

AGREEMENT

THIS AGREEMENT is made as of the 12th day of March, 2012 ("Effective Date") by and between ENMR Telephone Cooperative, Inc. and Plateau Telecommunications, Incorporated, each a New Mexico corporation (hereinafter "ENMR"), whose principal address is 7111 North Prince Street, Clovis, Curry County, New Mexico 88101 and Baca Valley Telephone Company, Inc., including its wholly-owned subsidiary Sierra Communications, Inc. ("Baca"), a New Mexico Corporation with an address of P.O. Box 67, 532 Broadway Avenue, Des Moines, New Mexico 88418. Each party to this Agreement may also be referred to singularly as "a party", collectively as "the parties."

RECITALS:

A. WHEREAS, the Parties desire that this Agreement serve as an Agreement between them to more clearly define the rights, responsibilities and duties between them and as to the Raton Community Anchor Institution (CAI) Network; and,

B. WHEREAS, ENMR has applied for and has been awarded funds from the American Recovery and Reinvestment Act of 2009 through the NTIA within the DOC, and whereas Baca is a Subrecipient of that award; and

C. WHEREAS, ENMR and Baca wish to set forth the responsibilities and obligations of each in utilizing the BTOP Grant funds for the Raton CAI Network;

D. WHEREAS, this Agreement is based upon the anticipated continuation of the Broadband Technology Opportunities Program (BTOP) funding to ENMR by the NTIA, should that funding be modified, terminate, or cease, then this agreement shall terminate. In such event, each of the parties agrees that it will use its best efforts to negotiate a new agreement at that time based upon any such modification, termination or cessation of the BTOP funding.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ENMR and Baca agree as follows:

ARTICLE 1 NETWORK OWNER AND MANAGER

1.0 Title to and authority over and responsibility for network management for the Raton CAI Network shall and will be vested in Baca as the Network Owner and Network Manager. No additional or substitute Network Manager may be appointed without the prior written approval of all parties. The Network Manager shall have such powers as are: (i) in accordance with this Agreement; and, (ii) as are otherwise necessary, advisable, allowable, or convenient to manage, control, administer and operate the business affairs and property of the Raton CAI Network.

**ARTICLE 2
TAXES**

2.0 Each party shall be responsible for all items of income, gain, loss, deduction and credit (including items of tax preference), for purposes of state or federal taxation, incurred by it in connection with this Agreement. Each party shall pay any gross receipts or compensating tax owed in connection with the transactions contemplated by this Agreement. Each party shall, separately, file, in its own names, returns for and pay any and all taxes required to be filed and paid for the rights granted under this Agreement.

**ARTICLE 3
PROPRIETARY INFORMATION**

3.0 All information, including, but not limited to, specifications, microfilm, photocopies, computer discs, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, customer information, financial reports and market data marked or identified in writing as proprietary (hereafter "Proprietary Information"), furnished to or obtained by all parties, whether written or oral or in other form, shall remain the property of the disclosing party. All copies of such Proprietary Information, whether written, graphic, or other tangible form, shall be returned to the disclosing party, except that one copy may be retained for archival purposes, by ENMR. Unless otherwise agreed, no obligation hereunder shall extend beyond five (5) years from the date of receipt of such Proprietary Information and the obligation does not apply to such Proprietary Information as was previously known to the disclosing party free of any obligation to keep it confidential or has been or is subsequently made public by the disclosing party or a third party. Such Proprietary Information shall be kept confidential by the disclosing party and shall be used only for performing the covenants contained in this Agreement and may be used for such other purposes only upon such terms as may be agreed upon between the disclosing party and receiving party in writing.

**ARTICLE 4
CONFIDENTIALITY**

4.0 All information supplied by any party to any other party which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to said party, shall be treated by each party as confidential information, and each party shall not reproduce any such information except for its own internal use and as authorized by this Agreement, and shall use any information only for archival backup, in-house training, operating, maintenance and administrative purposes and in conjunction with its use of the equipment, materials and software furnished hereunder. All information supplied to any party which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to said party, shall be treated by each party as confidential information, and shall not be used by any party for any purpose adverse to the interests of said party, and shall not be reproduced or distributed by any party except for such party's use in its performance under this Agreement. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction.

ARTICLE 5 DEFAULT

5.0 A party shall be in default under the Agreement upon the occurrence of an Event of Default. The defaulting party shall have thirty (30) days after the non-defaulting party gives written notice of default to the defaulting party to cure the default (unless the default is cured or waived in writing by the non-defaulting party within the thirty (30) day period). However, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the party in default must cure the default within sixty (60) days after the non-defaulting party gives its notice.

5.1 Events of default shall mean any of the following occurrences not cured within the applicable cure period:

- Breach of a material provision of this Agreement;
- Failure to fulfill in a timely and proper manner any of its obligations under this Agreement;
- Failure to submit required reports that are complete and accurate;
- Failure to use the NTIA Funds for the stated purposes in this Agreement; or
- Termination of the BTOP funding by NTIA.

5.2 In addition to the specific remedies provided in this Agreement, upon giving notice of default, the non-defaulting party may: (i) take any action it determines to be necessary to correct the default; and (ii) pursue any other legal or equitable remedies it may have under applicable law that are consistent with the Terms of this Agreement.

ARTICLE 6 TERMINATION

6.0 Any Party may terminate this Agreement upon the failure of any other party to cure an event of default after the expiration of the applicable cure period as provided herein. In the event of termination, a party may pursue any legal or equitable remedy available to it under applicable law.

No act of forbearance or failure to insist on the prompt performance by a party of its obligations under this Agreement, either express or implied, shall be construed as a waiver by any other party of any of its rights hereunder.

ARTICLE 7 INSURANCE

7.0 The Parties shall at all times during the Term of this Agreement, at their own respective cost and expense, carry and maintain the insurance coverage listed below with insurers having a minimum "Best's" rating of A. The insuring party shall require its subcontractors and agents to maintain the same type and level of insurance coverage.

7.0.1 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of any premises in connection with this Agreement by the insuring party, including

coverage for premises-operation, products/completed operations and contractual liability with respect to the liability assumed by insuring party hereunder. The limits of insurance shall not be less than:

Each Occurrence	\$ 5,000,000
General Aggregate	\$ 10,000,000
Products/Completed Operations	\$ 5,000,000
Personal & Advertising Injury	\$ 1,000,000

7.0.2 Workers' Compensation insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee entering onto any premises in connection with this Agreement, even if not required by statute.

7.0.3 Comprehensive Automobile Liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Agreement, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

7.0.4 The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Baca shall forward to ENMR certificate(s) of such insurance upon execution of this Agreement and notice of change of such insurance during the term.

ARTICLE 8

BTOP GRANT PROGRAM INFORMATION AND REQUIREMENTS

8.1 Federal Award Information.

CFDA Title:	Broadband Technology Opportunities Program
CFDA Number:	11.557
Award Title:	Recovery Act – ENMR-Plateau Middle Mile
Award Number:	NT10BIX5570027
Federal Agency:	Department of Commerce
Office:	National Telecommunications and Information Administration
Award period:	02/01/2010 - 01/31/2013.

8.2 Budget. The total Project budget for ENMR Telephone Cooperative, Inc.'s BTOP grant "Recovery Act – ENMR-Plateau Middle Mile" (award NT10BIX5570027) totals \$16,074,926 and is comprised of \$11,252,066 of Federal funds, a \$4,822,860 cash matching requirement, and a \$527,773 in-kind matching requirement. The portion of the funding allocated to the Raton CAI Network is \$849,874.50 in Federal funds and \$364,231.93 in cash matching requirements paid by Baca.

8.3 Scope of Work. The Raton Community Anchor Institution (CAI) Network is a part of the "Project" as defined in ENMR Telephone Cooperative's approved BTOP application (EGID 587), in which ENMR, as Recipient, and Baca, as Subrecipient, have been awarded BTOP Grant Funds. This Project will enable, in several New Mexico communities, high speed broadband for special access and Internet connectivity.

8.4 Relationship of Recipient and Subrecipient. ENMR, acting as the BTOP Award Recipient, awards Baca, as Subrecipient, a sub-award of 70% of the funding as shown in Exhibit A, for the

Raton CAI Network fiber optic facilities and equipment identified in Exhibit B. The equipment and fiber optic network is to be used to provide the Raton community anchor institutions with Broadband Service and for other services within the Raton community. This funding is supplied pursuant to ENMR's approved BTOP application (EGID 587).

8.4.1 Baca, acting as Subrecipient, will have a direct relationship with ENMR, acting as the Recipient, and not NTIA. ENMR, acting as BTOP Award Recipient, will inform Baca, acting as Subrecipients, of the specific obligations imposed pursuant to the BTOP grant award agreement, as specified in 8.1.

8.4.2 Each Party's responsibilities as Recipient and Subrecipient are defined below:

8.4.3 Recipient

8.4.3.1 Monitor Subrecipient(s) and overall performance of the BTOP Project and maintain compliance with the program and grant requirements.

8.4.3.2 Communicate compliance requirements to Subrecipient(s).

8.4.3.3 Provide technical advice to Subrecipient(s).

8.4.3.4 Report BTOP Project progress and financial information to NTIA.

8.4.3.5 Maintain appropriate records and provide auditors and the Federal Government access to those records.

8.4.3.6 Ensure required audits are performed and provided to NTIA and OIG.

8.4.3.7 Contribute the 70% of funding shown on Exhibit A to the payment of the costs of the Raton CAI network.

8.4.4 Subrecipient

8.4.4.1 Assist ENMR as necessary as to the Raton CAI Network owned by the Subrecipient in connection with the performance of the BTOP Project.

8.4.4.2 Maintain compliance with the program and grant requirements

8.4.4.3 Provide the matching funds identified on Exhibit A through reimbursements to Recipient.

8.4.4.4 Maintain appropriate records and provide BTOP program-specific auditors and the Federal Government access to those records as necessary to maintain compliance with the award.

8.4.4.5 Maintain current registration in the Central Contractor Registration (CCR) at all times while participating in an active Federal award funded with ARRA funds.

8.4.4.6 Obtain and provide to Recipient its Data Universal Numbering System (DUNS) number.

8.4.4.7 Otherwise comply with all BTOP requirements, including those imposed upon subrecipients who hold real property, tangible and intangible personal property that it acquires or improves, in whole or in part, with federal funds ("BTOP Property") in trust for the public purposes for which the financial assistance award was made.

8.5 Compliance

8.5.1 Administrative Requirements (BTOP Compliance). BTOP Program Specific Compliance: ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the Broadband Technology Opportunities Program's Notice of Funds Availability (NOFA) that corresponds with the award.

8.5.2 DOC Terms and Conditions. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the U.S. Department of Commerce Standard Terms and Conditions.

8.5.3 ARRA Terms and Conditions. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the U.S. Department of Commerce American Recovery and Reinvestment Act Standard Terms and Conditions.

8.5.4 Uniform Administrative Requirements. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the Uniform Administrative Requirements, included in 15 CFR Part 14.

8.5.5 Financial Requirements and Cost Principles. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the Federal financial requirements and cost principles for its organization type, included in OMB Circular A-122 (2 CFR Part 230) or FAR cost principles (48 CFR Part 31), whichever is applicable.

8.5.6 Audit Requirements. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the audit requirements included in OMB Circular A-133.

8.5.7 Special Award Conditions (SACs). ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the special award conditions placed on the award.

8.5.8. BTOP Application. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with the activities described in ENMR's application for funding (EGID 587) and any amendments thereto related to the NMSU Cooperation Agreement.

8.5.9 Procurement and Property Standards Policies. ENMR and Baca shall, at all times during the course of this Agreement, maintain compliance with ENMR's Procurement and Property Standards Policies with respect to all equipment purchased with the funds shown on Exhibit A.

8.6 Performance Monitoring. The Network Manager will coordinate with ENMR as necessary to monitor the overall performance of the Raton CAI Network project in accordance with ENMR's approved BTOP application (EGID 587) and ensure that goals and performance standards of the Award are met. ENMR shall promptly notify Baca in the event that NTIA provides any notice to ENMR regarding ENMR's overall performance under the Award or with respect to the Raton CAI Network. Baca shall provide ENMR all necessary information as required by NTIA in the administration and review of this portion of the Award. Performance not meeting the performance standards required by NTIA or as published by ENMR and provided to Baca will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by a party within a reasonable period of time after being notified in writing of the performance standards in jeopardy, contract suspension or termination procedures will be initiated.

8.7 Procurement and Payment.

8.7.1 In using the BTOP award funds, ENMR shall procure fiber optic facilities construction, equipment and professional services for its responsibilities in provisioning the Raton CAI Network in whole and on behalf of Baca and as identified in ENMR's approved BTOP application (EGID 587). ENMR in the use of BTOP funds will follow its Stimulus Procurement Policy when procuring goods and services related to the Raton CAI Network project and this Agreement. Upon completion of the Network construction, equipment installation and final testing, ENMR shall transfer all final construction documents, including but not limited to complete "as built" documentation of the network construction, staking sheets, maps, fiber optic splice testing results and engineering approvals to Baca. Upon Baca's receipt of the final construction documentation and approval of test results, Baca will reimburse ENMR for matching funds equal to 30% of the costs as shown in Exhibit A used to procure fiber optic facilities construction, equipment and professional services related to the Raton CAI Network along with any additional costs over and above the project budget incurred by ENMR in the course of constructing and provisioning the Raton CAI Network. These additional costs are listed in Exhibit A. Upon reimbursement of the matching funds and any additional costs by Baca to ENMR, the Raton CAI Network shall be the property of Baca and subject to its sole management and control.

8.7.2 ENMR shall request drawdowns of BTOP Funds, according to its Stimulus Drawdown Policy, to reimburse allowable BTOP expenses. Once Baca has reviewed and approved final network testing results for the Raton CAI Network, ENMR shall notify Baca of the amount of reimbursable funds due to ENMR. Baca will have 30 days to repay in full ENMR. Title to the Raton CAI Network shall vest in Baca upon receipt, and clearance to ENMR of the reimbursable funds shown in Exhibit A. Baca shall hold such title to be held in trust for the beneficiaries of the Project, according to the terms of 15 CFR 14.37 and, if applicable Section 7 Paragraph 5 of the BTOP-Wide Special Award Conditions, and all applicable guidelines, rules, regulations, codes as may be promulgated.

8.7.3 A breakdown of Baca's budgeted award and matching requirements are reflected in Exhibit A. The amounts shown on Exhibit A for fiber optic facilities construction are the "as staked" amounts included in the outside plant contractor's response to ENMR's Round 1 project request for pricing and based on the approved Raton CAI Network design. The Grant Project amounts shown on Exhibit A have been appropriated by ENMR for the construction of the Raton CAI Network. Fiber optic facilities construction costs for the Raton CAI network incurred by ENMR in excess of the appropriated amount for the Raton CAI Network project will be funded 100% by Baca and shall be fully reimbursed to ENMR prior to the transfer of title. The amounts for equipment are the invoiced third party equipment costs for all equipment installed to date and the firm quote price for all equipment ordered but not installed. The engineering and environmental costs shown on Exhibit A are the third party estimated costs associated with the fiber optic facilities construction and equipment listed. Additional engineering costs associated with final end-to-end testing of the Raton CAI Network may be incurred, but total engineering and environmental costs shall not exceed 10% of the engineering and environmental services amounts shown on Exhibit A unless agreed to by all parties. In addition, ENMR will invoice Baca for any additional services not included with the Exhibit A that Baca may request from ENMR, other than BTOP grant related assistance.

8.7.4 Within 90 days of final acceptance testing of the Raton CAI Network, ENMR will conduct a “true-up” of all third party engineering expenses associated with the fiber optic facilities construction and equipment installed on the Raton CAI Network. To the extent there are any additional third party engineering expenses associated with the Raton CAI Network not recovered to date; ENMR shall invoice the additional engineering costs, subject to the limitations in 8.7.3

8.7.5 Baca shall have the right to review all invoices for equipment and engineering costs and all other records associated with the Raton CAI Network. Baca shall have the right to participate and observe all testing for the Raton CAI network.

8.8 Records. Each party shall keep all records of the project in a manner that is consistent with generally accepted accounting principles. All disbursements from the award shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure. ENMR may withhold a disbursement if it demonstrates that Baca has failed to comply with this requirement, until such compliance is demonstrated. Baca may withhold reimbursement if it demonstrates that ENMR has failed to comply with this requirement, until such compliance is demonstrated.

ARTICLE 9 COMPLIANCE WITH STATUTES AND REGULATIONS

9.0 Each party represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions” and any rules and regulations issued pursuant thereto.

9.1 Each party to this Agreement shall be responsible for obtaining all necessary permits and approvals from any third party, including without limitation, any governmental body having jurisdiction, in order for that party to perform its obligations under this Agreement or use the rights granted under this Agreement.

9.2 Each party shall represent, warrant and agree that each will comply with all applicable government codes, laws, statutes, ordinances, rules and regulations pertaining to their work, responsibilities and obligations under this Agreement.

ARTICLE 10 PROTECTION TO PERSONS AND PROPERTY

10.0 At all times when equipment and materials are being delivered and installed, each party shall exercise reasonable precautions for the safety of employees on the job and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety, building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the “Manual of Accident Prevention in Construction” of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations.

10.1 During construction, each party shall at all times keep the premises free from accumulations of waste material or rubbish caused by its contractors, its employees or work, and at the completion of the work, each party shall remove all rubbish from and about the Project(s) and all tools, scaffolding and surplus materials and shall leave its work "broom clean."

ARTICLE 11 TERM

11.0 The Term of this Agreement shall be from the Effective Date until January 31, 2013 at 11:59 Mountain Daylight Time, unless sooner terminated pursuant to the provisions of this Agreement. The obligations of the parties as required by the BTOP program shall survive termination of this agreement.

ARTICLE 12 SUB-CONTRACTING

12.0 The Parties to this Agreement may subcontract for any portion of services being performed under or in relation to this Agreement, provided such subcontractors are licensed, bonded and insured. The contracting Party shall be responsible for payment of its subcontractors and all actions or inactions of its subcontractors, including without limitation the cost of repairs for damages caused by or associated with any such subcontractor.

ARTICLE 13 FORCE MAJEURE

13.0 No party shall be in default under this Agreement if its failure to perform is caused by any of the following conditions: act of God; fire; flood; sabotage; power outages; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations, orders approvals or restrictions (collectively, "Regulations"); war or civil disorder; acts of terrorism; labor unrest or strike; or any other cause beyond the commercially reasonable control of the effected party. The party claiming relief under this section shall promptly notify the other in writing of the existence of the event relied upon and the cessation or termination of that event. For the duration of any valid force majeure event, the performance of the effected party shall be excused.

ARTICLE 14 LIMITATION OF LIABILITY

14.0 Notwithstanding any provision of this Agreement to the contrary, no Party shall be liable to any other Party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such party's failure to perform its respective obligations hereunder, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, a party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Nothing contained herein shall operate as a limitation on the right of the parties hereto to bring an

action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party.

ARTICLE 15 INDEMNIFICATION

15.0 Each party shall defend and indemnify and hold the other harmless from any direct loss, damage, expense (including reasonable attorney's fees and cost of suit), claim, suit and liability ("Claim") alleged by a third party, whether based in contract or tort or other legal or equitable theory, arising out of the negligent performance or material breach of the indemnifying party's obligations or warranties under this Agreement. The parties shall promptly notify each other of any Claim for which indemnification is sought hereunder. At its sole costs and expense, the indemnifying party may have control over the defense and settlement of any such Claim or suits; provided, however, that the indemnified party may participate in such defense at its own expense and provided that no settlement of any Claim or suit shall be valid unless approved in writing by both parties, which approval shall not be unreasonably withheld or delayed.

ARTICLE 16 ASSIGNMENT

16.0 The Parties to this Agreement 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 prior written approval of the other Parties to this Agreement. Such approval shall not be unreasonably withheld. The foregoing provision notwithstanding, the rights granted to a Party under this Agreement shall be assignable without restriction to its affiliates so long as (i) all rights are assigned and (ii) the affiliate assumes all obligations under this Agreement. Affiliate shall mean an entity controlling, controlled by or under common control of a Party as applicable at the time this Agreement was entered into.

ARTICLE 17 MISCELLANEOUS PROVISIONS

17.0 Every right or remedy herein conferred upon or reserved to a party shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

17.1 Each Party warrants by, between and among themselves as follows:

17.1.1 Each has the legal capacity to enter into and execute this Agreement; and,

17.1.2 This Agreement does not breach any existing agreements with other parties.

17.1.3 To its knowledge, there is no pending litigation or administrative action which would interfere with its obligations under this Agreement.

17.1.4 To the best of its knowledge, entering into this Agreement will not violate the terms of any contracts, statutes, rules, regulations, orders, judgments, or decrees.

17.1.5 That each party has obtained any necessary internal approvals, including any other entity approvals.

17.1.6 That each party has the authority to enter into this transaction and has obtained all necessary third party approvals to do so.

17.2 The headings of the articles of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute a part hereof.

17.3 This Agreement shall inure to the benefit of and be binding upon each party and its respective successors and assigns, except that nothing contained in this article shall be construed to permit any attempted assignment or other transfer which would be unauthorized by or void pursuant to any other provision of this Agreement.

17.4 Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement; provided, however, that the general intent of this Agreement shall not be voided thereby.

17.5 No provision of this Agreement shall be deemed to have been waived by any party unless a waiver by one party is contained in a written notice given to a party by the party willing to allow any such provision of this Agreement to be waived. No such waiver, if any, shall be deemed to be a waiver of any other or further obligation or liability of a party, or any party in whose favor the waiver is given.

17.6 This Agreement and the rights and obligations hereunder shall be construed and interpreted in general in accordance with the laws of the State of New Mexico.

17.7 This Agreement constitutes the entire Agreement by, between and among the Parties and shall supersede all previous negotiations, commitments, representations and writings.

17.8 The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

17.9 Except as may be set forth herein, nothing shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

17.10 All notices given by a party to any other party under this Agreement shall be in writing, registered or certified mail, postage pre-paid, addressed as follows (or to such other address as any party may specify in such notice to a party):

ENMR Telephone Cooperative, Inc.
Attn: Tom Phelps
7111 North Prince Street
Clovis, New Mexico 88101

Baca Valley Telephone Company, Inc.
Attn: Paul Briesh
P.O. Box 67,
532 Broadway Avenue
Des Moines, NM 88418

Such notices shall be effective on the third business day subsequent to the date of mailing.

17.11 This Agreement may be executed in any number of counterparts, each of which shall be considered an original.

17.12 This Agreement is based upon the anticipated continuation of the Broadband Technology Opportunities Program (BTOP) funding by the NTIA. Should that funding be modified, terminate, or cease, then this Agreement shall terminate and in such event, each of the parties agrees that it will use its best efforts to negotiate a new agreement at that time based upon any such modification, termination or cessation of the BTOP funding.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their duly authorized representatives.

ENMR TELEPHONE COOPERATIVE, INC.

(b) (4)
By: _____
Name: Tom M. Phelps
Title: CEO
Date: 3/13/12

BACA VALLEY TELEPHONE COMPANY, INC.

(b) (4)
By: _____
Name: PAUL J. BEVESH JR.
Title: GENERAL MANAGER
Date: 3-11-12

Exhibit A: Project Award and Matching Costs Breakdown

The BTOP Grant amount reflected below equates to 70% of the cost of fiber optic facilities construction, access network equipment, engineering and environmental services shown below. The cash match amount for Baca reflected below equates to 30% of the cost of fiber optic facilities construction, access network equipment, engineering and environmental services and 100% of the cost of the NMSU fiber splice at Raton and 100% of the BNSF Bore which is in addition to the cash matching requirement.

The engineering and environmental services costs below are based on estimated costs as of the date of this award. These costs shall not exceed 10% of the engineering and environmental services amounts shown below unless agreed by all parties.

The access network equipment costs are final costs.

The fiber optic facilities construction costs are the “as staked” amounts based on the approved Raton CAI Network design and provided by the outside plant contractor in their response to ENMR’s Round 1 project RFP. This amount has been appropriated by ENMR for the construction of the Raton CAI Network. Fiber optic facilities construction costs for the Raton CAI network incurred by ENMR in excess of the appropriated amount for the Raton CAI Network project will be funded 100% by Baca and shall be fully reimbursed to ENMR prior to the transfer of title

These figures include New Mexico gross receipts tax calculated at 5.125%.

Description	Amount
Fiber Optic Facilities Construction	\$983,700.48
Access Network Equipment	\$86,146.78
Engineering Services	\$134,321.87
Environmental Services	\$9,937.30
Total Grant Project Costs	\$1,214,106.43
BTOP Grant (70%)	\$849,874.50
Cash Match - Baca (30%)	\$364,231.93
NMSU Fiber Splice – Raton - Baca	\$44,687.71
Additional Costs:	
BNSF Bore	11,443.00

