

**SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
CRESTINO TELECOMMUNICATIONS SOLUTIONS**

THIS AGREEMENT is made and entered into this 30th day of May 2017, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **CRESTINO TELECOMMUNICATIONS SOLUTIONS**, whose principal address is **909 Brazos Pl. SE, Albuquerque, NM 87123** hereinafter referred to as the "Contractor".

WHEREAS, pursuant to NMSA 1978, Section 13-1-125, the County issued a Letter of Interest (LOI No. 2017-0268-GM/KE) to solicit the services of a consultant to assist the County's Growth Management Department (GM) to provide information to Santa Fe County to assist in the development/additional implementation/expansion of broadband and develop an adoptable policy to guide future expansion of the broadband network; and

WHEREAS, based upon the evaluation criteria established within the LOI for the purpose of selecting the most qualified Offeror, the County has determined the Contractor as the most responsive and highly rated Offeror; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

I. SCOPE OF WORK

A. Project Initiation: The Contractor will coordinate with County Economic Development staff to develop a final scope, approach and schedule:

- Review and compile background information;
- Internal meetings with Santa Fe County staff, this includes: County Manager's Office; Public Works Department; Information Technology Department; Growth Management Department; Planning Division; Sustainability Department;
- Identify resources and collaborators that can provide data and support;
- Develop work schedule with completion date.

B. Development of a Broadband Current Status Report:

- Provide a description of the existing system as a whole.
- Provide maps showing types of coverage.
- Identify areas without sufficient broadband service.
- Address the lack of adequate infrastructure and identify reasons for deficiency.
- Identify all potential partnerships with existing providers or other entities with infrastructures that are middle-mile providers as well as last mile providers.
- Identify management models from other regions in the nation and compare and contrast those models and their possible application to Santa Fe County and the region.
- Present a report with above information to the Board of Santa Fe County Commissioners in a presentation that includes visual aids. At this time the Board may offer guidance for the broadband policy to be developed.

C. Development of a Draft Broadband Policy:

- Develop a comprehensive draft broadband policy with a broad outline demonstrating an implementation plan addressing existing needs and conditions and SGMP Goals.
- Provide possible funding mechanisms, sources, and review of existing ordinances.
- Propose new funding mechanisms and sources that will benefit the investment in broadband in the County.
- Prepare a draft policy document to include short and long-term implementation strategies with the associated cost estimates. This will include a Santa Fe County Broadband Strategic Plan, with sections on "Policy Considerations", "Regional Design Options", and/or "Staged Implementation Strategies" or alternative recommendations.
- Present to the Board of County Commissioners (including the use of visual aids) where they may offer suggestions as to how the policy could be improved.

Once the Board approves the policy, the General Design and Implementation Plan can be developed. This Plan will follow using the newly adopted broadband policy.

D. Development of General Design and Implementation Plan

- Prepare an implementation Plan to include ways that the County can enter into public-private partnerships.
- Prepare strategies that could involve County investment in infrastructure that include strategies for implementation that does not necessarily include the County – the County will only be the governing agency making sure the policy is adhered to.
- Develop preferred and alternative designs that serve growth areas and rural communities within the County. Include different technologies and present different mechanisms of providing the infrastructure for service.
- Identify emerging technologies and a balance of practical applications that will interface with existing assets, include identification of lower cost alternatives.

Project Deliverables:

1. Develop a work schedule and completion date.
2. Prepare a report of the current status of broadband in Santa Fe County.
3. Presentation to the Board of County Commissioners (BCC).
4. Assist the County in Drafting and finalizing a Policy.
5. Presentation to the BCC of the Draft of Broadband Policy.
6. Develop a design, implementation and strategies Plan.
7. Prepare a final report of findings.

2. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.
- B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the

Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:
1. The Contractor shall invoice monthly based on work performed for each month and the invoice shall accompany a monthly progress report. The invoice shall describe the service(s) provided and identify the individual(s) who performed the service(s). The County shall pay to the Contractor in full payment for services satisfactorily performed. (See attached Exhibit A Contractor's Cost Proposal)
 2. The total amount payable to the Contractor under this Agreement shall not exceed **\$46,000.00 exclusive** of New Mexico gross receipts tax.
 3. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.
- B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the deliverables for which payment is sought.
1. The County's representative for certification of acceptance or rejection of contractual items and services shall be the Growth Management Department, Chris Hyer, 505-995-2728 or such other individual as may be designated in the absence of the County representative.
 2. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.
 3. Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

The effective date of this Agreement shall be the date of last signature by the parties. The term of this agreement is one year from such date, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term in one-year increments not to exceed four years in total.

5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment

of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

- A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).
- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

- A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Attn: Santa Fe County Manager
 102 Grant Avenue
 P.O. Box 276
 Santa Fe, New Mexico 87504-0276

To the Contractor: Crestino Telecommunications Solutions
 Attn: Herman Baca, President
 909 Brazos Pl SE
 Albuquerque, NM 87123
 hdbaca@crestino.com

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with Contractor's state of incorporation on Contractor's behalf.
- C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be a named additional insured on the policy.
- C. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Professional Liability Insurance. The Contractor shall procure and maintain Professional Liability Insurance during the life of this Agreement.
- E. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure form approved by the County.

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY


Katherine Miller
County Manager

5-30-17
Date

Approved as to form


Gregory S. Shaffer
County Attorney

5-18-17
Date

Finance Department

Don D. Moya
Don D. Moya
Interim Finance Director

5-23-17
Date

CONTRACTOR:

[Signature]
(Signature)

5-24-17
Date

Hermon Baca
(Print Name)


President
(Print Title)

Castro Telecom Solutions
(Print Company Name)

Finance Department



Don D. Moya
Interim Finance Director



Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)

(Print Company Name)

EXHIBIT A
Contractor's Cost Proposal

**Letter of Interest for Consulting Services for a Broadband
Policy and Implementation Plan in Santa Fe County**



CRESTINO
Telecommunications Solutions

Santa Fe County Growth Management Department

LOI# 2017-0268-GM/KE
Due April 26, 2017

Introduction

Crestino Telecommunications Solutions is pleased to submit this response to Santa Fe County's LOI: 2017-0268-GM/KE, Consulting Services for a Broadband Policy and Implementation Plan in Santa Fe County. Crestino is experienced in working with New Mexico's communities to achieve a future empowered by improved access to broadband communications.

Project Approach

Santa Fe County is seeking a path for executing the vision of the *2015 Sustainable Growth Management Plan* to improve broadband communications infrastructure in unincorporated areas of Santa Fe County. Santa Fe County wants to accomplish four tasks:

1. Project initiation to develop scope, approach and schedule
2. Evaluate the available broadband communications services, identify underserved areas, and explore opportunities for improving broadband infrastructure
3. Develop a draft broadband policy
4. Develop a general design and implementation plan

Crestino will work with Santa Fe County in fulfilling these tasks with the following work process:

1. Project Initiation

Meet with County Economic Development staff and stakeholders for a project kick off. Project objectives, resources, deliverables, timelines, risks and constraints will be identified and documented.

2. Research, analyze, and report on existing broadband services

- a. Map existing broadband service data rates using available data
- b. Identify areas of the county that are underserved, and potential causes, using criteria established during step one
- c. Characterize potential partnerships with existing service providers and examine the relevance of broadband models from other communities
- d. Prepare a report on these tasks and present findings to the Board of Santa Fe County Commissioners

3. Develop the Draft Broadband Policy

- a. Using the findings from step two, develop a course of action to improve broadband services in underserved areas and achieve economic development goals
- b. Identify potential funding sources and county practices that can support broadband improvements

4. Develop the General Design and Implementation Plan

- a. Develop a plan to implement the Broadband Policy, including partnership and funding opportunities
- b. Prepare design concepts based on suitability of existing and emerging technologies to integrate with existing easements and County assets, and potential value

All in all, we understand this project and will be willing team members who will work closely with the Santa Fe community to learn as we identify the details of the existing services, to educate by applying our practical experience towards building a broadband policy and plan that is achievable and effective, and inform by presenting the project information in a clear and concise manner.

Expertise and References

Crestino has worked with many municipal and commercial organizations in the Southwest region to plan, design and deploy high speed digital networks. We know and have worked with broadband service providers in NM. The following three projects demonstrate Crestino's ability to conceive, design and build communication systems that put broadband infrastructure plans into action.

Client	Northern New Mexico Regional Economic Development Initiative
Project	REDI Net
Description	Crestino developed REDI Net, a broadband fiber optic network for rural northern New Mexico, creating a 150-mile backbone providing data connectivity to four counties, three municipalities, seven federally recognized tribes and 415 community anchor institutions.
Contact	REDI Net Office 19 Industrial Park Rd Pojoaque, New Mexico 87506 866-699-4927

Client	Los Alamos County
Project	Community Broadband Network
Description	Crestino developed the network design and operations concept for an open access last-mile network to provide advanced broadband communications to all Los Alamos County citizens and institutions. Crestino also analyzed potential partnership opportunities, national case studies and funding mechanisms to construct and operate the network.
Contact	Chief Information Officer, Los Alamos County 10000 Central Avenue Los Alamos, NM 87544 505-662-8333

Client	State of New Mexico
Project	Statewide Broadband (Middle Mile) network
Description	Crestino completed the design, site review and project management for fourteen new NM public safety wireless microwave sites across New Mexico. We provided the RF design and path profiles, and assisted in FCC licensing.
Contact	State of New Mexico Dept. of Information Technology 715 ALTA VISTA ST Santa Fe, NM 87502 505-827-0000

Team

Herman Baca, Project Manager

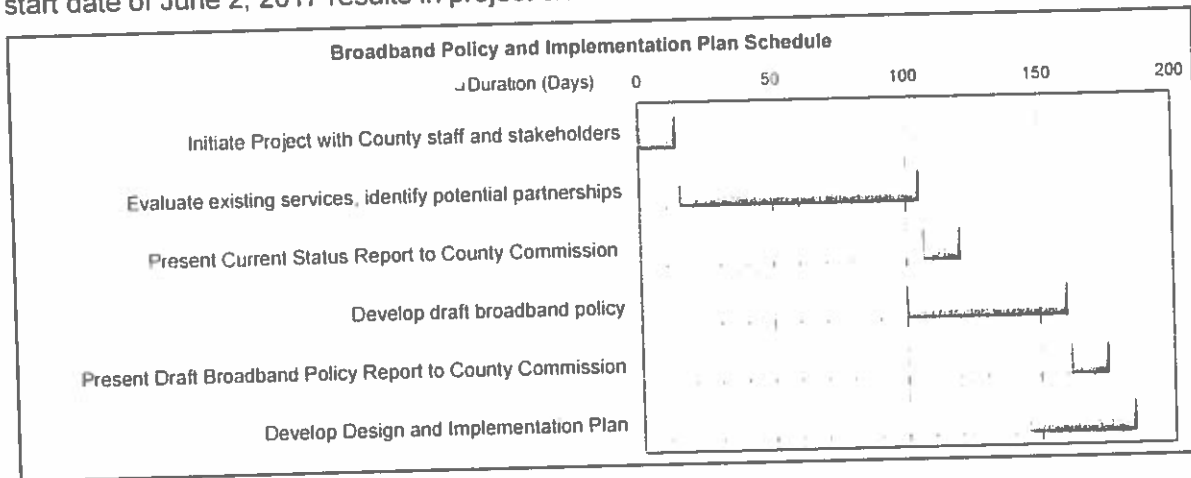
Managed large communication system projects in the southwest region. Designed and managed the implementation of large-scale fiber optic network and digital communication systems. Rate: \$130/hr.

Ben Olbrich, Sr. Engineer

Designed and developed fiber optic, microwave and satellite networks. Developed systems engineering concepts and requirements. Rate: \$110/hr.

Schedule

The following proposed project schedule has a total duration of 185 calendar days. A project start date of June 2, 2017 results in project closeout on December 4, 2017.



Insurance

Liability Coverage \$2,000,000 / \$4,000,000

Costs

The following table lists the high-level tasks along with their associated schedule durations and costs.

ID	TASK NAME	COST
1	Initiate Project with County staff and stakeholders	\$3,000.
2	Evaluate existing services, identify potential partnerships	\$18,000
3	Present Current Status Report to County Commission	\$2,000
4	Develop draft broadband policy	\$12,000
5	Present Draft Broadband Policy Report to County Commission	\$2,000
6	Develop Design and Implementation Plan	\$9,000
	TOTAL (less GRT)	\$46,000

We will bill monthly based on engineer hours accumulated.