LLD. Contractor shall attend the public meeting either in person or virtually, at the discretion of the County's Project Manager, to address any questions which may arise from Council. Contractor shall provide an estimate for the Bill of Materials (BOM) identifying equipment and materials to be acquired, related to the approved HLD and LLD, and construction costs based on the design to date, as part of the presentation to Council. Approval of the Cost Estimate by Council shall authorize Contractor to commence material acquisition and stockpiling, in anticipation of market shortages for core materials needed for the Project, in an amount not to exceed THREE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,800,000.00). The County and Contractor shall jointly approve the initial material order and any subsequent material orders as applicable.
- v. **Make-Ready and Pole Attachment Costs.** Contractor shall coordinate with County electric utility staff to determine where aerial pole make-ready improvements are needed and determine the expected associated costs. The actual associated costs will be reimbursed to the County electric utility by the CBN construction project, no later than fifteen (15) days following written notice and demand for payment.
- vi. **LLD Review.** Contractor shall provide a detailed LLD package, for each phase, to County for review and feedback. Contractor shall address questions and requests from County and provide a finalized phase specific or complete detailed LLD for approval by the County's Project Manager. The Design Development package(s) shall be thorough, meeting industry standards and best practices and allowing for no less than a two (2) week County staff review.
- vii. For each phase or DA of design, the Contractor will perform constructability and coordination reviews and publish comments.
- viii. **Council Approval.** Contractor shall prepare and submit audio-visual presentation materials for approval of the phase-specific or complete LLD, by County Council at a public meeting. Contractor shall attend the public meeting either in person or virtually, at the discretion of the County's Project Manager, to address any questions may arise from Council.
- ix. **Creation of Permit and Construction Low-Level Design Prints.** Contractor shall compile all field data into permissible construction LLD prints suitable for permit submission and use in the construction process, which shall include, but may not be limited to:

1. New conduit, fiber type, size, coating and capacity, handholes, splice locations, fiber line of count (LOC), and associated fiber terminals.
 2. Identify the list of County owned assets to be utilized in the design.
 3. Contractor shall generate review sets of construction packages two weeks prior to submitting for a permit, for each permissible phase of construction.
 - x. **LLD BOM.** Completion of the LLD prints, shall provide construction prints for subcontractors and a finalized detailed BOM. Contractor shall provide to County a full list of equipment specified by and for the LLD identifying any equipment which differs from the Cost Estimate described in Section D(2)(b)(iv) above.
 - xi. **Complete Construction Ready Drawings.** Contractor shall provide to County's Project Manager final civil, landscape, architectural, structural mechanical, electrical, technology, and equipment packages as applicable for each phase of construction for approval. Council authorizes the County's Project Manager to provide approval of the Construction Ready Drawings for each applicable phase.
- II. Delete Section **D. SERVICES, 3., Design Approval and Construction** in its entirety and replace it with the following:
3. **Design Approval and Construction.** Construction of each phase of the Community Broadband network is contingent upon approval by the County's Project Manager, together with prior approval by Council of the detailed LLD, and availability of funding for the construction of the network. Distribution Area construction activities, excluding the pre-construction purchase of materials as described above, are detailed in Attachment 1 – Construction Contract Book. Construction of the Community Broadband Network by DA shall not occur until approval of the detailed LLD design is granted by Council at a public meeting, and approval by the County's Project Manager of various phases, utilizing Complete Construction Ready Drawings, as may be most advantageous for the project schedule.
- III. For the avoidance of doubt, the date of Substantial Completion for all work is therefore September 19, 2030, and Final Completion of all work is therefore November 19, 2030.
- IV. Delete Exhibit C, Compensation Rate Schedule in its entirety and replace it with the attached Exhibit C-1.

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

[this section intentionally left blank]

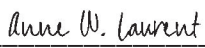
IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

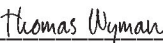

MICHAEL D. REDONDO
COUNTY CLERK



INCORPORATED COUNTY OF LOS ALAMOS

BY:  1/8/2026
ANNE W. LAURENT **DATE**
COUNTY MANAGER

Approved as to form:

 for
J. ALVIN LEAPHART
COUNTY ATTORNEY

BONFIRE ENGINEERING & CONSTRUCTION LLC, A
COLORADO LIMITED LIABILITY COMPANY

BY:  1/9/2026
BRIAN HOLLISTER **DATE**
CHIEF EXECUTIVE OFFICER

**Exhibit C-1
Compensation Rate Schedule
AGR24-46a-A1**

Description	Cost
Network Design	\$1,241,790.68
Network Construction	\$21,944,637.00
Network Drop @ 60% of all passings	\$6,168,896.00
Design and Construction Total	\$29,355,323.68
Contingency	\$5,622,676.32
Total Not to Exceed Amount	\$35,000,000.00

Any adjustments in costs during construction shall utilize the unit prices provided below and shall be calculated and executed in accordance with the provisions in Attachment 1. Changes in the Work, and must not exceed the Not to Exceed Amount for compensation.

Description	UM	Unit Price
LOS ALAMOS COUNTY, NM HTTP - LABOR		
ENGINEERING		
ENG - HLD	LF	\$ 0.20
ENG - AR	LF	\$ 2.21
ENG - UG	LF	\$ 1.17
UNDERGROUND		
BM60(1-3") (1) Bore Hole Directional Bore - 3" (pullback not included)	LF	\$ 28.73
BM60(1-5") (1) Bore Hole Directional Bore - 5" (pullback not included)	LF	\$ 32.26
BM60(1-8") (1) Bore Hole Directional Bore - 8" (pullback not included)	LF	\$ -
BFV (1x0.75") IE Pull Back HDPE 1 - (0.75")	LF	\$ 2.01
BFV (1x1.25") IE Pull Back HDPE 1 - (1.25")	LF	\$ 2.01
BFV (2x1.25") IE Pull Back HDPE 2 - (1.25")	LF	\$ 2.24
BFV (3x1.25") IE Pull Back HDPE 3 - (1.25")	LF	\$ 2.24
Microtrench-Mainline	LF	\$ 35.90
Microtrench-Laterals	LF	\$ 46.92
Microtrench-Flowerpot install	EACH	\$ 597.83
Microtrench-Pedestal install	EACH	\$ 597.83
BFV (1x0.75") T Trench HDPE 1 - (0.75")	LF	\$ 14.30

BFV (1x1.25") T Trench HDPE 1 - (1.25")	LF	\$ 14.30
BFV (2x1.25") T Trench HDPE 2 - (1.25")	LF	\$ 14.30
BFV (3x1.25") T Trench HDPE 3 - (1.25")	LF	\$ 14.30
UO1-96 Place Fiber in new duct (up to 96 ft)	LF	\$ 2.19
UO1-96 - COIL Place Fiber Coil in new Handhole (up to 96 ft)	LF	\$ -
UO144-288 Place Fiber in new duct (144 - 288 ft)	LF	\$ 2.19
UO144-288 - COIL Place Fiber Coil in new Handhole (144 - 288f)	LF	\$ -
UO MST TERM Place MST Term in Handhole	EACH	\$ 250.96
UO(TAIL) PER FT LBR Place Terminal Tail in Duct	LF	\$ 1.76
UO432 Place Fiber In New Duct	LF	\$ 2.33
UOxxxIE Proof and Pull / Place Fiber in Existing duct (any size up to 288f)	LF	\$ 2.19
BHF(17x30x24) Place Handhole (17"x30"x24") w/ Ground Assy	EACH	\$ 216.58
BHF(24x36x24) Place Handhole (24"x36"x24") w/ Ground Assy	EACH	\$ 558.22
BHF(30x48x36) Place Handhole (30"x48"x36") w/ Ground Assy	EACH	\$ 771.66
Vac out area and tie existing ducts to vault-Burn Zone	EACH	\$ 1,500.00
Pedestals	EACH	\$ 355.00
BHF - FP Place 9" Flower Pot	EACH	\$ 89.62
BM53(6) PL Place Test Station (Ground Assembly w/ Handholes)	EACH	\$ 89.62
BM21 OLT Site Prep - Pour and Place 8'x8' x8" Concrete Pad, etc.	EACH	\$ 6,223.59
Cabinet Place OLT Cabinet on BM21 Site	EACH	\$ 80,664.77
AERIAL		
CS(6M) Place New 3M Strand (Includes all hardware, dead ends, bolts, clamps, etc.)	LF	\$ 1.79
Lash (1) Fiber Cable (any size up to 288 ft)	LF	\$ 1.79
Lash (2) Fiber Cable (any size up to 288 ft)	LF	\$ 2.08
Lash (3) Fiber Cable (any size up to 288 ft)	LF	\$ 3.80
BM80 Place 1" 8' U-Guard	EACH	\$ 84.82
BM86(2) Place 2" PVC Riser	EACH	\$ 84.82
PE 1-2 Place Anchor & Guy with Guy Guard	EACH	\$ 503.03
PM-SHSH Place Snowshoe (pair)	EACH	\$ 225.18
CO MST TERM Place Aerial MST Term	EACH	\$ 331.62
CO(TAIL) PER FT LBR Lash Terminal Tail to Strand	LF	\$ 3.59

SPLICING		
HO1 Fusion Splice Fiber	EACH	\$ 36.43
HO3 Plug Connector into Device (splitter, hub, etc.)	EACH	\$ 21.78
HUSO (144) Place / Prep Splice Closure up to 144 ft (450B) - includes trays, splitters, etc.	EACH	\$ 448.14
HUSO (144) Aerial Place / Prep Splice Closure up to 144 ft (450B) - Aerial - includes trays, splitters, etc.	EACH	\$ 492.96
HUSO (288) Place / Prep Splice Closure 193-288 ft	EACH	\$ 403.32
HO6 OTDR Test - Uni-Directional	EACH	\$ 12.70
HO6A OTDR Test - Bi-Directional	EACH	\$ 25.46
FDH (288) Place Fiber Distribution Hub Adjacent To Handhole (288 Port)	EACH	\$ 1,541.59
MISCELLANEOUS / ADDERS		
ROCK Rock Adder (Bore)	LF	\$ 87.17
ROCK CBL Cobble Adder (Bore)	LF	\$ 65.38
ROCK Rock Adder (Trench)	LF	\$ 62.78
ROCK CBL Cobble Adder (Trench)	LF	\$ 53.80
BM73A Concrete R/R (up to 6")	SF	\$ 51.58
BM72A Asphalt R/R (up to 6")	SF	\$ 33.07
BM73A Concrete R/R (up to 6") microtrench areas	SF	\$ 55.23
BM72A Asphalt R/R (up to 6") microtrench areas	SF	\$ 45.18
Traffic Control-Microtrench	EACH	\$ 1,357.40
Traffic Control	LS	\$ 196,883.22
Pole Make-Ready	MILE	\$ 12,063.50



AGR24-46a



LOS ALAMOS

INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Bonfire Engineering & Construction LLC**, a Colorado limited liability company ("Contractor"), collectively (the "Parties"), to be effective for all purposes November 20, 2024 ("Effective Date").

WHEREAS, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 24-46 ("RFP") on December 15, 2023, requesting proposals for the Design, Construction and Operation of a Community Broadband Network ("Project"), as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a Phase 1 response dated January 12, 2024 and a Phase 2 response by March 21, 2024 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, the County Council approved this Agreement at a public meeting held on November 19, 2024; and

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

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

SECTION A. DEFINITIONS: In addition to any other terms elsewhere defined in this Agreement, the following terms are defined for the purpose of this Agreement. Where a definition is not defined, the standard meaning applies:

1. The terms "Contract" and "Agreement" are interchangeable when used throughout.
2. The terms "Services," "Construction Services," "Work," and "Project" are used interchangeably.
3. Bill of Materials (BOM): The list of components needed to complete the build of the network.
4. Central Office (CO): The origination point for the fiber-to-the-premises, the data center where the signal for the network begins.
5. Critical Path: A critical path is determined by identifying the longest stretch of dependent activities and measuring the time required to complete them from start to finish.
6. Fiber Distribution Hub (FDH): an enclosure which provides the connection between fiber optic cabling and optical splitters, a component in the Outside Plant.

7. Fiber Optic Network (Network): means a communication system consisting of optical transmitter(s) to convert electrical signal(s) to an optical signal(s) transmitted through optical fiber(s), a bundle of optical fibers in a cable is routed to transport the signal(s) to optical receiver(s) which recovers the signal(s) as electrical signal(s).
8. Fiber-to-the-Premises (FTTP): means a fiber optic communication delivery in which an optical fiber is run directly onto the end user's premises.
9. Gigabits per second (Gpbs); means billions of bits per second and is a measure of bandwidth for a digital data transmission through optical fiber.
10. High-Level Design (HLD): The level of design which describes the overall architecture and description of the system as a whole.
11. Internet Service Provider (ISP): An entity which will provide access to the network for end users or subscribers.
12. Low-Level Design (LLD): The detailed level of design, allows for finalization of the requirements of the network.
13. Megabits per second (Mbps): means millions of bits per second and is a measure of bandwidth for a digital data transmission through optical fiber.
14. Network Operation (Operation): all tasks necessary to provide a high level of service to subscribers including but not limited to standard and emergency network maintenance and repair, perform all the typical responsibilities of an internet services exchange, including contracting with internet service providers (referred to as "providers" or "ISPs"), sales and marketing, retention of providers and end users, 24/7 technical support, customer service, service provisioning, billing, and service upgrades.
15. Optical Beam Splitter (OBS): An optical device used to split a beam of light into two parts during transmission.
16. Optical Line Terminal (OLT): The endpoint hardware device in a passive optical network, used to connect fiber and transfer signals.
17. Optical Network Terminals (ONT): a device which converts signals from optical to electrical and vice versa to allow for connection of fiber optics cabling to other types of cabling such as ethernet cabling.
18. Outside Plant (OSP): All equipment which are located outside of the buildings the network is connected to.
19. Passive Optical Network (PON): An optical networking configuration which utilizes OLT and Optical Beam Splitters to distribute a single signal through multiple branches of fiber.

SECTION B. SUBJECT MATTER.

The Contractor shall perform the Work, and shall furnish all the materials, equipment, tools, labor and all supplies, appliances, and appurtenances necessary to the full completion of the Work on the Project, and in accordance with the language of the Contract and the Solicitation Documents. The term "Agreement" or "Contract" includes all the terms, conditions and obligations. The Work shall be performed in accordance with the Contract, which shall be interpreted to give full effect

to all the terms and conditions herein. In the event of a conflict in the terms and provisions of the Construction Contract, the terms and provisions of the Contract shall control in the following order:

- A. Change Orders, if applicable;
- B. Amendments, if applicable;
- C. Addenda, if applicable;
- D. Contract;
- E. Notice to Contractors;
- F. Special Conditions;
- G. General Conditions;
- H. Technical Specifications;
- I. Drawings

SECTION C. LIQUIDATED DAMAGES FOR DELAY OF COMPLETION

1. Should the Contractor fail to complete the work within the time agreed upon in the Contract, Contractor will be assessed \$500.00 per day or fraction thereof for each calendar day beyond the Substantial, and/or Final Completion dates, including all executed change orders. In view of the difficulty of estimating the damage, this amount is fixed by and agreed to by the parties as the amount of liquidated damages that the County will suffer and Contractor shall pay by reason of such default and not by way of penalty.
2. Delays –
 - a. If the Contractor is delayed at any time in the progress of the Work by any act or neglect by the County, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusual weather, adverse soil conditions other than was described in a geotechnical survey, unavoidable loss by the Contractor, delays specifically authorized by the County, or by unforeseeable or unavoidable causes beyond the Contractor's control, avoidance, or mitigation, and without the fault or negligence of the Contractor or subcontractor or supplier at any tier, then the Contract Time may be extended by Change Order for such reasonable time as the overall completion of the Work, as the County may in its sole discretion determine that such event has delayed the Critical Path of the County approved schedule and Completion of the Work, only if the Contractor complies with the notice and documentation requirements set forth below.
 - b. Contractor shall provide a written notice of delay which may result in a request for an extension of time to the County, within ten (10) calendar days from the date the Contractor knew or should have known of the facts giving rise to the delay. The notice shall indicate the cause of the delay, the anticipated length of the delay, and the probable effect of such delay upon the progress of the Work. If the cause of the delay is continuous, the Contractor must give written notice to County every month at the same time it submits the updated schedule and/or progress report to the County with the Payment Application. County will review Contractor's notice of delay and request for extension of Contract Time, determine its timeliness and alleged facts giving rise to the delay as alleged by Contractor. The County may in its sole discretion determine if the Contract Time should be extended.
 - c. Within fifteen (15) calendar days after the elimination of any such delay, the Contractor shall submit a formal Change Order request for an extension of time for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested, and such analysis and documentation of the schedule of the project and other documentation to demonstrate a delay in the Critical Path of the Work.

- d. If the Contractor does not comply with the notice and documentation requirements set forth above, the Contractor shall have waived its right to a claim for delay. Contractor's submission of a notice of delay to County is not a guarantee that County will grant the requested extension of the Contract Time.

SECTION D. SERVICES: The activities required to fulfill the requirements of this Agreement include but may not be limited to the design, engineering, permitting, procurement, material coordination, construction, testing, completion, and operation of a fiber optic network. The Network shall be constructed as a County-owned open access fiber-to-the-premises (FTTP) Community Broadband Network (CBN) capable of providing competitive, high-speed internet and related services to County residents, businesses, and anchor institutions using a wholesale broadband model. Contractor shall perform the above functions in addition to contracting with Internet Service Providers (ISPs) to deliver such retail services on an open, non-discriminatory basis. For each phase of design, the Contractor shall prepare a realistic construction estimate within the total project cost budget. The Project shall be conducted in the following Phases.

1. **Project Initiation:** Contractor shall, within ten (10) business days from the Effective Date of this Agreement, schedule a kick-off meeting with County's designated staff ("Project Team") at a date, time, and format to be agreed upon by the Parties. As part of the kick-off meeting, the Parties shall, at a minimum:
 - a. Establish a mutually agreed upon Project Schedule to accomplish key tasks defined herein and durations by which each task is completed. Contractor shall, within five (5) business days from the kick-off meeting, provide a written Project Schedule to the designated Project Manager for review and approval.
 - b. Establish communication protocols, meeting frequency, and a meeting format, with meetings occurring either in-person or online in a virtual format as agreed upon by the Parties.
 - c. Contractor shall identify an Engineering Project Manager to function as the primary point of contact throughout the Design and Construction phases detailed below.
 - d. Identify document format and data transfer methods between Contractor and Project Team.
2. **Design Phase.**
 - a. **High Level Design (HLD) Phase:**
 - i. Develop a schematic design further developing the High-Level Design (HLD) utilized for the conceptual design from the Proposal, including coordination with the Contractors OSP engineering team and review the engineering approach to include system architecture, placement methods, H-cut approach, existing assets and design assumptions. The design shall include or incorporate all requirements identified in Exhibit A, Design Requirements, attached hereto and made a part hereof for all purposes.
 - ii. **Materials and Site Analysis.** The HLD shall produce a Bill of Materials (BOM) as well as the proposed fiber route (feeder and distribution), OLT locations and fiber distribution hub locations throughout the Los Alamos Townsite and White Rock sites.
 - iii. **Site Development Concept.** The HLD shall provide the overview addressing network architecture, initial areas of focus, and provide the information necessary for Contractor's OSP engineering team to create Low-Level Design (LLD) drawings and blueprints. Contractor shall

provide HLD detail of the County owned Assets which are included in the HLD to County's Project Manager for review by County.

- iv. **Public Information Support Material.** The Contractor's team will generate large format boards of schematic design plans, site plans, and views to provide design progress and educate the public. Design must comply with all applicable codes.
- v. **HLD Review.** Contractor shall provide completed HLD package to County for review and feedback. Contractor shall address questions and requests from County and provide a finalized HLD for approval.

b. Design Development and Construction Document Phase

- i. **Design Development Drawings.** Civil, landscape, architectural, structural mechanical, electrical, technology, and equipment packages shall be developed as applicable.
 - 1. Prepare geographic information system (GIS)-based designs and computer aided design (CAD) construction prints of final designs, any new assets documented "as-built" utilizing GIS and provided digitally in an Environmental Systems Research Institute, Inc., (Esri) file geodatabase format. All splices must be documented by type of splice, method, material used, date, location, and mapped accurately to show which strands connect to which continuing strands, and also detailed in Microsoft Excel format. All GIS data must include complete Federal Geographic Data Committee (FGDC)-compliant metadata. Horizontal accuracy must be 6 inches or better.
 - 2. The Design shall provide service for all 10,014 passings identified by County, County reserves the right to amend the number of passings.
- ii. **Permitting Discovery.** Contractor shall conduct a comprehensive review of permitting requirements during the LLD process, identifying permitting requirements from all applicable authorities.
- iii. **Field Verification.** Contractor shall deploy engineering resources to verify field fiber route(s) in their entirety. Conducting field verification for new aerial and underground placement and fiber overpull locations. Collected data shall be recorded, used and transferred for the creation of permittable construction prints. Contractor shall perform field verification of any County owned assets to be utilized in the design.
- iv. **Creation of Permit and Construction Low-Level Design Prints.** Contractor shall compile all field data into permittable construction LLD prints suitable for permit submission and use in the construction process, and shall include but may not be limited to:
 - 1. New conduit, fiber type, size, coating and capacity, handholes, splice locations, fiber line of count (LOC), and associated fiber terminals.
 - 2. Identify the list of County owned assets to be utilized in the design.
 - 3. Contractor shall generate review sets of construction packages two weeks prior to submitting for permit.
- v. **LLD BOM.** Completion of the LLD prints shall provide construction prints for subcontractors and a finalized detailed BOM to allow for

ordering of materials. Contractor shall provide to County a full list of equipment specified for the LLD.

- vi. **Make-Ready and Pole Attachment Costs.** Contractor shall coordinate with County electric utility staff to determine where aerial pole make-ready improvements are needed and determine the expected associated costs. The actual associated costs will be reimbursed to the County electric utility by the CBN construction project, no later than fifteen (15) days following written notice and demand for payment.
- vii. **LLD Review.** Contractor shall provide completed LLD package to County for review and feedback. Contractor shall address questions and requests from County and provide a finalized LLD for approval by County Council. The Design Development package(s) shall be thorough, meeting industry standards and best practices and allowing for no less than a two-week County staff review.
- viii. **Complete Construction Ready Drawings.** Civil, landscape, architectural, structural mechanical, electrical, technology, and equipment packages shall be finalized as applicable.
- ix. For each phase of design, the Contractor will perform constructability and coordination reviews and publish comments.
- x. **Detailed Cost Estimate for Construction based on the Low Level Design.** Contractor shall develop a detailed cost estimate for construction based on the LLD to be presented to County Council. Contractor shall provide a PowerPoint presentation for use during the Council Meeting, with a summary of the LLD and summary of the expected construction costs.
- xi. **Council Approval.** Contractor shall prepare and submit audio-video presentation materials for approval of the LLD by County Council at a public meeting. Contractor shall attend the public meeting either in person or virtually, at the discretion of the County's Project Manager, to address any questions which may arise for Council.

3. **Design Approval and Construction.** Construction of the Community Broadband network is contingent upon approval by County Council of the LLD, and availability of funding for the construction of the network. Construction activities detailed below and in Attachment 1 – Contract Documents_Construction of Broadband Network shall not occur until approval of the design is granted by County Council at a public meeting.
4. **Construction and Amendment for Approved Design.** County reserves the right to Amend Attachment 1 – Contract Documents_Construction of Broadband Network to incorporate details related to the selected design to aid the parties in management of the construction of the Community Broadband Network.
5. Attachment 1 – Contract Documents_Construction of Broadband Network shall be the primary document to govern construction of the Project. The Project shall include or incorporate all requirements identified in Exhibit B, Construction Requirements, attached hereto and made a part hereof for all purposes.
6. County reserves the right to Partial Utilization as defined in Attachment 1, allowing for completed portions of the network to transfer to the Operation phase.
7. **Construction Phase Deliverables**
 - a. Obtain Permits

- b. Construction of Project and Site(s) Development
 - c. Special Inspections Reports
 - d. Final approved shop drawing and submittal package
 - e. As-Built Drawings including detailed AutoCAD and GIS drawings in electronic format.
 - f. Perform all of the construction work within the approved project budget.
 - g. Provide link loss testing of completed portions of work to confirm that the network functions according to all requirements, prior to network turnup for any completed portions.
8. Conduct Testing for Completed Portions of the Network prior to connecting subscribers as Follows:
- a. Testing at the hand-off between Construction to Operations: Shall include an in-depth review of all splice tests, assessing for acceptable loss levels throughout the network and testing back to the OLT.
 - b. Testing Operations with Service Providers: Service providers and the operations team shall test router connections in the network, again assessing for ensuring speeds are provisioned as advertised for customers. Perform a thorough testing review of ISPs' integration with Contractor's Operations Support System and Business Support System (OSS)/(BSS), including quality assurance testing of orders and provisioning through a test environment and once tests are passed, moved into a production environment and re-tested as well.
 - c. Testing with Friendly Customers: Contractor will acquire ten (10) friendly customers within the County to fully test the customer experience. Contractor may offer 3 to 4 months of free internet as compensation to the participating friendly customers.

9. Technical Specifications

- a. Specifications are provided to the County in a timely manner prior to installation.
- b. Complete Construction Documents including detailed coordination of equipment, hardware, and software.
- c. Complete General/Supplemental Specifications.

10. **As Built Maps.** Within ninety (90) days after the completion of construction of each phase or section of the Network, Contractor shall provide to County as-built drawing of the Network for inclusion in the County GIS or other infrastructure tracking system. Such as-built drawings shall be accurate and provided in an electronic format suitable for incorporation into the County's GIS system as a layer thereof.

11. **Operation of the Community Broadband Network.** Upon acceptance of partially completed sections of the CBN by County, operation of the CBN shall be governed by Services Agreement AGR24-46b.

SECTION E. TERM:

1. The term of this Agreement shall commence November 20, 2024, Contractor shall proceed with performance under this Agreement at such a rate of progress such that all work, duties, and obligations under this Agreement have been met by November 19, 2030 ("Final Completion Date").
2. The Contractor shall proceed with the Work at such rate of progress to ensure full completion of the Work by the Final Completion date. It is expressly understood and agreed, by and between the Contractor and the County, that the Contract Time for the completion of Work described herein is a reasonable time, and that in submitting its Proposal for the Project and executing the Contract, the Contractor has taken into consideration the average climatic and

economic conditions and other factors prevailing in the locality where the Work is to be performed.

SECTION F. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed THIRTY-FIVE MILLION and 00/100 DOLLARS (\$35,000,000.00), which amount does not include any applicable New Mexico gross receipts taxes ("NMGR") or other current or future generally applicable taxes and/or fees. Compensation shall be paid in accordance with the rate schedule set out in Exhibit C, attached hereto and made a part hereof for all purposes.
- 2. Total Not-to-Exceed Compensation Amount.** The Parties understand that County can only utilize Contractor's Services, as specified herein, throughout the Term of this Agreement, in a manner that does not surpass the total not-to-exceed compensation amount for Services originally estimated by County and specified in Section F(1) herein, unless approved by Amendment to this Agreement. Any increase to the not-to-exceed compensation amount provided herein must be authorized by an Amendment to this Agreement. The Parties agree that any Amendment to increase compensation shall not exceed the amount proposed by Contractor for potential unanticipated conditions in the Contingency Build-Up Analysis provided by Contractor on May 8, 2024. It is the sole responsibility of Contractor to ensure that all work performed does not exceed the not-to-exceed amount of this Agreement and any subsequent Amendment. Any work performed under this Agreement by Contractor where the costs exceed the not-to-exceed amount is not a just and lawful debt payable to Contractor.
- 3. Monthly Invoices.** Contractor shall submit in writing itemized monthly invoices for design related tasks to County's Project Manager showing the work completed and amount of compensation due, amount of any NMGR, and total amount payable. Contractor shall submit pay applications as found in Attachment 1, and described below in SECTION F(4) PROGRESS PAYMENTS, for all design related tasks and construction work. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.
- 4. PROGRESS PAYMENTS.**
 - a. Contractor shall submit (but not more often than once a month), to the County for review, an Application and Certification for Payment, as shown in the RFP Attachment 1, Section 5.1.4, filled out and accompanied by such supporting documentation as is required by the Contract and as the County may reasonably require. The County has fourteen (14) business days to review each Application for Progress Payment whether to accept or reject it. If application is rejected, Contractors shall resubmit a new Application for Progress Payment. Upon any re-submittal of Application for Progress Payment, the twenty-one (21) calendar daytime frame is reinstated, as outlined below. These applications for payments shall be based on the performance of the Work in accordance with the Contract Documents. Contractor shall submit Earned Value Management report if required by the Project Manager with each Application for Payment,
 - b. Contractor warrants and guarantees that title to all work, material and equipment covered by an Application for Progress Payment, whether incorporated in the Project

- or not, will pass to County at the time of payment, free and clear of all liens, claims, security interests and encumbrances.
- c. Prior to Substantial Completion, the County with the concurrence of the Contractor may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
 - d. As provided herein, County may refuse to make payment of the full amount requested by the Contractor. County will provide Contractor with written notice (with copy to Engineer) stating the reasons for such action.
 - e. If payment is requested and approved by the County's Project Manager on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Progress Payment shall also be accompanied by such data, (receipts, invoices, packing lists, delivery tickets, etc.) satisfactory to County and shall establish County's title to the material and equipment and project. Contractor is solely responsible for all loss or damage to stored materials regardless of cause.
 - f. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to County free and clear of all liens no later than time of payment.
 - g. In the event that agreement between the County or County's designee and Contractor cannot be reached concerning a County rejected Pay Application, the County will pay the portion not in question and attempt to reach agreement on those portions not in agreement in the next billing cycle.
 - h. Payment may be made by mutually agreed upon method.
 - i. Contractor agrees that County has full power to withhold payment and release of Contractor's Performance as well as Labor and Materials Bonds until all the Work is completed to the County's satisfaction, until the Contractor shall satisfy the County that it has fully settled or paid for all labor performed and materials, supplies, equipment rentals and services used from the respective suppliers and subcontractors involved, and to withhold payment equal to liquidated damages as accepted payment for liquidated damages.
 - j. County, at its sole discretion, may require an Affidavit of Payment and Release of Liens with every Application.
 - k. Unless otherwise specified in the Solicitation Documents as a Notice of Extended Payment, permitting the Owner to make payment within a period not to exceed that specified in the New Mexico Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. or any replacement to such Act.
 - l. Final Application for Payment
 - i. The Final Application for Progress Payment shall include a notarized Affidavit of Payment and Release of Liens.
 - ii. After Contractor has completed all such corrections to the satisfaction of the County and delivered in accordance with the Contract all maintenance and operating instructions, all materials including but not limited to spare parts, lubricants, etc., as required by the Contract, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Notice of

Termination for National Pollutant Discharge Elimination System NPDES, marked up record documents showing work as constructed (as-builts), video tapes, or other required documents, Contractor may make application for final payment following the procedure outlined above for progress payments. The final Application for Payment shall be accompanied (except if previously delivered) by all documentation called for in the Contract, including but not limited to the evidence of insurance required, consent of surety, if any, to final payment, and complete and legally effective releases or waivers (satisfactory to County) of all liens arising out of or filed in connection with the Work. If any subcontractor or supplier fails to furnish such release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to County to indemnify County against any lien or other claim(s).

m. Final Payment and Acceptance

- i. On the basis of the Engineer's and County's observation of the Work during construction and final inspection and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract, Engineer recommends to County that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, County shall process final payment. Otherwise, County will return the Application for Final Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application once the corrections have been made to the satisfaction of the County.
- n. The final payment by the County signifies that the Work has been accepted by the County under the conditions of the Contract.
 - i. Contractor agrees that the acceptance by the Contractor of final payment shall be and shall operate as a full and complete release to the County of all claims and all liability to the Contractor, other than claims in stated amounts as may be specifically expected by the Contractor, for all things done or furnished in connection with this Work and for every act and neglect of the County and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or the Contractor's sureties from any obligations under the Contract or the Performance Bond and Labor and Materials Bond.
- o. Contractor agrees that the making and acceptance of Final Payment shall constitute a full and complete waiver of all claims (whether know or unknown, presently existing, or arising in the future) by the Contractor against the County other than those previously made in writing and still unsettled.

SECTION G. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION H. PAYMENT TO MECHANICS AND LABORERS: Contractor agrees to make prompt payment to its subcontractors and suppliers for work performed under the Contract within seven (7) calendar days after receipt of payment from County and to pay all mechanics and laborers in accordance with NMSA 1978, Section 57-28-5, as applicable. Contractor shall obtain from each

supplier of labor, services or materials used in the performance of Contractor's obligations under this Contract a written release and waiver of all liens against County and Project. Such releases and waivers of lien shall be submitted to County with the final Application for Payment and may be required with each Application for Payment at County's sole discretion.

Additionally, all Sub-contractors shall require that their Sub-contractors and suppliers make prompt payment to their Sub-contractors and suppliers for amounts owed for work performed on the Project within seven (7) calendar days after receipt of payment from the County, Contractor or Sub-contractors, as applicable.

If the Contractor or Sub-contractors fails to pay the Contractor's or Sub-contractor's subcontractor and suppliers by first-class mail or hand delivery within seven (7) calendar days of receipt of payment, the Contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the disputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

SECTION I. MODIFICATION OF CONTRACT AND CHANGE ORDERS: This Agreement shall be modified only by mutual written consent of the parties. County may at any time, as the need arises, order changes within the Project without invalidating this Agreement. If such changes increase or decrease the costs of the Project within the not-to-exceed compensation amount provided herein, or the time required for completion of the Project, then an equitable adjustment to the amount of compensation due and/or times for completion of the Project shall be authorized by the Change Order as mutually agreed to by County and Contractor. Only the County Manager shall have authority to authorize such Change Orders on behalf of the County under this Agreement. If such changes increase the costs of the Project beyond the not-to-exceed compensation amount provided herein, such an increase must be approved and authorized by an Amendment to this Agreement.

SECTION J. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall 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 County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to bind the County in any manner, nor enjoy 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 K. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION L. DELIVERABLES AND USE OF DOCUMENTS: 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 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 County.

SECTION M. 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 N. INSURANCE: 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, and Contractor shall provide (and keep updated as necessary) prior to commencing any Services under this Agreement, Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
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:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance,** with a limit of not less than \$1,000,000 each Claim, with a \$1,000,000 annual aggregate, and sufficient to provide coverage for a three (3) year period from completion of this contract, against any and all claims which may arise from the Contractor's negligent performance of work described herein.
5. **ALL RISKS BUILDERS RISK INSURANCE (covering Fire, Extended Coverage, Vandalism and Malicious Mischief):** will be carried on a completed value or reporting form,

for not less than 100% of the value of the work, including foundations. The All Risks Builder's Risk required above shall include the Incorporated County of Los Alamos and will cover the interests of all sub-contractors without specifically naming them. If the insurance is written subject to a deductible clause, Contractor assumes sole responsibility for the amount of the deductible.

Note that insurance limits set out above shall not be deemed a limitation on Contractor's liability under this Agreement.

SECTION O. 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 P. DUTY TO ABIDE: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

SECTION Q. 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 R. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION S. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

SECTION T. WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION U. INDEMNITY: Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement. All representations, indemnifications, warranties, and guarantees made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the extent permitted by New Mexico or other applicable law, completion and acceptance of the Work and termination or completion of the Agreement.

SECTION V. 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 W. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein and shall not novate this Agreement to another without the prior written consent of the County Manager.

SECTION X. 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 Y. 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. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION Z. TERMINATION:

1. This contract shall terminate upon County's issuance of Notice of Final Completion, provided however, that Contractor's warranty obligations and any warranties listed within the Technical Specifications for materials, equipment, systems and/or labor supplied through the Contractor for the execution of the Work shall survive the termination of this Contract until such time as County determines that Contractor's warranty obligations have been fulfilled and County has specifically released Contractor in writing, or by the individual warranty expirations, from such obligations. The issuance of Notice of Final Completion or the release of surviving Contractor obligations shall not be deemed a waiver of any claim the County may have against Contractor arising from Contractor's performance under this Contract.
2. The County Manager may terminate this Agreement with or without cause upon ten (10) 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 F. 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.

3. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by 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 AA. 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 or delivery verified by a properly empowered representative of the recipient.

County:

Broadband Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 220
Los Alamos, New Mexico 87544

Contractor:

President
Bonfire Engineering and Construction, LLC
4500 Cherry Creek Drive South, Suite 1200
Denver, Colorado 80246

With a simultaneously-delivered copy to:

County Attorney
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544

Note that the copy to the County Attorney's Office is a required administrative step, but does not constitute actual notice to the County.

Either Party may change its notice name and address upon ten (10) days written notice to the other Party.

SECTION AB. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION AC. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION AD. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION AE. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.

SECTION AF. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

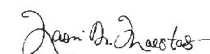
SECTION AG. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AH. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit E. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

SECTION AI. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

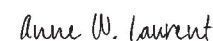
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

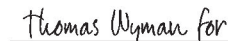

NAOMI D. MAESTAS
 COUNTY CLERK



INCORPORATED COUNTY OF LOS ALAMOS

BY:  11/20/2024
ANNE W. LAURENT **DATE**
 COUNTY MANAGER

Approved as to form:


J. ALVIN LEAPHART
 COUNTY ATTORNEY

**Bonfire Engineering & Construction LLC, A
 COLORADO LIMITED LIABILITY COMPANY**

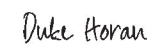
BY:  11/20/2024
DUKE HORAN **DATE**
 PRESIDENT

Exhibit A
Design Requirements
AGR24-46a

1. The FTTP network shall reach all serviceable residences and businesses within the County and have sufficient capacity to serve one hundred percent of the addresses within Los Alamos County.
2. Fiber optic cable to the customer demarcation point in each residential or business unit is required.
3. A single buffer tube with a minimum of 12 strands which extends through all arterial and collector streets is required. The reserved tubes would be dark fiber, for County use. Exhibit D – Los Alamos Townsite and White Rock Street Classifications details the street classifications described above. (NOTE that East Road (NM502) and Trinity Drive in Los Alamos and NM 4 in White Rock are State Owned Roads).
4. The physical fiber network plant shall be capable of supporting a range of standards-based FTTP access technologies, including Active Ethernet (IEEE 802.3 or newer) and advanced Passive Optical Network (PON) technology. The Community Broadband Network shall be designed for high levels of redundancy, reliability, and resiliency. It shall also be designed to reduce operational complexity to simplify the onboarding of ISPs to the network; assign bandwidths and capacity; and isolate where an operational issue originates at the operator infrastructure, ISP network, or customer sides without disrupting services of other ISPs or customers.
5. The design shall provide systems for proactive fault and capacity management at different open systems interconnection (OSI) layers.
6. The Community Broadband Network shall be designed to be efficiently expandable in terms of increased data capacity, service area, and accommodating advances in technology as may reasonably be expected to become available over the life of the network (at least 30 years after installation).
7. The Community Broadband Network shall allow for leasing dark fiber(s) to multiple service providers (open access).
8. The design shall provide lockable, secure controlled physical access to all equipment housed in pull-boxes, handholes, hand-holds, buildings and facilities having a volume designed to contain equipment.
9. For the purposes of evaluation, the costs of drops (premises boundary to a private building wall), subscriber network electronics, and any other subscriber related costs should be included at a take rate of sixty percent of homes and businesses.

County shall retain ownership of all physical assets of the network, including conduits, fibers, terminals, electronics, and drops (conduit, cable, fiber and equipment located between the County right-of-way and the premises boundary, and a premises private building exterior wall). The final design shall describe all equipment to be utilized in the network in terms of brand, quality, and expected life span.

The resulting network will include, without limitation:

1. Fiber,
2. Conduit (if any underground construction is required),

3. Pole attachments (for aerial fiber),
4. Optical splitters,
5. Terminals,
6. Cabinets,
7. Hubs,
8. Fiber taps,
9. Fiber drop connections,
10. Fiber termination at the premises, and
11. Any other passive equipment necessary to support communications networking over the network.

The network access technology and design will be an FTTP open access network capable of delivering at least 10 GB symmetrical service to every covered location with the possibility of upgrading to 25 GB or more in the future.

SEE H-Cut Illustration below Figure 1. H-Cut allows for reduction of the installed fiber line, by allowing a bore from one installed cable to reach the opposite side of a roadway to allow for installation at additional premises rather than installing fiber line on both sides of the roadway.

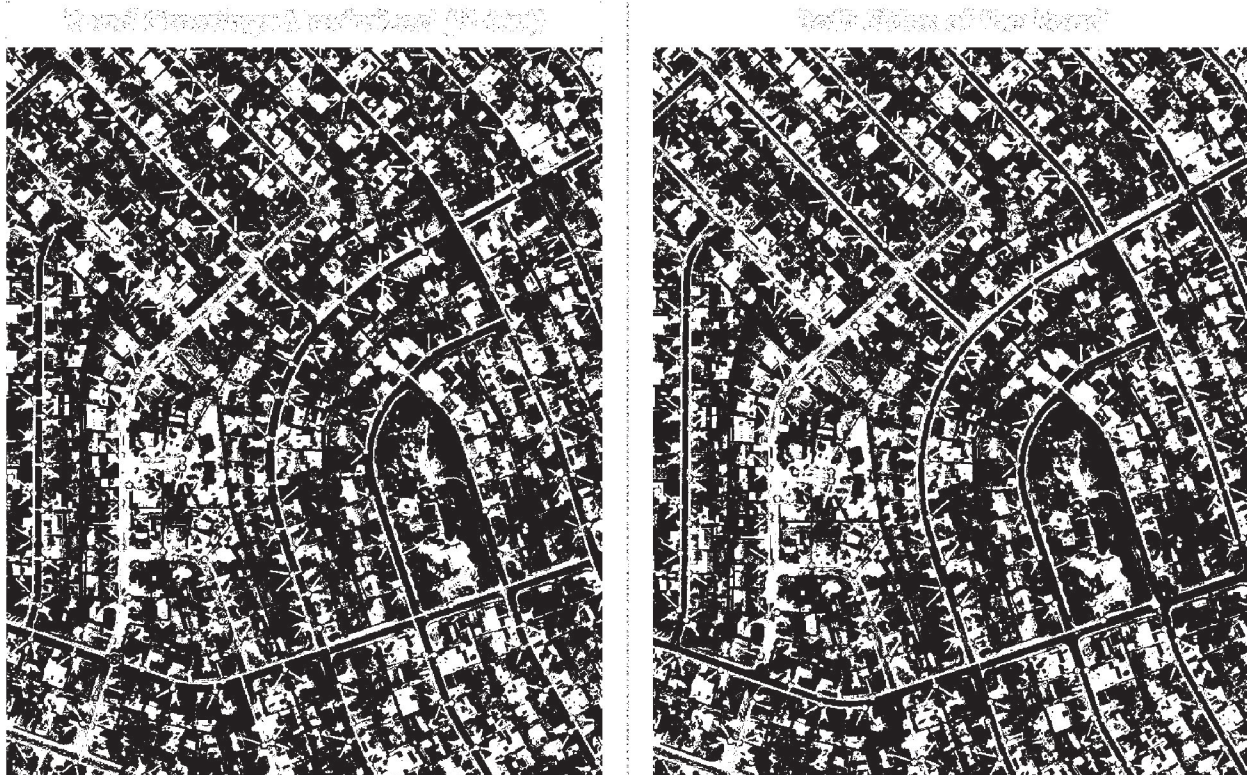


Exhibit B
Construction Requirements
AGR24-46a

Contractor shall be responsible for the following construction tasks, at minimum:

1. Placement of fiber optic cable and tracer wire, when installed in conduit;
2. Only conduit allocated for fiber optic cable may be utilized for this project;
3. Fiber optic cable, may not be installed in electric manholes;
4. Installation of new messenger strand between utility poles for aerial cable construction, to include installation or relocation of guy wires and anchors;
5. Lash and/or overlash fiber optic cable to existing or upgraded pole-to-pole aerial strand;
6. Installation of fiber splice enclosures and fiber splicing;
7. Placement and assembly of fiber termination panels and related hardware;
8. Placement of internal fiber optic cable necessary to reach the customer demarcation point;
9. Sub-surface installation of conduit, primarily through micro-trenching, open trench excavation or through boring techniques, including locating existing utilities through test pitting, potholing, traffic control, and permanent surface restoration;
10. Installation of underground handholes and ground rods, including permanent paved surface restoration;
11. Optical performance, optical time-domain reflectometer (OTDR) testing of fiber optic strands;
12. Obtain all necessary permits, including County excavation, County Traffic Control, environmental approvals and/or jurisdictional determinations; and
13. Provision and storage of all materials related to the above construction tasks.
14. Construct and test all work in accordance with applicable Public Works Department and Construction Standards as well as NMDOT Standard Specification for Highway and Bridge Construction. Work will be subject to inspection and approval by the County Public Works Division for scope affecting grading, drainage, and transportation infrastructure including but not limited to roadway, sidewalks, curb and gutter and trails.
15. Construct and test all work in accordance with applicable Los Alamos Department of Public Utilities Construction Standards originally dated October 17, 2007 with the most current revision as may be amended from time to time: <https://losalamosnm.egnyte.com/fl/5VooxM9k37>

Exhibit C
Compensation Rate Schedule
AGR24-46a

Description	Cost
Network Design	\$1,241,790.68
Network Construction	\$21,944,637.00
Network Drop @ 60% of all passings	\$6,168,896.00
Design and Construction Total	\$29,355,323.68
Contingency	\$5,622,676.32
Total Not to Exceed Amount	\$35,000,000.00

Any adjustments in costs during construction shall utilize the unit prices provided below and shall be calculated and executed in accordance with the provisions in Attachment 1. Changes in the Work, and must not exceed the Not to Exceed Amount for compensation.

Description	Quantity	UM	Unit Price
LOS ALAMOS COUNTY, NM HTTP - LABOR			
ENGINEERING			
ENG - HLD	653,068	LF	\$ 0.20
ENG - AR	333,738	LF	\$ 2.21
ENG - UG	319,330	LF	\$ 1.17
UNDERGROUND			
BM60(1-3") (1) Bore Hole Directional Bore - 3" (pullback not included)	231,459	LF	\$ 28.73
BM60(1-5") (1) Bore Hole Directional Bore - 5" (pullback not included)	32,104	LF	\$ 32.26
BM60(1-8") (1) Bore Hole Directional Bore - 8" (pullback not included)	-	LF	\$ -
BFV (1x0.75") IE Pull Back HDPE 1 - (0.75")	108,229	LF	\$ 2.01
BFV (1x1.25") IE Pull Back HDPE 1 - (1.25")	50,074	LF	\$ 2.01
BFV (2x1.25") IE Pull Back HDPE 2 - (1.25")	291,728	LF	\$ 2.24
BFV (3x1.25") IE Pull Back HDPE 3 - (1.25")	5,000	LF	\$ 2.24
BFV (1x0.75") T Trench HDPE 1 - (0.75")	10,000	LF	\$ 14.30
BFV (1x1.25") T Trench HDPE 1 - (1.25")	5,000	LF	\$ 14.30
BFV (2x1.25") T Trench HDPE 2 - (1.25")	5,000	LF	\$ 14.30

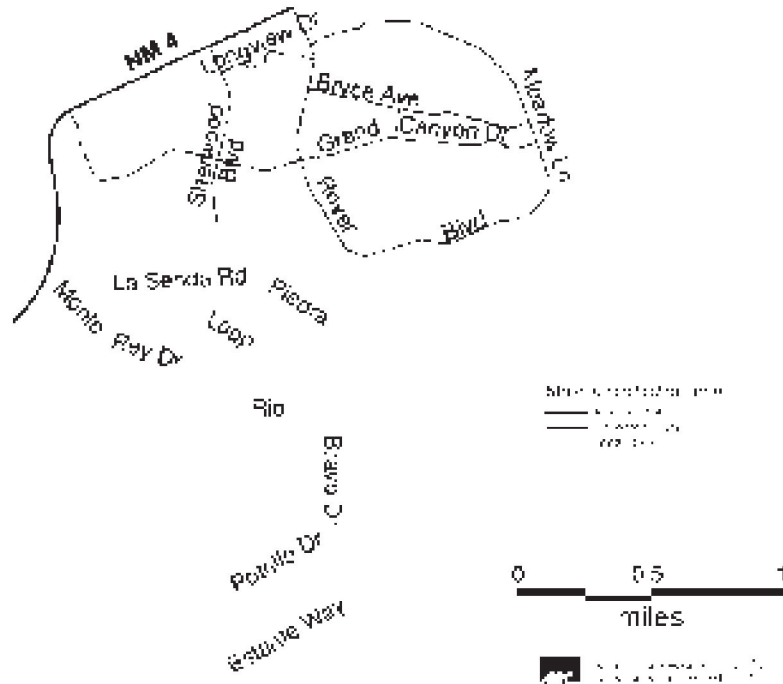
Services Agreement No. AGR24-46a

Bonfire Engineering & Consulting

BFV (3x1.25") T Trench HDPE 3 - (1.25")	5,000	LF	\$ 14.30
UO1-96 Place Fiber in new duct (up to 96 ft)	243,050	LF	\$ 2.19
UO1-96 - COIL Place Fiber Coil in new Handhole (up to 96 ft)	-	LF	\$ -
UO144-288 Place Fiber in new duct (144 - 288 ft)	104,428	LF	\$ 2.19
UO144-288 - COIL Place Fiber Coil in new Handhole (144 - 288ft)	-	LF	\$ -
UO MST TERM Place MST Term in Handhole	2,081	EACH	\$ 250.96
UO(TAIL) PER FT LBR Place Terminal Tail in Duct	663,325	LF	\$ 1.76
UO432 Place Fiber In New Duct	1,381	LF	\$ 2.33
UOxxxIE Proof and Pull / Place Fiber in Existing duct (any size up to 288f)	30,767	LF	\$ 2.19
BHF(17x30x24) Place Handhole (17"x30"24") w/ Ground Assy	2,075	EACH	\$ 216.58
BHF(24x36x24) Place Handhole (24"x36"24") w/ Ground Assy	425	EACH	\$ 558.22
BHF(30x48x36) Place Handhole (30"x48"x36") w/ Ground Assy	17	EACH	\$ 771.66
BHF - FP Place 9" Flower Pot	2,026	EACH	\$ 89.62
BM53(6) PL Place Test Station (Ground Assembly w/ Handholes)	2,952	EACH	\$ 89.62
BM21 OLT Site Prep - Pour and Place 8'x8' x8" Concrete Pad, etc.	3	EACH	\$ 6,223.59
Cabinet Place OLT Cabinet on BM21 Site	3	EACH	\$ 80,664.77
AERIAL			
CS(6M) Place New 3M Strand (Includes all hardware, dead ends, bolts, clamps, etc.)	333,738	LF	\$ 1.79
Lash (1) Fiber Cable (any size up to 288 ft)	49,493	LF	\$ 1.79
Lash (2) Fiber Cable (any size up to 288 ft)	148,478	LF	\$ 2.08
Lash (3) Fiber Cable (any size up to 288 ft)	131,980	LF	\$ 3.80
BM80 Place 1" 8' U-Guard	167	EACH	\$ 84.82
BM86(2) Place 2" PVC Riser	175	EACH	\$ 84.82
PE 1-2 Place Anchor & Guy with Guy Guard	223	EACH	\$ 503.03
PM-SHSH Place Snowshoe (pair)	67	EACH	\$ 225.18
CO MST TERM Place Aerial MST Term	849	EACH	\$ 331.62
CO(TAIL) PER FT LBR Lash Terminal Tail to Strand	284,325	LF	\$ 3.59
SPlicing			
HO1 Fusion Splice Fiber	23,567	EACH	\$ 36.43
HO3 Plug Connector into Device (splitter, hub, etc.)	11,682	EACH	\$ 21.78

HUSO (144) Place / Prep Splice Closure up to 144 ft (450B) - includes trays, splitters, etc.	860	EACH	\$ 448.14
HUSO (144) Aerial Place / Prep Splice Closure up to 144 ft (450B) - Aerial - includes trays, splitters, etc.	465	EACH	\$ 492.96
HUSO (288) Place / Prep Splice Closure 193-288 ft	17	EACH	\$ 403.32
HO6 OTDR Test - Uni-Directional	10,114	EACH	\$ 12.70
HO6A OTDR Test - Bi-Directional	250	EACH	\$ 25.46
FDH (288) Place Fiber Distribution Hub Adjacent To Handhole (288 Port)	41	EACH	\$ 1,541.59
MISCELLANEOUS / ADDERS			
ROCK Rock Adder (Bore)	1	LF	\$ 87.17
ROCK CBL Cobble Adder (Bore)	1	LF	\$ 65.38
ROCK Rock Adder (Trench)	1	LF	\$ 62.78
ROCK CBL Cobble Adder (Trench)	1	LF	\$ 53.80
BM73A Concrete R/R (up to 6")	1	SF	\$ 51.58
BM72A Asphalt R/R (up to 6")	1	SF	\$ 33.07
Pole Make-Ready	1	MILE	\$ 12,063.50

Exhibit D
Los Alamos Townsite and White Rock Street Classifications
AGR24-46a
White Rock Functional Street Classifications



Los Alamos Townsite Functional Street Classifications

*Los Alamos Townsite
 Functional Street Classifications*

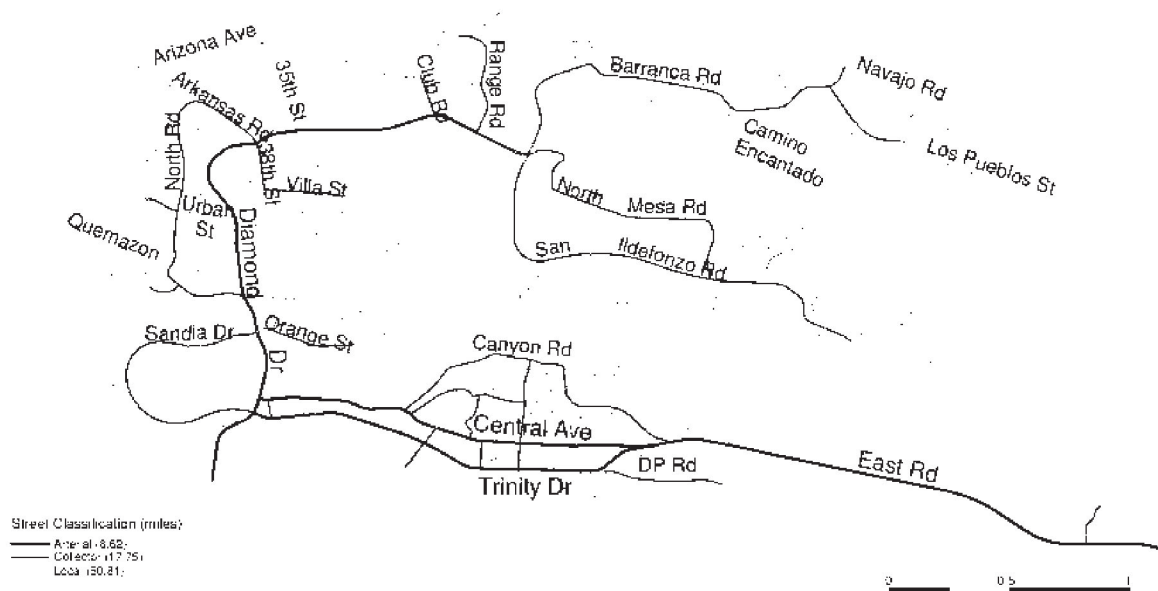


Exhibit E
Confidential Information Disclosure Statement
AGR24-46a

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act (1978) NMSA §§14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

Contractor: Duke Horan
 Bonfire Engineering and Construction, LLC
 4500 Cherry Creek Drive South, Suite 1200
 Denver, Colorado 80246
 Email: duke.horan@bonfireig.com

County: Broadband Manager
 Incorporated County of Los Alamos
 1000 Central Avenue, Suite 220
 Los Alamos, New Mexico 87544

Either Party may change its notice name and address upon ten (10) days written notice to the other Party.

2. Definitions:

- a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
- b) **Discloser** - the party disclosing Confidential Information.
- c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
- d) **Recipient** – the party receiving Confidential Information.

3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to

the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.



LOS ALAMOS
where discoveries are made

Attachment 1
Construction Contract Book

AGR24-46a

Design, Build and Operate a Community Broadband Network

Note: This Construction Contract Book is subject to revision as part of the contracting process, and where it conflicts with Agreement AGR24-46a the Agreement controls.

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1.0 REQUIREMENTS FOR OFFERORS

Proposals must be made with the understanding and in accordance with these conditions for offerors:

1.1 PROPOSAL SECURITY (BID BOND)

Pursuant to Section 31-172 of County's Procurement Code, Proposal Security (Proposal/Bid Bond) in the amount of five percent (5%) of the proposal for the costs associated with the construction of the project **must accompany the proposal during Phase Two of this solicitation**. Proposal security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. **Noncompliance with this requirement at Phase Two of this solicitation requires that the proposal be rejected**. Proposal Security will be returned promptly after the County and the accepted Offeror have executed the contract, or if no award has been made within sixty (60) days after the date of the opening of proposals, upon demand of the Offeror at any time thereafter, so long as Offeror has not been notified of the acceptance of Offeror's proposal. In submitting their Proposal Security, it is not mandatory that Offerors use the Proposal Bond form provided in the packet. The County strongly encourages all Offerors to use this form, but if the Offeror elects not to use it, the Proposal Bond must be submitted on a form acceptable in the construction industry and approved by the County Project Manager in advance of the proposal due date.

1.1.1 Liquidated Damages for Failure to Enter into Contract

The successful Offeror, upon failure or refusal to execute and deliver the Contract and required Bonds within ten (10) calendar days after Offeror has received the Notice of Award, shall forfeit the Bidder's Bond to the County, as liquidated damages for such failure or refusal, the proposal bond deposited with Offeror's bid.

1.1.2 Conditions of Work

Each Offeror must inform itself fully of the conditions relating to the construction of the Project and the employment of labor thereon. Failure to do so will not relieve a successful Offeror of its obligation to furnish all material and labor necessary to carry out the provisions of the Contract. The Work in this Contract will be carried out during the hours of 7:00 a.m. to 9:00 p.m., Monday through Sunday unless otherwise scheduled with and approved by the County. Noise Ordinance Waivers are required for work occurring between the hours 9:00 p.m. and 7:00 a.m.

1.1.3 Addenda and Requests for Interpretation

- A. No interpretation of the meaning of the plans, specifications or other solicitation documents will be made to any Offeror orally and offerors understand that no oral interpretation once made may be relied upon. Every request for such interpretation shall be in writing addressed to the Project Manager. Requests for interpretation must be received at least six (6) calendar prior by 5:00 p.m. to the date fixed for the opening of proposals. Failure of any Offeror to acknowledge all addenda on the Addendum Acknowledgement Form shall not relieve such Offeror from any obligation under its

proposal as submitted and may render the Offeror non-responsive. Each Offeror shall ascertain prior to submitting a proposal that the Offeror has received all Addenda issued, and the Offeror shall specifically acknowledge their receipt in the proposal. All addenda so issued shall become part of the Contract documents.

- B. Addenda will be e-mailed to all who are known by the County to have requested RFP Documents.
- C. No Addenda will be issued later than four (4) calendar days prior to the date for receipt of proposals except an Addendum withdrawing the request for proposals or one which includes postponement of the date for receipt of proposals.

1.1.4 Power of Attorney

Attorneys-in-Fact who sign any required bonds must file with each bond a certified properly executed and dated copy of their power of attorney.

1.1.5 Obligation of Offeror

Complete sets of Solicitation Documents must be used in preparing Proposals; neither the County nor Engineer as defined in this Attachment 1, Definitions, Section 5.2.1, assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Solicitation Documents.

The Submission of a proposal will constitute an incontrovertible representation by Offeror that Offeror has complied with every requirement of the RFP, which without exception the proposal is premised upon performing and furnishing the Work required by the Solicitation Documents. The Offeror will be required to establish to the satisfaction of the County the qualifications and capability of the persons proposed to furnish and perform the Work described in the Solicitation documents. Offeror, by signing the proposal also acknowledges that the Contract Time is reasonable for the weather and climactic conditions.

Prior to the award of the Contract, the County will notify the Offeror in writing if the County after due investigation has reasonable objection to a proposed person or entity, the Offeror may, at the Offeror's option, (1) withdraw the proposal, or (2) submit a substitute person or entity acceptable to the County with an adjustment in the Base Proposal Cost or Deductive Alternate to cover the difference in cost, if any, occasioned by such substitution. The County may accept the adjusted proposal price. In the case that the adjusted price makes them no longer the selected Offeror, County reserves the right to award the contract to another Offeror as determined by County to be the most advantageous to the County, taking into consideration the evaluations factors set forth in the Solicitation Documents. In the event of withdrawal as described in this subsection, proposal bond will not be forfeited. Persons, including but not limited to, the Project Manager, Superintendent, and any Subcontractors proposed by the Selected Offeror and to whom the County has made no reasonable objection must be used by the Selected Offeror to perform the Work for which they were proposed and shall not be changed except with the prior written consent of the County.

1.1.6 Safety Standards and Accident Prevention

With respect to all Work performed under this contract, the Selected Offeror shall:

- A. Comply with the standard provisions of the most current versions of all applicable laws, rules and regulations that apply to the Work contracted for.
- B. Provide a Safety Management Plan to the County within 10 days of award for review and approval by the Project Manager (see Section 5.2.1).

1.1.7 Substitutes or Brand Name or Equal

Substitutes or Brand Name or Equal may be determined that a “brand name or equal” is in the County’s best interests, and in many cases is the “Basis of Design” for an item or system.

- A. The Selected Offeror may provide a substitution of an item or items
- B. The Selected Offeror shall provide proof in the respective submittal that the proposed substitute item is equal to or exceeds the basis of design.
- C. The procedure for submission of any such application by the Selected Offeror and consideration by County is set forth in Section 5.2.7. The County reserves the right to accept or reject the substitution at its sole discretion.

All re-design and evaluation costs that may be incurred shall be paid by the Selected Offeror.

1.1.8 Proposals to Remain Subject to Acceptance

All proposals will remain subject to acceptance for one hundred eight (180) calendar days after the day of the RFP Closing Date. The County may, at its sole discretion, release any proposal and return that proposal bond prior to that date. County may request an extension, agreeable to both the Offeror and County.

1.1.9 Withdrawal of Proposals

- A. Offeror may withdraw its proposal by written notice and received by Purchasing Agent prior to RFP Closing Date opening.
- B. After the RFP Closing Date, no changes in proposal prices or other provisions of proposal shall be permitted.

1.1.10 Acceptance or Rejection of Proposals

The County reserves the right to accept any proposal, reject any or all proposals without cause, to waive any or all technicalities in any proposal in the interest of the County and the right to reject all non-responsive proposals.

1.1.11 Award

Proposals shall be evaluated based on the Proposal Evaluation Criteria set forth in the RFP, and the Contract shall be awarded to the responsible Offeror whose proposal has been determined by County to be the most advantageous to the County, taking into consideration the evaluations factors set forth in the Solicitation Documents accordance with Chapter 31-102(1)(i) of the Los Alamos Code of Ordinances.

1.1.12 Registration of Contractors and Subcontractors

Any Offeror that submits a proposal valued at more than the dollar amount required by the New Mexico Public Works Minimum Wage Act [13-4-10 through 13-4-17 NMSA 1978] and the New Mexico Subcontractors Fair Practice Act [13-4-31 to 13-4-35, 13-4-36 to 13-4-2] for a public works project shall be registered with the labor and industrial division of the New Mexico Department of Workforce solutions. County will not accept proposals for a public works project subject to the New Mexico Public Works Minimum Wage Act from an Offeror that does not provide proof of required registration for itself and its subcontractors.

1.1.13 Procurement Preferences

State and local preferences apply to construction projects.

Preference factor: Preferences in purchasing by formal bid, or request for proposals or qualifications shall be in accordance with New Mexico Statutes, Section 13-1-21 NMSA 1978 et. al. and County Code of Ordinances 31-261. Offeror must provide a copy of State-issued preference certificate if requesting a preference.

2.0 SUMMARY OF WORK

2.1 Project Description

The following sections 2.1 through 2.4 contains a sample outline of tasks which County anticipates will be required to design and construct the Project, County reserves the right to revise the content of these sections based on the final design selected for construction of the project.

The successful Design-Build (“D-B”) Team shall have recent experience in the design and construction of open access fiber-to-the-premises (FTTP) Community Broadband Networks. This contractor and designer shall be currently licensed in the State of New Mexico to perform all of the work required by the NM Construction Industries Division (CID), which licenses contractors and approves the construction documents for permit and provides the required state inspections. The Owner requires the D-B contractor to interact/interface with the stakeholders to reach a consensus on design.

Purpose of Project

The purpose is to design and construct a County-owned open access fiber-to-the-premises (FTTP) Community Broadband Network.

Project Stakeholders

The project stakeholders may include the County Broadband Manager, the County Engineer, Department of Public Utilities, Information Management Manager, County Senior Management Team, and the County Council.

2.2 Project Scope of Work

All parties of the design-build contract shall, at minimum:

1. Familiarize themselves with the Project scope.
2. Ensure that Standards provided in the RFP document for design of the Community Broadband Network are met.
3. Provide a conceptual design with simple plans and sketches, detailing layout of the network and work plan for each area to be constructed by phase to include but not limited to pole attachment or conduit use by segment.
4. Following input from stakeholders adjust the conceptual design as needed and attend County Council meeting to assist in presentation of the design with cost considerations.
5. Following approval by County Council, receive direction from County Project manager to develop construction plans.
6. Complete formal design and construction plans in sufficient detail to build the Network and site development.
7. Site Plan including landscaping, for all areas of construction. Obtain locates for any required excavation work.
8. Obtain necessary construction permits through the NM Construction Industries Division.

9. Acquisition of all permitting required, including but not limited to Los Alamos County Planning and Zoning Commission site plan approval.
10. Complete design and implementation of SWPPP plan and any necessary traffic control, permit, and oversee daily maintenance of the plans.
11. The area of disturbance for the project is >1 acre. Final construction plans shall provide provisions to ensure the construction contractor complies with NPDES Construction General Permit Requirements, including:
 - a. Preparation of a temporary erosion and sediment control plan for the installation of United States Environment Protection Agency ("US EPA") "Best Management Practices" for temporary erosion control measures (i.e. silt fence, mulch socks, cobble at site entrances, concrete washout facilities, etc.)
 - b. Preparation and updating of a Storm Water Pollution Prevention Plan (SWPPP)
 - c. Submittal of a Notice of Intent (NOI) and Notice of Termination (NOT) to the US EPA.
12. Post-construction cleanup and removal of debris.
13. Perform and/or call for all required regular and special testing and inspections as may be required herein and/or by the County Code, or applicable building code.
14. Provide electronic and two printed copies of the as-built drawings.
15. Provide O&M manuals in electronic format and training.

The County shall provide:

1. Existing conditions site maps with known utilities locations, soils conditions and other factors.
2. Water connections and service at the build locations.
3. Electrical service at the build locations.
4. General direction and oversight of the work.

2.3 Deliverables

The proposed design and construction plans must include, at minimum:

1. A professionally designed and constructed, Network, fulfilling the requirements as detailed in the RFP document, detailing any required support or infrastructure building(s) and site;
2. The deliverables for the Design phases as listed in this document during: Schematic Design, Design Development Phase, Construction Documents Phase, and Construction Phase;

2.4 Design Phase Deliverables

2.4.1 Architect / Engineer Design Phase Deliverables

The following phases shall be used for the design portion of the Design-Build. The list of deliverables is not all inclusive or limited only to these deliverables listed below. At the end of each phase there will be a formal review and approval process before proceeding to the next phase.

a. Schematic Design Phase:

Develop a schematic design further developing the approved conceptual design.

Materials and Systems Concepts

Site Analysis

A landscaping plan for the entire project by phase.

Site Development Concept including utility improvements beyond the project site.

Detailed Cost Estimate for final selected schematic design.

Public Information Support Material.

IDRC, Planning & Zoning and County Council required materials for approval.

Schematic Design

The D-B team will generate for each public meeting large format boards of schematic design site plans to provide design progress and educate the public. Design must comply with all applicable codes.

b. Design Development Phase

Design Development Drawings (civil, landscape, architectural and structural design package may precede mechanical, electrical, technology, and interior design drawings)

Outline Specifications

Cost Estimate

Design Development

The D-B team will generate a thorough Design Development package(s) meeting industry standards and best practices for a two-week staff review.

c. Construction Documents Phase

Complete Architectural & Engineering Working Drawings (civil, landscape, architectural and structural design package may precede mechanical, electrical, and interior design drawings)

Design Coordination Plan & Workshop

Technical Specifications

Specifications are provided to County in a timely manner prior to installation.

Complete Construction Documents including detail coordination of equipment, hardware, Audio/Visual equipment, etc. with building infrastructure.

Complete General/Supplemental Specifications

Update Cost Estimate

Construction Documents

The D-B team will generate review sets of construction packages two weeks prior to submitting for permit. This process can be phased to meet schedule requirements. Los Alamos County permits construction work through the State of New Mexico Construction Industries Division. All state and federal laws pertaining to public facilities such as the Americans with Disabilities Act and Voting machine and material storage requirements are applicable.

2.4.2 Contractor Design Phase Deliverables

- a. For each phase of design, the Contractor shall prepare for the County a realistic construction estimate within the total project cost budget based on the following parameters:
 - i. Schematic Design Phase: Total Project Cost Estimate including an adequate design contingency.
 - ii. Design Development Phase: Total Project Cost Estimate including an adequate design contingency.
 - iii. Construction Documents Phase: A lump sum not-to exceed project budget.
 - iv. Construction Phase: Perform all the construction work within the approved project budget.
- b. Fee Schedule for General Contractor (GC) shall be a maximum of 2% for all design phases to cover all costs incurred in developing construction budgets, (attending meetings, handling A&E invoices, any reproduction costs, etc.). During the construction phase payments shall be made to the GC by monthly Application for Payment(s) based upon an approved Schedule of Values and the corresponding portion of the work performed as contained in and in accordance with the Owner's standard construction contract.
- c. For each phase of design, the Contractor will perform constructability and coordination reviews and publish comments.

2.4.3 Construction Phase Deliverables

- a) Obtain all required governmental Permits.
- b) Construction of Project and Site Development.
- c) Routine and Special Inspections Reports.
- d) Obtain Certificate of Occupancy (as applicable)
- e) Final approved shop drawing and submittal package.
- f) O&M manuals (printed, and electronic copies in unlocked PDF format).
- g) Videotaped onsite training for all project systems and maintenance items
- h) Professional photography of construction progress from 5 consistent vantage points for each phase of construction.
- i) AutoCAD Drawings in electronic DXF or other format approved by County.
- j) As-Built Drawings in electronic DXF or other format approved by County suitable for inclusion in the County's GIS as a layer.

2.5.0 NOTICES TO CONTRACTORS

Work shall be performed in accordance with applicable federal, state and local laws and regulations.

2.5.1 Applicable Law

Work shall be performed in accordance with applicable federal, state and local laws and regulations.

2.5.2 Gross Receipts Tax

All proposals submitted are to exclude the applicable gross receipts taxes. County will pay the applicable taxes to the Selected Offeror including any increase in the applicable taxes becoming effective after the execution date of the contract. The applicable gross receipts taxes will be shown as a separate amount on each payment application made under the contract. The Selected Offeror is responsible for payment to the State of New Mexico for all gross receipt's taxes collected.

2.5.3 Minimum Wage Rates

Pursuant to the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978 (comp.) all certified payrolls submitted must contain required information as stated on the pertinent information sheet of the Wage Rate Decision issued on said project.

The Selected Offeror, its Sub-contractor(s) and all tiers shall provide the Statement of Intent to Pay Prevailing Wages form to County's Project Manager.

2.5.4 Work Conditions

The Work will be performed in and adjacent to Los Alamos County for the contract duration specified in the Contract. The Selected Offeror shall be aware of the conditions that may normally exist within the Project area during performance of the Work. Those conditions may include but are not limited to:

- Extended freezing temperatures,

- Intense rainfall events,
- Snowfall and snow accumulation,
- Limited direct sunlight.

Delays due to normal weather conditions are not eligible for time extensions and/or additional compensation. Contractor is required to protect their work and the project from normal weather events. Unusual weather-related time extensions may, but not guaranteed, to be awarded by the County pursuant to an approved change order at the County's sole discretion.

The Contractor shall comply with State Public Health Orders. Delays due to Public Health Orders shall be address per Attachment 1, Section 5.2.15.

2.5.5 Public Information

The Selected Offeror is required to be an active participant in the execution of the Public Information and Involvement Plan (PIIP) to be developed by the County. County retains edit and approval rights to any documents being released to the public and requires two (2) working days advance notice to allow for said edit/approval. Selected Offeror will perform/assist the County in successfully implementing PIIP activities that may include, but not be limited to:

- Weekly updates by Wednesday noon of traffic control expected on this project for the following week;
- Placement of door hangers 48 hours prior to any Utilities service disconnections (gas, water, and electric);
- Five (5) working days advance notification to the County Project Manager regarding impacts to school or transit bus stops and safe routes to schools;
- Inform businesses and residents 48 hours prior to direct impacts during construction.
- County policy is to advertise in the local newspaper in advance of posting traffic control signs or barricades. The Selected Offeror will submit information concerning posting of traffic control signs and barricades at least five (5) working days in advance to the County.

The County Project Manager shall determine the need, size, and location for a Project sign(s) that may include the following:

1. Project name
2. Contractor business name and contact information
3. Budget
4. Project start and end months
5. County Project Manager contact information
6. A rendering of the improvement(s) if available.

2.5.6 Performance and Labor and Material Bonds Requirements

Performance Bond and Labor-Materials Bond shall be executed after receipt of Notice of Award to the successful Offeror in an amount equal to one hundred percent (100%) of the total amount payable by the terms of the contract or the total construction cost whichever is greater. Bonds must be prepared and executed on the Performance Bond and Labor-Materials Bond forms

attached hereto or on such other forms as may be approved in writing by the County. Surety shall be by a company licensed to do business in the State of New Mexico and acceptable to the County.

2.5.7 LEAD of DESIGN-BUILD CONTRACT

Depending on the nature of a project, either member of the Design-Build team (architect/engineer or general contractor) may be the lead or primary contractor. The secondary team member will be a sub-contractor to the lead member. The County will issue its contract only with the lead member.

3.0 PROPOSAL FORMS

This Cost Proposal shall be Submitted with Offeror's Proposal Response in accordance with the following:

- A. The undersigned Offeror proposes and agrees, if this Proposal is accepted; to enter into an agreement with County in the form included in the Solicitation Documents; to perform and furnish all Work as specified or indicated in the Solicitation Documents for the contract price; and within the contract time indicated in this proposal; and in accordance with all the other terms and conditions of the Solicitation Documents.
- B. Offeror accepts all the terms and conditions of the Request For Proposals and Instructions to Offerors, including without limitation those dealing with the disposition of Proposal Security. This Proposal will remain subject to acceptance for one hundred eight (180) calendar days after the day of the RFP Closing Date. Offeror will sign and submit the Agreement and the Performance, Labor and Material Bonds, Certificate of Insurance and all other documents required by the Solicitation Requirements within ten (10) calendar days after receipt of the County's Notice of Award.
- C. Offeror shall promptly provide written notice to the County of any conflicts, errors, or discrepancies discovered in the solicitation documents.
- D. Offeror represents this Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation. Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal. Offeror has not solicited or induced any person, firm or corporation to refrain from proposing, and Offeror has not sought by collusion to obtain for itself any advantage over any other Offeror or over County.
- E. By submitting this proposal, Offeror represents to the County that it has inspected the site, is familiar with local conditions that may affect cost, progress, performance or furnishing of the work, has considered federal, state, and local laws and regulations that may affect cost, progress, performance, or furnishing of the Work and has read and is thoroughly familiar with all of the technical specifications and plans and the Solicitation and Contract

documents (including all addenda). The failure or omission of any such Offeror to examine any form, instrument or document shall in no way relieve any Offeror from any obligation in respect to its bid.

- F. Offeror represents that a complete set of Solicitation Documents was used in preparing its proposal and acknowledges that the County assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Solicitation Documents.
- G. Offeror represents that the submission of this proposal constitutes an incontrovertible representation by Offeror that Offeror has complied with every requirement of the RFP, that without exception its proposal is premised upon performing and furnishing the Work required by the Solicitation Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Solicitation Documents, and that the Solicitation Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- H. The Solicitation Documents are intended to describe a functionally complete project to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether specifically required. When words or phrases which have a well-known technical or construction industry or trade meanings are used to describe work, materials or equipment, such words or phrases shall be interpreted in accordance with those meanings. Clarifications and interpretations of the Technical Specifications and Contract

3.1.1 Cost Proposal Form

County at its sole option shall select the final design, proposed below. Offeror shall propose cost; and Offeror agrees to perform the work for the following prices:

The TOTAL amounts of the below Cost Proposal (excluding NMGR) shall be shown in both words and figures. In case of discrepancies, the amount shown in words will govern.

Base Cost Proposal:

Offeror agrees to perform all the Work described as the Base Proposal Cost in the Solicitation Documents for an amount determined as follows:

Offeror (Company Name): _____

Description	Amount Dollars (\$)
Network Construction Cost	

Total Base Proposal Cost Amount written in words:

_____ Dollars

Note: The amount shall exclude state gross receipts tax or local option tax, but shall include all other costs of doing business, including but not limited to bonds, insurance and profit. The Incorporated County of Los Alamos is required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered. The applicable gross receipts tax or local option tax shall be shown as a separate amount on each billing or request for payment under contract.

This proposal is hereby submitted by the undersigned, in full conformity with the Solicitation Documents, and warrant that the undersigned has the authority to bind the Offeror for the work.

I, the undersigned, have reviewed the Scope of Work and certify that the following licenses are required to fully perform the Scope of Work and that I, as the General Contractor, and/or Sub-contractors to be employed under this contract possess such New Mexico Contractor's License Number(s) and Classification(s):

Contractor	License Number(s)	Classification(s)

Signature of Agent authorized to sign on behalf of Offeror

Printed Name & Title of Agent

Organization's Legal Name

Mailing Address

Physical Address

City, State, Zip Code

Telephone Number

Fax Number

Federal Tax I.D Number

NM CRS # (if located in-state)

N.M. Preference Certification (attach copy)

Los Alamos County Business License Number: (Required to perform work in the County)

NON-DISCRIMINATION POLICY: Offeror does not discriminate based on color, national origin, sex, religion, age, and disabled status in employment or the provision of services.

3.1.3 List of Subcontractors

All Offerors shall comply with the Subcontractor's Fair Practices Act of New Mexico.

Pursuant to New Mexico Statute Section 13-4-34, based on the Architect/Engineer estimate, list all subcontractors including second and third tiers performing Work in excess of FIVE THOUSAND DOLLARS (\$5,000.00) or one-half of one percent of the Architect/Engineer estimate of the total project cost.

No modifications to the list of subcontractors can be made at any time during the performance of the Work without the prior written approval of the County.

Contractor & Contact Name:	License # Classification:	E-mail:	Phone: Fax:	Address:	Work to be Performed:

3.1.4 Proposal Bond (Bid Bond)



LOS ALAMOS

As Principal, hereinafter called the Principal or Contractor, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, as Surety hereinafter called the Surety, are held and firmly bound unto the County of Los Alamos, New Mexico, as Obligee, hereinafter called the County, in the sum of five percent of the Construction of the Proposal, _____dollars - \$ _____

for the payment of which sum Principal and Surety bind themselves, their heirs, executors, and administrators, successors, and assigns, jointly and severally. The conditions of this Bond are such that whereas the Principal has submitted the accompanying Proposal for:

Incorporated County of Los Alamos

RFP Number: 24-46

Phase 2 - Design Construction and Operation of Community Broadband Network

which Proposal is by reference made a part hereof and is hereinafter referred to as the Proposal and, if the County shall award the Contract to the Principal, then the Principal shall enter into a Contract with the County in accordance with the terms of such a Proposal, and give such bond or bonds as may be specified in the bidding or solicitation documents with good and sufficient surety for the faithful performance of such Work and for the prompt payment of labor and material furnished in the prosecution thereof, and shall in all other respects perform the agreement created by the award of said Contract. In the event of the failure of the Principal to enter into such contract and give such bond and bonds, the Principal shall pay the County the difference between the amount specified in said Proposal and such larger amount which the County may in good faith

Proposal Bond continued

contract with another party to perform the Work covered by said Proposal, then this obligation shall be null and void. Otherwise this obligation shall remain in full force and effect. The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the County may accept such Proposal; and said Surety does hereby waive notice of any such extension.

SIGNED AND ATTEST this _____ day of _____, 20____.

PRINCIPAL:

By: _____

Print Name: _____

Title: _____

ATTEST: _____

SURETY:

By: _____

Print Name: _____

Title: _____

ATTEST: _____

3.1.5 Campaign Contribution Form

Incorporated County of Los Alamos

RFP Number: 24-46

Design Construction and Operation of Community Broadband Network

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 contributions made to the following - COUNTY COUNCILORS: Theresa Cull; Denise Derkacs; Melanee Hand; Susie Havemann; Keith Lepsch; David Reagor; and Randal Ryti.)

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)

3.1.6 Certification - Debarment, Suspension, and other Responsibility Matters

Incorporated County of Los Alamos

RFP Number: 24-46

Design Construction and Operation of Community Broadband Network

(1) I or We, _____ (the "Offeror/Bidder") hereby certify to the best of our knowledge and belief that neither the Offeror/Bidder nor any of its principals:

- (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local department or agency; and
- (b) have, within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records; making false statements; or receiving stolen property; and
- (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) are not current or former County employees. If an Offeror/Bidder is a current or former county employee, Offeror/Bidder shall provide additional information as described in paragraph (2) of this certification; and
- (d) are not considered to be an "immediate family member" of a County employee or public official. Immediate family means the employee's or public official's spouse, parents, stepparents, child, stepchild, sibling, stepsibling, half-sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or their in-laws, or an individual claimed by the public official or his/her spouse as a dependent under the United States Internal Revenue Code; and
- (e) have within a 3-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

(2) If we are unable to certify to any of the statements in this certification, we shall attach an explanation hereto.

(3) Certification to any of the statements in this certification will be thoroughly reviewed, and may not necessarily preclude the Offeror/Bidder from consideration for award.

(4) Falsification of any statement in this Form shall constitute grounds for non-consideration of the Offeror's/Bidders proposal or bid or rescinding of a contract award.

Comments:

Date: _____

Contractor: _____

Address: _____

City, State, Zip Code: _____

_____ confirms that all proposed subcontractors are not currently
Contractor

suspended or debarred from conducting business with any City, State, County, or Federal Government entities.

Name and Title of Authorized Representative

Date

--- OR ---

I am unable to certify the above for the following reasons:

3.1.7 Permanent Main Office Address of Company

Organization's Legal Name

Founding Date

Physical Address

Mailing Address

City, State, Zip Code

If incorporated, attach a Certificate of Good Standing from the Public Regulation Commission.

3.1.8 Authorization for Verification of Information

_____ hereby authorizes any person, firm, or corporation to furnish
Contractor

any information requested by Los Alamos County or designated representative, to verify any and
all information submitted with or relevant to this Proposal.

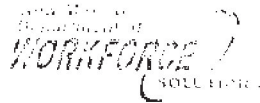
Printed Name and Title of Authorized Representative

Signature

Date

3.1.9 Certificate of Contractors Registration

Sample *Certificate of Contractor Registration*



This is to certify that

XYZ Company, Inc.

1234 Main Street

ALBUQUERQUE, NM, 87109-5564

has registered with the Department of Workforce Solutions

Registration Date: 01/01/2017

Registration Number: 123456789

**This certificate does not show the current status of the company.
To see the current status for this company please go to the Public Works
and Apprenticeship Application (PWAA) at
<https://www.dws.state.nm.us/pwaa>**

New Mexico Department of Workforce Solutions, Labor Relations Division, Public Works, 121 Tiguas Ave NE, Suite 3020, Albuquerque, NM 87107, (505) 841-4400

4.0 AWARD FORMS

4.1 Award Forms

4.1.1 Notice of Award



NOTICE OF AWARD AND IDENTIFICATION OF COUNTY'S DESIGNEE

To: _____

Address: _____

Project Description:

Incorporated County of Los Alamos
RFP Number: 24-46
Design Construction and Operation of Community Broadband Network

The County has considered the Proposal submitted by you for the above described Project in response to its Request for Proposals dated _____.

You are hereby notified that your Proposal has determined in writing by the Evaluation Committee to be the most advantageous to the County, taking into consideration the evaluation criteria set forth in the solicitation, subject to your execution of the Agreement and furnishing the required Contractor's Performance Bond, Labor and Materials Payment Bond and required Certificates of Insurance, within ten (10) calendar days from the date of receipt of this Notice of Award.

You are hereby notified that the schedule required per Section 5.2.3 Schedules, Reports, and Records below, will be required to be submitted and accepted by County prior to Notice to Proceed being issued.

The following documents are provided with the Notice of Award: Two (2) copies of the Agreement, Performance Bond and Labor and Materials Payment Bond.

Notice of Award continued

If you fail to sign and return to County's Designee said Agreement, and to furnish said Bonds within ten (10) days from the receipt of this notice, the County will be entitled to consider all your rights arising out of the County's acceptance of your Proposal as abandoned and as a forfeiture of your Proposal Bond. The County will be entitled to such other rights as may be granted by law.

County's Designee:

The Incorporated County of Los Alamos (County) designates _____ as the County's Designee in connection with the performance of the work contemplated in the Contract, dated _____, between the County and _____ (Contractor).

Dated this _____ day of _____ year _____.

Incorporated County of Los Alamos

Anne W. Laurent
County Manager

4.1.2 Receipt of Notice of Award



LOS ALAMOS

Receipt of the above Notice of Award is hereby acknowledged by:

_____, this _____ day of _____ year

_____2X for the following Project:

**Incorporated County of Los Alamos
RFP Number: 24-46
Design Construction and Operation of Community Broadband Network**

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

4.1.3 Performance Bond



Bond No. _____

We as Principal, hereinafter referred to as Contractor, and _____ a corporation organized and existing under and by the virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, hereinafter called Surety, are held and firmly bound unto the Incorporated County of Los Alamos, hereinafter referred to as County, in the penal sum of one hundred percent (100%) of the Contract Price of _____ dollars (\$_____), as may be adjusted by Change Order, inclusive of applicable gross receipts taxes in lawful money of the United States of America, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are such that, whereas, Contractor has been awarded and has agreed to enter into a certain Contract with the Incorporated County of Los Alamos, to which this Performance Bond will be attached and incorporated therein, for performance of Work or services on Project specifically described in the Contract document for:

Incorporated County of Los Alamos

RFP Number: 24-46

Design Construction and Operation of Community Broadband Network

and if Contractor shall perform and complete all of the undertakings, covenants, terms, and obligations of said Contract during the original term thereof, and any extensions which may be granted by the County with or without notice to the Surety, and if Contract shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the County from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the County all outlay and expenses which the County may incur in making good any default, then upon successful completion of said requirements, this obligation shall become void; otherwise it shall be and remain in full force and effect.

Performance Bond Continued

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due, except that, with respect to express guarantees of a longer term, a suit thereon must be initiated within six (6) months following the expiration of said express guarantees, if any.

The Surety acknowledges that said Contract may contain express guarantees and agrees that said guarantees, if any, are covered by the Surety's obligation hereunder.

Right of action with respect to any express guarantees in said Contract shall accrue following completion and formal acceptance of the work under said contract.

The right to sue on this bond accrues only to the County and the parties to whom New Mexico Statutes Annotated, 1978 Comp. 13-4-18 through 13-4-20, as amended, grant such right; and such right shall be exercised only in accordance with the provisions and limitation of said statutes.

PROVIDED, FURTHER, that Surety, for value received hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of Contract, the Agreement, or the Work to be performed thereunder, or the Contract Documents accompanying the same, shall in any way affect its obligation on this bond, and it does hereby unmistakably waive notice of any such change, extension of time, alternation or addition to the terms of the Contract.

PROVIDED, FURTHER, that no final settlement between the County and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument may be executed in two counterparts, each one of which shall be deemed as an original, this _____ day of _____, year _____.

The undersigned state that they have the authority to enter into said Contract.

CONTRACTOR AS PRINCIPAL:

By: _____

Print Name: _____

Title: _____

ATTEST: _____

SURETY:

By: _____

Print Name: _____

Title: _____

ATTEST: _____

4.1.4 Payment (Labor and Materials) Bond



Payment (Labor and Materials) Bond for the Protection of all Persons Supplying Labor and Material to the Contractor or its Sub-contractors.

Bond No. _____

We _____ as Principal, hereinafter called the Contractor, and _____, a Corporation organized and existing under and by virtue of the laws of the State of _____, and authorized to do business in the State of New Mexico, hereinafter called the Surety, are held and firmly bound unto the Incorporated County of Los Alamos, as Obligee, hereinafter the County, in the amount of _____ Dollars (\$_____), in the penal sum of one hundred percent (100%) of the Contract Price of _____ dollars (\$_____), as may be adjusted by Change Order, inclusive of applicable gross receipts taxes in lawful money of the United States of America, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

Payment (Labor and Materials) Bond is for the Protection of all Persons Supplying Labor and Material to the Contractor or its Sub-contractors

WHEREAS, Contractor has agreed to enter into the Contract described as follows:

**Incorporated County of Los Alamos
RFP Number: 24-46
Design Construction and Operation of Community Broadband Network**

Which contract is by reference made part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the Contractor shall pay as they become due, all just claims for labor performed and materials and supplies furnished upon or for the Work under said contract, whether said labor be performed and materials and supplies be furnished under the original contract or any contract thereunder, upon successful completion of said requirements, then this obligation shall become null and void; otherwise, it shall remain in full force and effect, subject, however to the following conditions:

The right to sue on this bond accrues only to the Contracting Agency and the parties to whom Section 31-173 Los Alamos County Code of Ordinances grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said ordinance.

PROVIDED, FURTHER, that the Surety, for value received hereby stipulates and agrees that no change, extensions of time, alteration, or addition to the terms of the Contract, or to the Work to be performed thereunder, shall in any way affect its obligation on this bond, and it does hereby unmistakably waive notice of any such change, extension of time, alteration or addition to the terms of the Contract.

PROVIDED, FURTHER, the County shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have no obligations to make payments to give notices on behalf of or otherwise have obligations to Claimants. The Surety hereby unmistakably waives notice of any change, including changes of time, to the Contractor or to related subcontracts, purchase orders and other obligations.

SIGNED AND SEALED ON this _____ day of _____ year _____.

CONTRACTOR AS PRINCIPAL:

Signature: _____

Print Name: _____

Title: _____

Address: _____

SURETY'S AUTHORIZED NEW MEXICO AGENT:

Signature: _____

Print Name: _____

Title: _____

Address: _____

This bond is issued simultaneously with Performance Bond in favor of County for the faithful performance of the contract.

4.1.5 Insurance Requirement

- A. Contractor shall purchase and maintain such liability and other insurance, including completed operations insurance, for the Work being performed and furnished, and will provide protection to County from claims set forth which may arise out of or result from Contractor's performance and furnishing of the Work being performed and furnished and will provide protection to County from claims set forth which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Solicitation Documents, whether it is to be performed or furnished by Contractor, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of said parties listed herein to perform or furnish any of the Work, or by anyone for whose acts any of said parties listed herein may be liable, the amounts set forth below shall not serve as a limitation upon liability. Insurance requirements are as follows:
 - A.1.1. Comprehensive and General Liability Insurance
 - A.1.2. \$1,000,000 per occurrence and a combined single limit of at least Two Million Dollars (\$2,000,000) aggregate Bodily Injury and Property
- A.2. Motor Vehicle Insurance
 - A.2.1. Same limits as Comprehensive General Liability Insurance whether for:
 - A.2.1.1. Owned or leased motor vehicles; or non-owned or hired vehicles
- A.3. Worker's Compensation Insurance
 - A.3.1. The Contractor shall also be required to provide proof of full compliance with New Mexico State Worker's Compensation Laws
- A.4. PROPERTY INSURANCE, required on all Work except sewer and water drainage pipelines, reinforced concrete canals, work completely underground, and similar work (however Contractor is not relieved of responsibility therefore,) as follows:
 - A.4.1. ALL RISKS BUILDERS RISK INSURANCE which shall cover Fire, Extended Coverage, Vandalism and Malicious Mischief, and shall be carried on a completed value or reporting form, for not less than 100% of the value of the Work, including foundations. The Builder's Risk policy will include the Incorporated County of Los Alamos as the named insured and beneficiary of any relevant Builder's Risk claim proceeds. If the insurance is written subject to a deductible clause, Contractor assumes sole responsibility for the total amount of the deductible.

(NOTE: "ALL RISKS" Builder's Risk Insurance may be acceptable in lieu of Builder's Risk and Installation Floater Insurance and must meet the requirements of the Property Insurance above).

The Builder's Risk and Installation Floater Policies required above shall include the Incorporated County of Los Alamos, and shall cover the interests of all sub-contractors without specifically naming them. If the insurance is written subject to a deductible clause, Contractor assumes sole responsibility for the total amount of the deductible. In addition, the Contractor shall be required to furnish to the Risk Manager of the Incorporated County of Los Alamos all copies of investigative reports with regard to any and all claims with the Contractor and his insurance and his carriers' relative to this Work and Contract, with the exception of claims filed towards its Workers'

Compensation Insurance. Such reports shall include dates, location and description of loss as well as amounts of settlements or judgments in order that annual aggregate limits maybe monitored by the Incorporated County of Los Alamos for the Contactor's compliance with these specifications.

A.4.2. The Contractor, following signing the Contract and prior to the Notice to Proceed , shall provide and at all times keep updated a Certificate of Insurance as proof of insurance coverage, which is subject to County's review and approval, and which is deemed satisfactory by the County, in the County's sole discretion, and copies of same to the County, which shall remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work.

A.4.3. Insurance Terms and Conditions

A.4.4. The following statement shall be included on each certificate of insurance required herein: "The Incorporated County of Los Alamos is named as additional insured on all policies listed herein, including but not limited to, General Liability, Automobile Liability, and, for

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A.4.5. The insurance policy shall provide a requirement that the County's Project Manager will be notified as soon as possible in the event of cancellation.

A.5. Renewal of Insurance

A.6. Evidence of renewal of insurance policies shall be provided to the County's Project Manager no less than forty-five (45) days prior to expiration date.

A.7. Subcontractors

A.7.1. Contractor shall ensure all its subcontractors always meet and maintain all insurance requirements.

A.8. Receipt and Application of Insurance Proceeds

A.8.1. Any insured loss under the policies of insurance required of Contractor will be adjusted with County and made payable to County as fiduciary for the insured's, as their interests may appear, subject to the requirements of any applicable loan clause. County shall deposit into a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no such agreement is reached, the damaged Work shall be repaired or replaced the monies so received, applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Agreement.

County, as fiduciary, shall have power to adjust and settle any loss with insurers, unless one of the parties in interest shall object in writing to County's exercise of this power within fifteen days

after the occurrence of loss. If such objection is made, County, as fiduciary, shall make agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, County, as fiduciary, shall adjust and settle the loss with the insurers and, if required in writing, by any party of interest. County as fiduciary shall give bond for the proper performance of such duties.

5.0 CONSTRUCTION PHASE

5.1 Construction Phase Related Forms

5.1.1 Contractor Personnel Information

The Contractor will provide at the pre-construction meeting and update as necessary the following information to the County:

- A. Contractor's Project Manager: _____
- B. Contractor's Superintendent: _____
 - 1. Address: _____
 - 2. Telephone No.: _____
 - 3. Email Address: _____
- C. Emergency Contact Information:
 - 1. Name: _____
 - 2. Phone No.: _____
 - 3. Name: _____
 - 4. Phone No.: _____
 - 5. Name: _____
 - 6. Phone No.: _____
 - 7. Name: _____
 - 8. Phone No.: _____
- D. List of authorized signatures for: Certified Payroll, Payroll Affidavits, Change Orders, Progress Payment Certifications.
 - 1. Name: _____
 - 2. Title: _____
 - 3. Name: _____
 - 4. Title: _____
- E. Project Safety Officer: _____
- F. Equal Employment Opportunity Officer: _____

The person listed in "B" will become the Contractor's Representative of Record. The Contractor will not be allowed more than one (1) Representative. The Contractor's Representative shall always supervise the project and be available when construction is in progress.

5.1.2 Notice to Proceed



Date: _____

To: _____

Address: _____

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You are notified that the Contract Time identified in the above Contract will start on _____, year _____. By that date you shall start performing your obligations under the Contract. You shall return an acknowledged Acceptance of Notice to Proceed form to the County's Designee before commencing any work and meet all other requirements of the Contract. The date of Substantial Completion of all work is therefore _____, 202X, and Final Completion of all work is therefore _____, 202X.

Incorporated County of Los Alamos

 Anne W. Laurent
 County Manager

5.1.3 Acceptance of Notice to Proceed



Receipt of the Notice to Proceed is hereby acknowledged this _____ day of _____, 202X.
for the following project:

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

5.1.4 Application and Certification for Payment Part 1

APPLICATION AND CERTIFICATION FOR PAYMENT Incorporated County of Los Alamos

Application Date: _____ Period: From: _____ To: _____
 Application Number: _____
 Project: _____ Bid Number: _____
 Contractor: _____ Contract Date: _____

Change Order Summary		
Change Orders approved in previous months by County	ADDITIONS	DEDUCTIONS
TOTAL		
Approved this Month:		
Number	Date	
TOTALS		
Net change by Change Orders		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all Amounts have been paid by the Contractor for Work with previous Certificates for Payment were issued and payments received from the County, and that Current Payment shown herein is now due.

CONTRACTOR.

BY _____ DATE _____

State of _____ County of _____

Subscribed and sworn before me this _____ day of _____ 20____

Notary Public _____

My Commission Expires _____

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. ORIGINAL CONTRACT SUM \$ _____
2. Net change by Change Orders \$ _____
3. CONTRACT SUM TO DATE \$ _____
(Line 1 plus line 2)
4. TOTAL COMPLETED TO DATE \$ _____
(Column Four Cont. Sheet)
5. BALANCE TO FINISH \$ _____
(Line 3 less Line 4)
6. PREVIOUS TOTAL COMPLETED \$ _____
(Line 4 from prior Application)
7. NET TOTAL OF CURRENT PAYMENT \$ _____
(Line 3 less Line 6)
8. N.M. PROPOSED PAYMENTS TAX \$ _____
(7.3125% of Line 7)
9. CURRENT PAYMENT DUE \$ _____
(Line 7 plus Line 8)

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents based on on-site observations and the data comprising the above application, the ENGINEER'S Project Manager certifies to the Owner that to the best of the ENGINEER'S Project Manager's knowledge, information and belief the Work has progressed as indicated, the quantity of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for.)

Owner's Project Manager

Name _____ Date _____

APPLICATION & CERTIFICATION FOR PAYMENT
Incorporated County of Los Alamos

[illegible]

Affidavit of Payment and Release of Liens

See page 2 of this form for instructions regarding (A)-(H)

To All Whom It May Concern, To the Following I Do Solemnly Swear And Affirm:

WHEREAS, the undersigned has been employed by (A)

to furnish labor and materials for (B)

work, under a contract (C)

for improvement of the premises described as (D)

in the (E) _____ County of _____,

State of New Mexico of which _____ is the Owner.

NOW, THEREFORE, this _____ day of _____, 202X, for and in consideration of the sum of (F) \$ _____ Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby unmistakably waive and release any lien rights to, or claim of lien with respect to and on said above described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the County, on account of labor, services, materials, fixtures, apparatus or machinery heretofore or which may hereafter be furnished by the undersigned to or for the above described premises by virtue of said contract.

The undersigned, as Contractor for the above named Contract, pursuant to the terms and conditions of the Contract hereby certifies that, except as listed below, he/she has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or his/her property might in any way be held responsible.

The undersigned hereby certifies that all Work required to be done under terms of the above described Contract has been fully performed and completed in conformance with the Contract and that applicable provisions of the New Mexico Public Works Minimum Wage Act (§ 13-4-11 NMSA 1978) have been met.

Affidavit of Payment and Release of Liens (continued)

EXCEPTIONS:(G)

INSTRUCTIONS:

1. Person or firm with whom you agreed to furnish either labor, or services, or materials, or both. (A)
2. Fill in the nature and extent of work; strike the word labor or the materials if not in the contract. (B)
3. Identify contract(s) by number, description, and extent of work. (C)
4. Describe improvements and location of the premises to exclude all others. (D)
5. Name community, such as County of _____. (E)
6. Amount shown should be the amount received and equal to the total adjusted contract. (F)
7. If none, write "None". If required by County, Contractor shall furnish bond satisfactory to County for each exception. (G)
8. If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing affidavit should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate as partner. (H)

(H) _____

(Name of sole ownership, corporation or partnership)

(Signature of Authorized Representative)

TITLE: _____

State of _____ County of _____

Subscribed and sworn before me this ____ day of _____ 202__

Notary Public: _____

My Commission Expires: _____

Field Order #	Project:	Date:
RFP #: Affected Document(s):		
Description of Change(s) (Attach to Design Document Mark-ups):		
Reason for Change(s):		
☐ Design Error/Omission ☐ Design Improvement ☐ Facilitate Construction ☐ Criteria Change		
Priority: Low Medium High (Circle One)		
Complexity: Low Medium High (Circle One)		
Preliminary Approval to Proceed by Engineer:		
Review		
	Signature	Date
Originator		
Engineer		
Owner		
Contractor		
Request for Quote issued? _____ Date: _____		
Force Account: _____ Date: _____		
ACCEPTED	☐ Owner	
REJECTED	☐ Owner	

5.1.7 Change Order Form



Change Order No.: _____

Agreement Date: _____

**Incorporated County of Los Alamos
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Contractor:

The following changes are hereby made to the Contract Documents:

JUSTIFICATION:

CHANGE TO CONTRACT PRICE:

Original Price \$ _____

Current Contract Price adjusted by previous Change Order \$ _____

The Contract Price due to this Change Order will be (_____) by: \$ _____

The new Contract Price, including this Change Order will be \$ _____

CHANGE TO CONTRACT TIME:

SUBSTANTIAL COMPLETION:

Original Contract Time _____calendar days.

Current Contract time adjusted by previous Change Order(s) _____calendar days.

The Contract Time will be (_____) by _____calendar days.

New Contract Time including this Change Order will be _____calendar days.

The date for completion of substantial work will be _____(Date)

FINAL COMPLETION

Page 2 of 4

Original Contract Time _____ calendar days.

Current Contract time adjusted by previous Change Order(s) _____ calendar days.

The Contract Time will be (_____) by _____ calendar days.

New Contract Time including this Change Order will be _____ calendar days.

The date for completion of all work will be _____ (Date)

(Change Order Continued)
Page 3 of 4

APPROVALS REQUIRED:

To be effective, this order must be approved by the County Manager; or the Los Alamos County Council if the contract modification, change order, or contract price adjustment exceeds the funding budgeted and specifically appropriated for this project, or as may otherwise be required by County.

The adjustment in Contract price and/or Contract time stated in this Change Order shall constitute the total price and/or time adjustment due or owed the Contractor for the work or changes ordered by the Change Order. By executing the Change Order, the Contractor acknowledges and agrees that the stipulated price and/or time adjustments represent full compensation for all adjustments in the cost or the time required to perform the Contract as a whole arising directly or indirectly from the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect on all other non-affected work under Contract not changed by the Change Order. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in contract price and/or time, as applicable, subject to the current scope of the entire Work as set forth in the Contract. Acceptance of this Change Order constitutes an agreement between County and Contractor that the Change Order represents an equitable adjustment to the Contract, and that the Contractor hereby unmistakably waives all rights to file a claim on this Change Order after it is properly executed.

Requested by Engineer: _____

Recommended by (Department Director): _____
Department Director

Approved by (County Manager): _____
Anne W. Laurent, County Manager

If applicable, approved by the County Council on the

_____ Day of _____, 202X.

Attest:

(County Clerk)

Print Name _____

Title _____

(Change Order Continued)

Page 4 of 4

ACCEPTANCE OF CHANGE ORDER

(Contractor name)

By: _____

Print Name _____

Title _____

(Corporate Seal)

Attest:

Print Name: _____

Title: _____

Date: _____

5.1.8 Certificate of Substantial Completion Form

INCORPORATED COUNTY OF LOS ALAMOS CERTIFICATE OF SUBSTANTIAL COMPLETION



LOS ALAMOS

Date of Issuance: _____
Contract Number: _____
Contract Title: _____
Contractor: _____
Engineer: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO:

Contractor

The Work to which this Certificate applies has been inspected by authorized representatives of County, Contractor and Engineer and that Work is hereby declared to be substantially complete in accordance with the Contract on

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and failure to include an item in it does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract.

Certificate of Substantial Completion

(Page 2 of 2)

This certificate does not constitute an acceptance of Work not in accordance with the Contract, nor is it a release of Contractor's obligations to complete the Work in accordance with the Contract.

Executed by Engineer on _____, 202__

Engineer

By: _____
(Authorized Signature)

Owner accepts this Certificate of Substantial Completion on _____, 202__

County

By: _____
(Authorized Signature)

Contractor accepts this Certificate of Substantial Completion on _____, 202__

Contractor

By: _____
(Authorized Signature)

5.2 Conditions of the Contract - General Conditions

5.2.1 Definitions

Wherever used in any of the Contract, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof unless another meaning is clearly specified:

- A. **The terms “Contract” and “Agreement” are interchangeable when used throughout.**
- B. **Abandoned or Unknown Underground Facilities** – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which were installed underground and have since been abandoned. Such utilities will not be located.
- C. **Active Underground Facilities** – All active pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, telephone or other communications, sewage, and drainage removal, or effluent, potable or other pressurized or gravity water. Contractor shall exercise due diligence and reasonable care when digging in the event of encountering and working near utilities or facilities that could interfere with the Work. Safety for each encounter is primary. These facilities may not be able to be located. Contractor shall be responsible for any costs associated with damage, uncovering, repair, usage, including delay, and shall include such costs in the proposal.
- D. **Addenda** – Written or graphic documents issued prior to the opening of proposals to the RFP which modifies or interprets the Solicitation Documents, Drawings and Specifications, by additions, deletions, clarifications or corrections.
- E. **Application for Payment** – The form accepted by the County which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract documents.
- F. **Architect** – (See Engineer below)
- G. **Offeror** – Any person, firm, or corporation submitting a proposal to the RFP.
- H. **Solicitation Documents** – Includes but not limited to Advertisement, Invitation to the Solicitation, Scope of Work Contract Book, Proposal Forms, Attachments, Exhibits, Plans, Specifications, and including all addenda issued prior to receipt of Proposals, and includes the executed Contract.
- I. **Bonds** – Proposal, Performance, and Labor and Materials Payment Bonds and other instruments of security, furnished by Contractor and the Contractor’s surety in accordance with the Solicitation Documents.
- J. **Change Order** – A written Amendment to the Contract, signed by both parties, authorizing an addition, deletion or revision in the Work within the general scope of the Contract, or authorizing an adjustment in the Contract, Contract Price or Contract Time.
- K. **Completion Definitions:**
Substantial Completion - The date when the Contractor and County consider the entire Work ready for its intended use as evidenced by the Certificate of Substantial Completion.

1. **Partial Utilization** – Use by County at County’s sole option of any substantially completed part of the Work which constitutes a separately functioning and usable part of the Work that can be used by County for its intended purpose without significant interference with Contractor’s performance of the remainder of the Work and may be accomplished prior to Final Completion of all the Work.
 2. **Final Completion** – The date when the Contractor and County consider the entire Work to be complete, including all outstanding Punch List items. Contractor shall at the completion of Work, in addition to any requirements and obligations outlined in the Contract, remove all debris and other rubbish from the project site and shall remove all its tools and surplus materials and shall leave the project site clean. If the Contractor fails to clean up, the County may do so and subtract the cleanup cost from the Contractor’s final payment. Contractor shall legally dispose of all construction debris at the Contractor’s expense.
- L. **Contract Documents** – The written construction contract between County and Contractor covering the Work to be performed, including but not limited to all associated documents contained in the Solicitation:
1. Addenda to the Solicitation, Scope of Services, Requirements for Offerors, Cost Proposal Forms, Award Forms, Application and Certification of Payment, Contract Book General Requirements, Notices to Contractor, Technical Specifications and Plans, and documentation submitted by Contractor prior to Notice of Award, Bonds, Written Amendments to the Contract, Change Orders, Field Orders, and County’s written interpretations and clarifications issued on or after the Effective Date of the Agreement, all of which are incorporated by reference and made a part of this Contract as fully as if herein repeated and a copy of which the Contractor acknowledges hereby that it has received, understands and agrees to. Engineer’s written interpretations and clarifications issued on or after the Effective Date of the Contract as identified and incorporated by reference therein.
 2. Shop drawing submittals approved, and the reports and drawings referred to in Section 5.2.4 are not Contract documents.
- M. **Compensation** – The total monies payable to the Contractor under the terms and conditions of the Contract Documents and includes all County-approved changes thereafter.
- N. **Contract Time** – The time period stated in the Contract for the Contractor’s completion and County’s acceptance of the Work.
- O. **Contractor** – The person, firm or corporation with whom the County has executed the Agreement.
- P. **County** – Incorporated County of Los Alamos.
- Q. **Covering Work** – Work that restricts or inhibits the viewing of previous Work for the purpose of inspection or verification.
- R. **Critical Path** – The sequence of activities that represents the longest path through a project Gantt Chart schedule, which determines the shortest possible duration.”
- S. **Defects and /or Defective Work** – Work that is unsatisfactory, faulty or deficient, in that it does not conform to the contract documents, or does not meet the requirements of any inspection, reference standard, test, or approval, or Work that has been damaged prior to final payment.
- T. **Earned Value** – The budgeted cost of work performed as defined by the Project Management Institute.

- U. **Earned Value Management** – The evaluation technique as defined by the Project Management Institute to measure a project's progress by comparing cost expended to the budgeted cost at a given time in the project schedule.
- V. **Emergency** – A sudden, unexpected, or impending situation that poses and immediate risk to health, life, property or environment, including but not limited to the safety or protection of the Work, or property, real or personal, at the site or on related construction and staging areas and roads, or property adjacent thereto.
- W. **Engineer** – or the Designer of Record's designated representative who has designed the technical aspects of this project for the County of Los Alamos, includes Architect, and Architect/Engineer.
- X. **Engineer's (or Architect's) Resident Project Representative (RPR)** –The Engineer's representative that oversees that the Work conforms to the Construction Documents including construction oversight, administration, inspection, and quality assurance services during construction. Also known as Construction Observer.
- Y. **Field Order** – A written order effecting a change in the Work which does not involve an adjustment in the Compensation or an extension of the Contract Time, issued by the County Project Manager or Designee to the Contractor during performance of the Work.
- Z. **Hazardous Waste** – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- AA. **Lump Sum** – The total single price commitment for paying for all the Work defined in the Solicitation Documents or a specified portion thereof.
- BB. **Milestone** – A significant event in a project occurs at a point in time marking the completion of a major phase of work.
- CC. **Notice of Award** – The County's written notice that the County is issuing award of the Contract to the Contractor.
- DD. **Notice to Proceed** - The County's written notice to the Contractor authorizing the Contractor to proceed with Work and establishing the date of commencement of the Work.
- EE. **Plans** – The part of the Solicitation Documents which show the characteristics and scope of the Work to be performed by the Contractor and which have been prepared or approved by the Engineer.
- FF. **Project Manager** – County's designee who provides construction oversight, administration, inspection, and quality assurance services during construction.
- GG. **Samples** – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be evaluated.
- HH. **Shop Drawings** – All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor which illustrate how specific portions of the Work shall be fabricated, performed or installed. Shop drawings shall illustrate some portion of the work and confirm dimensions and conformance to Solicitation documents. Shop drawings are not part of the Contract documents.
- II. **Specifications** – Written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship.
- JJ. **Subcontractor** – An individual, firm or corporation having a direct contract with the Contractor (not the County) or with any other Subcontractor for the performance of a part of the Work at the site.

- KK. **Punch List Items** – A list of deficiencies to be corrected by Contractor between Substantial and Final Completion.
- LL. **Supplier** – A manufacturer, fabricator, distributor, or vendor etc., having a direct contract with Contractor or any Subcontractor.
- MM. **Unit Price** – Amount to be paid based on individual line item prices.
- NN. **Work** – The entire construction or various separately identifiable parts thereof required to be furnished under the Contract. Work includes and is the result of performing or furnishing and incorporating materials and equipment into the construction, and performing furnishing services and furnishing documents, all as required by the Contract.
- OO. **Written Notice** – Any notice to any party of the Contract relative to any part of the Contract.

5.2.2 Additional Instructions

- A. County may furnish to the Contractor additional instructions and detail drawings, Field Orders or Change Orders as necessary to carry out the Work required by the Contract.
- B. Additional documents supplied to the Contractor by the County will become a part of the Contract. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.
- C. The Contractor is responsible for conducting its own, independent quantity take-off for the Work.
- D. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and verify pertinent figures shown thereon and all applicable field measurements.
- E. Contractor shall promptly report in writing to County any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from County before proceeding with any Work affected thereby.
- F. Contractor agrees that the Contract comprises the entire agreement between County and Contractor concerning the Work. The Contract is complementary, meaning what is called for by one is as binding as if called for by all.
- G. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Solicitation Documents. Any work, materials, or equipment that may reasonably be inferred from the documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe work, materials, or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Technical Specifications and Contract Drawings shall be issued by the County and adhered to by Contractor.
- H. Reference to standards, specifications, manuals, or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time

- I. If during the performance of the Work, Contractor discovers any conflict, error, or ambiguity, or discrepancy within the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any Supplier, Contractor shall upon discovery provide to the County written notice thereof. Contractor shall not proceed with the Work affected thereby (except in emergencies affecting the safety or protection of the Work or property at the site or adjacent thereto), until the conflict, error, ambiguity or discrepancy has been resolved through a Field Order or a Change Order.
- J. Except as otherwise specifically stated in the Contract Documents or as may be provided by Change Order, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Document) or the provisions of any Laws, Regulations, policies or procedures applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract documents would result in violation of such Law or Regulation). No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of County, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to County, Engineer, or any of Engineer's Consultants, agents or employees any duty or authority to supervise or direct the furnishings of performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract.
- K. Whenever in the Contract, Documents the terms "as ordered," "as directed," "as required," "as allowed," or terms similar to "reasonable," "suitable," "acceptable," "proper," or "satisfactory" are used to describe a requirement, direction, review or judgment of County or Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance (methods and means) of the Work or any duty or authority to undertake responsibility contrary to any provision of the Contract Documents.
- L. The Contractor shall develop a document control system for the Project which establishes protocol for acceptance and distribution of all construction related documents. Contractor shall also establish processes for certain standardized documents in the Contract and in other pertinent documents as required such as Requests for Information, Submittals, Change Orders, Field Orders, Cost Sheet, Design Notices, and Meeting Minutes and others as necessary during the Pre-

Construction Conference. The Contractor shall adhere to these processes and require the same of all its subcontractors.

- M. Contractor shall maintain, in a safe place known to the County, one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Field Orders, and written interpretations and clarifications in good order and annotated to show all changes made during the Work. These record documents together with all approved samples and all approved Shop Drawings shall be available to County for reference. Upon Final Completion of the Work, these record documents, and Samples and Shop Drawings will be delivered to the County or the County's designee within sixty (60) days of Final Completion Date.
- N. Generally, Plans, Specifications and other Contract Documents are provided electronically. If the Contractor requests paper copies, these copies may be furnished upon request at the cost of reproduction.

5.2.3 Schedules, Reports and Records

A. Baseline Schedule -

1. Contractor shall provide a Baseline Schedule, for County review and acceptance prior to the Pre-Construction meeting, showing the complete sequence of construction by activity with costs loaded by activity as appropriate to depict the value of the activities and the respective rolled-up work packages. This schedule and all updates shall be in Microsoft Project or other programs as approved by County.
2. The Contractor shall submit as part of the Baseline Schedule, the proposed number of working days per week; holidays to be observed during duration of Contract by day and month; planned shifts per day and number of hours per shift. Contractor shall notify County at least three (3) working days in advance of any work to be done outside of usual working hours or any change in usual working hours for approval by County.
3. The Baseline Schedule shall be in sufficient detail to include but not be limited to include significant elements of the Work, time frame for each element of Work with a beginning and ending point, percentage of progress of Work placed or to be placed in a monthly period of time, value of the elements of the Work and relationship of elements of Work one to the other for the total Work under the Contract.
4. The Baseline Schedule shall show, for each activity, the durations, early and late start and finish dates, and predecessors. The Baseline Schedule shall clearly identify one and only one critical path through the entire Project.
5. The Baseline Schedule shall also show timing of all submittals, including but not limited to, shop drawings, manufacturer's literature, certificates of compliance, material samples, permits and inspections by outside agencies, operating manuals, and guarantees as required per the Contract. The Baseline Schedule shall indicate the type of item and the contract requirement reference. The Baseline Schedule shall show review time by County, Engineer and sub-consultants for all submittals.
6. The Baseline Schedule shall also show timing for installation and testing for all equipment and systems.
7. The Baseline Schedule shall be a logically linked schedule and utilize the Critical Path Method (CPM) based on the period within which this Contract is to be completed as set forth in the Contract Time. The Baseline Schedule shall identify the Work in sufficient detail to ensure compliance with Contract dates, schedules, and sequences of construction.
8. The Baseline Schedule shall be maintained throughout the life of the Contract. The initial schedule will be the baseline and progress will be compared monthly to this baseline unless a baseline change request is approved in writing by the County. Schedule is Contractor's schedule, prepared by the Contractor and approved by the County, which Contractor retains sole responsibility for adherence thereto.

9. County reserves the right to establish hold point Milestones in the Schedule to temporarily stop progress of work before Covering Work, requiring specialty inspections, or work requiring County inspection or approval. Such hold points may include but are not limited to inspection of primary electrical feed equipment prior to connecting to the County system, and pressure testing the gas system prior to County installation of gas meter station. Actual hold points will be determined by County during the progress meetings. Contractor shall give County at least 48-hour notice in advance of each hold point and shall schedule a 72 hour hold until it is automatically released.
- B. In the event that the Contractor submits a Baseline Schedule that provides a shorter time for completion of the Project than that provided in the Contract, the Contractor shall not be entitled to any incentive for early completion or damages for delay resulting from any act or omission of County or any other person or entity, occurring between the end of the Baseline Schedule and the Contract Time allowed in Article 2 of the Contract and any change to contract time approved through an executed Change Order.
- C. Schedule Updates with Payment Applications –
 1. After submittal and County review and acceptance of the Baseline Schedule, Contractor shall submit all monthly schedule updates to County with each partial payment application.
 2. The updates to the schedule shall show the Work which has been performed and the order in which the Contractor proposes to carry on the remaining Work, including dates at which the Contractor will start and complete the various parts of the Work.
 3. Monthly progress will be assessed at the activity level to determine Earned Value. The percent complete assigned to each task will be determined by mutual agreement between the Contractor and County. Progress payments shall approximate the total Earned Value as calculated for the month. Each month, with the submission of the updated schedule with progress, Contractor shall provide a narrative report as needed to define problem areas, anticipated delays, and the impact on the schedule. For any activity which is more than 10% behind approved schedule, Contractor shall provide County a written corrective action to be taken prior to or within the Pay Application submittal.
 4. Progress payment applications without an updated project schedule may be rejected by County.
- D. Contractor, at its sole expense shall submit schedules, reports, estimates, records, and other data, as required, in a format approved by the County throughout the duration of the project.
- E. Acceptance of Contractor's schedule by County will not relieve Contractor from compliance with all conditions of the Contract. Errors and omissions in the accepted Contractor's Schedule shall not be cause for future claims by Contractor for extra costs or increased Contract Time. Contractor shall adhere to the established progress schedule as may be adjusted from time to time as provided below:

1. Contractor may submit, for County acceptance, proposed adjustments in the progress schedule that will not change the Contract Times or Milestones.
 2. Proposed adjustments in the progress schedule that will change the Contract Times or Milestones shall be submitted as a request for a Change Order. In the event Contractor requests an extension of Contract Time, Contractor shall furnish such justification, CPM data and supporting evidence for a determination.
- F. Contractor shall provide a minimum two (2) week look ahead for all scheduled activities in advance of each regularly scheduled project meeting with County. County may require this look ahead to be provided in written form.
- G. Work within the County limits after 9:00 p.m. and before 7:00 a.m. Mountain Time requires a Noise Ordinance Relief Permit. Contractor shall adhere to any conditions imposed by the County.
- H. Contractor shall maintain updated as-builts during construction. These shall be made available to the Project Manager for inspection upon request.

5.2.4 Shop Drawings and Submittals

- A. The Contractor shall provide shop drawings, manufacturer's literature, certificates of compliance, material samples, materials colors, guarantees and other materials as may be necessary for the completion of the Work as required by the Contract. The Contractor shall review and approve, and deliver all submittals to the Project Manager for review with reasonable promptness and in orderly sequence. The County, at its sole discretion, may forward submittal(s) for further review by the County's designee. All submittals shall be properly identified.
- B. Contractor shall comply with the Project Manager and/or Engineer's comments on its submittals. If such qualified review or if re-submission is so directed, Contractor shall make any corrections required or indicated by the Project Manager or Engineer at Contractor's expense.
- C. The approval by the Project Manager or Engineer of any shop drawing shall not release the Contractor from responsibility for deviations from the Contract.
- D. The approval of any shop drawing which substantially deviates from the requirement of the contract shall only be evidenced by a Change Order.

5.2.5 Start of Various Types of Work and Management Planning

- A. The County will not allow the Contractor to commence work at the project sites, including mobilization of equipment, unless the following submittals/shop drawings/firms, as applicable, are approved by the County:
1. Traffic Control Plan and Traffic Impedance Plan.
 2. Storm water Pollution Prevention Plans (SWPPP) as required by the project and specified in the Scope of Services..
 3. Copies of NPDES Notice of Intent (NOI) as specified.
 4. Name of proposed materials, soil, and concrete testing firm as specified.

5. Name of proposed registered land surveyor or registered Engineer as specified.
6. Safety Management Plan.
7. Contractor shall obtain a Los Alamos County Business License.
- B. The County will not allow the Contractor to begin excavation unless the following submittals/shop drawings are approved by the Engineer:
 1. Excavation/Shoring Plan
 2. Water, sewer, and gas system components (pipe, valve, fittings, manholes, etc.)
 3. Underground electric components
 4. Storm drain and sewer system components (pipe, inlets, manholes, etc.)
 5. Pipe bedding material
- C. The County will not allow the Contractor to commence installation of concrete structures until the following submittals/shop drawings are approved by the Engineer:
 1. Concrete mix design
 2. Reinforcing steel
- D. The County will not allow the Contractor to commence installation of road work at the Project Site, unless the following submittals/shop drawings are approved by the Engineer:
 1. Structural fill material
 2. Gravel base course
 3. Prime coat/tack coat material
 4. Asphalt Pavement Mix Design
 5. Performance Graded Binder
 6. Storm drainpipe
 7. Hydrated lime
 8. Geotextile material.
- E. Contractor shall deliver to County prior to the Substantial Completion Inspection:
 1. Certificates of inspection and of occupancy as required by authorities having jurisdiction over the work.
 2. Contractor shall notify the County in writing when the Work is Substantially Complete and request a Certificate of Substantial Completion.
 3. County and/or Engineer shall then inspect the Work and either concur with or decline the request.
 4. If accepted, a Certificate of Substantial Completion shall be issued, with a "punch list" of items to be corrected and completed by the Final Completion date and shall include division of responsibilities as applicable between County and Contractor including but not limited to security, operation, safety maintenance, insurance, warranties and guarantees. County shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but County shall allow Contractor reasonable access to complete or correct items on the correction list.
 5. If declined, County shall not issue the Certificate of Substantial Completion
- F. Final Completion –

1. The date when the Contractor and County consider the entire Work is complete, as evidenced by the Certificate of Final Completion.
 2. Contractor shall notify the County in writing when the Work is at Final Completion and request a Certificate of Final Completion.
 3. County and/or Engineer shall then inspect the Work and either concur in or reject the request.
 4. If accepted, a Certificate of Final Completion shall be issued.
 5. If declined, County shall not issue the Certificate of Final Completion. Contractor shall take such measures as are necessary to complete such Work or remedy deficiencies.
- G. Prior to County execution of the Certificate of Final Completion, Contractor shall furnish maintenance manuals as called for in Contract and Contractor shall provide start up assistance for County as required, including all the items identified below:
1. Data files of accurately surveyed coordinate points locating all as constructed structures and all buried utilities including depths and inverts of manholes. Use the coordinate system described in the Drawings on the Site Plan General Layout. Data files shall be in a format suitable for importing into AutoCAD drawings. Contractor shall furnish complete written descriptions of each point and include a brief description of the data (Metadata) describing the data collection process and the names and contract information of the parties responsible for producing the data. Approval documents if the work is constructed in any way at variance to that shown on the Contract documents.
 2. As-built plans in the form of redlined plans with all aspects of the Project constructed that deviate from the original plans marked in red on a Full Size (24"x36" or larger if architectural) paper set of plans.
 3. Contractor shall provide vendor training for the County as requested by the Project Manager, covering maintenance and operation of the systems. This may be provided prior to Substantial Completion upon agreement between the County and Contractor.

5.2.6 Materials, Services and Facilities

- A. Contractor agrees that, except as otherwise may be specifically stated in the Contract documents, the Contractor shall provide and pay for the costs and associated taxes for all materials, (except for materials furnished by the County), labor, tools, equipment and machinery, water, light, power, heat, fuel, telephone, sanitary facilities, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the Contract Time.
- B. Materials and equipment shall be stored to insure the preservation of quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located at the Site or Staging Area set forth in Section 6.1.2 to facilitate prompt inspection.
- C. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

- D. Materials, supplies, and equipment furnished by the Contractor shall be in accordance with samples submitted by the Contractor and approved by the County.
- E. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or any Subcontractor, subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- F. Materials and equipment shall be new and of good quality.
- G. Contractor shall, if required, furnish evidence of the quality of any materials.
- H. Materials not meeting requirements of the Contract shall be removed from Project by Contractor without expense to County.
- I. Materials shall be delivered to the site in original packaging with labels and trademarks intact, and such labels and trademarks shall remain intact until used.

5.2.7 Substitutes or “Brand Name” or Equal

- A. Whenever an item of material or equipment is specified or described in the Contract by using the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the type, function and level of quality required. Unless the specification or description contains or is followed by word reading that no “like,” “equivalent” or “equal” item or no substitution is permitted, other items of material or equipment of other suppliers may be recommended by Contractor for County’s approval under the following circumstances:
 - 1. “Or-Equal”: Contractor will recommend to County if an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required. It may be considered as an “or-equal” item, in which case review and approval of the proposed item may, in County’s discretion, be accomplished without compliance with some or all the requirements for acceptance of proposed substitute items.
 - 2. Substitute Items: If an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item, it will be considered a proposed substitute item.
 - a. Contractor shall first make written request to Project Manager for acceptance, signifying that the proposed substitute will perform the functions as specified and achieve the results called for by the particular design, functional or performance characteristics which are required.
 - (1) Contractor shall submit sufficient information to County to demonstrate that the item proposed is essentially equivalent to that named and is an acceptable substitute.
 - (2) Contractor will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will impact Contractor’s achievement of Substantial Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract documents to adapt the design to the proposed

substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated.

- (3) Contractor shall provide an itemized estimate of all costs or credits which will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by County in evaluating the proposed substitute. County may require Contractor to furnish additional data about the proposed substitute.
3. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Solicitation Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to County upon recommendation from Engineer. Contractor shall submit sufficient information to allow Engineer to make recommendation to County that the substitute proposed is equivalent to that expressly called for by the Solicitation Documents.
4. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each submittal made. County upon recommendation of Engineer will be sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. County may require Contractor to furnish, at Contractor's expense, a special performance guarantee or other surety with respect to any "or-equal" or substitute. Engineer will record time required by Engineer and Engineer's Consultants in evaluating substitutes proposed or submitted by Contractor and in making changes in the Solicitation documents occasioned thereby. Whether or not Engineer accepts a substitute item so proposed or submitted by Contractor, County reserves the right to charge Contractor, and Contractor hereby agree to pay, for review time by Engineer and Engineer's consultants for evaluation of each such proposed substitute item and for making changes in the Solicitation Documents as needed.
5. Contractor's Expense: All data to be provided by Contractor in support of any proposed "or-equal" or substitute item will be at Contractor's expense.

5.2.8 Inspection and Testing

- A. All materials and equipment used in performance of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards and as required and defined in the Solicitation Documents, and as provided herein.
- B. If required by the Solicitation Documents, the Contractor shall provide at the Contractor's expense the testing and inspection services.

- C. The Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, paying all costs in connection therewith, and furnishing County with the required certificates of inspection, or approval within 72 hours of inspection
- D. The Contractor shall give the County at least twenty-four (24) hours' notice of readiness and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall also be responsible for arranging obtaining and paying all costs in connection with any inspections, tests or approvals required for County and Engineer's acceptance of materials or equipment to be incorporated in the Work, or materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- E. Alternately, in accordance with the Solicitation Documents, the County may assume all responsibility and costs associated with testing; this will be noted specifically.
 - 1. If more than two (2) tests fail, County may at its discretion, charge the Contractor the full costs for all subsequent tests.
 - 2. Such charges may be deducted from the payment application.
- F. County may at their discretion perform additional testing and inspections as a means of quality assurance.
- G. Inspections, tests or approvals by the County/Engineer shall not relieve the Contractor's obligations to perform the Work in accordance with the requirements of the Solicitation Documents.
- H. Notice of Defects - Prompt notice of any defective Work of which County or Engineer have actual knowledge will be given to Contractor. All defective Work shall either be rejected, corrected, accepted, or accepted with payment adjustments as solely determined by County.
- I. If any Work is covered contrary to the direction of the County, or if Work is covered prior to testing, Contractor shall uncover it for testing and/or observation by the County. Re-excavation, inspection, testing and replacement of all materials and items shall be at the Contractor's sole expense.
- J. If the County directs the Contractor to uncover work where inspections are not required, then:
 - 1. The Contractor shall bear all costs for the re-excavation, inspection, testing, replacement and re-covering of the items if the Work did not meet specifications; or
 - 2. If items do meet specifications, Contractor may solicit a Change Order to cover the additional work costs.
- K. Sub-grade, base-course, and asphalt testing shall be conducted by an AMRL (Aggregate Materials Reference Laboratory) certified technician. Cement and concrete testing shall be performed by an ACI (American Concrete Institute) certified technician for lab and field testing.

5.2.9 Correction of Work

- A. The Contractor shall remove, at the County's sole discretion from the premises and replace at the Contractor's sole expense, all Work rejected by the Engineer or County for failure to comply with the Contract, whether incorporated in the project or not. Contractor shall promptly replace and re-execute the Work in accordance with the Contract. Contractor shall pay all claims, cost, losses, and damages caused by or resulting from such correction or removal including but not limited to all costs or repair or replacement of Work by others.
- B. If the Contractor does not take action to remove such rejected Work within time specified after receipt of written notice, the County may remove or correct such Work and store the materials. If at the time the County removes or corrects such Work, stores materials, and any amount of the Contract Price is then due and owing to the Contractor, the County may deduct from the amount owed to the Contractor the costs incurred by the County for such removal, correction and storage.
- C. In connection with such corrective and remedial action, County may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stores at the site or for which County has paid Contractor but which are stored elsewhere. Contractor shall allow County, County's representatives, agents, employees, County's other Contractors and Engineer and Engineer's Consultants access to the site to enable County to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by County in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Solicitation Documents with respect to the Work; and County shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include by not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by County of County's rights and remedies hereunder.
- D. In an emergency where delay would cause serious risk of loss or damage, County may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement including but not limited to all costs of repair or replacement of work of others shall be paid by Contractor.
- E. If instead of requiring correction or removal and replacement of defective Work, County with Engineer's recommendation, prefers to accept it, County may do so. Contractor shall pay all claims, costs, losses and damages attributable to County's evaluation of and determination to accept such defective Work. If such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract with respect to the

Work, and County shall be entitled to an appropriate decrease in the Contract Price. If acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to the County.

5.2.10 Patents

- A. The Contractor shall pay, on behalf of the County, all applicable royalties and license fees. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless County from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device whether it is specified or not in the Solicitation Documents. However, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, trademark or copyright, the Contractor shall be responsible for such loss unless the Contractor notifies the County upon discovery.
- B. Contractor shall indemnify, defend, or at its option, settle any claim or suit against County if such suit or claim is based on a patent, trademark, copyright or trade secret infringement resulting from the Work or use thereof, provided that County, upon knowledge of a claim or potential claim of infringement, promptly notifies Contractor and provides Contractor all related information known to County. In the event of a claim of patent, trademark, copyright or trade secret infringement, Contractor agrees to keep County timely informed of material developments with respect to such claim. In the event that a court of competent jurisdiction adjudicates that the Work or any part of it does infringe a third party's patent, trademark, copyright or trade secret, or in the event that County is enjoined from using the Work or any part of it, Contractor shall, at its expense and option, do one of the following: 1) procure for County the right to use the Work or the affected part thereof, or 2) replace the Work or affected part thereof with other suitable work, or 3) modify the Work or affected part hereof to make it non-infringing, or 4) if none of the foregoing remedies are commercially feasible, refund the aggregate payments paid by County for the Work which the County is no longer permitted to use, or the affected part thereof, less reasonable amortization for use, if any.

5.2.11 Surveys, Permits, and Regulations

- A. From the information provided by the County, unless otherwise specified in the Solicitation Documents, the Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.
- B. The Contractor shall carefully preserve benchmarks, property corners, reference points and stakes. When it becomes necessary by reason of construction to remove or obliterate any triangulation station benchmark, property corner, monument, stake, witness mark or other survey reference mark, it shall be the duty of the Contractor

to cause, at the Contractor's sole expense, the mark to be re-established by a registered surveyor in accordance with Section 61-23-28, NMSA 1978.

- C. Unless otherwise stated in the Solicitation Documents or agreed to in writing by the County, all permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Contractor. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations pertaining to the Work as required. If the Contractor observes that the Solicitation Documents are at variance therewith, Contractor shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided herein. Contractor shall pay for all governmental changes and inspection fees necessary for the prosecution of the Work, which are applicable at the time of its Notice of Award. Contractor shall pay all charges of utility connections and payment for use of said utilities for the Work.
- D. A Penetration Permit from the County is required prior to connecting to any gas, water, or sanitary sewer lines. Contractor shall allow five (5) working days for the County to process the application after submitting. A copy of the Penetration Permit can be obtained from the Los Alamos County Department of Public Utilities (DPU), (505) 662-8130. DPU staff will perform all switching and valve operations in accordance with the Permit.
- E. The Contractor shall prepare the plan and file the necessary documentation, obtain approvals, construct and maintain the Storm Water Pollution Prevention Plan (SWPPP) for all job sites, staging areas or other areas required prior to initiation of any site Work.
- F. The Contractor shall submit and get approval of a Traffic Impedance Permit from the County of Los Alamos, prior to beginning construction as required. Contractor shall apply to the County of Los Alamos for a Traffic Impedance Permit at least ten (10) working days in advance of setting up traffic control signs or barricades for work efforts which will affect the flow of traffic. Contractor cannot proceed with construction until traffic control plans are approved by County.
- G. The Contractor shall obtain all New Mexico Environment Department (NMED) Air Quality Permits as required, as well as any other required permits including, but not limited to, asbestos abatement, lead abatement and other hazardous material permits in conjunction with the Work.
- H. Neither County nor Engineer shall be responsible for Contractor's compliance with any Laws or Regulations except where otherwise expressly required.
- I. All County permit fees shall be waived with the exception of Solid Waste fees.

5.2.12 Subsurface and Physical Conditions

- A. Any reports on subsurface and physical conditions are included in Section 6.0 Exhibits. The County may not have conducted or contracted for Subsurface and Physical Condition Reports.
- B. Contractor may rely upon the general accuracy of the information contained in such reports and drawings which is provided as the best information at that time for the Contractor's use. Except for such reliance on such reports Contractor may not rely

upon or make any claim against County, Engineer or any of Engineer's Consultants with respect to:

1. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. Any Contractor interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- C. Notice of Differing Subsurface or Physical Conditions – if Contractor believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
1. Is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided above is materially inaccurate, or
 2. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent of the character of Work provided in the Solicitation Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency), notify County and Engineer in writing immediately about such condition. Contractor shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order from County and Engineer to do so.

3. County will promptly review the pertinent conditions, determine the necessity of obtaining additional exploration or tests with respect thereto and advise Contractor in writing of its findings and conclusions.
- D. Possible Contract Documents Change: If Engineer concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 3.2.14, a Change Order may be issued to reflect and document the consequence of such change.
- E. Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Time, or both may be allowed to the extent that the existence of such uncovered or revealed condition causes and increase or decrease in Contractor's cost of, or time required for performance of the Work subject to the following:
1. Such condition must meet any one or more of the categories described Section 5.2.12 above;
 2. A change in the Contract Documents pursuant to Section 5, Changes in the Work will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
 3. With respect to Work that is paid for on a Unit price basis, any adjustment in Contract Price will be subject to provisions relating to unit prices;

4. Contractor shall not be entitled to any adjustment in the Contract Price or Time if;
 - a. Contractor knew of existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Proposal or executing the Contract; or
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the site and contiguous areas required by the Solicitation Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice within the time and as required by Section 5.2.14, Changes in the Work.
 - d. County, Engineer and Engineer's Consultants shall not be liable to Contractor for any claims, costs, losses or damages sustained by Contractor on or in connection with any other project or anticipated project.
- F. Physical Conditions – Underground Facilities:
 1. Shown or Indicated: The information and data shown or indicated in the Solicitation Documents or subsequently located by the Active Underground Facilities locating service prior to excavation with respect to existing Active Underground Facilities at or contiguous to the site is based on the information and data furnished by the County of such Active Underground Facilities or by others. County shall not be responsible for the accuracy or completeness of such information or data provided in the Solicitation Documents. The Contractor shall be solely responsible for requesting the marking of the location of Active Underground Facilities by the locating service in accordance with the New Mexico Excavation Law prior to excavation. The cost of all of the following will be included in the Contract Price and Contractor shall have full responsibility for: reviewing and checking all such information and data, locating all Underground Facilities shown, or indicated in the Solicitation Documents, or subsequently located by the Active Underground Facilities owner, coordination of the Work with the County of such Underground Facilities during construction, and safety and protection of all such Underground Facilities and repairing any damage resulting from the Work.
 2. Not Shown or Indicated: If any Active Underground Facilities or Abandoned Underground Facilities are uncovered or revealed at or contiguous to the site which was not shown or indicated in the Solicitation Documents or was not subsequently located by the Active Underground Facilities owner in accordance with New Mexico exaction law, then Contractor shall, promptly after becoming aware of and before further disturbing conditions affected or performing any work in connection therewith (except in an emergency), give written notice to the County, if known, of the Underground Facilities Owner.
 3. The Contractor will promptly review the Active or Abandoned Underground Facilities and determine, if possible, the owner of the Underground Facilities.

The Contractor shall request that the owner of the Underground Facilities also investigate if the Underground Facilities are Active or Abandoned.

- a. If the Underground Facilities are Active Underground Facilities, the County shall determine the extent, if any, to which a change is required in the Contract to reflect and document the consequences of the existence of the Active Underground Facilities. During such time, Contractor shall be responsible for safety and protection of such Active Underground Facilities. Contractor may be allowed and increase in Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Active Underground Facilities that were not shown, indicated, or not subsequently located by the owner of the Active Underground Facilities prior to excavation, and that the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated.
- b. If the Underground Facilities are Abandoned Underground Facilities, and they interfere with the excavation or Work by the Contractor, the Contractor is not eligible for an increase in cost. The Abandoned Underground Facilities can be removed or allowed to remain with steps taken to work around the Abandoned Underground Facilities such as cutting, removing and capping the ends.
- c. If any Abandoned Underground Facilities are transite asbestos pipe or conduit (also known as asbestos-cement (AC) pipes), removal, if required or selected by the Contractor, shall be completed and no additional payment will be granted to the Contractor for the proper removal and disposal per the appropriate local, State, and federal regulations.

5.2.13 Protection of Work, Property and Persons

- A. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in a manner which complies with all local, state, and federal health and safety codes. The items below shall be included in the Contractor's Safety Management Plan. Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees, County staff or agents, and public on the Work, including but not limited to:
 1. Required personal safety equipment for personnel and visitors within the work zone including PPE to comply with Public Health Orders;
 2. Proper operation of equipment and power tools;
 3. Proper maintenance of equipment and power tools;
 4. Protection of personnel and public within excavation areas;
 5. Protection of personnel occupying confined spaces;
 6. Welding;
 7. Fall protection;

8. Procedures in the event that suspected hazardous materials are encountered and procedures to be used by Contractor and Subcontractors for handling and coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with applicable Laws and Regulations;
9. Precautions for lifting and maneuvering heavy objects;
10. Emergency procedures in the event of wildfire or other fire;
11. Emergency procedures in the event of injury;
12. Emergency procedures in the event of a line break (water, sewer, gas, power, etc.)
13. Flooding;
14. Excavating, trenching, shoring, sheeting, and bracing protection;
15. Pre-job safety planning;
16. Designation by Contractor of a qualified and experienced safety representative whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs;
17. Implementation of safety plan for subcontractors;
18. Safety meetings; and
19. Procedures for encounters with wildlife, including bears and snakes.

5.2.14 Changes in the Work

- A. The County may at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order mutually agreed to by the County and Contractor.
- B. The County may at any time, by issuing a Field Order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work so ordered by the County, unless the Contractor believes that such Field Order entitles the Contractor to a change in the Contract Price or Time, or both, in which event the Contractor shall give the County written notice within seven (7) calendar days after the receipt of the Field Order. Thereafter the Contractor shall document the basis for the change in Contract Price or Time within thirty (30) calendar days. The Contractor shall not execute such changes until receipt of an executed Change Order or further instruction from the County followed by the executed Change Order.
- C. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the original Solicitation Documents or as amended or modified, except in the case of an emergency.

- D. The value of any Work covered by a Change Order or any claim for an adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Solicitation Documents, by application of such unit prices to the quantities of the items involved.
 2. Where the Work involved is not covered by unit prices contained in the Solicitation Documents, by a mutually agreed lump sum.
- E. Force Account -In the event that an agreed upon price or time cannot be reached, Contractor, when directed, shall proceed on a Force Account (Time and Materials) basis and document all costs and time incurred by the work. Force Account shall include a not-to-exceed amount. Costs shall include all direct and indirect labor, equipment and materials and shall be based on:
1. Actual costs for labor, direct overhead, materials, supplies, equipment, and other services required to complete the work;
 2. In addition, there shall be an amount agreed upon, but not to exceed fifteen percent (15%) of the actual cost of such work to cover the cost of general overhead and profit;
 3. Contractor shall establish and maintain records in accordance with generally accepted accounting practices and submit in a form acceptable to the County an itemized cost breakdown together with supporting data, agreed to at the end of each day by the Project Manager and Contractor.
- F. Cost of Work: The term Cost of Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by County, such costs shall include only the following items and shall not include any of the costs itemized in G below.
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by County and Contractor. Such employees shall include without limitation superintendents, foreman, and other personnel employed full time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned based on their time spent on the Work. Payroll costs shall include, but not limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by County.
 2. Cost of materials and equipment furnished and incorporated in the Work, including costs of transportation and storage, and Supplier's field services required in connection. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to County and Contractor shall make provisions so that they can be obtained.
 3. Payments made by the Contractors to the Subcontractors for Work performed or furnished by Subcontractors. If required by County, Contractor shall obtain

competitive bids from subcontractors acceptable to County and Contractor shall deliver such bids to County who will then determine which bids, if any, will be accepted. All subcontracts shall be subject to other provisions of the Solicitation Documents insofar as applicable

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain property of Contractor.
 - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by County with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal; all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, or similar taxes related to the Work, and for which Contractor is liable, imposed by laws and regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by the County), provided loss has resulted from causes other than the negligence of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of County. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee. If, however any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for service a proportional fee as stated above.
 - g. The cost of utilities, fuel and sanitary facilities at the site.

- h. Cost of premiums for additional bonds and insurance required because of changes in the Work.
- G. The term Cost of Work shall not include any of the following:
 - 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work which are to be considered administrative cost covered by the Contractor's fee.
 - 2. Expenses of Contractor's offices other than Contractor's office at the site.
 - 3. Any part of Contractor's capital expenses, including interest and charges for delinquent payments.
 - 4. Original cost of premiums for all Bonds and for all insurance required by the Solicitation Documents to purchase and maintain the same.
 - 5. Costs due to the negligence of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - 6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included herein.
- H. The Contractor's fee allowed to Contractor for general overhead and profit shall be determined by an amount not to exceed fifteen percent (15%) of the Cost of Work described above and in accordance with the Contract.
- I. For work performed by Sub-contractors the Contractor's fee shall not exceed 5% and in accordance with the Contract.
- J. No fee will be allowed for cost of special consultants and supplemental costs as described above.

5.2.15 Suspension, Delay or Termination of Work

- A. At any time and without cause, County may suspend the Work or any portion thereof for a period of not more than 90 days per event by notice in writing to Contractor which will fix the date on which Work may be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Time or both, directly attributable to any such suspension of work, if Contractor receives an approved Change Order as provided herein.
- B. The County, at its sole discretion may terminate the Contract if the Contractor:
 - 1. Is determined to be and adjudged to be bankrupt or insolvent;
 - 2. The Contractor makes a general assignment for the benefit of the Contractor's creditors;

3. A trustee or receiver is appointed for the Contractor for any of the Contractor's property;
4. The Contractor files a petition to take advantage of any debtor's act, to reorganize under the bankruptcy or applicable laws.
5. Contractor fails to perform the Work in accordance with the Contract including but not limited to:
 - a. The Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
 - b. The Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment.
 - c. The Contractor disregards laws, ordinances, rules, regulation or orders of any public body having jurisdiction over the Work,
 - d. The Contractor disregards the authority of the County, or
 - e. The Contractor otherwise violates any provision of the Contract Documents.
- C. The County may, without prejudice to any other right of surety, within a minimum of ten (10) calendar days from delivery of a written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery owned by the Contractor, and finish the Work by whatever method the County may deem expedient or at County's sole discretion may elect to suspend the Work or any portion thereof until the cause for such notice of termination has been eliminated. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.
- D. Contractor shall be paid for Work completed in accordance with the Contract Documents.
- E. If an agreement cannot be reached to remedy the cause of termination and the County hires a different Contractor to complete the remaining Work or the Work is completed by a different means:
 1. The resulting costs incurred by the County will be determined by the County.
 2. If such costs exceed such unpaid balance of the Contract Price, the County will request that Contractor pay the difference to the County.
 3. If the Contractor refuses to pay the difference to the County, the County may terminate the contract and request payment directly from the Contractor's bonding company.
 4. Any unpaid balance of the current Contract Price that exceeds the direct and indirect cost of completing the Work, including compensation for additional professional services, shall not be paid to the Contractor.
- F. Where the Contractor's services have been terminated by the County, said termination shall not affect any right or claim of the County against the Contractor existing at that time or which may thereafter accrue. Any payment by the County due the Contractor will not release the Contractor from compliance with the Contract. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- G. After ten (10) calendar days from delivery of a written Notice to the Contractor from the County, the County may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all Work executed in conformance with the Contract plus reasonable profit.

5.2.16 Subcontracting

- A. The Contractor may utilize the services of specialty subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty subcontractors. The County reserves the right to review and then may approve or disapprove the use of any subcontractors prior to retention by Contractor.
- B. The Contractor shall maintain the services of subcontractors as designated by the Contractor in the Solicitation Documents for the Term of the Contract. Replacement or changes to subcontractors from those originally submitted in Contractor's Proposal Response to the RFP is not permitted without prior written justification and written approval of the County.
- C. The Contractor shall not award Work to subcontractor(s), in excess of fifty percent (50%) of the Contract Price, without prior written approval of the County.
- D. The Contractor shall be fully responsible to the County for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, just as the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor.
- E. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the Solicitation Documents insofar as applicable to the Work of subcontractors and to give the Contractor the same power to terminate any subcontract that the County may exercise over the Contractor under any provision of the Contract.
- F. Nothing contained in this Contract shall create any contractual relation between any subcontractor and the County.

5.2.17 Duties of the Contractor

- A. The Contract contains the provisions required for the construction of the Project. Information obtained from an officer, agent, or employee of the County or another person shall not affect the risks or obligations assumed by the Contractor or relieve Contractor from fulfilling any of the conditions of the Contract. The Contract requires performance of services entirely at the Contractor's risk and Contractor has agreed to fully indemnify the County from all claims, demands, and actions, arising from the Contractor's actions, errors, or omissions.
- B. The Contractor shall maintain employment of qualified Project Manager and Project Superintendent as designated by the Contractor in the Solicitation Documents for the Term of the Contract. Replacement or changes to Project Manager or Superintendent from those originally submitted in Contractor's Proposal Response

to the RFP is not allowed without prior written justification and written approval of the County.

- C. The Contractor shall supervise and direct all work to be performed pursuant to this Contract. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- D. The Superintendent shall be considered an agent of the Contractor and shall have full authority to act on behalf of the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. The Superintendent shall always be present on the site as required to perform adequate supervision and coordination of the services provided pursuant to this Contract.
- E. If at any time Contractor or any subcontractor is suspended or debarred from conducting business with any city, county, state or federal government or military unit of any state or the federal government, Contractor has continuing obligation to promptly notify County. County has the option to terminate Contract or require a different subcontractor at no additional cost to the County.
- F. Superintendent shall track daily all labor (including classifications), equipment and materials used on site. Superintendent shall communicate weekly this information to the Project Manager or representative. Superintendent and Project Manager shall agree on this usage.
- G. Contractor shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract. Contractor shall at all times enforce strict discipline and good order among all workers at the sites and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to them.
- H. Contractor shall be responsible to see that the completed Work complies accurately with the Contract.
- I. Contractor shall abide by the Los Alamos County Harassment Policy and Procedures #1120.

5.2.18 Job Site Administration

- A. The Contractor is responsible for orderly use and cleanup of all job sites including staging areas and all areas affected by the project to the satisfaction of the County. Outdoor storage space may be obtained by the Contractor at its sole expense.
- B. The County may authorize, through issuance of a Staging Area License, Contractor's use of land owned by the County. Contractor shall comply with the terms of written agreements.
- C. Construction materials and equipment such as tools, scaffolds, forms and excess material not in use shall be stored or stacked in neat order at the Contractor's storage site. Contractor shall at all times as part of its services, keep the sites free from accumulation of waste materials or rubbish caused by Contractor's operations.
- D. Contractor shall provide trash receptacles sufficient in number to accommodate all refuse generated within the property and provide for their regular and routine maintenance and servicing. At the completion of the services to be performed in the

Contract, Contractor shall remove Contractor's waste materials and rubbish from and about the project, as well as all Contractor's tools, construction equipment, machinery and surplus materials and shall clean all surfaces. At substantial completion and prior to occupation by the County, the Contractor shall disinfect all surfaces that may come into contact by the public or County staff.

- E. Contractor may provide lighting as necessary for security and safety of materials and equipment. Such lighting shall be down-directed and in accordance with all New Mexico Night Sky provisions and approved by the Project Manager.
- F. Contractor shall provide portable toilets at all job sites sufficient in number to accommodate all waste generated within the site and provide for their regular and routine maintenance and servicing.
- G. Contractor shall restore to original condition all affected property not designated for alteration by the Contract.
- H. Services performed pursuant to this Contract are not to unduly interfere with the County's normal operation and maintenance.
- I. Contractor shall be responsible for all areas of the Project used by the Contractor, subcontractors, suppliers or other involved in performance of the services to be performed in the Contract.
- J. Contractor shall have the right to exclude all who have no purpose or function related to the performance or inspection of the services, except personnel employed by the County or other governmental agencies. Contractor may require all persons on the site of the Work to observe all regulations that the Contractor requires of its employees. Contractor will exert full control over the site and personnel with respect to use, safety and preservation of property and the existing facilities, except for controls as reserved to County or others.
- K. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Solicitation Documents and other land and areas permitted by Laws and Regulations. Contractor shall assume full responsibility for any damage to any such land or area or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly resolve such claim by negotiation or other proceeding at law.
- L. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless County against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against County, Engineer or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- M. Contractor shall be responsible for all materials brought to the job sites by the Contractor, its subcontractors or agents.
- N. Hazardous waste shall be properly stored and disposed in accordance with applicable laws and regulations. The Contractor shall promptly remove all spilled or splattered materials from surfaces to prevent marring, staining, or damage. Clean-up will be evaluated prior to all applications for progress payment.

- O. County shall have the right to enter the site or Work area for the purpose of doing work not covered by the Contract. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work or the restoration of any damaged Work except such as may be caused by agents or employees of the County.
- P. County may perform other work related or unrelated to the Project on the premises using County's own employees, other utility owners, or let other contracts for the performance of work. If there is such work to be performed that was not noted in the Contract, written notice shall be given to the Contractor prior to the start of such work. As directed by the County, Contractor shall provide proper and safe access to the County, contractors and utility owners to the premises and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work.
- Q. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of County and the others whose work will be affected.
- R. Gas and Oil Storage, Service Areas, Concrete Batch Plant, Caretaker Dwelling Units- County shall approve the location of equipment areas, gas and oil storage areas, service areas, concrete batch plant and caretaker dwelling units in writing. Contractor shall clear all areas of brush, litter, grass and all other flammable debris for a radius of 50 feet. Caretaker dwelling unit's area subject to approval by County and to the County License Agreement in Section 6.1.2.
- S. Prevention of Oil Spills – If Contractor maintains storage facilities or uses flammable or combustible liquids in the project area, Contractor will provide to the Fire Marshall an operational plan that addresses the use and appropriate measures which will address soil containment and clean-up. Pollutants such as fuels, lubricants and other harmful materials shall not be discharged on the ground.
- T. Contractor, at its sole expense, shall immediately take action to contain and clean up all potentially hazardous spills in the performance of this Contract which are caused by Contractor's employees directly or indirectly, or as a result of subcontractor operations, and shall immediately report to County and all applicable agencies. Contractor will be held liable for all damages and costs of additional labor, equipment, supplies, and transportation deemed necessary by the County for the containments and cleanup of potentially hazardous spills caused by Contractor's employees or resulting from subcontractor operations.
- U. Control of Sources of Ignition – When Contractor uses any process that requires an ignition source, Contractor must provide a plan outlining the process and prior approval must be granted by the Fire Marshall before any ignition source is used within the project area. Areas where welding cutting, burning, or grinding is occurring are to be shielded to prevent flying sparks and debris. Fires shall not be built on the premises.
- V. Communications – The Contractor's communication system shall provide prompt and reliable communications between Contractor's crews. County shall be able to

communicate with Contractor 24/7; Contractor shall be responsive to phone calls and return calls within fifteen (15) minutes.

- W. Contractor shall conduct all activities associated with this Project in such a manner that there will not be any adverse impact to archeological sites, trails, identified natural features, fences, gates and private property.
- X. Contractor shall be responsible for all damage to property and to persons, including third parties that occur as a result of its or its agents or employees or subcontractors or subcontractor's employees' fault or negligence.
- Y. Contractor shall cooperate with the owners of all utilities, including County, in removal and/or rearrangement operations in order that these operations may progress in a reasonable manner and services shall not be unnecessarily interrupted.
- Z. In the event of interruption to utility services because of accidental breakage or as a result of lines being exposed or unsupported, Contractor shall promptly notify Project Manager and owner of the utility and shall cooperate with owner in the restoration of services. If utility services are interrupted, Contractor's cooperation shall be required until service is restored.
- AA. Contractor shall protect all streets, private roads and sidewalks, and shall make all necessary repairs for damage incurred during course of the work at Contractor's own expense.
- BB. Contractor shall provide proper protection of all furnishings and fixtures likely to be damaged. When exterior openings are made, they shall be covered with weather tight protection at the end of the day's work.
- CC. Contractor shall take suitable precautions to protect existing trees, shrubs, and other natural vegetation and fences during construction. The Contractor shall restore the area to permit re-vegetation of the area. This includes restoring the area to pre-existing contours, reducing soil compaction by scarification, and mitigating for the effects of runoff. Any fences that need to be removed must be placed or dealt with as specified in Contract. Contractor shall reseed disturbed areas in accordance with NMDOT Specifications or as specified in the Contract.
- DD. The County will allow Contractor metered usage of water required for construction, to the extent of existing facilities. The Contractor shall obtain a water meter from the Los Alamos County Department of Public Utilities (DPU). Payment to the Utilities Department for the quantity of water used at the prevailing rate will be due before final acceptance of the project. A deposit for the water meter is required by DPU.
- EE. Contractor shall remove all snow and ice as may be required for the proper protection and performance of the Work and access to job site. Snow and ice shall also be removed by the Contractor from active work zones open to the public.
- FF. Contractor shall provide all shoring, bracing, and sheathing as required for safety and for proper execution of the Work and have some removed when Work is completed.
- GG. Contractor shall provide installation and maintenance of necessary precautions to protect all personnel on the site, including members of the general public from injury

or harm, including but not limited to posting of appropriate warning signs in hazardous areas.

- HH. Contractor shall always provide protection against weather (rain, wind, storms, frost, floods or heat) so as to maintain all Work, materials, apparatus, private property and fixtures free from injury or damage. At the end of the day's Work, all new Work likely to be damaged shall be protected.
- II. During cold or inclement weather, Contractor shall protect all Work from damage. If low temperatures make it impossible to continue operations safely despite cold weather precautions, Contractor shall cease Work and so notify County.
- JJ. Contractor may, as part of its Work, provide and erect one sign with a minimum size of 2' x 2' with a maximum size of 4' x 8', with the Contractor's name, license number, address and telephone number and locate sign as approved by the County. No other sign or advertisement shall be displayed by the Contractor unless requested or approved by the County.

5.2.19 Engineer's Authority

The Engineer or the Engineer's designated representative may:

- A. Recommend, disapprove, or reject Work which Engineer believes to be defective or will not produce a completed Project that conforms to the Technical Specifications and Drawings or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Technical Specifications and Drawings or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Technical Specifications and Drawings require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.
- B. The Engineer may be on site during construction and determine if the Work is proceeding in accordance with Technical Specifications and Drawings. Duties and responsibilities of Engineer may be modified by County as needed.
- C. Inspections may be made at the factory or fabrication plant of the source of material supply.
- D. The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.
- E. As requested by County or Contractor, Engineer will issue to both County and Contractor with reasonable promptness written clarifications or interpretations of the requirements of the Technical Specification and Drawings (in the form of Drawings or otherwise), which shall be consistent with intent of and reasonably inferable from Technical Specifications and Drawings.
- F. Engineer may authorize minor variations in the Work from the requirements of the Technical Specifications and Drawings which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by a Field Order and will be binding on the County and also on Contractor who shall perform the Work involved promptly.

- G. Engineer will review and approve Shop Drawings, Samples and submittals in accordance with the schedule of submittals accepted by Engineer. Engineer's review and approval will only be to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Technical Specifications and Drawings and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Technical Specifications and Drawings. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, unless explicitly specified or related to applicable safety precautions or programs. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by the Engineer and shall return the required number of corrected copies of the Shop Drawings and submit as required new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Engineer may assure the quality of work through independent testing, but Engineer remains responsible for all such quality requirements. Engineer shall provide unaltered and unredacted test results to the Contractor and shall copy the Project Manager with all such test results.

5.2.20 Duties, Responsibilities and Limitations

Duties, responsibilities and limitations of authority of the Resident Project Representative (RPR).

- A. General – RPR is the Engineer's representative at the site and will act as directed by and under the supervision of Engineer and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor keeping County advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with County with the knowledge of and under the direction of Engineer.
- B. Schedules – Review the progress schedule, schedule of submittals and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
- C. Conferences and Meetings – Attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences and other project related meetings and prepare and circulate copies of meeting minutes.
- D. Liaison – Serve as Engineer's liaison with Contractor, working principally through Contractor's Superintendent and assist in understanding the intent of the Technical Specifications and Drawings and assist Engineer in serving as County's liaison with Contractor when Contractor's operations affect County's on-site operations.
- E. Assist in obtaining from County additional details or information when required for proper execution of the Work.
- F. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample, if the submittal has not been approved by Engineer.

5.2.21 Engineer's Review of Work, Rejection of Work, Inspections, and Tests

- A. Verify that tests, equipment and systems startups, operating and maintenance training are conducted in the presence of appropriate personnel and that Contractor maintains adequate record thereof, record and report to County appropriate details relative to the test procedures and startups.
- B. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project; record the results of these inspections and report to County.
- C. Modifications – Consider and evaluate Contractor's suggestions for modification in Drawings or Specifications and report with RPR's recommendations to County. Transmit to Contractor decisions as issued by County.

5.2.22 Limitations of Authority

Resident Project Representative shall not:

Authorize any deviation from the Technical Specifications and Drawings or substitution of materials or equipment, unless authorized by County and approved by County.

- A. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
- B. Undertake any of the responsibilities of Contractor, subcontractors or Contractor's Superintendent.
- C. Advise on or issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required in the Technical Specifications and Drawings.
- D. Advise on or issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- E. Accept Shop Drawings or sample submittals from anyone other than Contractor.
- F. Shall not authorize County to occupy the Work areas prior to Final Completion in whole or in part as set forth in the Scope of Work.
- G. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by County.

5.2.23 Land and Right-of-Way

- A. The County shall provide to the Contractor information which delineates and describes the land owned and rights-of-way acquired.
- B. The Contractor may provide at the Contractor's own expense and without liability to the County any additional land and access thereto that the Contractor may desire for temporary construction facilities or for storage of materials.

5.2.24 Warranty/Guaranty

- A. The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date established as Final Completion or as specified in the Technical Specifications, whichever is later. The Contractor warrants and guarantees for a period of one (1) year from the date of Final Completion that the completed Work is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system resulting from such defects. The Contractor shall pay for all costs associated with correcting these defects, including but not limited to shipping, travel, labor and parts to repair and or replace the Work. The County will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments or other Work that may be made necessary by such defects, the County may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through this warranty/guarantee period.
- B. All materials shall be of good quality and new. All warranties and guarantees specifically called for by the Specifications shall be provided in writing and expressly run to the benefit of County.
- C. Where defective Work (and damage to other Work) has been corrected, removed or replaced, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- D. All representations, indemnifications, warranties, and guarantees made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive the final payment, completion and acceptance of the Work and termination or completion of the Agreement.
- E. The Contract shall cover defects which shall be in existence during such warranty period, but which shall not become apparent until thereafter.
- F. Contractor shall be fully responsible for all direct, indirect and consequential costs to the County approximately caused by such defects in materials or workmanship including defects in materials or workmanship supplied to the Contractor by a subcontractor or supplier. Contractor shall also hold the County harmless from liability of any kind arising from damage due to said defects.
- G. Contractor shall make all repairs and replacements or payments promptly upon receipt of written order from the County. If Contractor fails to make the repairs, replacements or payments promptly, County may do the work and Contractor and the Contractor's Surety shall be liable for cost thereof, including but not limited to, fees and charges for engineers, architects, attorneys and other professionals.
- H. County will schedule an inspection eleven (11) months after the Final Completion date, providing Contractor with a minimum of one (1) week notice unless the County and Contractor mutually agree to other arrangements. County will contact Contractor to report and schedule any further warranty work as provided herein.

5.2.25 Miscellaneous

- A. Taxes – Contractor shall be responsible for the payment of all applicable taxes, including but not limited to the State of New Mexico Gross Receipts Tax.
- B. Independent Contractor – The relationship of the Contractor to the County shall be that of an independent contractor. The Contractor and all employees and subcontractors of the Contractor shall not be deemed agents or employees of the County. This agreement shall not be construed as a joint venture or partnership between the parties hereto. Nothing in this Agreement burdens the County with the duties of an employer concerning Contractor or any employee or subcontractor of the Contractor, under any state workers' compensation laws, any state or federal occupational health and safety laws or any other state or federal laws.
- C. Contractor's Authority – Contractor shall not enter into any agreement with any person which binds or is intending to bind County to any duty or obligation unless the County has given Contractor prior written consent to represent the County in such matter. Nor shall Contractor make representations to any person which indicate that Contractor is acting on behalf of the County without the County's prior written consent.
- D. 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 County's name or logo.

5.2.26 Dispute Resolution, Applicable Law, and Venue

- A. Arbitration – This agreement is not subject to arbitration, however the Contractor and County may engage in mutually-agreeable non-binding mediation in an attempt to resolve their differences prior to or during litigation.
- B. Applicable Law, Venue – Contractor and County agree that the laws of New Mexico and County Ordinances shall govern any dispute or claim arising from the Contract or the rights, duties and obligations created therein. Contractor and County further agree that all court actions shall be filed and pursued in New Mexico courts, unless the parties mutually agree to a different forum. Venue shall be in the First Judicial Court of New Mexico, Los Alamos, New Mexico.
- C. If the surety on any Bond furnished by the Contractor is declared as bankrupt or becomes insolvent or its right to do business is terminated in New Mexico or it ceases to meet the requirement in Los Alamos Ordinances, Contractor shall within 10 calendar days thereafter substitute another Bond and surety, both of which must be acceptable to County.
- D. When any period is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of such period falls on a Saturday or Sunday or on a day made a legal holiday by Los Alamos County, such day will be omitted from the computation. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

5.2.27 Examination of Records Provisions

- A. The Contractor agrees that the County, and any authorized representative of the County, shall, until the expiration of six (6) years after acceptance of final payment of the Contract Price, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Contract.

5.2.28 American with Disabilities Act Compliance

- A. The Contractor will comply with all relevant provisions of the Americans with Disabilities Act, as well as with the New Mexico Human Rights Act, and all other applicable local, state, and federal laws governing the rights of the disabled.

5.2.29 Proposals are Public Records

- A. Pursuant to the New Mexico Inspection of Public Records Act NMSA- 1978, Chapter 14, Article 2, all materials submitted under this RFP shall be presumed and considered public records. Except to the extent any information may be protected by state or federal law, proposals shall be considered public documents and available for review by the public.

5.2.30 Wage Rate Determination

- A. Issuance of the following wage rate determination is done pursuant to Section 13-4-11 N.M.S.A. 1978, as amended, or such successor statute and with duly adopted rules and regulations properly registered with the Supreme Court, as required by law, and other statutes pertaining to public works in New Mexico.
- B. Each certified payroll shall have the correct Wage Rate Decision Number printed clearly on the first page. The Contractor and all Subcontractors shall also submit certified payrolls. Prior to the issuance of a Certificate of Payment, the Contractor shall determine that a certified payroll has been submitted to the New Mexico Department of Workforce Solutions as provided for by State law and that all other provisions applicable to and relating to the payment of wages to artisans, draftsmen, laborers has been abided by and that said payments have been made in accordance with established scales as furnished by the New Mexico Department of Workforce Solutions for this particular contract.



LABOR RELATIONS DIVISION
 121 Tijeras Ave NE, Suite 3000
 Albuquerque, NM 87102
 Phone: 505-841-4400
 Fax: 505-841-4424

WWW.DWS.STATE.NM.US

PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the state of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.



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Subcontractor

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

Additional Information

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at public.works@state.nm.us or call (505) 841-4400.

6.0 EXHIBITS

6.1 – Wage Rates

6.2 – License Agreement for Staging Area

6.1 Wage Rates

To be provided by County following selection of a conceptual design.

6.2 License Agreement for Staging Area

THIS LICENSE AGREEMENT (Agreement) is entered by and between the **Incorporated County of Los Alamos (County)** and **Contractor** to be effective for all purposes on _____.

A. PURPOSE

The purpose of this Agreement is to grant to CONTRACTOR the revocable privilege of using County properties ("Property"), more specifically described herein, for staging areas to facilitate CONTRACTOR'S work on **Los Alamos County Project RFP 24-46 Design Construction and Operation of Community Broadband Network**. The County's grant of this revocable privilege shall satisfy County's obligation to provide CONTRACTOR with staging areas under the above-identified Project.

B. TERM

This Agreement shall commence on _____ and shall continue until CONTRACTOR'S work under the above-referenced Project is substantially complete, unless sooner terminated as provided herein.

C. USE OF THE PREMISES

County grants to CONTRACTOR the use of the Property described herein for staging area to include the placement, unless specifically excluded herein, of a temporary, portable office structure, and the storage of Project related materials, and the storage of Project related equipment, and for no other purpose.

D. GENERAL REQUIREMENTS APPLICABLE TO ALL PROPERTIES

The following requirements are applicable to the Property unless specifically addressed or modified in Section E. Specific Property herein: CONTRACTOR shall:

1. Provide properly anchored portable toilets sufficient in number to accommodate all waste generated within the Property. Locate portable toilets as far as possible away from residential development and provide for their regular and routine maintenance and servicing;
2. Provide covered trash receptacles sufficient in number to accommodate all refuse generated within the Property and provide for their regular and routine maintenance and servicing;
3. May provide sufficient lighting necessary for security and safety of persons, material and equipment as well as for the security and safety of the public. Such lighting shall be down directed and produce no glare and conform to the New Mexico Dark Sky Act;
4. Provide and maintain a protective buffer between staging activities and nearby water courses;
5. Provide Good housekeeping measures as outlined in the Storm Water Pollution Prevention Plan (SWPPP) will always be adhered to;
6. Provide any applicable utility hook-ups at contractor's coordination and expense;
7. Provide storm water pollution protection and management at his/her expense;
8. Ensure staging area boundaries on the Property do not encroach onto other properties or open space.

E. SPECIFIC PROPERTY

The following specific Property, including specific uses or limitations to such use, are designated as staging areas for use by CONTRACTOR in conformity with the contract documents and this License.

F. STAGING AREA: At _____, Los Alamos, New Mexico as designated in the Figure 1 drawing titled, “Staging Areas,” and as coordinated with the Contractor and County Project Manager (“Property”) (Contractor accepts to use area by initialing: _____)

Site-specific requirements are as follows:

1. Weather resistant Information Board for posting required information such as prevailing wage rates, Need to Know information, Notice of Intent, Safety Info, etc.;
2. Fuel storage tank is **not** permitted;
3. Limited Repair of vehicles and equipment is permitted as per SWPPP;
4. Clearing and grubbing is **not** permitted;
5. Grading of the property is **not** permitted;
6. Contractor is responsible for providing fencing if deemed necessary by the Contractor. Optional lighting to the extent that surrounding homes are not affected by glare is permitted; to be approved by Project Manager;
7. All materials and equipment must be confined within the defined area;
8. Limited storage space of traffic control devices and storage containers is permitted;
9. Maximum of two (2) portable toilets are permitted at each Property site;
10. Contractor shall provide adequate dust control at proper frequencies within the staging area;
11. Sweep Staging area *as needed*.

G. ASSIGNMENT

This License is not assignable.

H. RECORDS

CONTRACTOR shall maintain throughout the term of this License records necessary to demonstrate that all of the terms and conditions of the License have been met, including but not limited to records relating to any necessary licenses, permits, and other “authorizations” and compliance with any and rules, regulations, requirements or guidelines applicable to CONTRACTOR’S use of the Properties. CONTRACTOR shall make available for inspection by County all records, books of account, memoranda and other documents pertaining to County immediately upon request of County.

I. STRUCTURES, IMPROVEMENTS, ALTERATIONS OR ADDITIONS

Except as specifically permitted or required herein, no structures, improvements, alterations or additions shall be permitted on the Property without the prior written authorization of County. CONTRACTOR shall maintain and leave the Property in a clean condition, free of debris and litter, and restored to their prior condition or as close thereto as is reasonably practicable.

J. LIABILITY

County shall not be liable for any cost of expense or any kind or nature with respect to this License or CONTRACTOR'S use of the Property, CONTRACTOR shall promptly pay all costs and expenses associated with CONTRACTOR'S use of the Property including, without limitation, the cost of utility services and fencing. CONTRACTOR shall assure; and provide evidence to County that the insurance maintained by CONTRACTOR under its Contract the performance of work awarded from **RFP 24-46 Design Construction and Operation of Community Broadband Network** is applicable to and will cover losses resulting from the use of the Property. CONTRACTOR agrees to indemnify, defend, and hold County harmless from any liability, damage, loss, injury, cause of action, and costs and expenses (including attorneys' fees), of any kind or nature, arising from or in any way related to the use of the Property, including but not limited to, any liability, damage, loss, injury, cause of action, or costs and expenses (including attorneys' fees) arising from or in any way related to any actual, threatened or alleged disposal, release, or contamination by hazardous substances of the Property by CONTRACTOR its employees, subcontractors and agents. CONTRACTOR'S obligations under this Section shall survive the expiration or termination of the License.

K. SAFETY

CONTRACTOR shall assure that all of its operations conducted on the Property are performed in a safe manner.

L. COUNTY ACCESS TO PROPERTIES

County and its designated representatives shall have access to the Property at all times. CONTRACTOR shall notify County immediately of any situation that may arise on the Property that may cause damage or harm to the health, welfare or safety of the public or to the environment and property of County and shall fully cooperate with County in addressing any such situation.

M. APPLICABLE LAWS

CONTRACTOR shall comply with all federal, state, and local laws, regulations, ordinances and, other legal requirements applicable to CONTRACTOR'S use of and activities on the Property. This License shall be construed and enforced according to the Laws of the State of New Mexico.

N. CANCELLATION AND VACATION OF THE PROPERTIES

County may, at its sole discretion immediately cancel this License or any part hereof at any time with or without cause and no further use shall be made of the Property by CONTRACTOR. Failure of County to fully enforce all provisions of this License shall not constitute a waiver of any future breach of any such terms or provisions. Upon expiration or cancellation of this License, the CONTRACTOR shall remove within seven (7) days all equipment, tools, vehicles, and any other property belonging to the CONTRACTOR from the Property and shall leave the Property in clean condition, free of debris and litter and restored to its prior condition or as close thereto as reasonably practicable.

INCORPORATED COUNTY OF LOS ALAMOS

ATTEST:

_____ Naomi D. Maestas County Clerk	_____ Anne W. Laurent County Manager
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Approved as to Form

J. Alvin Leaphart
County Attorney

_____ Contractor	_____ Title	_____ Date
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Figure 1 – Staging Area