

2.0 AWARD PHASE

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Pages: 18 Fees: 0.00
Naomi D. Maestas, County Clerk
Los Alamos County NM
danielle.miera



2.1 Award Forms

2.1.1 Notice of Award



LOS ALAMOS

NOTICE OF AWARD AND IDENTIFICATION OF COUNTY'S DESIGNEE

To: Kelly Cable of New Mexico LLC.

Address: 6901 Reading Ave. SE, Albuquerque, NM 87105

Project Description: The selected contractor shall provide all labor, materials, and equipment to install and test approximately Thirteen (13) miles of new, 24-strand Single Mode (SM) fiber optic line per Exhibit E, El Vado Fiber Optic Line Specifications and Exhibit F, El Vado Fiber Optic Line Plan Set, as described in Summary of Work in IFB24-35 El Vado Fiber Optic Line Install.

Incorporated County of Los Alamos

Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install

Notice of Award:

The County has considered the Bid submitted by you for the above described Project in response to its Invitation for Bids dated November 7, 2023.

You are hereby notified that your Bid has been accepted subject to your executing 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 the Notice of Award.

You are hereby notified that the schedule required per Section 3, Schedules, Reports, and Records will be required to be submitted and accepted 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.

IFB24-35

Incorporated County of Los Alamos

El Vado Fiber Optic Line Install

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 Bid as abandoned and as a forfeiture of your Bid 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 Lucas Montoya as the County's Designee in connection with the performance of the work contemplated in the Contract, dated January 31, 2024, between the County and Kelly Cable of New Mexico LLC (Contractor).

Dated this 31 day of January 20 2024.

Incorporated County of Los Alamos

Philo Shelton
Philo S. Shelton, III P.E.
Utilities Manager

2.1.2 Receipt of Notice of Award



LOS ALAMOS

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

Kelly Cable of New Mexico, this 1st day of February, 2024,

for the following project:

**Incorporated County of Los Alamos
Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

CONTRACTOR: Kelly Cable of New Mexico

By: Steven Olson

Steven Olson
Printed Name: _____

President
Title: _____

2.1.3 Performance Bond



LOS ALAMOS

Bond No. 1106766

We Kelly Cable of N.M., LLC as Principal, hereinafter referred to as Contractor, and The Hanover Insurance Company a corporation organized and existing under and by the virtue of the laws of the State of New Hampshire 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 **Four Hundred Forty-Four Thousand Five Hundred Thirty Two Dollars & Fifty One Cents (\$444,532.51)**, 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
Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

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 this obligation shall be 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, if any, 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 contracting agency 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 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 counter-parts, each one of which shall be deemed as an original, this 2nd day of February, 2024.

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

CONTRACTOR AS PRINCIPAL: Kelly Cable of N.M., LLC

By: Troy Vallier
Print Name: Troy Vallier
Title: COO

ATTEST: Toni Bertorello
Notary

SURETY: The Hanover Insurance Company

By: Jacob Motto
Print Name: Jacob Motto
Title: Attorney-In-Fact

ATTEST: Leigh McCarthy
Leigh McCarthy Underwriting Assistant

TONI BERTORELLO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014005662
MY COMMISSION EXPIRES DECEMBER 07, 2026



2.1.4 Payment (Labor and Materials) Bond



LOS ALAMOS

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

Bond No. 1106766

We Kelly Cable of N.M., LLC as Principal, hereinafter called the Contractor, and The Hanover Insurance Company, a Corporation organized and existing under and by virtue of the laws of the State of New Hampshire, 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 **Four Hundred Forty-Four Thousand Five Hundred Thirty Two & 51/100** Dollars (**\$444,532.51**), in the penal sum of one hundred percent (100%) of the Contract Price of **Four Hundred Forty-Four Thousand Five Hundred Thirty Two & 51/100** Dollars (**\$444,532.51**), 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
Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

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, then this obligation shall be 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.

PROVIDE, 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 waive notice of any such change, extension of time, alteration or addition to the terms of the Contract.

PROVIDE, 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 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 2nd day of February, 20 24

CONTRACTOR AS PRINCIPAL: Kelly Cable of N.M., LLC

Signature: Jy Vallier

Print Name: J Tray Vallier

Title: CFO

Address: 310 Interlocken Parkway, Suite 220
Broomfield, CO 80021

SURETY'S AUTHORIZED ~~NEW MEXICO~~ AGENT:

Signature: Jacob Motto

Print Name: Jacob Motto

Title: Attorney-In-Fact

Address: 2307 River Road, Suite 200, Louisville, KY 40206



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

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Brook T. Smith, James Thomas Smith, Raymond M. Hundley, Jason D. Cromwell, Deborah S. Neichter, James H. Martin, Michele Lacrosse, Leigh McCarthy, and/or Jacob Motto

Of Acrisure, LLC DBA Smith Manus, Inc., Louisville, KY each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Twenty-Five Million and No/100 (\$25,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 30th day of May, 2023



The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

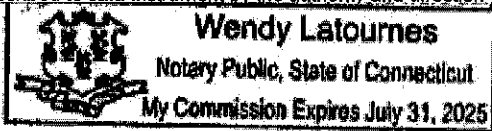
James H. Kawlecki
James H. Kawlecki, Vice President

The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

Jillian M. Mendoza
Jillian M. Mendoza, Vice President

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) ss.

On this 30th day of May, 2023 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Wendy Latournes
Wendy Latournes, Notary Public
My commission expires July 31, 2025

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 2nd day of February 2024.

CERTIFIED COPY

The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

John Rowedder
John Rowedder, Vice President

Client#: 1483410

PEAKUTI

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/07/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Insurance Services, LLC
INSURED: Kelly Cable of NM dba Kelly Utility Field Services
CONTACT NAME: den.contractors@usi.com
INSURER(S) AFFORDING COVERAGE: Arch Insurance Company, Allied World Specialty Insurance Co

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Excess Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: IFB24-35, El Vado Fiber Optic Line Install. The General Liability and Automobile Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to Incorporated County of Los Alamos, only when there is a written contract that requires such status, and only with regard to work performed by or on behalf of the named insured.

CERTIFICATE HOLDER: Incorporated County of Los Alamos, 1000 Central Ave., Ste 300, Los Alamos, NM 87544-4059
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

This page has been left blank intentionally.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>ALL PARTIES EXCEPT PARTICIPANTS OF CONTROLLED INSURANCE PROGRAMS, WHERE REQUIRED BY A WRITTEN CONTRACT. THIS INSURANCE IS PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE WHERE THE WRITTEN CONTRACT REQUIRES THAT THIS INSURANCE BE PRIMARY AND NON-CONTRIBUTORY. WHEN THE INSURANCE PROVIDED BY THIS ENDORSEMENT IS PRIMARY AND NON-CONTRIBUTORY, WE WILL NOT SEEK ANY CONTRIBUTION FROM ANY OTHER INSURANCE POLICY AVAILABLE TO THE ADDITIONAL INSURED ON WHICH THE ADDITIONAL INSURED IS A NAMED INSURED.</p>	<p>ALL LOCATIONS AND PROJECTS OF THE INSURED</p>

A. Section II --- Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
<p>ALL PARTIES EXCEPT PARTICIPANTS OF CONTROLLED INSURANCE PROGRAMS, WHERE REQUIRED BY A WRITTEN CONTRACT. THIS INSURANCE IS PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE WHERE THE WRITTEN CONTRACT REQUIRES THAT THIS INSURANCE BE PRIMARY AND NON-CONTRIBUTORY. WHEN THE INSURANCE PROVIDED BY THIS ENDORSEMENT IS PRIMARY AND NON-CONTRIBUTORY, WE WILL NOT SEEK ANY CONTRIBUTION FROM ANY OTHER INSURANCE POLICY AVAILABLE TO THE ADDITIONAL INSURED ON WHICH THE ADDITIONAL INSURED IS A NAMED INSURED.</p>	<p>ALL LOCATIONS AND PROJECTS OF THE INSURED</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

Section II — Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

2.1.6 Contract

**Incorporated County of Los Alamos
 Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

THIS CONTRACT, made and entered into by and between the Incorporated County of Los Alamos, New Mexico, hereinafter called the County and Kelly Cable of New Mexico LLC, a New Mexico Limited Liability Company (State and entity status), hereinafter called the CONTRACTOR, is executed on the date set forth opposite the signature of the authorized representatives of the parties.

WHEREAS, the Contractor was awarded the Contract for the Incorporated County of Los Alamos: **Invitation for Bids Number IFB24-35, El Vado Fiber Optic Line Install** and said award was approved by the County on January 31, 2024, which date shall be deemed to be the date of this Contract.

THE PARTIES AGREE:

ARTICLE 1 – 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 "Contract" means the Solicitation. The Work shall be performed in accordance with the Contract, which shall be interpreted to give full effect to all of the terms and conditions herein. In the event of a conflict in the terms and provisions of the Contract, the terms and provisions of the Contract shall control in the following order:

- A. Change Orders
- B. Addenda
- C. Contract
- D. Notice to Contractors
- E. Special Conditions
- F. General Conditions
- G. Technical Specifications
- H. Contract Drawings

ARTICLE 2 – CONTRACT TIME –

- A. Construction shall start on or after the date specified on the Notice to Proceed. **The Work shall achieve Substantial Completion by August 1, 2024. The Project shall achieve Final Completion by September 1, 2024.** The calendar day period between the substantial completion and final completion dates is for the sole purpose of completing all punch list items.
- B. The Contractor will 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 a bid on 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.

C. Termination of the Contract-

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. County 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 work actually completed to the satisfaction of County at the rates agreed upon by the parties hereto. Contractor shall render a final report of the work done to the date of termination and shall turn over to County originals of all materials, documents or other deliverables prepared pursuant to this Contract.
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 the 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.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY OR INCENTIVES FOR EARLY COMPLETION -

- A. Should the Contractor fail to complete the work within the time agreed upon in the Contract, Contractor will be assessed \$1,000.00 per day for each calendar day beyond the Milestone, 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 parties as the liquidated damages that the County will suffer by reason of such default and not by way of penalty.

B. Delays –

1. 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 and Completion of the Work, if the Contractor complies with the notice and documentation requirements set forth below.
2. 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 continuing, the Contractor must give written notice every month at the same time it submits the updated schedule and/or progress report to the County with the Payment Application.
3. 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.
4. 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.

C. An incentive for early completion if applicable shall apply to each calendar day the work is substantially complete prior to Milestone or Substantial Completion date up to a maximum number days as assigned.

1. The incentive payments for this contract are assigned at \$0.00 per day.

ARTICLE 4 – COMPENSATION – In consideration of the satisfactory performance of the Work by the Contractor and the acceptance of such Work by the County, Contractor shall be paid an amount not to exceed the Contract Price of Four Hundred Forty-Four Thousand Five Hundred Thirty Two & 51/100 Dollars (\$444,532.51), plus any executed Change Order(s), plus applicable New Mexico Gross Receipts Tax

ARTICLE 5 – 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 herein, filled out and accompanied by such supporting documentation as is required by the Agreement and also as the County

may reasonably require. The County has seven (7) calendar days to review the Application for Progress Payment either to accept or reject. 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 day time frame is reinstated. These applications for payments shall be based on the performance of the Work in accordance with the Contract Documents. Contractor shall submit Earned Value Curve 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 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 Owner and will establish Owner's title to the material and equipment and project. Contractor is responsible for all loss or damage to stored materials.
- 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 no later than time of payment, free and clear of all liens.
- G. In the event that agreement between the County or County's designee and Contractor cannot be reached, 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. 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 45 days, payments shall be made within twenty-one (21) calendar days from receipt of an undisputed request in accordance with the New Mexico Prompt Payment Act, Sections 57-28-1 et seq. NMSA 1978.
- L. Final Application for Payment

- L.1. The final Application for Progress Payment shall include a notarized Affidavit of Payment and Release of Liens.
- L.2. After Contractor has completed all such corrections to the satisfaction of the County and delivered in accordance with the Contract Documents all maintenance and operating instructions, all materials including but not limited to spare parts, lubricants, etc., as required by Contract documents, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Notice of Termination for NPDES, marked up record documents showing work as constructed (as-builts), video tapes, Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by all documentation called for in the Contract Documents, 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 Owner to indemnify Owner against any lien.
- M. Final Payment and Acceptance
- M.1. On the basis of the Engineer's and Owner'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 Documents, Engineer recommends to Owner that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Owner shall process final payment. Otherwise, County will return the Application 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.
- N. The final payment by the County signifies that the Work has been accepted by the County under the conditions of the Contract Documents.
- N.1. The acceptance by the Contractor of final payment shall be and shall operate as a 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 Solicitation documents or the Performance Bond and Labor and Materials Bond.
- O. The making and acceptance of Final Payment shall constitute a waiver of all claims by the Contractor against the County other than those previously made in writing and still unsettled.

ARTICLE 6 – 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) days after receipt of payment from the County and to pay all mechanics and laborers in accordance with Section 57-28-5 NMSA 1978, as applicable. Contractor shall obtain from each supplier of services or materials used in the performance of the Contractor's obligations under this Contract a written release and waiver of all liens against the County and Project. Such releases and waivers of lien shall be submitted to the County with the final Application for Payment and may be required with each Application for Payment at the 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 construction project within seven days after receipt of payment from the owner, contractor or Sub-contractors

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 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.

ARTICLE 7 – MODIFICATION OF CONTRACT – This Contract may be modified only by mutual written consent of the parties.

ARTICLE 8 – INDEMNITY – Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, (including without limitation fees for attorneys and other professionals, of any kind or nature), arising from Contractor's performance or failure to perform hereunder or breach hereof or the performance or failure to perform of Contractor's employees, agents, representatives and subcontractors.

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.

ARTICLE 9 – NON-ASSIGNMENT – Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of the County.

ARTICLE 10 – LAWS, REGULATIONS, JURISDICTION AND VENUE – Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Work in accordance with all applicable laws, regulations, and policies during the term of the Contract. In any lawsuit or legal dispute arising from the operation of this Contract Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District court of New Mexico in Los Alamos County, New Mexico.

IN WITNESS whereof the parties have executed this Contract.

CONTRACTOR

Date: 2/8/2024

DocuSigned by:
By: [Signature]
Print Name: Steve Olson
Title: President

INCORPORATED COUNTY OF LOS ALAMOS:

Date: 2/12/2024

By: Philo Shelton
Philo S. Shelton, III P.E., Utilities Manager

ATTEST

By: [Signature]
Naomi Maestas, County Clerk bym



APPROVED AS TO FORM

[Signature]
J. Alvin Leaphart, County Attorney

3.1.2 Notice to Proceed

Date: 02-16-2024


To: KELLY CABLE OF NEW MEXICO, LLC.

Address: 6901 READING AVE. SE, ALBUQUERQUE, NM 87105

**Incorporated County of Los Alamos
Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

You are notified that the Contract time under the above contract will start on 02/16/2024, 2024. By that date you are to start performing your obligations under the Contract. You are required to return an acknowledged copy of this Notice to Proceed 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 AUGUST 1, 2024, and Final Completion of all work is therefore SEPTEMBER 1, 2024.

Incorporated County of Los Alamos



Philo S. Shelton, III P.E.
Utilities Manager

IFB24-35

Incorporated County of Los Alamos

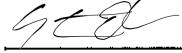
El Vado Fiber Optic Line Install

3.1.3 Acceptance of Notice to Proceed

Receipt of the Notice to Proceed is hereby acknowledged this 21.00 day of February, 202,024.00
for the following project:

**Incorporated County of Los Alamos
Invitation for Bids Number: IFB24-35 El Vado Fiber Optic Line Install**

CONTRACTOR: Kelly Cable of New Mexico

By: 

Print Name: Steve Olson

Title: President