

STATE OF NEW MEXICO
Office of Broadband Access and Expansion
CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Office of Broadband Access and Expansion, hereinafter "Department," at 715 Alta Vista Street, Santa Fe, New Mexico, 87502, and the Pueblo of Sandia at 481 Sandia Loop, Bernalillo, NM 87004, hereinafter referred to as the "Grantee."

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 26, Paragraph 1, the Legislature made an appropriation to Department "to plan, design, engineer, construct, purchase and equip broadband infrastructure statewide" in the amount of seven million forty-eight thousand dollars (\$7,048,000.00);

WHEREAS the Office of Broadband Access and Expansion was created pursuant to the Broadband Access and Expansion Act, §§63-9J-1 – 63-9J-4 NMSA 1978, and empowered to plan and manage broadband infrastructure development projects in New Mexico.

WHEREAS §63-9J-3(A) administratively attached the Office of Broadband Access and Expansion to the Department of Information Technology.

WHEREAS, pursuant to this Agreement, Department wishes to make funds available to Grantee from that appropriation;

WHEREAS, the Department hereby grants to Grantee, and Grantee hereby accepts the grant of, funds from that appropriation in the amount of Three Hundred Fifty-Five Thousand Dollars, Three Hundred Fifty-Three Dollars and Two Cents (\$355,353.02), subject to the terms and conditions of this Agreement; and

WHEREAS, Grantee is an Indian nation, tribe, or pueblo, or is a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION
DATE

A. Project Description

The project that is the subject of this Agreement ("Project") is described as follows:

Appropriation:

Project # A21F2527-1

Severance Tax Bonds Fund Code: A21F2527

Chapter/Section 138/26

Appropriation Title "A21F2527-1 Sandia Pueblo"

Year

2021

Project Title:

Pueblo of Sandia – 67 Acre Subdivision Fiber Installation

APPROPRIATION REVERSION DATE: 30-JUN-2025

B. Scope of Work:

The Scope of Work is specified in Exhibit A, hereby fully incorporated into this Agreement, and broadly consists of: laying fiber and providing broadband to an unserved community on the Pueblo of Sandia, as specified in the maps.

C. Budget

The Grantee's total reimbursements under this Agreement shall not exceed Three Hundred Fifty-Five Thousand, Three Hundred Fifty-Three Dollars and Two Cents (\$355,353.02) ("Appropriation Amount"), in accordance with the Budget specified in Exhibit B, hereby fully incorporated into this agreement.

In the event the Appropriation Amount in this Agreement is greater than the amount stated in the laws cited in Article I.A. above, Grantee acknowledges and agrees that the amount so available to Department under those laws is the maximum amount that could be available to Grantee under this Agreement.

In the event of a conflict between the Reversion Date specified in the laws cited in Article I. A. and any deadline or timeframe set out in this Agreement, the Reversion Date of the laws cited therein shall control.

The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

D. Schedule

The Grantee shall complete the project prior to the appropriation reversion date of June 30, 2025, in accordance with the proposed Project Schedule found in Exhibit C, which is fully incorporated herein by reference.

**ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE
GRANT DISBURSEMENT TO GRANTEE**

- A. Upon the Effective Date of this Agreement and issuance of a purchase order, for permissible purposes within the scope of the Project Description, this Agreement and the disbursement of any and all amounts of the above referenced Appropriation Amount are expressly conditioned upon the following:
- B. The Grantee's submittal of documentation of all Third-Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
- a. A "Third-Party Obligation" is a written obligation between Grantee and a Third-Party contractor or vendor, including force account labor as defined in Article XVII herein, for the provision of services, including professional services, or for the purchase of tangible personal property and/or for real property for the Project.
 - b. A Notice of Obligation is a writing issued by the Department that establishes its obligation to reimburse the Grantee for a specified amount of qualifying expenditures incurred pursuant to a specific Third-Party Obligation, in accordance with the terms and conditions of this Agreement.
 - c. The Grantee shall submit to the Department one copy of all Third-Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third-Party but prior to execution by the Grantee.
 - d. Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation for the Third-Party Obligation, it shall be solely responsible for expenditures under the Third-Party Obligation in the event the Department does not issue a Notice of Obligation.
 - e. The Department may not unreasonably refuse to issue a Notice of Obligation; provided however, that this restriction in no way limits the Department's discretionary rights under Article VI. By way of illustration, the following are non-exhaustive examples of circumstances under which Department's refusal to issue a Notice of Obligation would be reasonable:
 - i. This Agreement is suspended or a notice of termination has been issued;
 - ii. The amount of the Third-Party Obligation plus the amounts of previously issued Notice(s) of Obligation exceed the Appropriation Amount;
 - iii. The Third-Party Obligation is not within the Project Description;
 - iv. The Third-Party Obligation was not incurred in accordance with the Grantee's procurement code and/or procurement policies; or
 - v. The Grantee has not provided affirmative proof of the existence of the Third-Party Obligation.
 - f. If there are not questions about or deficiencies in Grantee's request and supporting material or questions about the Grantee's compliance with this Agreement, Notices of Obligation shall ordinarily be issued within seven (7) business days of the

Department's receipt of Grantee's request. The Department shall not be liable in the event Notices of Obligation are issued later than seven (7) days.

- g. The date the Department sends by mail, facsimile, or email the Notice of Obligation is the date that the Department's Notice of Obligation is effective.
- C. Irrespective of any Notice of Obligation, the Grantee's expenditures, as defined in Article IV, shall be incurred on or before the Reversion Date and, if applicable, any Early Termination Date.
- D. The total amount received by the Grantee shall not exceed the total of all amounts stated in the Notice(s) of Obligation.
- E. Grantee's expenditures shall be made pursuant to Grantee's legal procurement code and/or policies and pursuant to the execution of binding Third Party Obligations.
- F. Grantee shall submit timely Requests for Payment in accordance with the procedures set forth in Article IX herein. In the event that capital assets acquired with Project funds are to be leased or licensed to or operated by another entity, Department must approve of the lease, license, or operating agreement as complying with law and as providing the Grantee with adequate consideration in exchange for the capital assets. Prior to the Department approving such lease, license, or operating agreement, Department may, in its discretion and if consistent with New Mexico State Board of Finance imposed conditions, reimburse Grantee for necessary expenditures incurred to develop the Project sufficiently to make the lease, license, or operating agreement commercially feasible, such as plan and design expenditures.
- G. Grantee shall implement, in all respects, the Project. Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- H. Project funds shall not be used for purposes other than those specified in the Project Description.
- I. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT
DESIGNATED REPRESENTATIVES**

- A. Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.
- B. The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: Pueblo of Sandia
Name: Felix L. Chaves
Title: Governor
Address: 481 Sandia Loop, Bernalillo, NM 87004
Telephone: (505) 867-3317

Department: OBAE
Name: Drew Lovelace
Title: Acting Director
Address: 715 Alta Vista Street, Santa Fe, NM 87505
Email: Drew.Lovelace@connect.nm.gov
Telephone: (505) 476-3622

- C. Grantee and Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above-named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

- A. The Effective Date of this Agreement is the date of last signature by either the Department or the Grantee.
- B. As referenced in Article I, the applicable law establishes a date by which Project funds must be expended by Department ("Reversion Date"). This Agreement shall terminate on the Reversion Date in Article I.A. unless it is terminated before that Reversion Date ("Early Termination") pursuant to Article V herein.
- C. Project funds must be "expended" by Grantee on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, Grantee has "expended funds" and made an "expenditure" on the day it accepts services rendered or accepts title for goods or property. Entering into a contract for services, goods, or property does not constitute funds being expended or an expenditure being made. "Encumbering" Project funds on the Grantee's books to pay for services, goods, or property not yet rendered or the title to which the Grantee has not yet accepted does not constitute funds being expended or an expenditure being made.

ARTICLE V. EARLY TERMINATION

- A. Early Termination before the reversion date includes:
- a. Termination due to completion of the Project before the Reversion Date;
 - b. Termination due to complete expenditure of the Appropriation Amount before the Reversion Date;
 - c. Termination for violation of the terms of this Agreement; or
 - d. Termination for mishandling of public funds, including but not limited to, fraud, waste, abuse, and/or conflicts of interest.
- B. Either Department or Grantee may terminate this Agreement early for the reasons

described above prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written, notice of early termination.

- C. The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the New Mexico Legislature for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final.
- D. In the event of Early Termination of this Agreement by either party, the Department’s sole obligation to reimburse Grantee is expressly conditioned upon the limitations set forth in Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may direct the Grantee to suspend entering into new and further Third-Party Obligations.
 - a. The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
 - b. The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
 - c. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI.D. herein.
- B. In the event of Suspension of this Agreement, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further Third-Party Obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.
- D. In the event that the Department directs the Grantee to suspend entering into new or further Third-Party Obligations pursuant to Article VI.A and the reason for such suspension is Grantee’s action or inaction, the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department, which approval shall not be unreasonably withheld, and be signed by the Grantee. Failure to develop a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for

purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Periodic Reports.

- a. In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Periodic Reports for the Project. Periodic Reports shall be submitted by entering such Project information and in such format as the Department may require. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.
- b. The Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Department may change the reporting period by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Final Report. The Grantee shall submit to the Department a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

C. Request for Additional Information/Inspection. During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph C are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A and B of this Article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit D, or such other form as the Department may prescribe. Payment requests are subject to the following procedures:

- a. The Grantee must submit a Request for Payment;

- b. Each Request for Payment must contain proof of payment by Grantee or liabilities incurred by Grantee showing that the expenditures are valid or are liabilities incurred by Grantee in the form of actual invoices received by Grantee for Third-Party Obligations; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department;
 - c. In cases where Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by Grantee for a Third-Party Obligation, if the invoices comply with the provisions of this Agreement and are a valid liability of Grantee, Grantee shall make payment in-full on those Third-Party Obligations within five (5) Business Days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. Grantee is required to certify to the Department proof of payment of the Third-Party Obligations within ten (10) Business Days from the date of receiving reimbursement from the Department;
 - d. Requests for Payment on a Third-Party Obligation shall be submitted by Grantee to the Department within 30 days from the date the Third-Party Obligation was incurred as evidenced by an unpaid invoice received by the Grantee from a third-party contractor or vendor;
 - e. Grantee's failure to abide by the requirements herein will result in the denial of its Request for Payment or will delay the processing of its Request for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of this Agreement including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third-Party Obligations. Further, the Department's right to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to the Grantee's violation of this Agreement.
- B. Requests for Payment shall be submitted by Grantee to the Department on the earlier of:
- a. Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred, if total unreimbursed expenditures at calendar quarter end exceed \$25,000;
 - b. July 15 of each year for all unreimbursed expenditures incurred during the previous State fiscal year, which runs from July 1 to June 30; provided, however, that, if Requests for Payment cannot be submitted by July 15 despite Grantee's good faith and reasonable efforts to do so, the Department may allow the Grantee to:
 - i. submit a good faith and documented estimate of its unreimbursed expenditures by July 15; and
 - ii. submit Requests for Payment with all required supporting documentation by a later date established by the Department in accordance with deadlines promulgated by the Department of Finance and Administration Financial Control Division.
 - c. Twenty (20) days from date of Early Termination; or

- d. Twenty (20) days from the Reversion Date.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS
AND WARRANTIES**

- A. The Grantee hereby represents and warrants that all the following general conditions and restrictions are applicable to the Project:
 - a. The Project's funds must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to, the Grantee's procurement code and/or processes.
 - b. The Project may not benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
 - c. The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
 - d. Ownership of property acquired with funds made available under this Agreement shall remain with the tribal entity and/or its local governmental entities throughout the useful life of the property.
 - e. The Grantee has the legal authority to receive and expend the Project's funds.
 - f. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
 - g. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's constitution or federal law (if applicable), or any judgment or decree to which it is subject.
 - h. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
 - i. The Grantee's governing body has duly adopted or passed as an official act a law, resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement.
 - j. If applicable to the Project, the Grant will be conducted and administered in conformity with:
 - i. The policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act and as issued pursuant to section 104 (g) of the Housing and Urban Development Act and contained in 24 CFR Part 58.
 - ii. The requirements of the Flood Disaster Protection Act of 1973 (Public Law 93-234; as amended) and if necessary with the participation requirements of the National Flood Insurance Program.
 - iii. The prohibition against the use of lead-based paint of the Lead- Based Paint

Poisoning Prevention Act (42 U.S.C. 4831 (b)). Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures.

- k. The Grantee shall abide by all applicable federal whistleblower laws.
- l. The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid to or for the benefit of an elected official, officer, or employee of the Grantee in connection with the awarding of any Third-Party Obligation.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;
PROJECT RECORDS**

- A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles and maintain a separate fund with a separate organizational code for the funds to ensure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records related to the Project as the Department shall prescribe.
- C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act. Any liability of the Grantee is subject to immunities and limitations of applicable federal and tribal law.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the

activity of officers, agents or employees of the parties to this Agreement, shall apply to them to the same extent while engaged extraterritorially in the performance of any of their functions and duties under the provisions of this Agreement.

The Parties agree to attempt to resolve any and all disputes arising under, related to, or in connection with this Agreement first through voluntary negotiations.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and the Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the [Grantee’s name] may immediately terminate this Agreement by giving the Contractor written notice of such termination. The [Grantee’s name]’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.”

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a [Department’s name] Grant Agreement. Should the [Department’s name] early terminate the grant agreement, the [Grantee’s name] may early terminate this contract by providing contractor written notice of such termination. In the event of termination pursuant to this paragraph, the [Grantee’s name] only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date.”

ARTICLE XVII. FORCE LABOR ACCOUNTS

- A. The Grantee may utilize force labor accounts for the Project and such force labor accounts constitute Third-Party Obligations within the meaning of this Agreement. Force labor accounts are defined as the hiring of temporary employees to work specifically on the Project. In the case of force labor accounts, the Department shall issue a Notice of Obligation in accordance with the following:
- a. The Grantee must submit a notarized certification stating:
 - i. the amount to be used to pay force labor working on the Project;
 - ii. that the labor is being hired specifically for the Project;
 - iii. that the labor is being hired in accordance with the Grantee's procurement or employment code and/or processes; and
 - iv. that the labor will be hired within a reasonable time after the Grantee's receipt of a Notice of Obligation.
- B. The certification required under this Article must be made by the Grantee's designated representative in Article III of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.
- C. Grantee shall submit Requests for Payment concerning force labor account expenditures in accordance with the provisions in Article IX, above, and the Department will accept pay stubs in lieu of invoices.
- D. Grantee must submit in the final report required by Article VIII written documentation, such as a labor distribution report, that shows all force labor account expenditures;
- E. In the event that the Grantee will expend less on force labor account than is stated in the Notice of Obligation concerning such labor, it must immediately notify the Department of such fact. In that event, the Department shall issue an amended Notice of Obligation reflecting the reduced level of force labor account expenditures.
- F. A Notice of Obligation issued for force labor account expenditures cannot be used for any other purpose unless the tribal entity has obtained an amended or new Notice of Obligation for another Third-Party Obligation.

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond, which is administered by the New Mexico State Board of Finance ("BOF"), an entity separate and distinct from the Department.
- B. Grantee acknowledges and agrees that: (i) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (ii) the BOF may in the future impose further or different conditions upon the Project; (iii) all BOF conditions are effective without amendment of this Agreement; (iv) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); (v) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied; and (vi) all applicable BOF conditions must be satisfied prior to the Project's Reversion Date.
- C. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project

Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

By: *Felix L. Chaves*
Felix L. Chaves
Governor, Pueblo of Sandia

Date: 11/22/2024

OFFICE OF BROADBAND ACCESS AND EXPANSION

DocuSigned by:
By: *Drew Lovelace*
Drew Lovelace
Acting Director, OBAE

Date: 11/20/2024

This document was reviewed for financial sufficiency:

DocuSigned by:
By: *Eve Banner*
Eve Banner
Chief Financial Officer, DoIT

Date: 11/19/2024

This document was reviewed for legal sufficiency:

DocuSigned by:
By: *Cassandra Brulotte*
Cassandra Brulotte
General Counsel, OBAE

Date: 11/18/2024

EXHIBIT A – SCOPE OF WORK

1. **Scope of Work Detail:** The Project consists of the design and installation of a fiber utility consisting of 5 fiber paths within the exterior boundaries of the Pueblo of Sandia. A West Highway 313 path consisting of 5 fiber Paths, 7 segments, and 39 extensions as described in the following sections. Approximate linear feet is represented in the excel sheet table attached.
 - a. **Path 4 Segment 1 – 313 Telecom Shelter 1 to Fiber node 1– 144 strands**
 - i. **Route in conduit from West Highway 313 Telecom Shelter to node 1:** From the telecom shelter described above, the fiber will be routed into one of the Two 2” HDPE conduits that will be installed by the contractor, along the water/sewer line for 675 feet, then turn south along the west side of a new developed road, ending at the first Node called Fiber Node 1, 1025 ft away, on the attached drawing. 24’x36”x36” Traffic rated Pull boxes must be placed every 500 feet within this segment. The 144 strand SM fiber optic will be terminated into the first pedestal.
 - ii. **Cabinet penetration at the Fiber Node Cabinet #1:** Fiber will enter the cabinet from the pull box outside the panel, into a 4” conduit. Fiber will be terminated into a fiber tray within the fiber node cabinet 2.
 - iii. **67 Acre Fiber Node 1 cabinet.** A new Fiber Node cabinet approximately 60” x30”x35” with Dual Door access to be installed at the first intersection. The cabinet penetration to the new Fiber Node Cabinet to include a pull box outside the cabinet with 2 quantity 4-inch conduits into the new cabinet. The fiber node cabinet is to be set on a concrete foundation, to have air conditioning and power capability for future connections. This node cabinet will need to have the standard 19” rack to accommodate two 144 strand, 1 48 strand, and one 24 strand fiber terminations and serve as a loop off point for future development in the 67 acre subdivision Area.
 - b. **Path 4 Segment 2 – Fiber Node Cabinet 1 to Fiber Node Cabinet 2 – 144 strands**
 - i. **Cabinet penetration at the Fiber Node Cabinet #2:** Fiber will enter the cabinet from the pull box outside the panel, into a 4” conduit. Fiber will be terminated into a fiber tray within the fiber node cabinet 2.
 - ii. **Conduit install path from Fiber Node 1 to Fiber Node Cabinet 2:** Path 4 Segment 2, qty 2, 2” HDPE conduits will be installed by contractor, from fiber node 1 pullbox, along the west side of the road into a pull box next to the Fiber node 2. The 144 strand fiber will be routed into one of the conduits and terminated at both pedestals.
 - iii. **67 Acre Fiber Node 2 cabinet.** A new Fiber Node cabinet approximately 60” x30”x35” with Dual Door access to be installed at the first intersection. The cabinet penetration to the new Fiber Node Cabinet to include a pull box outside the cabinet with 2 quantity 4-inch conduits into the new cabinet. The fiber node cabinet is to be set on a concrete foundation, to have air conditioning and power capability for future connections. This node cabinet will need to have the standard 19” rack to accommodate one 144 strand, 1 48 strand, and one 24 strand fiber

terminations, and serve as a loop off point for future development in the 67 acre subdivision Area.

- c. **Path 5 Segment 1 – Fiber Node Cabinet #1 to New Child Development Center (CDC) Building pull box – 24 strands**
 - i. **Pull box outside of New CDC building:** Path 5 Segment 1 will be routed from Fiber node 1 into a building once it's constructed. In the meantime, a pull box will be placed and the fiber can be rolled up into it for Future Building penetration that will be designed and coordinated later.
 - ii. **Fiber Node 1 to CDC building pull box:** The fiber will be routed into a 2" HDPE conduit, installed by contractor, into a 24'x36"x36" pull box. The fiber can be rolled up into there until its ready to be routed into the new CDC building at a future date.

- d. **Path 6 Segment 1 – Fiber Node Cabinet #2 to Proposed future building development pull box – 24 strands**
 - i. **Pull box outside of New Future Building:** Path 6 Segment 1 will be routed from Fiber node 2 into a building once it's constructed. In the meantime, a pull box will be placed and the fiber can be rolled up into it for Future Building penetration that will be designed and coordinated later.
 - ii. **Fiber Node 1 to CDC building pull box:** The fiber will be routed into a 2" HDPE conduit, installed by contractor, into a 24'x36"x36" pull box. The fiber can be rolled up into there until its ready to be routed into the new CDC building at a future date.

- e. **Path 7 Segment 1 – Fiber Node Cabinet #1 to Fiber Node Cabinet #3 – 72 strands**
 - i. **Cabinet penetration at the Fiber Node Cabinet #3:** Fiber will enter the cabinet from the pull box outside the panel, into a 4" conduit. Fiber will be terminated into a fiber tray within the fiber node cabinet 3.
 - ii. **Cabinet #1 to Fiber Cabinet #3:** 72 strand single mode fiber will be routed into the new 2" HDPE conduit installed by contractor. 2" HDPE conduit will be installed along with the water and sewer lines within utility right of way down north side of road as depicted on attached layout. Fiber will be routed in the new conduit to the new fiber cabinet #3. Owner will provide conduits crossing the roads.
 - iii. **Fiber Node Cabinet #3 at new north subdivision intersection:** A new Fiber Node cabinet approximately 60"x30"x35" with Dual Door access to be installed at north side subdivision Intersection. The cabinet penetration to the new Fiber Node Cabinet to include a pullbox outside the cabinet with 2 quantity 4-inch conduits into the new cabinet. The fiber node cabinet is to be set on a concrete foundation. This node cabinet will need to have the standard 19" rack to accommodate one 72 strand and 40+ 4 strand fiber terminations and serve as a fiber splitter point for future home development.

- f. **Path 8 Segment 1 – Fiber Node Cabinet 2 to Fiber node #4 – 72 strands**
 - i. **Cabinet penetration at Fiber Distribution Panel 4:** Fiber will enter the cabinet from the pull box outside the panel, into a 4" conduit. Fiber will be terminated into a fiber tray within the fiber node cabinet 4.

EXHIBIT B

Project Budget

Categories and Eligible Cost Areas	Specific Cost Element	Units	Unit Price	Total Element Cost
Network Infrastructure Deployment Costs related to the construction, improvement, and acquisition of network facilities required to deploy broadband infrastructure, including: * Materials for cables, conduits, ducts, poles, towers, repeaters, etc. * Labor for installation * Site planning and preparation work (e.g., make ready which involves moving existing cable attachments on utility poles, pole replacements, reinforcements, etc.) * Project management	Type C Pull Box	15	\$ 4,705.84	\$ 70,587.600
	vault/pedestal	21	\$ 6,029.02	\$ 126,609.420
	2" PVC	10000	\$ 11.30	\$ 113,000.000
	114 Fiber	14200	\$ 3.18	\$ 45,156.000
	Fill	0	\$ -	\$ -
	Fill	0	\$ -	\$ -
	Fill	0	\$ -	\$ -
	Fill	0	\$ -	\$ -
Network Equipment - Last-Mile: Electronics necessary to deliver service to an end user including, but not limited to optical line terminal (OLT), optical network				

terminals (ONT), routers, switches, firewalls, wireless radio equipment, antennae, access points, and any necessary equipment shelters.
 - Middle-Mile: Electronics necessary to deliver backhaul and middle-mile services
 - Alternative Technologies for Non-Terrestrial Systems: Eligible network elements include system components required to deliver broadband to unserved and underserved New Mexicans. These may include user terminals to receive a signal, ground segments designed to serve New

Customer Premise Equipment
 Equipment placed within the premise to enable end-user connectivity (e.g., routers, modems, etc.)

FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-
FIII	0	\$	-	\$	-

Total	\$	355,353,020
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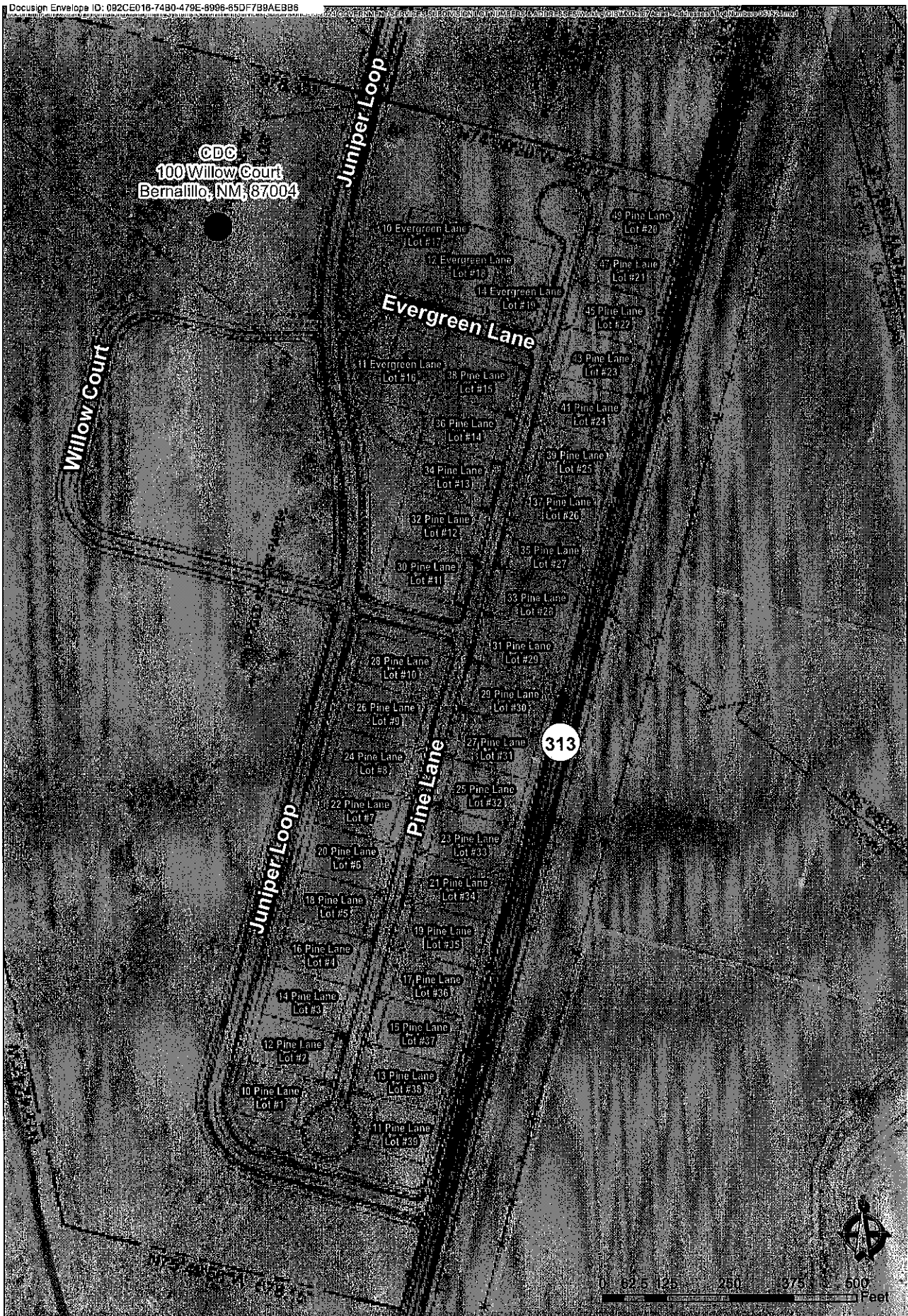
(Total Cost)

Exhibit C - Project Schedule
Pueblo of Sandia – 67 Acre Subdivision Fiber Installation

Project Area	Activity (e.g., tasks, actions)	Target Start Date (Month/Year)	Target End Date (Month/Year)	Other brief relevant input (e.g., critical dependencies, strategy to ensure on-time competition, early planning steps, etc.)
Market Assessment	•			•
	•			•
	•			•
	•			•
Network and Engineering Design	•			•
	•			•
	•			•
	•			•
Permitting (right of way easements, etc.)	•			•
	•			•
	•			•
	•			•
Environmental Assessment	•			•
	•			•
	•			•
	•			•

Exhibit C - Project Schedule
Pueblo of Sandia – 67 Acre Subdivision Fiber Installation

Site Preparation	•				•
	•				•
	•				•
Workforce Development	•				•
	•				•
	•				•
	•				•
	•				•
Vendor Selection and Procurement	•				•
	•				•
	•				•
	•				•
	•				•
Network Deployment/Construction	•	67 acre common trench	Late Nov '24	Dec '24	• Working in tandem with other utilities, MWI will place fiber in the shared common trench
	•	Commercial Lot Stubs	Jan 25	Apr 25	• Fiber node cabinet #2 - 24 strand single mode fiber
	•	Home Lot stub, C-box terminations	Jan 25	Apr 25	• Pedestals installed between every 2 homes, midspan splicing of fiber at each pedestal, fiber terminated
	•				•
	•				•



Government Subdivision Layout – Lots & Addresses

Created By: GIS Team
 Checked By: N/A
 Approved By: N/A

Date: 5/15/2024
 Sheet 1 of 1
 Project Manager: N/A



Pueblo of Sandia

Lands Department
 481 Sandia Loop
 Bernalillo, NM 87004



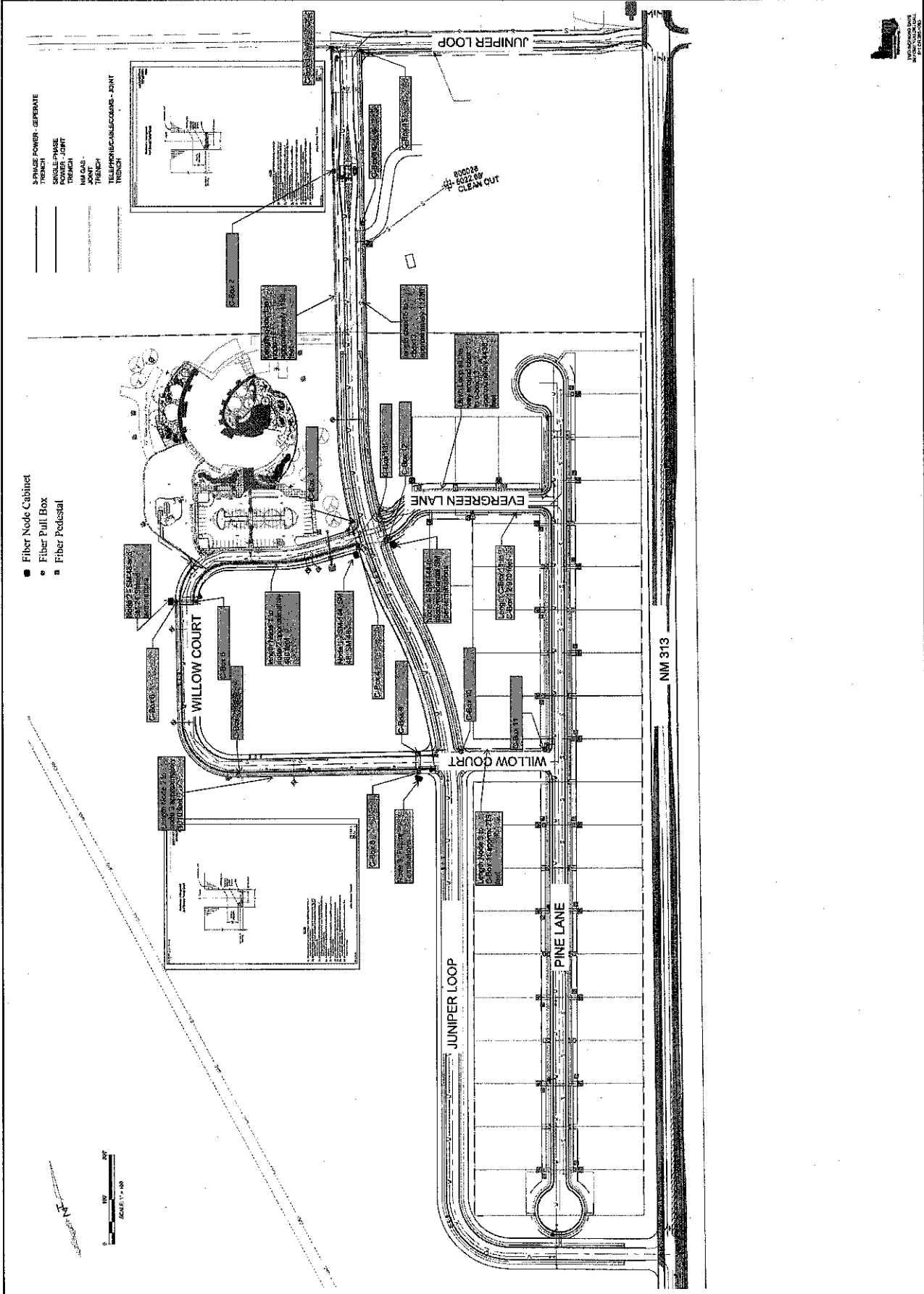
NO.	DESCRIPTION	DATE	BY
1			
2			
3			
4			
5			
6			
7			

HZ HUITT ZOLLARS
 3525 RIVINGTON DRIVE, SUITE 101
 ALBUQUERQUE, NEW MEXICO 87111
 Phone: (505) 882-8141 Fax: (505) 882-2289

PUEBLO OF SANDIA
GOVERNMENT SUBDIVISION
ROADWAY AND UTILITIES
DRY UTILITY PLAN

PROJECT NO. R816983.01
 DESIGNED BY: RLD
 DRAWN BY: DR
 CHECKED BY: SOG
 DATE: APRIL 2024
 DPW GJK

SHEET: 11-12

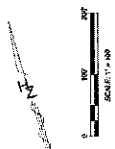


- Fiber Node Cabinet
- Fiber Pull Box
- Fiber Pedestal

- SPRING POWER - SEPARATE TRENCH
- SINGLE-PHASE JOINT
- TRENCH
- NO GAS - JOINT
- TRENCH
- CONCRETE/REINFORCED CONCRETE - JOINT
- TRENCH



NM 313



THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF HZ HUITT ZOLLARS AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF HZ HUITT ZOLLARS.

STATE OF NEW MEXICO
Request for Payment Form
Exhibit D

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

- A. Payment Request No. _____
- B. Grant Amount: \$ 0.00
- C. AIPP Amount (If Applicable): \$ 0.00
- D. Funds Requested to Date: \$ 0.00
- E. Amount Requested this Payment: \$ 0.00
- F. Reversion Amount (If Applicable): \$ 0.00
- G. Grant Balance: \$ 0.00
- H. CNMF GF GOB STB
- I. Final Request for Payment (if Applicable)

III. Fiscal Year : 2024 (July 1, 2023 - June 30, 2024)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Reporting Certification: I hereby certify to the best of my knowledge and belief, that required reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with the Agreement

V. Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or Fiscal Agent (if applicable)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT D**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount: _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____ \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____