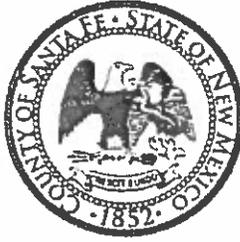


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: February 11, 2015
TO: Board of County Commissioners
FROM: Bill Taylor, Procurement Manager
VIA: Katherine Miller, County Manager
Jeff Trujillo, ASD Director
Daniel Sanchez, IT Director

ITEM AND ISSUE: BCC Meeting February 24, 2015

REQUEST BCC APPROVAL TO MODIFY THE TERM OF THE AGREEMENT WITH CENTURYLINK FOR CENTURYLINK DATACENTER SERVICES/DELTA PORT INTERNET SERVICES AND AUDIO RESERVATION LINE AND ALLOW THE COUNTY TO ENTER INTO A FIVE (5) YEAR TERM AGREEMENT FOR SUCH SERVICES, PURSUANT TO SECTION 2 OF SANTA FE COUNTY ORDINANCE 2012-5. (Bill Taylor, Purchasing/Daniel Sanchez, IT Division)

Issue:

Pursuant to NMSA 1978, 13-1-150 Multi-term contracts; specified period – may be entered into for any period deemed to be in the best interest of the local public body not to exceed eight (8) years; however, pursuant to Santa Fe County Ordinance 2012-5, Section Two. Periodic Rebidding. Each multi-year contract awarded henceforth following a competitive procurement process shall be written for a one-year term with an annual renewal at the County's option for no more than three additional one-year terms unless a modified term is specifically approved by the Board of County Commissioners.

Background:

CenturyLink currently provides ATM (Asynchronous Transfer Mode) internet service to several remote Santa Fe County sites via bundled services. The ATM services are being replaced with DeltaPort DSL services at a lower rate for higher speed/Mbps. Santa Fe County will also begin to utilize the CenturyLink Datacenter in Albuquerque as a central access point for additional internet services to the larger Santa Fe County sites (Admin Building, Public Safety, Public Works, etc.). The Audio Conference line will allow several meeting participants to dial into a meeting from various locations throughout Santa Fe County and also allow vendors to dial into meetings with Santa Fe County departments.

Recommendation:

Purchasing Division and the IT Division recommend that the Board of County Commissioners approve the modified term of the agreement with CenturyLink for CenturyLink Datacenter, DeltaPort, and Audio Conference services for the County pursuant to Section 2 of Ordinance 2012-5.

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT

This CenturyLink Loyal Advantage Agreement ("Agreement") is between CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC ("CenturyLink") and Santa Fe County ("Customer") and is effective on the date the last party signs it ("Effective Date"). CenturyLink may withdraw this offer if Customer does not execute and deliver the Agreement to CenturyLink on or before December 31, 2014 ("Cutoff Date"). Using CenturyLink's electronic signature process for the Agreement is acceptable.

SANTA FE COUNTY

CENTURYLINK COMMUNICATIONS, LLC

Authorized Signature

Name Typed or Printed

Title

Date

Authorized Signature

Name Typed or Printed

Title

Date

Customer's address for notices:
Customer's facsimile number (if applicable):
Person designated for notices:

1. **Services.** Customer may purchase the products and services ("Services") in service exhibits ("Service Exhibits") attached to the Agreement. The parties agree that any notation to the "CenturyLink Total Advantage Agreement" on the Service Exhibits will be disregarded and such exhibits will be governed by the Agreement. For an interim period of time until all work is completed to update the Service Exhibits, Tariffs and other terms and conditions incorporated by attachment or reference into this Agreement, all references to Qwest Communications Company, LLC mean CenturyLink Communications, LLC. The Service Exhibits attached to the Agreement as of the Effective Date and incorporated by this reference are shown below.

• **RESERVATIONLESS AUDIO AND WEB CONFERENCING OFFER ATTACHMENT**

2. **Term.** Customer selects the following "Initial Term" of the Agreement: one year ("Initial Term"), 600051 code. The Initial Term begins on the Effective Date. At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal periods equal to the Initial Term (a "Renewal Term") if not terminated earlier in accordance with the Agreement. The Initial Term and each Renewal Term are referred to as the "Term."

3. **Rates.** Unless specified otherwise in a Service Exhibit, Services will receive the applicable rates specified in a Service Exhibit, valid Order Form, or CenturyLink-approved quote form, for the duration of the Initial Term. CenturyLink reserves the right to modify rates after the conclusion of each Service's minimum service period upon not less than 30 days' prior written notice to Customer; provided that CenturyLink may reduce the foregoing notice period or modify rates or discounts prior to the conclusion of the minimum service period, as necessary, if such modification is based upon Regulatory Activity. CenturyLink also reserves the right to modify rates when the Agreement renews to the rates that are in effect at that time. If Regulatory Activity causes an increase in the rates for Customer's ordered Services that materially and adversely affects Customer, then Customer may terminate the affected Service upon 30 days' prior written notice to CenturyLink without liability for Cancellation Charges for the affected Service, provided, however that Customer: (a) provides such notice within 30 days after the increase occurs; and (b) provides CenturyLink 30 days to cure such increase. If Customer does not provide CenturyLink such notice during the time permitted in this Section, Customer will have waived its right to terminate the affected Service under this Section.

4. **Payment.** CenturyLink may begin invoicing for specific Services as specified in the applicable Service Exhibit. Customer must pay CenturyLink all charges within 30 days after the invoice date. Any amount not paid when due is subject to late interest at the lesser of 1.5% per month or the maximum rate allowed by law. In addition to payment of charges for Services, Customer must also pay CenturyLink any applicable Taxes assessed in connection with Services. Taxes may vary and are subject to change. If Customer is exempt from any Tax, it must provide CenturyLink with an appropriately completed and valid Tax exemption certificate or other evidence acceptable to CenturyLink. CenturyLink is not required to issue any exemption, credit or refund of any Tax payment for usage before Customer's submission of valid evidence of exemption. Customer may access its invoices and choose paperless invoices online through CenturyLink Control Center located at controlcenter.centurylink.com. If Customer does not choose paperless invoices through Control Center, CenturyLink may in its discretion assess a \$15 MRC for each full paper invoice provided to Customer or a \$2 MRC for each summary/remit only (where available) paper invoice provided to Customer. Those charges will not apply to an invoice that is not available through Control Center. Customer's payments to CenturyLink must be in the form of electronic funds transfer (via wire transfer or ACH), cash payments (via previously-approved CenturyLink processes only), or paper check. CenturyLink reserves the right to charge administrative fees when Customer's payment preferences deviate from CenturyLink's standard practices.

5. **Confidentiality.** Except to the extent required by an open records act or similar law, neither party will, without the prior written consent of the other party: (a) disclose any of the terms of the Agreement; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information of the other party. Each party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the party would use to protect its own. CenturyLink's consent may only be given by its Legal Department. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. CenturyLink will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of CenturyLink's Services.

6. **CPNI.** CenturyLink is required by law to treat CPNI confidentially. Customer agrees that CenturyLink may share CPNI within

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its business operations (e.g., wireless, local, long distance, and broadband services divisions), and with businesses acting on CenturyLink's behalf, to determine if Customer could benefit from the wide variety of CenturyLink products and services, and in its marketing and sales activities. Customer may withdraw its authorization at any time by informing CenturyLink in writing. Customer's decision regarding CenturyLink's use of CPNI will not affect the quality of service CenturyLink provides Customer.

7. Use of Name and Marks. Neither party will use the name or marks of the other party or any of its Affiliates for any purpose without the other party's prior written consent. CenturyLink's consent may only be given by its Legal Department.

8. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS." CENTURYLINK DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

9. Limitations of Liability. The remedies and limitations of liability for any claims arising between the parties are set forth below.

9.1 Consequential Damages. NEITHER PARTY OR ITS AFFILIATES, AGENTS, OR CONTRACTORS IS LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, LOST REVENUES, LOST DATA, LOST BUSINESS OPPORTUNITY, OR COSTS OF COVER. THESE LIMITATIONS APPLY REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF FORESEEABILITY.

9.2 Claims Related to Services. For Customer's claims related to Service deficiencies or interruptions, Customer's exclusive remedies are limited to: (a) those remedies set forth in the SLA for the affected Service or (b) the total MRCs or usage charges paid by Customer for the affected Service in the one month immediately preceding the event giving rise to the claim if an SLA does not exist for the affected Service.

9.3 Personal Injury; Death; Property Damages. For claims arising out of personal injury or death to a party's employee, or damage to a party's real or personal property, that are caused by the other party's negligence or willful misconduct in the performance of the Agreement, each party's liability, to the extent permitted by law, is limited to proven direct damages.

9.4 Other Direct Damages. For all other claims arising out of the Agreement, each party's maximum liability will not exceed in the aggregate the total MRCs and usage charges paid by Customer to CenturyLink under the Agreement in the three months immediately preceding the event giving rise to the claim ("Damage Cap"). The Damage Cap will not apply to a party's obligations under the Responsibilities Section below or Customer's payment obligations under the Agreement.

10. Responsibilities. To the extent permitted under law, each party agrees to be responsible to the other party, its Affiliates, agents, and contractors against all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees, arising directly from performance of the Agreement and related to personal injury or death, or damage to personal tangible property that is alleged to have been caused by the negligence or willful misconduct of the responsible party. To the extent permitted under law, Customer also agrees to be responsible for all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees against CenturyLink, its Affiliates, and contractors, related to the modification or resale of the Services by Customer or End Users, or any AUP violation.

11. Termination.

11.1 Service. Either party may terminate an individual Service or a Service Exhibit: (a) in accordance with the individual Service Exhibit's term requirements with 60 days' prior written notice to the other party, or (b) for Cause. If Service or a Service Exhibit is terminated by Customer for Convenience or by CenturyLink for Cause, then Customer will pay Cancellation Charges.

11.2 Agreement. Either party may terminate the Agreement and all Services by: (a) providing written notice to the other party of its intention not to renew the Agreement at least 60 days prior to the expiration of the then current Term or (b) for Cause. Cause to terminate an individual Service Exhibit will not constitute Cause to terminate the Agreement; rather, Cause to terminate the entire Agreement for Service-related claims will exist only if Customer has Cause to terminate all or substantially all of the Services under the applicable SLA, Service Exhibit, RSS or Tariff. If the Agreement is terminated by Customer for Convenience or by CenturyLink for Cause prior to the conclusion of the Term, then Customer will pay the higher of: (c) the Early Termination Charge or (d) the total Cancellation Charges that apply for terminating all CenturyLink Services at the time the Agreement is terminated.

11.3 Unpaid Charges. Customer will remain liable for charges accrued but unpaid as of the termination date.

12. Non-Appropriations. Customer intends to continue this Agreement for its entire Term and to satisfy its obligations hereunder. For each fiscal period for Customer: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; (b) Customer agrees to use all reasonable and lawful means to secure these appropriations; (c) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose. In the event that Customer is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose (as evidenced by notarized documents provided by Customer and agreed to by CenturyLink), Customer may terminate this Agreement without incurring an Early Termination Charge or Cancellation Charges by giving CenturyLink not less than 30 days' prior written notice. Upon termination and to the extent of lawfully available funds, Customer will remit all amounts due and all costs reasonably incurred by CenturyLink through the date of termination.

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13. Miscellaneous.

13.1 General. The Agreement's benefits do not extend to any third party (e.g., an End User). If any term of the Agreement is held unenforceable, the remaining terms will remain in effect. Except for time requirements as specifically stated in a Service Exhibit or SLA, neither party's failure to exercise any right or to insist upon strict performance of any provision of the Agreement is a waiver of any right under the Agreement. The terms and conditions of the Agreement regarding confidentiality, the Responsibilities Section, limitation of liability, warranties, payment, dispute resolution, and all other terms of the Agreement that should by their nature survive the termination of the Agreement will survive. Each party is not responsible for any delay or other failure to perform due to a Force Majeure Event.

13.2 Conflicts Provision. If a conflict exists among provisions within the Agreement, the following order of precedence will apply in descending order of control: Service Exhibit, the Agreement, and any Order Form. If Services are provided pursuant to a Tariff, RSS, or ISS as described in the applicable Service Exhibits, the order of precedence will apply in the following descending order of control: Tariff, Service Exhibit, the Agreement, RSS, ISS, and Order Form.

13.3 Independent Contractor. CenturyLink provides the Services as an independent contractor. The Agreement will not create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

13.4 ARRA. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those obligations are explicitly identified and agreed to by the parties in the Agreement or in an amendment to the Agreement.

13.5 HIPAA. CenturyLink does not require or intend to access Customer data in its performance hereunder, including but not limited to any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F. R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"). To the extent that any exposure to PHI is incidental to CenturyLink's provision of Service and not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI, such exposure is allowable under 45 CFR 164.502(a)(1)(iii).

13.6 Installation, Maintenance and Repair

(a) Provision of Services is subject to availability of adequate capacity and CenturyLink's acceptance of a complete Order Form.

(b) Customer will reasonably cooperate with CenturyLink or its agents to install, maintain, and repair Services. Customer will provide or secure at Customer's expense appropriate space and power; and rights or licenses if CenturyLink must access the building of Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment. CenturyLink may refuse to install, maintain, or repair Services if any condition on Customer's premises is unsafe or likely to cause injury.

(c) Customer is responsible for any facility or equipment repairs on Customer's side of the demarcation point. Customer may request a technician dispatch for Service problems. Before dispatching a technician, CenturyLink will notify Customer of the dispatch fee. CenturyLink will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point or was not caused by CenturyLink's facilities or equipment on CenturyLink's side of the demarcation point.

13.7 Governing Law; Dispute Resolution.

(a) **Billing Disputes.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges when due and provides CenturyLink with a written explanation of the reasons for Customer's dispute of the charge within 90 days after the invoice date of such amount. If CenturyLink determines, in its good faith, that the disputed charge is valid, CenturyLink will notify Customer and within five business days after CenturyLink's notification, Customer must pay the charge and accrued interest.

(b) **Governing Law; Forum.** The Agreement will be governed by the laws of the State in which the Customer's principal office is located without regard to its choice of law principles. Any legal proceeding relating to the Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in Denver, Colorado.

(c) **Waiver of Jury Trial and Class Action.** Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a jury trial and any right to pursue any claim or action relating to the Agreement on a class or consolidated basis or in a representative capacity. If for any reason the jury trial waiver is held to be unenforceable, the parties agree to binding arbitration for any dispute relating to the Agreement under the Federal Arbitration Act, 9 U.S.C. § 1, et. seq. The arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(d) **Limitations Period.** Any claim relating to the Agreement must be brought within two years after the claim arises other than Customer disputing an amount in an invoice, which must be done by Customer within 90 days after the invoice date of the disputed amount.

13.8 No Resale; Security. Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws. CenturyLink has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by CenturyLink from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The CenturyLink information security program is subject to reasonable changes by CenturyLink from time to time. CenturyLink's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

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13.9 Assignment. Either party may assign the Agreement without the other party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an Affiliate provided such party gives the other party 30 days' prior written notice. Any assignee of the Customer must have a financial standing and creditworthiness equal to or better than Customer's, as reasonably determined by CenturyLink, through a generally accepted, third party credit rating index (i.e. D&B, S&P, etc.). Any other assignment will require the prior written consent of the other party.

13.10 Amendments; Changes. The Agreement may be amended only in a writing signed by both parties' authorized representatives. Each party may, at any time, reject any handwritten change or other alteration to the Agreement. CenturyLink may change features or functions of its Services; for material changes that are adverse to Customer, CenturyLink will provide 30 days' prior written notice, but may provide a shorter notice period if the change is based on Regulatory Activity. CenturyLink may amend, change, or withdraw the Tariffs, RSS, ISS or AUP, with such updated Tariffs, RSS, ISS or AUP effective upon posting or upon fulfillment of any necessary regulatory requirements.

13.11 Websites. References to websites in the Agreement include any successor websites designated by CenturyLink.

13.12 Required Notices. Unless provided otherwise in the Agreement, all required notices to CenturyLink must be in writing, sent to 1801 California St., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Legal Dept., and to Customer as provided above. All notices are effective: (a) when delivered via overnight courier mail or in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; or (c) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

13.13 Service Termination Notices. Customer's notice of termination for CenturyLink QCC Services must be sent via mail, facsimile or e-mail to: CenturyLink, Attn.: GBM Disconnects, 112 Sixth St., Bristol, TN 37620, Fax: 866.887.6633, e-mail: GBMdisconnects@CenturyLink.com. Such termination is effective 30 days after CenturyLink's receipt of the notice, unless a longer period is otherwise required. For Services under the Select Advantage Service Exhibit, Customer must call the customer care number specified on Customer's invoice to provide notice of termination.

13.14 Entire Agreement. The Agreement (including any applicable Service Exhibit, CenturyLink accepted Order Forms, and all referenced documents) constitutes the entire agreement between the parties and supersedes all prior oral or written agreements or understandings relating to the same service, ports, or circuits at the same locations as covered under the Agreement.

14. Definitions.

"Affiliate" means any entity controlled by, controlling, or under common control with a party.

"AUP" means the Acceptable Use Policy incorporated by this reference and posted at <http://www.centurylink.com/legal/>.

"Cancellation Charge" means the cancellation charge described in the applicable Service Exhibit and charges incurred by CenturyLink from a third party provider as a result of an early termination.

"Cause" means the failure of a party to perform a material obligation under the Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default; or (b) for any other material breach, within 30 days after written notice.

"CenturyLink QCC" means the former Qwest Communications Company, LLC d/b/a CenturyLink QCC. On April 1, 2014, CenturyLink completed an internal reorganization resulting in the merger of multiple CenturyLink owned companies into Qwest Communications Company, LLC. Simultaneously with the merger, Qwest Communications Company, LLC changed its name to CenturyLink Communications, LLC. The term "CenturyLink QCC" refers to the former "d/b/a CenturyLink QCC" company and not to any other CenturyLink owned companies now a part of CenturyLink Communications, LLC.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature, (including CPNI), and that: (a) the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party; or (b) is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect the information from disclosure. Confidential Information will not include information that is in the public domain through no breach of the Agreement by the receiving party or is already known or is independently developed by the receiving party.

"Convenience" means any reason other than for Cause.

"CPE" means any customer equipment, software, and/or other materials of Customer used in connection with the Service.

"CPNI" means Customer Proprietary Network Information, which includes confidential account, usage, and billing-related information about the quantity, technical configuration, type, destination, location, and amount of use of a customer's telecommunications services. CPNI reflects the telecommunications products, services, and features that a customer subscribes to and the usage of such services, including call detail information appearing in a bill. CPNI does not include a customer's name, address, or telephone number.

"Early Termination Charge" means an amount equal to 35% of the average monthly charges billed under this Agreement through the date of termination multiplied by the number of months remaining in the Term.

"End User" means Customer's members, end users, customers, or any other third parties who use or access the Services or the CenturyLink network via the Services.

"Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, explosion, lightning, hurricane, labor dispute, cable cuts by third parties, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services.

"ISS" means CenturyLink's Information Services Schedule incorporated by this reference and posted at http://www.centurylink.com/tariffs/clc_info_services.pdf.

"MRC" means monthly recurring charge.

"NRC" means nonrecurring charge.

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"Order Form" includes both order request forms and quotes issued by CenturyLink. If a CenturyLink service requires a quote to validate the Order Form pricing, the quote will take precedence over the order request form, but not over the Service Exhibit.

"Regulatory Activity" is a regulation or ruling by any regulatory agency, legislative body or court of competent jurisdiction.

"RSS" means as applicable CenturyLink's Rates and Services Schedules incorporated by this reference and posted at http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_2.pdf for CenturyLink's International RSS and at http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_3.pdf for CenturyLink's Interstate RSS.

"SLA" means the service level agreement applicable to a Service as described in a Service Exhibit.

"State" means one of the 50 states of the United States or the District of Columbia.

"Tariff" includes as applicable: CenturyLink state tariffs, price lists, price schedules, administrative guidelines, catalogs, and rate and term schedules incorporated by this reference and posted at <http://www.centurylink.com/tariffs>.

"Tax" or "Taxes" means foreign, federal, state, and local excise, gross receipts, sales, use, privilege, or other tax (other than net income) now or in the future imposed by any governmental entity (whether such Taxes are assessed by a governmental authority directly upon CenturyLink or the Customer) attributable or measured by the sale price or transaction amount, or surcharges, fees, and other similar charges that are required or permitted to be assessed on the Customer. These charges may include state and federal Carrier Universal Service Charges, as well as charges related to E911, and Telephone Relay Service.

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT

RESERVATIONLESS AUDIO AND WEB CONFERENCING OFFER ATTACHMENT ("Attachment")

This Attachment is subject in all respects to the CenturyLink Total Advantage® or CenturyLink Loyal Advantage® agreement ("Agreement") between CenturyLink and Customer. Capitalized terms not defined in this Attachment are defined in the Agreement.

Scope. The purpose of this Attachment is to offer the Reservationless Audio and CenturyLink Web Offer Pricing (as defined below) on CenturyLink's Reservationless Audio and Century Web Conferencing Service ("Service") as described in a CenturyLink Conferencing Service Exhibit ("Exhibit"), which is part of the Agreement.

Eligibility and Restrictions. If eligible, CenturyLink will waive two months of rate per minute charges for Service if Customer signs this Attachment at any time beginning April 16, 2012 through December 31, 2014 ("Offer Period"). Customer will be limited to 25,000 minutes of use per month during the two months during which the rate per minute charges are waived. At the conclusion of the two months of waived rate per minute charges and for any overage minutes of use during the two free months, Customer will pay the Offer Pricing as outlined in the following section. Customer must not have an in-effect agreement with CenturyLink prior to signing up for this promotion or Customer's in-effect Agreement cannot have already had CenturyLink Conferencing. Customers who are signing a new Agreement must have a minimum one-year term on the new Agreement. To be eligible for the Offer Pricing, Customer must use Service within 90 days of signing and returning this Attachment to CenturyLink. The Offer Pricing is not available with any other promotional or discounted pricing for Service. Any other types of Conferencing or features added to the account during or after the Offer Period will be at the then-current standard rates. Additional restrictions as outlined in the Offer Pricing section apply.

Offer Pricing. For eligible customers, the rate per minute charge will be \$.05 per minute per line for Reservationless Audio and \$.05 per minute per line for CenturyLink Web ("Offer Pricing"). The Offer Pricing will not apply to Customer's use of CenturyLink Web only. The Offer Pricing will end on the earliest of: (a) termination or expiration of the Agreement; (b) cancellation or expiration of the Conferencing Service Exhibit; or (c) cancellation of the Offer Pricing by either party. **Offer Codes: RESLESS5 and CTLWEB5 and 2MTHWAIVE**

Miscellaneous. All other terms and conditions in the Agreement will remain in effect. This Attachment will be effective on the date CenturyLink signs it. If the Customer has an existing Agreement that does not contain Conferencing, this Attachment will act as an amendment to the Agreement to add the Conferencing Service Exhibit and Pricing Attachment. The rates in this Attachment will take precedence over the Service rates shown in the Pricing Attachment, as long as Customer remains eligible for the Offer Pricing and this Attachment is in effect. This Attachment and the Agreement set forth the entire understanding between the parties as to the subject matter of this Attachment, and in the event there are any inconsistencies between the documents, the descending order of control is: this Attachment; a Service Exhibit, if applicable; and the Agreement. Using CenturyLink's electronic signature process for the Acknowledgment is acceptable.

Agreed to and Accepted:

Santa Fe County

**Qwest Communications Company, LLC
d/b/a CenturyLink QCC**

Authorized Signature

Authorized Signature

Name Typed or Printed

Name Typed or Printed

Title

Title

Date

Date

**PARTICIPATING ADDENDUM
FOR
CENTURYLINK METRO OPTICAL ETHERNET SERVICE
BETWEEN
Santa Fe County
State of NM Pricing Agreement Number
30-000-00-00002
AND
QWEST CORPORATION D/B/A CENTURYLINK QC**

The undersigned hereby represents, acknowledges, and agrees as follows:

1. The undersigned represents that it is a State of New Mexico agency, commission, institution, political subdivision or local public body, and, as such, that it is qualified to purchase CenturyLink telecommunication services ("Service(s)") pursuant to the terms and conditions of the CenturyLink Metro Optical Ethernet Service Agreement, Content ID: 398367/OMR: N29286, approved and signed by the State of New Mexico, on or about November 7, 2012, by and between Qwest Corporation d/b/a CenturyLink QC ("QC" or "CenturyLink") and the State of New Mexico, as amended, including its Exhibits and Attachments (hereafter the "Underlying Agreement").
2. The undersigned ("Customer") is executing this Participating Addendum for the purpose of purchasing Service from CenturyLink pursuant to the Underlying Agreement, by and between the State of New Mexico and CenturyLink. The parties understand and agree that all terms and conditions of this Participating Addendum and the Underlying Agreement will apply to Services purchased by Customer hereunder. Customer will be responsible for any and all use of Services provided hereunder, including but not limited to responsibility for all payment obligations. Customer will be CenturyLink's customer of record for the Services provided hereunder.
3. **DESCRIPTION OF SERVICES.** CenturyLink will provide to Customer the intrastate telecommunications service(s) described in the Underlying Agreement (the "Services"). The specific Services purchased by Customer are set forth in Exhibit 1 to this Participating Addendum. Customer will pay the amounts set forth on Exhibit 1 to this Participating Addendum and as set forth in the Underlying Agreement.
4. **TERM.** This Participating Addendum is effective on the latest signature date ("Effective Date"), and it expires sixty (60) months from the date Service is available to Customer, as evidenced by CenturyLink records ("Initial Term").
5. **PRIMARY CONTACT.** The primary Customer contact individual for this Participating Addendum is as follows:

Daniel Sanchez
6. This Participating Addendum and the Underlying Agreement set forth the entire agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Underlying Agreement will not be added to or incorporated into this Participating Addendum or the Underlying Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Underlying Agreement will prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Customer: Santa Fe County

Qwest Corporation d/b/a CenturyLink QC

Authorized Signature

Authorized Signature

Name Typed or Printed

Name Typed or Printed

Title

Title

Date

Date

Address for Notices:
102 Grant Ave, Santa Fe NM

Address for Notices:
CenturyLink
1801 California Street, 9th Floor
Denver, Colorado 80202
Attn: Legal Department

(FOR CENTURYLINK INTERNAL USE ONLY)
FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION

AQCB Quote No. _____

Date Concurred: _____



CenturyLink Agreement

Service Order

Company Name: SANTA FE COUNTY - NM	Billing Address:
Billing Site Name: SANTA FE COUNTY - NM	Street: 102 Grant Ave
Billing Account Number: New	City, State, Zip: Santa Fe, NM 87501
Currency: USD	
Primary Contact:	Billing Contact:
Name: Dale Lucero	Name: Dale Lucero
Email: dlucero@santafecounty.org	Email: dlucero@santafecounty.org
Phone: (505) 995-9535	Phone: (505) 995-9535

CenturyLink Contact Details	Name	Phone	Email
Sales Representative	Bradley Campbell		brad.campbell@centurylink.com
Solutions Engineer	Michael Phillips, Scott Robinson		michael.phillips@savvis.com, scott.robinson@savvis.com

Quote Summary

Quote Description (for informational purposes only)
Santa Fe County colo Albuquerque - FAST START PROMO
Initial Service Term
60

60 Months		
Totals	Monthly Recurring Charges	Non-Recurring Charges
New Totals	1,378.80	2,084.50
Existing Totals	0.00	0.00
Delta Totals	1,378.80	2,084.50

Service Details - 60 Months							
Request Type	Qty	Product Family	Product Configuration	Monthly Recurring Charges			Non-Recurring Charges
				New	Existing	Delta	Non-Recurring
Add	1	Colocation	Colocation Space 2.0 Data Center: ZZAB3 Quantity: 1 Location: Raised Floor Space Type: Secure Cabinet - 2kW	513.60	0.00	513.60	764.50
Add		Colocation	Colocation Power Distribution 2.0 Data Center: ZZAB3 Quantity: 1 Power Configuration: Primary/Redundant Pair Power Circuit: 20A/120V-Single Phase-L5	115.20	0.00	115.20	550.00
Add		Colocation	Colocation Power Strip 2.0 Data Center: ZZAB3 Quantity: 2 Power Strip Type: 15-20 Vertical Mount Power Strip with Display	0.00	0.00	0.00	395.00
Add	3	Colocation	Customer Access Extension 1.0 Data Center: ZZAB3 Cross Connect Type: Telco without Private Entrance Media Type: Singlemode Fiber CPE Rackspace (RUs): No CPE Rackspace (RUs) Qty: 0	750.00	0.00	750.00	375.00
Add	1	Colocation	Gold Support 1.0 Hours: 0.0 Type: No Commit	0.00	0.00	0.00	0.00
Group Totals				1,378.80	0.00	1,378.80	2,084.50

Usage Per Unit	Tier	60 Months Usage Rate
1. Gold Support 1.0 Hours	-	200.0

Customer Acceptance

- Upon Customer's signature on this quote (hereinafter, a "Service Order"), Customer hereby orders the services identified above ("Services"). By signing this Service Order, Customer hereby agrees that the Services will be provided in accordance with the governing service agreement between Customer and CenturyLink, including the Service Exhibit ("SE"), and any other documents incorporated therein, (collectively, the "Agreement" or "MSA"). As used herein, the SE includes any applicable Service Schedules, Service Guides ("SGs"), and service level agreements ("SLAs") attached and/or incorporated thereto. In the event of any conflict of terms between the underlying service Agreement and the SE, the SE will govern.

If there is no SE in place between the parties, this Service Order will be subject to and governed by all terms of the standard SE as posted at <http://www.centurylinktechnology.com/legal-guides>, which shall be incorporated herein and made a part hereof.
- Any Service Order which is not executed by Customer prior to the Quote Expiration Date (as indicated herein) shall be cancellable by CenturyLink in its sole discretion. Without limiting any other CenturyLink right, acceptance of this Service Order is subject to credit approval.

Terms and Conditions

1. The Customer Access Extension (i.e. cross connect) ordered herein provides connectivity to an existing CenturyLink service and shall be subject to all terms and conditions governing the existing Services, including a connectivity related SLA, if applicable.
2. The maximum Committed Electrical Capacity (CEC) that Customer is entitled to in each contiguous Customer Area is specified in the table below. For the purposes of the Service Order, the CEC equals the TOTAL purchased number of allocated kilowatts in the Customer Area. Customer acknowledges and agrees that CenturyLink may refuse any request for power that would cause the CEC in the Customer Area to exceed the Maximum CEC identified below.

The Maximum CEC (kilowatts) specified in the table below supersedes all previous Service Order CEC's for the same contiguous space.

Data Center	Maximum CEC
AB3 New SC	2kW

Additional Terms

1. **Expedite Request Fee:** If Customer requests that CenturyLink accelerate a Service Delivery Date and CenturyLink in its sole discretion agrees to accelerate such date, Customer agrees to pay, as invoiced by CenturyLink, an initial flat fee of \$500, plus \$50 per day per service package for each day the actual delivery date precedes the Service Delivery Date identified by the order/project manager and documented in CenturyLink's order management system.
2. **Baseline Service Change Fee:** If Customer requests changes to baseline Service requirements prior to the Service Delivery Date, Customer agrees to pay, as invoiced by CenturyLink, all of the following: (i) a change fee in the amount of \$500, (ii) \$150 per hour for work resulting from Customer changes implemented by CenturyLink, and (iii) third party charges and fees incurred by CenturyLink as the result of Customer's requested change.
3. **Three Month Colocation Credit:** After the third month of the Initial Term, CenturyLink will provide a one-time credit to the Customer's invoice for the first three month's Colocation services that include space, power and distribution power only. The contracted Colocation Service is required to be installed in its entirety by the 90th day after contract signature. Credit will be issued after installation is complete. Should Customer terminate the Services prior to the completion of initial term, CenturyLink will reverse the credit and Customer will pay CenturyLink the credited amount as well as any applicable ETCs.

Upon Customer's signature on this Service Order, Customer acknowledges the Quote Description is provided solely for informational and illustrative purposes only and such Quote Description is nonbinding with no force or effect.

CenturyLink Communications, LLC

SANTA FE COUNTY - NM

 Name:
 Title:
 Date:

 Name:
 Title:
 Date:

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT

This CenturyLink Loyal Advantage Agreement ("Agreement") is between CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC ("CenturyLink") and Santa Fe County ("Customer") and is effective on the date the last party signs it ("Effective Date"). CenturyLink may withdraw this offer if Customer does not execute and deliver the Agreement to CenturyLink on or before December 31, 2014 ("Cutoff Date"). Using CenturyLink's electronic signature process for the Agreement is acceptable.

SANTA FE COUNTY

CENTURYLINK COMMUNICATIONS, LLC

Authorized Signature

Name Typed or Printed

Title

Date

Authorized Signature

Name Typed or Printed
Offer Management

Title

Date

Customer's address for notices:
Customer's facsimile number (if applicable):
Person designated for notices:

1. **Services.** Customer may purchase the products and services ("Services") in service exhibits ("Service Exhibits") attached to the Agreement. The parties agree that any notation to the "CenturyLink Total Advantage Agreement" on the Service Exhibits will be disregarded and such exhibits will be governed by the Agreement. For an interim period of time until all work is completed to update the Service Exhibits, Tariffs and other terms and conditions incorporated by attachment or reference into this Agreement, all references to Qwest Communications Company, LLC mean CenturyLink Communications, LLC. The Service Exhibits attached to the Agreement as of the Effective Date and incorporated by this reference are shown below.

- Domestic iQ Networking Service Exhibit
- Local Access Service Exhibit
- iQ Networking Data Center Connectivity Offer
- iQ Delta Port Offer Attachment
- TS Service Exhibit
- Select Advantage Service Exhibit

2. **Term.** Customer selects the following "Initial Term" of the Agreement: five years ("Initial Term"), 600055 code (QLAGESZ). The Initial Term begins on the Effective Date. At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal periods equal to the Initial Term (a "Renewal Term") if not terminated earlier in accordance with the Agreement. The Initial Term and each Renewal Term are referred to as the "Term."

3. **Rates.** Unless specified otherwise in a Service Exhibit, Services will receive the applicable rates specified in a Service Exhibit, valid Order Form, or CenturyLink-approved quote form, for the duration of the Initial Term. CenturyLink reserves the right to modify rates after the conclusion of each Service's minimum service period upon not less than 30 days' prior written notice to Customer; provided that CenturyLink may reduce the foregoing notice period or modify rates or discounts prior to the conclusion of the minimum service period, as necessary, if such modification is based upon Regulatory Activity. CenturyLink also reserves the right to modify rates when the Agreement renews to the rates that are in effect at that time. If Regulatory Activity causes an increase in the rates for Customer's ordered Services that materially and adversely affects Customer, then Customer may terminate the affected Service upon 30 days' prior written notice to CenturyLink without liability for Cancellation Charges for the affected Service, provided, however that Customer: (a) provides such notice within 30 days after the increase occurs; and (b) provides CenturyLink 30 days to cure such increase. If Customer does not provide CenturyLink such notice during the time permitted in this Section, Customer will have waived its right to terminate the affected Service under this Section.

4. **Payment.** CenturyLink may begin invoicing for specific Services as specified in the applicable Service Exhibit. Customer must pay CenturyLink all charges within 30 days after the invoice date. Any amount not paid when due is subject to late interest at the lesser of 1.5% per month or the maximum rate allowed by law. In addition to payment of charges for Services, Customer must also pay CenturyLink any applicable Taxes assessed in connection with Services. Taxes may vary and are subject to change. If Customer is exempt from any Tax, it must provide CenturyLink with an appropriately completed and valid Tax exemption certificate or other evidence acceptable to CenturyLink. CenturyLink is not required to issue any exemption, credit or refund of any Tax payment for usage before Customer's submission of valid evidence of exemption. Customer may access its invoices and choose paperless invoices online through CenturyLink Control Center located at controlcenter.centurylink.com. If Customer does not choose paperless invoices through Control Center, CenturyLink may in its discretion assess a \$15 MRC for each full paper invoice provided to Customer or a \$2 MRC for each summary/remit only (where available) paper invoice provided to Customer. Those charges will not apply to an invoice that is not available through Control Center. Customer's payments to CenturyLink must be in the form of electronic funds transfer (via wire transfer or ACH), cash payments (via previously-approved CenturyLink processes only), or paper check. CenturyLink reserves the right to charge administrative fees when Customer's payment preferences deviate from CenturyLink's standard practices.

5. **Confidentiality.** Except to the extent required by an open records act or similar law, neither party will, without the prior written consent of the other party: (a) disclose any of the terms of the Agreement; or (b) disclose or use (except as expressly permitted by, or OMR #N99057 (QLAGESZ)

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT

required to achieve the purposes of, the Agreement) the Confidential Information of the other party. Each party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the party would use to protect its own. CenturyLink's consent may only be given by its Legal Department. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. CenturyLink will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of CenturyLink's Services.

6. CPNI. CenturyLink is required by law to treat CPNI confidentially. Customer agrees that CenturyLink may share CPNI within its business operations (e.g., wireless, local, long distance, and broadband services divisions), and with businesses acting on CenturyLink's behalf, to determine if Customer could benefit from the wide variety of CenturyLink products and services, and in its marketing and sales activities. Customer may withdraw its authorization at any time by informing CenturyLink in writing. Customer's decision regarding CenturyLink's use of CPNI will not affect the quality of service CenturyLink provides Customer.

7. Use of Name and Marks. Neither party will use the name or marks of the other party or any of its Affiliates for any purpose without the other party's prior written consent. CenturyLink's consent may only be given by its Legal Department.

8. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS." CENTURYLINK DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

9. Limitations of Liability. The remedies and limitations of liability for any claims arising between the parties are set forth below.

9.1 Consequential Damages. NEITHER PARTY OR ITS AFFILIATES, AGENTS, OR CONTRACTORS IS LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, LOST REVENUES, LOST DATA, LOST BUSINESS OPPORTUNITY, OR COSTS OF COVER. THESE LIMITATIONS APPLY REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF FORESEEABILITY.

9.2 Claims Related to Services. For Customer's claims related to Service deficiencies or interruptions, Customer's exclusive remedies are limited to: (a) those remedies set forth in the SLA for the affected Service or (b) the total MRCs or usage charges paid by Customer for the affected Service in the one month immediately preceding the event giving rise to the claim if an SLA does not exist for the affected Service.

9.3 Personal Injury; Death; Property Damages. For claims arising out of personal injury or death to a party's employee, or damage to a party's real or personal property, that are caused by the other party's negligence or willful misconduct in the performance of the Agreement, each party's liability, to the extent permitted by law, is limited to proven direct damages.

9.4 Other Direct Damages. For all other claims arising out of the Agreement, each party's maximum liability will not exceed in the aggregate the total MRCs and usage charges paid by Customer to CenturyLink under the Agreement in the three months immediately preceding the event giving rise to the claim ("Damage Cap"). The Damage Cap will not apply to a party's obligations under the Responsibilities Section below or Customer's payment obligations under the Agreement.

10. Responsibilities. To the extent permitted under law, each party agrees to be responsible to the other party, its Affiliates, agents, and contractors against all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees, arising directly from performance of the Agreement and related to personal injury or death, or damage to personal tangible property that is alleged to have been caused by the negligence or willful misconduct of the responsible party. To the extent permitted under law, Customer also agrees to be responsible for all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees against CenturyLink, its Affiliates, and contractors, related to the modification or resale of the Services by Customer or End Users, or any AUP violation.

11. Termination.

11.1 Service. Either party may terminate an individual Service or a Service Exhibit: (a) in accordance with the individual Service Exhibit's term requirements with 60 days' prior written notice to the other party, or (b) for Cause. If Service or a Service Exhibit is terminated by Customer for Convenience or by CenturyLink for Cause, then Customer will pay Cancellation Charges.

11.2 Agreement. Either party may terminate the Agreement and all Services by: (a) providing written notice to the other party of its intention not to renew the Agreement at least 60 days prior to the expiration of the then current Term or (b) for Cause. Cause to terminate an individual Service Exhibit will not constitute Cause to terminate the Agreement; rather, Cause to terminate the entire Agreement for Service-related claims will exist only if Customer has Cause to terminate all or substantially all of the Services under the applicable SLA, Service Exhibit, RSS or Tariff. If the Agreement is terminated by Customer for Convenience or by CenturyLink for

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Cause prior to the conclusion of the Term, then Customer will pay the higher of: (c) the Early Termination Charge or (d) the total Cancellation Charges that apply for terminating all CenturyLink Services at the time the Agreement is terminated.

11.3 Unpaid Charges. Customer will remain liable for charges accrued but unpaid as of the termination date.

12. Non-Appropriations. Customer intends to continue this Agreement for its entire Term and to satisfy its obligations hereunder. For each fiscal period for Customer: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; (b) Customer agrees to use all reasonable and lawful means to secure these appropriations; (c) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose. In the event that Customer is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose (as evidenced by notarized documents provided by Customer and agreed to by CenturyLink), Customer may terminate this Agreement without incurring an Early Termination Charge or Cancellation Charges by giving CenturyLink not less than 30 days' prior written notice. Upon termination and to the extent of lawfully available funds, Customer will remit all amounts due and all costs reasonably incurred by CenturyLink through the date of termination.

13. Miscellaneous.

13.1 General. The Agreement's benefits do not extend to any third party (e.g., an End User). If any term of the Agreement is held unenforceable, the remaining terms will remain in effect. Except for time requirements as specifically stated in a Service Exhibit or SLA, neither party's failure to exercise any right or to insist upon strict performance of any provision of the Agreement is a waiver of any right under the Agreement. The terms and conditions of the Agreement regarding confidentiality, the Responsibilities Section, limitation of liability, warranties, payment, dispute resolution, and all other terms of the Agreement that should by their nature survive the termination of the Agreement will survive. Each party is not responsible for any delay or other failure to perform due to a Force Majeure Event.

13.2 Conflicts Provision. If a conflict exists among provisions within the Agreement, the following order of precedence will apply in descending order of control: Service Exhibit, the Agreement, and any Order Form. If Services are provided pursuant to a Tariff, RSS, or ISS as described in the applicable Service Exhibits, the order of precedence will apply in the following descending order of control: Tariff, Service Exhibit, the Agreement, RSS, ISS, and Order Form.

13.3 Independent Contractor. CenturyLink provides the Services as an independent contractor. The Agreement will not create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

13.4 ARRA. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those obligations are explicitly identified and agreed to by the parties in the Agreement or in an amendment to the Agreement.

13.5 HIPAA. CenturyLink does not require or intend to access Customer data in its performance hereunder, including but not limited to any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"). To the extent that any exposure to PHI is incidental to CenturyLink's provision of Service and not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI, such exposure is allowable under 45 CFR 164.502(a)(1)(iii).

13.6 Installation, Maintenance and Repair

(a) Provision of Services is subject to availability of adequate capacity and CenturyLink's acceptance of a complete Order Form.

(b) Customer will reasonably cooperate with CenturyLink or its agents to install, maintain, and repair Services. Customer will provide or secure at Customer's expense appropriate space and power; and rights or licenses if CenturyLink must access the building of Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment. CenturyLink may refuse to install, maintain, or repair Services if any condition on Customer's premises is unsafe or likely to cause injury.

(c) Customer is responsible for any facility or equipment repairs on Customer's side of the demarcation point. Customer may request a technician dispatch for Service problems. Before dispatching a technician, CenturyLink will notify Customer of the dispatch fee. CenturyLink will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point or was not caused by CenturyLink's facilities or equipment on CenturyLink's side of the demarcation point.

13.7 Governing Law; Dispute Resolution.

(a) **Billing Disputes.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges when due and provides CenturyLink with a written explanation of the reasons for Customer's dispute of the charge within 90 days after the invoice date of such amount. If CenturyLink determines, in its good faith, that the disputed charge is valid, CenturyLink will notify Customer and within five business days after CenturyLink's notification, Customer

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must pay the charge and accrued interest.

(b) **Governing Law; Forum.** The Agreement will be governed by the laws of the State in which the Customer's principal office is located without regard to its choice of law principles. Any legal proceeding relating to the Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in Denver, Colorado.

(c) **Waiver of Jury Trial and Class Action.** Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a jury trial and any right to pursue any claim or action relating to the Agreement on a class or consolidated basis or in a representative capacity. If for any reason the jury trial waiver is held to be unenforceable, the parties agree to binding arbitration for any dispute relating to the Agreement under the Federal Arbitration Act, 9 U.S.C. § 1, et. seq. The arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(d) **Limitations Period.** Any claim relating to the Agreement must be brought within two years after the claim arises other than Customer disputing an amount in an invoice, which must be done by Customer within 90 days after the invoice date of the disputed amount.

13.8 No Resale; Security. Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws. CenturyLink has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by CenturyLink from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The CenturyLink information security program is subject to reasonable changes by CenturyLink from time to time. CenturyLink's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

13.9 Assignment. Either party may assign the Agreement without the other party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an Affiliate provided such party gives the other party 30 days' prior written notice. Any assignee of the Customer must have a financial standing and creditworthiness equal to or better than Customer's, as reasonably determined by CenturyLink, through a generally accepted, third party credit rating index (i.e. D&B, S&P, etc.). Any other assignment will require the prior written consent of the other party.

13.10 Amendments; Changes. The Agreement may be amended only in a writing signed by both parties' authorized representatives. Each party may, at any time, reject any handwritten change or other alteration to the Agreement. CenturyLink may change features or functions of its Services; for material changes that are adverse to Customer, CenturyLink will provide 30 days' prior written notice, but may provide a shorter notice period if the change is based on Regulatory Activity. CenturyLink may amend, change, or withdraw the Tariffs, RSS, ISS or AUP, with such updated Tariffs, RSS, ISS or AUP effective upon posting or upon fulfillment of any necessary regulatory requirements.

13.11 Websites. References to websites in the Agreement include any successor websites designated by CenturyLink.

13.12 Required Notices. Unless provided otherwise in the Agreement, all required notices to CenturyLink must be in writing, sent to 1801 California St., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Legal Dept., and to Customer as provided above. All notices are effective: (a) when delivered via overnight courier mail or in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; or (c) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

13.13 Service Termination Notices. Customer's notice of termination for CenturyLink QCC Services must be sent via mail, facsimile or e-mail to: CenturyLink, Attn.: GBM Disconnects, 112 Sixth St., Bristol, TN 37620, Fax: 866.887.6633, e-mail: GBMdisconnects@CenturyLink.com. Such termination is effective 30 days after CenturyLink's receipt of the notice, unless a longer period is otherwise required. For Services under the Select Advantage Service Exhibit, Customer must call the customer care number specified on Customer's invoice to provide notice of termination.

13.14 Entire Agreement. The Agreement (including any applicable Service Exhibit, CenturyLink accepted Order Forms, and all referenced documents) constitutes the entire agreement between the parties and supersedes all prior oral or written agreements or understandings relating to the same service, ports, or circuits at the same locations as covered under the Agreement.

14. Definitions.

"Affiliate" means any entity controlled by, controlling, or under common control with a party.

"AUP" means the Acceptable Use Policy incorporated by this reference and posted at <http://www.centurylink.com/legal/>.

"Cancellation Charge" means the cancellation charge described in the applicable Service Exhibit and charges incurred by CenturyLink from a third party provider as a result of an early termination.

"Cause" means the failure of a party to perform a material obligation under the Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default; or (b) for any other material breach, within 30 days after written notice.

"CenturyLink QCC" means the former Qwest Communications Company, LLC d/b/a CenturyLink QCC. On April 1, 2014, CenturyLink OMR #N99057 (QLAGESZ)

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT

completed an internal reorganization resulting in the merger of multiple CenturyLink owned companies into Qwest Communications Company, LLC. Simultaneously with the merger, Qwest Communications Company, LLC changed its name to CenturyLink Communications, LLC. The term "CenturyLink QCC" refers to the former "d/b/a CenturyLink QCC" company and not to any other CenturyLink owned companies now a part of CenturyLink Communications, LLC.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature, (including CPNI), and that: (a) the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party; or (b) is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect the information from disclosure. Confidential Information will not include information that is in the public domain through no breach of the Agreement by the receiving party or is already known or is independently developed by the receiving party.

"Convenience" means any reason other than for Cause.

"CPE" means any customer equipment, software, and/or other materials of Customer used in connection with the Service.

"CPNI" means Customer Proprietary Network Information, which includes confidential account, usage, and billing-related information about the quantity, technical configuration, type, destination, location, and amount of use of a customer's telecommunications services. CPNI reflects the telecommunications products, services, and features that a customer subscribes to and the usage of such services, including call detail information appearing in a bill. CPNI does not include a customer's name, address, or telephone number.

"Early Termination Charge" means an amount equal to 35% of the average monthly charges billed under this Agreement through the date of termination multiplied by the number of months remaining in the Term.

"End User" means Customer's members, end users, customers, or any other third parties who use or access the Services or the CenturyLink network via the Services.

"Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, explosion, lightning, hurricane, labor dispute, cable cuts by third parties, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services.

"ISS" means CenturyLink's Information Services Schedule incorporated by this reference and posted at: http://www.centurylink.com/tariffs/clc_info_services.pdf.

"MRC" means monthly recurring charge.

"NRC" means nonrecurring charge.

"Order Form" includes both order request forms and quotes issued by CenturyLink. If a CenturyLink service requires a quote to validate the Order Form pricing, the quote will take precedence over the order request form, but not over the Service Exhibit.

"Regulatory Activity" is a regulation or ruling by any regulatory agency, legislative body or court of competent jurisdiction.

"RSS" means as applicable CenturyLink's Rates and Services Schedules incorporated by this reference and posted at http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_2.pdf for CenturyLink's International RSS and at http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_3.pdf for CenturyLink's Interstate RSS.

"SLA" means the service level agreement applicable to a Service as described in a Service Exhibit.

"State" means one of the 50 states of the United States or the District of Columbia.

"Tariff" includes as applicable: CenturyLink state tariffs, price lists, price schedules, administrative guidelines, catalogs, and rate and term schedules incorporated by this reference and posted at <http://www.centurylink.com/tariffs>.

"Tax" or "Taxes" means foreign, federal, state, and local excise, gross receipts, sales, use, privilege, or other tax (other than net income) now or in the future imposed by any governmental entity (whether such Taxes are assessed by a governmental authority directly upon CenturyLink or the Customer) attributable or measured by the sale price or transaction amount, or surcharges, fees, and other similar charges that are required or permitted to be assessed on the Customer. These charges may include state and federal Carrier Universal Service Charges, as well as charges related to E911, and Telephone Relay Service.

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
DOMESTIC IQ NETWORKING SERVICE EXHIBIT**

1. **General.** CenturyLink QCC will provide Domestic CenturyLink IQ® Networking Service ("Service") under the terms of the Agreement and this Service Exhibit.

2. **Service.**

2.1 **Description.** Service is a data, IP, and a network management solution that is designed for connectivity between Customer's sites or public Internet connectivity. Service includes ports ("Ports"), features, and network management capabilities. The rate of data transmission and features vary based on the type of Port ordered. Service does not include local access or customer premises equipment ("CPE"), which may be separately purchased from CenturyLink.

2.2 **Ports.** CenturyLink offers Service in a variety of speeds and in the following three Port types:

(a) **Internet Port.** Internet Ports provide public Internet connectivity.

(b) **Private Port.** Private Ports provide WAN connectivity between Customer sites. Customer may allocate Private Port traffic up to 10 different closed user groups. Customer may request more than 10 point-to-point closed user groups for an additional charge. Quality of service ("QoS") traffic prioritization can be used with Private Ports. Ethernet Private Ports with real-time traffic that require QoS are subject to local access limitations.

(c) **Enhanced Port.** Enhanced Ports provide the functionality of both an Internet Port and a Private Port in a consolidated solution.

2.3 **Network Management Service.** CenturyLink Network Management Service ("NMS") is a feature for all Ports. The feature, available as Select Management or Comprehensive Management, provides performance reporting, change management, configuration management, fault monitoring, management and notification of CPE and network related issues. CenturyLink will provide Select Management with each Port unless (a) Customer notifies its CenturyLink sales representative that Customer opts out of Select Management for that Port or (b) Customer chooses Comprehensive Management for that Port. Customer may also request NMS management features for devices not associated with a CenturyLink IQ Networking Port with CenturyLink's prior approval. The NMS management types are set forth in more detail below:

(a) **Select Management.** Select Management includes: 24x7x365 remote performance monitoring, reporting, and ticketing via an NMS online portal for devices supported by CenturyLink. Select Management also includes complete fault monitoring, management and notification (detection, isolation, diagnosis, escalation and remote repair when possible), change management supported by CenturyLink (up to 12 changes per year), asset management (device inventory), and configuration management (inventory of customer physical and logical configuration). Customer must make change management requests via Control Center at <https://controlcenter.centurylink.com>. Select Management only supports basic routing functions. NMS does not include new CPE initial configuration, lab testing, lab modeling, or on-site work of CPE. The NMS supported device list and a standard change management list are available on request and are subject to change without notice.

(b) **Comprehensive Management.** Comprehensive Management includes all of the Select Management features as well as total customer agency and change management (up to 24 configuration changes per year) of complex routing functions within routers, switches, and firewall modules. This includes configuration and management of complex routing, switching, device NIC cards, firewall module configurations, and basic router internal firewall functions. CenturyLink acts as the Customer's single point of contact in managing the resolution of all service, device, and transport faults covered by Comprehensive Management and will work with any third party hardware and/or transport providers the Customer has under contract until all network issues are successfully resolved. With Internet security protocol ("IPSec"), CenturyLink can configure full mesh, partial mesh, or hub-and-spoke topologies with secure tunnels for remote communication between Customer locations. IPSec is only available on approved Cisco and Adtran devices. IPSec opportunities greater than 25 devices or with other manufacturer's devices require CenturyLink approval before submitting an order.

(c) **Monitor and Notification.** Monitor and Notification is an optional NMS feature that can be used for Customer owned devices that do not support SNMP and are not connected to any CenturyLink IQ Networking Ports. CenturyLink will monitor the Customer devices 24x7x365 for up/down status and notify Customer of faults. Customer is responsible for any trouble shooting and repair of Customer owned devices. This feature does not include any of the Select Management or Comprehensive Management features.

(d) **CenturyLink Responsibilities.** For NMS, CenturyLink will provide Customer with a nonexclusive service engineer team, which will maintain a Customer profile for the portion of the Customer's network where the devices covered by NMS reside. CenturyLink will work with Customer to facilitate resolution of service affecting issues with Select Management or Comprehensive Management.

(e) **Customer Responsibilities.**

(i) Customer must provide all information and perform all actions reasonably requested by CenturyLink in order to facilitate installation of NMS. If Customer limits or restricts CenturyLink's read/write access to a device, CenturyLink cannot support configuration backups. Customer is responsible for supporting CenturyLink in access, troubleshooting, and configuration requests made in accordance with normal troubleshooting and repair support activities. For Out-of-Band management related to fault

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isolation/resolution, Customer will provide and maintain a POTS line for each managed device. "Out-of-Band" means a connection between two devices that relies on a non-standard network connection, such as an analog dial modem, which must be a CenturyLink certified 56k external modem. Additionally, Customer will provide a dedicated modem for each managed device. It is not mandatory that Customer have a POTS line but Customer must understand that CenturyLink will not be able to troubleshoot issues if the device covered by NMS cannot be reached. Service related outages requiring access to the device for troubleshooting and repair purposes will impact the eligibility of any associated SLA credits.

(ii) For Comprehensive Management, Customer must execute the attached Letter of Agency (Attachment 1) to authorize CenturyLink to act as Customer's agent solely for the purpose of accessing Customer's transport services.

(iii) Depending on transport type, Customer's managed devices must comply with the following set of access requirements: (A) for NMS delivered via IP connectivity with an Internet Port or other public Internet service, devices must contain an appropriate version of OS capable of establishing IPsec VPNs; and (B) for NMS delivered with a Private Port, CenturyLink will configure a virtual circuit to access Customer's device at no additional charge. CenturyLink will add the NMS network operations center to the Customer closed user group to manage the devices within Customer's network.

(iv) Customer must provide a routable valid IP address to establish the NMS connection. Customer's primary technical interface person must be available during the remote installation process to facilitate installation of NMS. All Customer devices managed under NMS must be maintained under a contract from a CenturyLink approved onsite CPE maintenance provider. The response times for which Customer contracts with its CPE maintenance provider will affect CenturyLink's timing for resolution of problems involving Customer provided devices. The performance of the CPE maintenance provider is Customer's responsibility.

2.4 End-to-End Performance Reporting. End-to-End Performance Reporting is a feature included with Private Ports and the Private Port functionality of Enhanced Ports, except for Ports with VPLS. Customer must include CenturyLink as a member of each closed user group. The feature includes a report based on data collected from Customer's traffic within its closed user groups and measures availability, jitter, latency, and packet delivery between Customer's edge routers, between CenturyLink's routers, and between Customer's edge routers and CenturyLink's routers. The data contained in the report is measured differently than the goals contained in the SLA applicable to the Service and is for informational purposes only. Customer is not entitled to SLA credits based on the data in the report. Customer may access the report in the Control Center portal.

2.5 Multicast. Multicast is an optional feature for Private Ports and the Private Port functionality of Enhanced Ports. The feature enables IP multicast on the CenturyLink IP network. Customer must configure its edge devices with CenturyLink designated multicast protocol specifications and use the CenturyLink designated IP address range for Customer's multicast applications. The standard feature allows up to ten sources of multicast traffic per Customer, but CenturyLink may permit a limited number of additional sources.

2.6 Secure IP Gateway. Secure IP Gateway ("SIG") is an optional feature for Enhanced Ports. SIG adds a network based firewall feature to an Enhanced Port and supports Customer defined network address translation policies and firewall rule sets.

2.7 VPLS. Layer 2 virtual private LAN service ("VPLS") is optional feature for Private Ports. Private Ports with VPLS are supported on CenturyLink-certified Cisco equipment and are limited to the following connection and encapsulation methods: Ethernet 10 Mbps, 100 Mbps, 1000 Mbps with Ethernet encapsulation; DS1 and DS3 with Frame Relay encapsulation, and OC3 with ATM encapsulation. The following features are not available with Private Ports with VPLS: (a) usage reports; (b) the Precise Burstable or Data Transfer pricing methodologies; (c) the SLA's Reporting Goal; (d) VPN Extensions and (e) End-to-End Performance Reporting.

2.8 VPN Extensions. A VPN Extension is an optional feature for layer 3 multi protocol label switching ("MPLS") Private Ports and Enhanced Ports. The feature allows Customer to extend its Layer 3 MPLS closed user groups to Customer locations that are not served by CenturyLink's MPLS network ("Remote Location"). Customer can establish a tunnel through the Internet between the Customer's CPE at the Remote Location (separately purchased and managed by Customer) and the CenturyLink network device. The Customer provided CPE must support the CenturyLink service configurations and be installed as designated by CenturyLink or as otherwise agreed upon by the parties. Customer is responsible for the installation, operation, maintenance, use and compatibility of the Remote Location CPE. Customer will cooperate with CenturyLink in setting the initial configuration for the Remote Location CPE interface with the VPN Extension Service. Customer must use IP connectivity at the Remote Location that includes a static public IP address.

(a) **Exclusions.** CenturyLink will not debug problems on, or configure any internal or external hosts or networks (e.g., routers, DNS servers, mail servers, www servers, and FTP servers). All communication regarding the VPN Extension must be between CenturyLink and a Customer approved site contact that has relevant experience and expertise in Customer's network operations. The following features are not available with VPN Extensions: (i) End-to-end Performance Reporting; (ii) QoS; (iii) VPLS; and (iv) Multicast. VPN Extensions are not subject to the SLA.

2.9 Backbone Prioritization. Backbone Prioritization is an optional feature available with individual domestic Private Ports. When this feature is configured on a Private Port, traffic originating from that Port will be designated at a higher class of service to the CenturyLink IP network than traffic originating from Private Ports without the feature or Internet Ports. If Customer desires Backbone Prioritization for traffic between two or more Private Ports, the feature must be ordered for each Private Port. The benefit from

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Backbone Prioritization is realized during periods of high network congestion. Backbone Prioritization may not be available at all locations or with Multicast in certain circumstances.

3. Ordering. For purposes of this Service Exhibit, "Order Form" means an electronic order confirmation process using an architecture confirmation document ("ACD") or other document that Customer and CenturyLink mutually agree to prior to submitting a Service order request. CenturyLink must approve each Order Form and Customer must send it via e-mail, fax, or other CenturyLink-approved electronic process to CenturyLink. Subject to availability, CenturyLink will assign /29 Internet address space for Customer during the use of a Port. Neither Customer nor any End Users will own or route these addresses. Upon termination of Service, Customer's access to the IP addresses will cease. If Customer requests special sequencing for Port installation, Customer must designate a Key Port. A "Key Port" is a Port that must be available on the network before adding additional Port locations. The installation of the Key Port will determine the timelines for the installation of other domestic Ports. Customer may designate one Key Port within its CenturyLink IQ Networking network topology by notifying CenturyLink in writing of that request. Unless the parties otherwise agree in writing, Customer has sole responsibility for ordering, securing installation and ensuring proper operation of any and all equipment required to enable Customer to receive the Service.

4. Charges. Customer must pay all applicable MRCs and NRCs set forth in the attached pricing attachment or offer attachment. Charges will commence within five days after the date CenturyLink notifies Customer that Service is provisioned and ready for use ("Start of Service Date"). Customer may order multiple Ports with multiple pricing methodologies in accordance with the pricing methodologies set forth below. Customer may change the pricing methodology (e.g., from Flat Rate to Precise Burstable) of a Port if: (a) the Port's new MRC remains the same or greater than the old MRC, and (b) the Port starts a new Service Term that is equal to or greater than the remaining number of months in the old Service Term, subject to a 12 month minimum. CenturyLink may change rates after the completion of a Port's Service Term with 60 days' notice. The net rate MRCs set forth in the pricing attachment or offer attachment will be used to calculate Contributory Charges. Net rate MRCs are lieu of all other rates, discounts, and promotions. The End to End Performance Reporting, VPN Extension, SIG and Multicast features are provided on a month-to-month basis and either party may cancel a feature with 30 days' prior written notice to the other party. CenturyLink may upon 30 days prior written notice to Customer modify those features, including without limitation, their rates.

4.1 Pricing Methodologies.

(a) Flat Rate. The Flat Rate pricing methodology bills Customer a specified MRC for a given Port speed regardless of Customer's actual bandwidth utilization.

(b) Tiered. The Tiered pricing methodology caps Customer's bandwidth at the tier specified on an Order Form and bills the Customer a fixed MRC based on that bandwidth tier regardless of Customer's actual bandwidth utilization. No more than once per month, Customer may change its specific bandwidth tier (e.g., 2 Mbps to 10 Mbps) within the applicable Port classification (e.g., Ethernet, Fast Ethernet). Customer may not change its bandwidth from one Port classification to another.

(c) Precise Burstable. Usage samples are taken every five minutes throughout the monthly billing cycle. Only one sample is captured for each five-minute period, even though there are actually two samples taken; one for inbound utilization and one for outbound utilization. The higher of these two figures is retained. At the end of the billing period, the samples are ordered from highest to lowest. The top 5% of the samples are discarded. The highest remaining sample is used to calculate the usage level, which is the 95th percentile of peak usage. For each Precise Burstable Port, Customer will pay an MRC calculated by multiplying Customer's 95th percentile of peak usage in a given month by the applicable MRC per Mbps. There is a minimum usage amount within each Precise Burstable Port classification ("Precise Burstable Minimum"). Customer will be billed the greater of the Precise Burstable Minimum or the actual charges based upon its 95th percentile of peak usage.

(d) Data Transfer. Usage samples are taken every five minutes throughout the Customer's monthly billing cycle. Samples are taken for both in-bound utilization and out-bound utilization. Customer will be billed for the sum total of both inbound and outbound utilization. Charges are applied using a stepped or "metered" methodology such that Customer's traffic will be billed incrementally at each volume tier. For example, if Customer's total volume on a DS1 circuit is 10 GB, the first 7 GB of such total would be billed at the 0-7 GB tier, and the remaining 3 GB would be billed at the 7.01-17 GB tier. For each Data Transfer Port ordered hereunder, Customer will pay an MRC calculated by multiplying Customer's volume of data transferred in a given month (in GBs) by the applicable MRC per GB. Within each Data Transfer Port classification (e.g., DS1, DS3), Customer will be subject to the minimum usage amount set forth in the column heading of the applicable Data Transfer pricing table ("Data Transfer Minimum"). Customer will be billed the greater of the Data Transfer Minimum or the actual charges based upon its actual volume of data transferred. Data Transfer pricing is only available if Customer's premises-based router uses HDLC, PPP, or MLPPP line encapsulation.

5. Term; Cancellation.

5.1 Term. The term of an individual Port (and NMS feature, if applicable) begins on the Start of Service Date for that Port and continues for five years ("Service Term"). If Service is installed at multiple Customer locations or with multiple Ports at a Customer location, each separate Port (and associated NMS) will have its own Start of Service Date. Upon expiration of a Service Term, Service (and associated NMS) will remain in effect on a month-to-month basis until canceled by either party with 60 days' notice.

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5.2 Cancellation. Upon cancellation of a Service, Customer will remain liable for charges accrued but unpaid as of the cancellation date. If a Port or NMS is canceled by Customer other than for Cause, or by CenturyLink for Cause, before the conclusion of its initial Service Term or Upgrade Service Term (as described in the "Upgrades" section), Customer will pay a "Cancellation Charge" equal to: (a) 100% of the balance of the MRCs that otherwise would have become due for the unexpired portion of the first 12 months of the Service Term (or Upgrade Service Term), if any, plus (b) 35% of the balance of the MRCs that otherwise would have become due for the unexpired portion, if any, of the Service Term (or Upgrade Service Term) beyond the first 12 months, plus (c) the amount of any NRCs discounted or waived if the Port has not remained installed for at least 12 months.

5.3 Waiver of Cancellation Charges.

(a) **Upgrades.** CenturyLink will waive the Cancellation Charges if Customer: (i) upgrades the Port to a higher bandwidth (e.g., from a DS1 to a DS3) within the same pricing methodology; or (ii) upgrades the Port type to a higher Port type (e.g., from an Internet Port to a Private Port or an Enhanced Port) within the same pricing methodology. All upgraded Ports must have a Service Term equal to or greater than the replaced Port's remaining Service Term, subject to a 12 month minimum ("Upgrade Service Term"). If Customer cancels the upgraded Port before the completion of the Upgrade Service Term, Customer will pay the Cancellation Charges set forth in the Cancellation section above. In some cases an upgrade to a Port may trigger a Local Access charge under the Local Access Service Exhibit.

(b) **Migration to Other CenturyLink Services.** CenturyLink will waive the Cancellation Charges if Customer migrates the Port to new Analog VoIP Service or Data Bundle Solutions (a "New Service") as long as: (i) the New Service's MRC is equal to or greater than the combined MRCs of the Port and the associated Local Access Service being terminated; (ii) the New Service's minimum service term is at least as long as the then remaining Service Term of the Port being terminated; and (iii) the New Service is available.

6. Additional Disclaimer of Warranty. In addition to any other disclaimers of warranty stated in the Agreement, CenturyLink makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the Services will render Customer's systems invulnerable to security breaches. Customer is responsible for Customer's own network security policy (including applicable firewall and NAT policies) and security response procedures.

7. E-mail Notification. Customer acknowledges and agrees that CenturyLink may contact Customer via e-mail at the e-mail address provided to CenturyLink when Customer ordered the Service for any reason relating to the Service, including for purposes of providing Customer any notices required under the Agreement. Customer agrees to provide CenturyLink with any change to its e-mail address.

8. AUP. All use of the Services must comply with the AUP located at <http://www.centurylink.com/legal/>, which is subject to change. CenturyLink may reasonably change the AUP to ensure compliance with applicable laws and regulations and to protect CenturyLink's network and customers. Any changes to the AUP will be consistent with the purpose of the AUP to encourage responsible use of CenturyLink's networks, systems, services, Web sites, and products.

9. SLA. Service is subject to the CenturyLink IQ Networking service level agreement ("SLA"), and the NMS feature is subject to the NMS SLA each located at <http://www.centurylink.com/legal/>, which are subject to change. For Customer's claims related to Service or NMS feature deficiencies, interruptions or failures, Customer's exclusive remedies are limited to those remedies set forth in the applicable SLA.

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PRICING ATTACHMENT

1. Pricing.

1.1 Network Management Service MRCs.

(a) NMS for devices associated with a CenturyLink IQ Networking Port. The following MRC is in addition to the Port MRC.

Description	Promo Code	MRC	NRC
NMS for devices associated with a CenturyLink IQ Networking Port.			
Select Management	IQ MANAGED	\$45.00 per device*	N/A
Comprehensive Management	IQ MANAGED	\$75.00 per device	N/A

*CenturyLink will provide Select Management with domestic CenturyLink IQ Networking Service unless Customer elects to opt out.

(b) NMS for devices not associated with a CenturyLink IQ Networking Port. The following MRC is in addition to the Port MRC.

Description	MRC	NRC
NMS for devices not associated with a CenturyLink IQ Networking Port (including VPN Extensions).		
Select Management	\$60.00 per device	N/A
Comprehensive Management	\$100.00 per device	N/A
Monitor and Notify	\$35.00 per device	N/A

1.2 CenturyLink IQ Networking Features.

(a) Secure IP Gateway.

Description	NRC
Secure IP Gateway Activation Fee	\$200.00 per each Enhanced Port

(b) VPN Extensions.

Description	MRC	NRC
VPN Extensions	\$25.00 per IPsec tunnel	\$50.00 per IPsec tunnel

(c) Backbone Prioritization. Backbone prioritization charges are in addition to the applicable Private Port MRCs.

Description	Increased MRC
Backbone Prioritization	CenturyLink will apply a 20% uplift charge to the MRC of each Private Port configured with Backbone Prioritization.

1.3 Port Pricing Tables. Some Port types or Port speeds may not be available in all areas or with certain types of access. If Customer wishes to order domestic CenturyLink IQ Networking Service with a different bandwidth or pricing methodology than those contained in the below pricing tables, Customer must enter into a separate written amendment to this Agreement.

Refer to the pricing outlined in the IQ Networking Data Center Connectivity Offer

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ATTACHMENT 1

COMPREHENSIVE MANAGEMENT

**LIMITED LETTER OF AGENCY
between
Santa Fe County ("Customer")
and**

CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC ("CenturyLink")

This limited letter of agency ("LOA") hereby authorizes CenturyLink to act as the Customer's agent for the limited purpose of contacting Customer's designated Local Exchange Carrier ("LEC"), Interexchange Carrier ("IXC"), Internet Service Provider ("ISP"), or customer premises equipment ("CPE") maintenance provider in conjunction with CenturyLink Network Management Service. Network Management Service activities will consist of working with Customer's LEC, IXC, ISP, and/or CPE maintenance provider for the purpose of: (a) extracting information concerning transmission data elements carried over Customer's network connection; (b) identifying Customer's links or data link connection identifiers ("DLCIs"); (c) opening, tracking, and closing trouble tickets with the LEC, IXC, ISP, or CPE maintenance provider on Customer's transport links or CPE when an alarm or fault has been detected; (d) dispatching CPE repair personnel on behalf of Customer to CPE for which a fault has been detected; and (e) discussing fault information with the LEC, IXC or CPE maintenance provider on behalf of Customer to facilitate resolution of the problem.

CenturyLink does not assume any of Customer's liabilities associated with any of the services the Customer may use.

The term of this LOA will commence on the date of execution below and will continue in full force and effect until terminated with 30 days written notice by one party to the other or until the expiration or termination of the Network Management Service.

A copy of this LOA will, upon presentation to LEC, IXC, ISP, and/or CPE maintenance provider, as applicable, be deemed authorization for CenturyLink to proceed on Customer's behalf.

SANTA FE COUNTY
Customer Company Name

Authorized Signature of Customer

Print or Type Name

Title

Date

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1. General. CenturyLink QCC will provide Local Access Service ("Service") under the terms of this Service Exhibit, the Agreement and the RSS.

2. Service Description and Availability.

2.1 Description. Service provides the physical connection between the Service Address and the CenturyLink Domestic Network. Service includes any entrance cable or drop wire to, and equipment maintained by CenturyLink at the Demarcation Point, but does not include CPE, Extended Wiring, inside wiring, or other equipment not maintained by CenturyLink. Customer is responsible for any additional terminations beyond the Demarcation Point. All equipment owned by CenturyLink remains property of CenturyLink. Customer disclaims any interest in any equipment, property or licenses used by CenturyLink to provide Service. CenturyLink will not provide Service to a residential location, even if business is conducted at that location. Service is not a standalone service and Customer must purchase the Service in connection with another CenturyLink service for which a local loop is required.

2.2 Types of Service Technologies. CenturyLink uses the following different technologies to provide Service. Some technologies or speeds may not be available in all areas or with certain types of Service.

(a) Special Access. "Special Access" means Service using digital signal bandwidths DS0, DS1 and DS3 or Optical Carrier signal bandwidths OC3, OC12, OC48 and OC192.

(b) Ethernet Local Access ("ELA"). ELA is available at bandwidths varying from 1 Mbps to 1,000 Mbps (1G) and 10G (Cross-Connect Access only). ELA is available in the following options: Native Single-Class-of-Service (CoS) Low, Native Single-CoS Medium, Native Single-CoS High, Native Multi-CoS, ELA over SONET, or Ethernet Virtual Access ("EVA"). "Native Single-CoS Low" is a layer 2, switched, native service using a standard Ethernet offering from the local access provider. Native Single-CoS Low is not recommended for use with critical applications (i.e. voice), but is ideal for non-critical applications (i.e. Internet and email traffic). "Native Single-CoS Medium" is a layer 2, switched, native service using a better-than-standard Ethernet offering from the local access provider. Native Single-CoS Medium is ideal for a combination of non-critical and/or critical applications; typically varying voice, video, and data. "Native Single-CoS High" is a layer 2, switched, native service using the best Ethernet offering from the local access provider. Native Single-CoS High is ideal for critical applications; typically predictable and reliable voice and data. Native Single-CoS Medium and Native Single-CoS High are only available with the following CenturyLink services: CenturyLink IQ® Networking Private Port or Enhanced Port with Secure Internet Gateway, E-Line, or Ethernet Private Line ("EPL"). Native Single-CoS Medium or Native Single-CoS High circuit speed must match the maximum CenturyLink IQ Networking port, E-Line, or EPL bandwidth. "Native Multi-CoS" is a layer 2, switched, native service closely aligning the CenturyLink IQ Networking QoS and the local access provider's Ethernet class of service offering and is only available with CenturyLink IQ Networking Private Port or Enhanced Port with Secure Internet Gateway. Native Single-CoS Medium, Native Single-CoS High, or Native Multi-CoS may be used to support CoS for critical applications (i.e. voice). "ELA over SONET" is a layer 1, SONET-based service. EVA is a layer 2, Ethernet-based service that provides customers with a premium non-oversubscribed connection with Fast E and Gig E connection types. Customer may experience delayed installation intervals due to construction requirements and available bandwidths may be limited due to distance and available Ethernet-supported facilities from the local access provider.

(c) Wavelength Local Access. "Wavelength Local Access" means Service using wave division multiplexing technology. Wavelength Local Access is available at bandwidths of 1 GbE, 10 GbE LAN PHY, 2.5 G (OC48), 10 GbE WAN PHY (OC192), 40G, OTU1, OTU2, OTU3, 1G, 2G, 4G and 10G.

(d) DSL Local Access. "DSL Local Access" means Leased Access using digital subscriber line ("DSL") technology. DSL Local Access is available at bandwidths varying from 128 kbps/64 kbps to 15000 Mbps/1000 Mbps. Customer may experience delayed installation intervals due to Construction requirements and available bandwidths may be limited due to distance and available DSL-supported facilities from the local access provider.

(e) IP Connection. "IP Connection" is a Layer 3, symmetrical transport service that utilizes established dedicated IP and MPLS transport technologies. IP Connection is available only for the provision of (i) wireline broadband Internet access (as defined in applicable Federal Communications Commission orders and regulations), or (ii) wireline broadband Internet access plus additional information services. IP Connection provides connectivity between single Customer locations within an affiliate LEC metropolitan area and a "hub" location using industry standard dedicated IP and MPLS protocols. The transmission speed depends on the amount of bandwidth available at the respective Customer location, which may be dependent on available underlying technology at the location. Service is available over multiple designs, which may include but not be limited to symmetrical VDSL2 connectivity with MPLS transport supporting speeds up to 40/40mg and symmetrical GPON connectivity with MPLS transport supporting speeds up to 1G/1G, all providing an IP Connection over the given transport solution.

2.3 Types of Service. CenturyLink offers the following three types of Service: CenturyLink Provided Access, Customer Provided Access or Cross-Connect Access.

2.3.1 CenturyLink Provided Access. "CenturyLink Provided Access" or "CLPA" means either On-Net Access or Leased Access.

(a) On-Net Access. For On-Net Access, Customer must be located in a CenturyLink designated building in which On-Net Access is generally available. On-Net Access is generally available as Special Access (except at the DS0 bandwidth), ELA, and Wavelength Local Access. Depending on the Service Address, On-Net Access may be provided through an existing CPOP, newly built CPOP, OMR #N99057 (QLAGESZ)

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existing intra-building local loop facilities, or connections to a third party provider where CenturyLink coordinates the connectivity between CenturyLink facilities and facilities of a service provider with whom CenturyLink is interconnected. On-Net Access is subject to the On-Net Service Level Agreement located at <http://www.centurylink.com/legal/>, which is subject to change.

(b) Leased Access. Leased Access is generally available as Special Access, ELA, Wavelength Local Access and DSL Local Access at the bandwidths described in this Service Exhibit for those access types. Customer may request a specific local access provider for Leased Access from a list of available providers with whom CenturyLink has interconnect agreements. CenturyLink will attempt to use the Customer requested provider, but both final routing and the provider actually used will be chosen by CenturyLink. Where available for Special Access, ELA and Wavelength Local Access, Customer may request CenturyLink to provide a separate fiber facility path for a protection system between the local access provider's serving wire center and the Service Address ("Protect Route"). Protect Route uses backup electronics and two physically separate facility paths in the provisioning of Service. If the working facility or electronics fail, or the Service performance becomes impaired, the facility is designed to automatically switch to the Service protect path in order to maintain a near-continuous flow of information between locations. Special Access and ELA are also generally available as a central office meet point at a local access provider central office to which Customer has a dedicated connection.

2.3.2 Customer Provided Access. "Customer Provided Access" or "CPA" means a local loop that Customer orders from a local access provider to connect Customer's premises to the CenturyLink Domestic Network at a connection point specified by CenturyLink. CenturyLink will provide Customer with a limited letter of agency ("LOA"), which is incorporated by this reference, authorizing Customer to act as CenturyLink's agent so that Customer's local access provider will connect Customer's premises to the CenturyLink Domestic Network. Customer will also need to execute a CPA-DAR Addendum for CPA POP with ELA or Wavelength Local Access. Customer will pay a CPA charge to CenturyLink when Customer uses the following: (a) Special Access CPA dedicated facilities or ELA CPA virtual local area network ("VLAN"), both of which are dedicated entrance facilities CenturyLink leases from a local access provider and that carry traffic only from CenturyLink; or (b) ELA CPA POP, which requires CenturyLink to provide space and power for the local access provider to install Ethernet equipment; or (c) Wavelength Local Access. Customer will pay a CPA charge to CenturyLink when Customer uses Special Access CPA non-dedicated facilities owned by local access providers and that carry traffic from multiple carriers, including CenturyLink, if the provider charges CenturyLink for those facilities. CPA ELA VLAN is an access type where CenturyLink will provision and assign an Ethernet virtual circuit from a CenturyLink POP to a Customer designated Ethernet facility leased from a common Ethernet service provider. This access will be used to connect to a CenturyLink VLAN assignment on a CenturyLink IQ Networking Internet or Private Port or E-Line. CenturyLink will not bill customer a CPA charge for an IP layer 3 expansion site because Customer, not CenturyLink, is responsible for ordering a cross-connect from the IP layer 3 expansion site manager to meet CenturyLink in the IP layer 3 expansion site's meet-me-room. CPA is the responsibility of Customer and CenturyLink will not pay for or troubleshoot components of CPA.

2.3.3 Cross-Connect Access. "Cross-Connect Access" or "XCA" means: (a) an intra-POP connection between certain Customer facilities with direct access to the CenturyLink Domestic Network and the CenturyLink backbone access point (either (i) located within CenturyLink's transport area where CenturyLink allows Customer to bring its own fiber directly to the CenturyLink fiber under an executed Direct Connect Agreement ("Direct Connect") or (ii) in an area where Customer has leased space in a CPOP, a remote collocation site, or a collocation hotel under a Telecommunications Collocation License Agreement or (b) a connection between a Savvis data center and a CenturyLink IQ Networking Port, Optical Wavelength Service ("OWS"), or E-Line ("Savvis Access") under an executed Savvis Service Exhibit with a CenturyLink IQ Networking, OWS or E-Line Service Exhibit. Savvis Access is available in bandwidths of 100 Mbps, 1G, and 10G (CenturyLink IQ Networking and OWS only). Direct Connect requires splicing of Customer and CenturyLink fibers and cross-connection of individual circuits.

2.4 RSS. Customer understands that Service is an interstate telecommunications service, as defined by Federal Communications Commission regulations and represents while using the Service, more than 10% of its usage will be interstate usage.

3. Ordering. Upon acceptance of an order for a Service, CenturyLink will notify Customer of CenturyLink's target date for the delivery of that Service ("Estimated Availability Date"). Once CenturyLink notifies Customer of the Estimated Availability Date for a Service, cancellation fees or Cancellation Charges set forth in the Cancellation section below will apply to any cancellation of that order. If Customer fails to respond to CenturyLink's requests to arrange for the installation of a Service when CenturyLink is ready, CenturyLink may consider the affected Service order canceled. CenturyLink will use commercially reasonable efforts to install each such Service on or before the Estimated Availability Date, but the inability of CenturyLink to deliver Service by such date is not a default under the Agreement or this Service Exhibit.

4. Charges. Customer will pay the net rates set forth in the attached pricing attachment or a quote for Service issued by CenturyLink if the rates for Service at particular Service Address are not included in the pricing attachment, including all applicable ancillary service charges. CenturyLink invoices MRCs in advance and NRCs in arrears. If the Start of Service Date for any Service falls on any day other than the first day of the month, the first invoice to Customer will consist of: (a) the pro-rata portion of the applicable MRC covering the period from the Start of Service Date to the first day of the subsequent month; and (b) the MRC for the following month. Charges for Service will not be used to calculate Contributory Charges. Customer will receive the rates for Service as shown on the pricing attachment regardless of whether an NPA/NXX split or overlay occurs.

4.1 Ancillary Charges. Ancillary charges applicable to Service include but are not limited to those ancillary services set forth in this section. If an ancillary charge applies in connection with provisioning a particular Service, CenturyLink will notify Customer of the ancillary charge to be billed to Customer. Customer may either approve or disapprove CenturyLink providing the ancillary service.

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LOCAL ACCESS SERVICE EXHIBIT**

(a) Expedite. A local loop expedite charge applies to orders where Customer requests the delivery of Service one or more days before the Estimated Availability Date. Customer may only request to expedite CenturyLink Provided Access of Special Access and ELA orders (where underlying local access provider allows CenturyLink QCC to order an expedited service.)

(b) Extended Wiring. "Extended Wiring" means additional wiring required for orders where the Customer requested termination point for Service is not located in the same location as the Demarcation Point. The Demarcation Point is typically located at a suitable location in the basement or on the first floor of a Service Address where provision is made for termination of CenturyLink's outside distribution network facilities. Customer may only request Extended Wiring for (i) Special Access ordered as Leased Access, (ii) DSL Local Access, (iii) Ethernet Local Access (where available), and (iv) IP Connection.

(c) Construction. Construction charges apply if special construction is required to extend Service to a Demarcation Point not covered by Extended Wiring or other activities that may cause CenturyLink to incur expenses for provisioning the Service (e.g., special arrangements of LEC facilities or equipment required to activate the Service) ("Construction"). If Customer does not approve of the Construction charges after CenturyLink notifies Customer of the charges, the Service ordered will be deemed cancelled.

(d) Multiplexing. Customer may request multiplexing for Special Access where available. CenturyLink will multiplex lower level local loop into a higher local loop, or vice-versa, for an additional charge. CenturyLink offers multiplexing at a CPOP, at an On-Net Access building or at an ILEC/CLEC facility providing the Leased Access. For multiplexing at a CenturyLink On-Net Access building, CenturyLink provides multiplexed circuit handoffs to Customer at the same On-Net Access Service Address. For multiplexing at ILEC/CLEC facility, CenturyLink facilitates the delivery of multiplexed circuit handoffs to Customer at a single Service Address or at multiple Service Addresses per Customer's request. Multiplexing is generally available at DS1 and OCn circuit levels. Pricing for multiplexing at an ILEC/CLEC facility is on an individual case basis.

(e) Changes. Ancillary change charge applies where Customer requests CenturyLink to change a local loop to a different Service Address that is within the same Customer serving wire center as the existing local loop, but a Cancellation Charge does not apply.

5. Term; Cancellation.

5.1 Term. The term of an individual Service begins on the Start of Service Date for that Service and continues for the number of months specified in the attached pricing attachment for a particular Service Address or a quote for Service issued by CenturyLink if the rates for Service at particular Service Address are not included in the pricing attachment ("Initial Service Term"). Excluding voice loops and Savvis Access with a month-to-month Initial Service Term, the Initial Service Term will not be less than 12 months. Upon expiration of the Initial Service Term, Service will automatically renew for consecutive periods equal to the Initial Service Term length ("Renewal Service Term"). CenturyLink may change rates at any time after the Initial Service Term, but will not change rates more than once during a Renewal Service Term.

5.2 Cancellation. Upon cancellation of a Service, Customer will remain liable for (a) charges accrued but unpaid as of the cancellation date (including MRCs, NRCs and Construction charges and other ancillary charges), (b) the amount of any NRCs that CenturyLink discounted or waived, if canceled during the first 12 months of the Initial Service Term and (c) any applicable cancellation fees and Cancellation Charges as set forth below.

(a) Leased Access and On-Net Access—Cancellation Before the Start of Service Date. Customer will pay the cancellation fee identified in the below table if cancellation of a Service order occurs before the Start of Service Date. If Customer accepted a Construction charge, Customer will also pay any unpaid Construction charges incurred by CenturyLink. If CenturyLink notifies Customer that Construction is required to provision a Service order and Customer cancels that order before the Start of Service Date because Customer disapproves of the Construction charge, the cancellation fee does not apply.

Leased Access and On-Net Access Service Bandwidth†	Before Start of Service Date Cancellation Fee
DS0 (Leased Access only), DS1, DSL Local Access speeds up to 1536 Kbps/1.024 Mbps	\$150 NRC
DS3, OCn, DSL Local Access speeds greater than 1536 Kbps/1.024 Mbps, all ELA speeds, all Wavelength Local Access speeds, all IP Connection speeds	\$500 NRC

†Includes all types of Service Technology unless otherwise noted.

(b) All Service Types—Cancellation After the Start of Service Date. If a Service is canceled by Customer other than for Cause, or by CenturyLink for Cause, before the conclusion of its Initial Service Term, Customer will pay a "Cancellation Charge" equal to: (i) 100% of the balance of the MRCs that otherwise would have become due for the unexpired portion of the first 12 months of the Initial Service Term, if any, plus (ii) 35% of the balance of the MRCs that otherwise would have become due for the unexpired portion, if any, of the Initial Service Term beyond the first 12 months.

(c) Moves. When Customer requests that CenturyLink move a local loop to a different Service Address that is not within the same Customer serving wire center as the existing local loop such move will be deemed a disconnect of the current local loop to which a Cancellation Charge applies and a new install of a new local loop.

(d) Waiver of Cancellation Charges. CenturyLink will waive the Cancellation Charge for a cancelled Service:

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- (i) When Customer cancels a Special Access ordered as Leased Access if it is (A) DS3 or less, (B) is not part of a bundle or package offering that required Customer to order the local loop with other service components and (C) the local loop's Start of Service Date was at least 12 months prior to the requested date of cancellation.
- (ii) When Customer upgrades existing Special Access, Native Single-CoS Low/Medium/High, Native Multi-CoS, ELA over SONET, or Wavelength Local Access ("Existing CLPA Service") with new Service within the same specific type of Service technology at a higher Service speed (e.g., Special Access DS1 to Special Access DS3 or Native Single-CoS Low Fast E to Native Single-CoS Low Gig E) and with the same local access provider ("Upgraded CLPA Service"). The Upgraded CLPA Service will have a new Service Term beginning on its Start of Service Date. If the type of Service technology changes when Customer upgrades Existing CLPA Service, Customer must pay Cancellation Charges.

(e) Customer Provided Access—Cancellation of Connectivity after Start of Service Date. To cancel CPA, Customer must provide CenturyLink with a written disconnect firm order confirmation ("DFOC") notice from Customer's CPA provider along with notice to cancel the CPA. If Customer fails to provide CenturyLink with the DFOC notice within 30 calendar days after CenturyLink's receipt of the notice to cancel the CPA, or if CenturyLink disconnects CPA for Cause, then CenturyLink may disconnect the CPA or require the CPA provider to do so. Customer will remain liable for charges for the connectivity to CPA (even if Customer cannot use the CPA) until: (i) Customer furnishes the required DFOC to CenturyLink; or (ii) either party cancels the associated CPA with the CPA provider.

6. Grooming. If CenturyLink plans to groom a circuit on which Service is provided, CenturyLink will provide a grooming notice to Customer. For CPA dedicated facilities grooming, Customer will provide a signed LOA to CenturyLink so that CenturyLink can order the necessary changes. Within 20 calendar days after receipt of that notice, Customer will: (a) notify CenturyLink of its approval, which may not be unreasonably withheld; (b) state its reason for refusing; or (c) request that CenturyLink provide Customer with an LOA so Customer can order the necessary changes. Customer's failure to respond within the 20-day period will constitute approval of the groom. If the groom results in Customer incurring additional NRCs from its local access provider and Customer provides sufficient proof of the local access provider charge, CenturyLink will issue a credit to Customer equal to the local access provider NRC for each groomed circuit. If Customer refuses the groom for On-Net Access, CenturyLink will, upon 20 calendar days' prior written notice, cancel the Service on that circuit and assess a Cancellation Charge. When Customer does not respond to a CPA dedicated facilities grooming notice or refuses a CPA dedicated facilities groom, Customer must either: (a) provide CenturyLink with a LOA/CFA so that CenturyLink can have the local access provider cancel the circuit; or (b) work directly with the local access provider to cancel the circuit. If Customer does neither of these things, CenturyLink will pass through to Customer any costs incurred by CenturyLink from the local access provider as a result of the circuit remaining in place. "CFA" means circuit facility assignment of the CenturyLink facility, as identified by CenturyLink, to which Customer must order a local loop for connection to the CenturyLink Domestic Network.

7. Definitions. Capitalized terms not defined in this Service Exhibit are defined in the Agreement.

"CenturyLink Domestic Network" means the CenturyLink network located within the contiguous U.S. states and Hawaii, which is comprised only of physical media, including switches, circuits, and ports that are operated by CenturyLink.

"CPOP" means a CenturyLink-owned physical point of presence that lies directly on the CenturyLink Domestic Network where direct interconnection between the CenturyLink Domestic Network and a local access provider's network is possible.

"Demarcation Point" means: (a) the physical interface between the CenturyLink Domestic Network and Customer's telecommunications equipment or (b) the physical interface between a local access provider connecting the CenturyLink Domestic Network to Customer's telecommunications equipment.

"Leased Access" means local backbone access circuits ordered and leased by CenturyLink from a local access provider chosen by CenturyLink.

"On-Net Access" means local backbone access circuits provided solely on CenturyLink owned and operated facilities.

"Service Address" means the business building where Customer receives the Service.

"Start of Service Date" for each circuit is the date Customer accepts the circuit, following notification by CenturyLink that the local loop is ready. The ready notification will be via phone call or e-mail. Customer has five days from CenturyLink's ready notification in which to inform CenturyLink if the circuit fails to operate error-free. Within the five-day timeframe, if Customer neither informs CenturyLink about errors nor accepts the circuit, the circuit will be considered to have been accepted and the Start of Service Date to have commenced on the fifth day following CenturyLink's ready notification, regardless of whether Customer placed traffic over the circuit. If Customer informs CenturyLink of circuit errors within the five-day timeframe, CenturyLink will promptly take necessary, reasonable action to correct the errors, and upon correction, notify Customer that the circuit is ready.

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
LOCAL ACCESS SERVICE EXHIBIT
PRICING ATTACHMENT**

Except as set forth in this Pricing Attachment, capitalized terms will have the definitions assigned to them in the Agreement or the Local Access Exhibit.

1. Customer will pay the MRCs and Install NRCs for the Local Access Service selected. In addition, Customer will pay all MRCs or NRCs for any ancillary services provided as described in the Local Access Service Exhibit, including without limitation Construction charges.
2. Customer will pay the MRCs and NRCs set forth in the below table for the particular Service at the NPA/NXX or CLLI and/or Service Address listed. The MRCs and NRCs set forth below apply to new Service only and do not apply to Service ordered prior to the effective date of this Pricing Attachment. All MRCs and NRCs set forth in the below table apply per circuit and not per Service Address. Any modifications to the NPA/NXX or CLLI or Service Address listed below will render the pricing below void, and Customer will pay the revised rates agreed upon by the parties for the correct NPA/NXX or CLLI or Service Address. The pricing contained in this Pricing Attachment represents pricing for the local access provider and route selected by CenturyLink. Customer requests for a specific local access provider or route may be subject to different pricing.

Refer to the pricing outlined in the IQ Networking Data Center Connectivity Offer

3. Prior to ordering additional Local Access Services which are not specified above for a specific NPA/NXX and/or Service Address, Customer and CenturyLink must execute a separate amendment to this Agreement.

**OFFER ATTACHMENT FOR
CENTURYLINK IQ NETWORKING DATA CENTER CONNECTIVITY OFFER**

This Qwest Communications Company, LLC d/b/a CenturyLink QCC ("CenturyLink") offer attachment ("Attachment") is subject in all respects to the domestic CenturyLink IQ[®] Networking Service Exhibit, the Local Access Service Exhibit, and the CenturyLink[®] Total Advantage[™] or CenturyLink[®] Loyal Advantage[®] Agreement ("Agreement") between Customer and CenturyLink. All capitalized terms used in this Attachment that are not defined herein will have the definition as set forth in the Agreement or Service Exhibit.

1. Definitions.

"Eligible Data Center" means a data center location which has been qualified by CenturyLink as eligible to receive the offer pricing specified below. Only the service address(es) specified below are considered Eligible Data Centers.

"Eligible On-Net Circuit" means a Local Access circuit that uses a 1 Gigabit, a 2.5 Gigabit, or a 10 Gigabit handoff to connect the Eligible Data Center to CenturyLink's network.

"Eligible Port" means a CenturyLink IQ Networking Internet or Private Port of either 1 Gbps or 10 Gbps capacity that uses the Precise Burstable billing methodology and provides IP connectivity to Customer's equipment located within the Eligible Data Center location(s) specified below.

2. Scope. The purpose of this Attachment is to provide offer pricing for Eligible Ports and Eligible On-Net Circuits. Unless approved by CenturyLink, offer pricing for CenturyLink IQ Networking Service and Local Access Service is exclusive of, and may not be combined with any other offers, promotions, or discounts and will only be applied in lieu of any such discounts. All other rate elements not specifically set forth in this Attachment are as stated in the Agreement and Service Exhibits.

3. Eligibility and Restrictions. The minimum service term ("Service Term") for each Eligible Port and Eligible On-Net Circuit may be 12, 24 or 36 months. Customer must order the Eligible Port and related Eligible On-Net Circuit at the same time and for the same Service Term. The offer pricing set forth below is available to Customers that are: (a) purchasing a new Eligible Port and a new Eligible On-Net Circuit; or (b) restarting the same length Service Term of an existing Eligible Port and related Eligible On-Net Circuit which have no more than 25% of the months remaining in their Service Term. For example, an existing Service Term of 36 months could have no more than nine months remaining to be considered eligible and a new 36 month Service Term would be required. Eligible Ports and Eligible On-Net Circuits are subject to availability and their specific location and availability must be qualified and approved by CenturyLink at CenturyLink's sole discretion. If an Eligible Port or Eligible On-Net Circuit is canceled before its Service Term is completed, then Customer must pay CenturyLink a Cancellation Charge equal to the Eligible Port's offer pricing MRC shown below multiplied by the number of months remaining in the Service Term. After the completion of the applicable Service Term for each Eligible Port and Eligible On-Net Circuit: (c) the term will continue on a month-to-month basis until canceled by either party with 60 days' notice and (d) offer pricing will continue to apply, however CenturyLink reserves the right to modify rates or discontinue offer pricing with 60 days' notice. In order to receive the offer pricing shown below, Customer's Agreement must include all of the applicable Service Exhibits and Customer must sign and return this Attachment, and order Service before December 31, 2014.

4. Offer Pricing. The following CenturyLink IQ Networking Eligible Port offer pricing MRCs shown below will be used to calculate Contributory Charges. Any Eligible Ports not shown below must be incorporated via an amendment. Offer pricing does not apply to any service addresses that are not specified as Eligible Data Centers. The Service Term for existing Eligible Ports and related Eligible On-Net Circuits will restart on the Attachment Effective Date.

4.1 Eligible Data Center locations. The following location(s) have been qualified as Eligible Data Centers. The parties may sign another offer attachment which specifies additional Eligible Data Center locations.

Eligible Data Center Service Address (including Suite or Floor, if applicable)
400 Tijeras Avenue, NW, Floor 3, Albuquerque, NM 87102

4.2 Precise Burstable Net Rate Pricing.

Precise Burstable Gigabit Ethernet (1000 Mbps) Precise Burstable Minimum = 100 Mbps Internet Port	36 Month Service Term MRC per Mbps* (promo code QDC2IGEPB3)	NRC per Port**
0.000 – 100 Mbps	\$6.46	\$4,000
100.001 – 150 Mbps	\$6.46	\$4,000
150.001 - 200 Mbps	\$6.46	\$4,000
200.001 - 250 Mbps	\$5.67	\$4,000
250.001 - 300 Mbps	\$5.67	\$4,000
300.001 - 350 Mbps	\$4.97	\$4,000
350.001 - 400 Mbps	\$4.97	\$4,000
400.001 - 500 Mbps	\$4.32	\$4,000

**OFFER ATTACHMENT FOR
CENTURYLINK IQ NETWORKING DATA CENTER CONNECTIVITY OFFER**

500.001 - 600 Mbps	\$3.90	\$4,000
600.001 - 700 Mbps	\$3.22	\$4,000
700.001 - 800 Mbps	\$3.22	\$4,000
800.001 - 900 Mbps	\$3.22	\$4,000
900.001 - 1000 Mbps	\$3.22	\$4,000

*Includes On-Net Local Access service. Special Construction and Local Access ancillary fees not included.

** CenturyLink will waive 100% of the installation NRC.

Precise Burstable Gigabit Ethernet (1000 Mbps) Precise Burstable Minimum = 100 Mbps Private Port	36 Month Service Term MRC per Mbps* (promo code QDC2PGEPB3)	NRC per Port**
0.000 - 100 Mbps	\$7.41	\$4,000
100.001 - 150 Mbps	\$7.41	\$4,000
150.001 - 200 Mbps	\$7.41	\$4,000
200.001 - 250 Mbps	\$6.53	\$4,000
250.001 - 300 Mbps	\$6.53	\$4,000
300.001 - 350 Mbps	\$5.74	\$4,000
350.001 - 400 Mbps	\$5.74	\$4,000
400.001 - 500 Mbps	\$4.96	\$4,000
500.001 - 600 Mbps	\$4.50	\$4,000
600.001 - 700 Mbps	\$3.71	\$4,000
700.001 - 800 Mbps	\$3.71	\$4,000
800.001 - 900 Mbps	\$3.71	\$4,000
900.001 - 1000 Mbps	\$3.71	\$4,000

* Includes On-Net Local Access 1Gbps service. Special Construction and Local Access ancillary fees not included.

** CenturyLink will waive 100% of the installation NRC.

**OFFER ATTACHMENT FOR
CENTURYLINK IQ NETWORKING DATA CENTER CONNECTIVITY OFFER**

5. Miscellaneous. All other terms not specifically set forth in this Attachment, including without limitation, any other rate elements, are as stated in the Agreement and Service Exhibit(s). This Attachment will be effective as of the date it is signed by CenturyLink ("Attachment Effective Date"). The offer pricing will become effective for existing Eligible Ports as soon as practicable, but in no event later than the second full billing cycle following the Attachment Effective Date. If Customer has an existing Agreement that does not include the CenturyLink IQ Networking or Local Access Service Exhibits, the applicable Service Exhibits are hereby added with this Attachment and by signing this Attachment, Customer understands that the respective Service Exhibit's Effective Date will be the same as the Attachment Effective Date and agrees to and accepts the terms of the Service Exhibit, which are hereby incorporated into the Agreement. If Customer has an existing Agreement that includes the applicable Service Exhibit(s), this Attachment is hereby added to the Agreement. In the event of any conflict between any of the following documents, the order of control is: this Attachment, the Service Exhibits, the Agreement, and any CenturyLink-accepted Order Form. All other terms set forth in the Agreement will remain in effect. This Attachment, the CenturyLink IQ Networking Service Exhibit and the Local Access Service Exhibit, and the Agreement set forth the entire understanding between the parties as to the subject matter herein and supersede any prior written or verbal statements, representations, and agreements concerning the subject matter hereof. Electronic signatures on this Attachment will be accepted only in the form and manner prescribed by CenturyLink.

Agreed to and Accepted:

CUSTOMER: SANTA FE COUNTY

CENTURYLINK COMMUNICATIONS, LLC

Authorized Signature

Authorized Signature

Name Typed or Printed

Name Typed or Printed

Title

Offer Management
Title

Date

Date

CENTURYLINK IQ® DELTA PORT™ OFFER ATTACHMENT

Promo Code:	DELTADSL
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This Qwest Communications Company, LLC d/b/a CenturyLink QCC ("CenturyLink") offer attachment ("Attachment") is subject in all respects to the Local Access Service Exhibit, the Rental CPE Service Exhibit, the domestic CenturyLink IQ® Networking Service Exhibit ("Service Exhibits"), and the CenturyLink® Total Advantage™ or CenturyLink® Loyal Advantage® Agreement ("Agreement") between Customer and CenturyLink. All capitalized terms that are used but not defined in this Attachment are defined in the Agreement or Service Exhibit.

1. **Scope.** The purpose of this Attachment is to offer bundle pricing ("Offer Pricing") for Customers purchasing a nationwide CenturyLink IQ® Delta Port™ bundle that includes Rental CPE Service, Local Access Service (DSL Local Access only), and CenturyLink IQ Networking VPN Extensions. Unless otherwise stated in this Attachment, Offer Pricing is exclusive of, and may not be combined with, any other offers, promotions, or discounts, and will only be applied in lieu of any such discounts. All other rate elements not specifically set forth in this Attachment are as stated in the Agreement and Service Exhibits.

2. **Eligibility and Restrictions.** Service is subject to availability and is only available in qualified locations where facilities exist and Customer's locations meet specific network conditions. Availability is determined at CenturyLink's sole discretion. Customer understands and agrees that nationwide CenturyLink IQ Delta Port bundles are not eligible for any CenturyLink service level agreements. Offer Pricing applies to: (a) the DSL Local Access connection speeds shown in the Offer Pricing tables below; (b) the CenturyLink-approved Rental CPE devices shown in the Rental CPE section below; and (c) VPN Extensions. Offer Pricing will apply only if the hardware listed in the Rental CPE section is configured and installed specifically for use with the CenturyLink-provided services contained in this offer. Additional nationwide CenturyLink IQ Delta Port bundles after Customer's initial order(s) may be available at CenturyLink's then-current pricing. Customer must sign and return this Attachment to CenturyLink together with the Local Access Service Exhibit, the Rental CPE Service Exhibit, the domestic CenturyLink IQ Networking Service Exhibit, and order Service during the period from August 14, 2012 to December 31, 2014 ("Offer Period").

3. **Term.** Customer must have an Agreement Term of at least 24 or 36 months and Customer must agree to use each required Service that is included in the nationwide CenturyLink IQ Delta Port bundle for the minimum number of months associated with the Offer Pricing selected below ("Minimum Term"). Customer must order all the applicable nationwide CenturyLink IQ Delta Port Service elements shown below at the same time. If CenturyLink or Customer cancels any of the Services that comprise a nationwide CenturyLink IQ Delta Port bundle, the entire CenturyLink IQ Delta Port Bundle must be terminated at the same time. Each nationwide CenturyLink IQ Delta Port bundle purchased by Customer will have its own Minimum Term, commencing on the Start of Service Date for that bundle. "Start of Service Date" means the date CenturyLink notifies Customer that the nationwide CenturyLink IQ Delta Port bundle is provisioned and ready for use. If Customer cancels a nationwide CenturyLink IQ Delta Port bundle for any reason other than Cause or if CenturyLink cancels a nationwide CenturyLink IQ Delta Port bundle for Cause before the completion of the nationwide CenturyLink IQ Delta Port bundle's Minimum Term, Customer will pay the following Cancellation Charges for each canceled nationwide CenturyLink IQ Delta Port bundle: the total MRC amount for the canceled bundle multiplied by the number of months remaining in the Minimum Term. At the conclusion of each bundle's Minimum Term, the bundles will continue on a month-to-month basis until canceled by either party with 60 days' notice. CenturyLink may modify or discontinue Offer Pricing for each nationwide CenturyLink IQ Delta Port bundle after the bundle's Minimum Term is completed.

4. **Upgrades; Migration to another CenturyLink Service.**

4.1 **Upgrades.** Customer may upgrade to a higher DSL Local Access connection speed at the same physical location if: (a) Customer has had Service under this CenturyLink IQ Delta Port offer for three months or longer; (b) Customer's location qualifies for the higher connection speed; and (c) the upgrade is within the Offer Period or if CenturyLink approves the upgrade. If Customer upgrades to a higher DSL Local Access connection speed, then: (d) CenturyLink will waive the Cancellation Charges associated with the nationwide CenturyLink IQ Delta Port bundle that is canceled; (e) Customer must start a new Minimum Term for the upgraded CenturyLink IQ Delta Port bundle; (f) Customer must pay the applicable MRCs for the upgraded CenturyLink IQ Delta Port bundle; and (g) Customer might be required to pay a speed-change charge at then-current time and material rates.

4.2 **Migration to Another Service.** CenturyLink will waive a nationwide CenturyLink IQ Delta Port bundle's Cancellation Charges if Customer migrates to standard CenturyLink IQ Networking Service or to a Data Bundle or Managed Data Bundle solution, if available ("Migration"). Customer must execute an amendment and all applicable contractual documents and any Order Forms required to accomplish the Migration. The migrated service will then be governed by its new terms and conditions as amended.

5. **Offer Pricing.** Nationwide CenturyLink IQ® Delta Port™ bundle pricing tables are located in Addendum A to this Attachment and are incorporated by reference into this Attachment.

6. **Services.**

6.1 **CenturyLink IQ Networking Service.** CenturyLink-configured VPN Extensions are required as part of the nationwide CenturyLink IQ Delta Port bundles. VPN Extensions must connect to a CenturyLink IQ Networking Private Port or Enhanced Port. The following CenturyLink IQ Networking Service features are not available in connection with the nationwide CenturyLink IQ Delta Port bundle offer: (a) NMS, (b) End-to-End Performance Reporting, (c) Multicast, and (d) QoS. In addition, some services (ordered separately) that CenturyLink generally offers with standard CenturyLink IQ Networking Service might not be supported with nationwide CenturyLink IQ Delta Port bundles.

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CENTURYLINK IQ® DELTA PORT™ OFFER ATTACHMENT

(a) CenturyLink-Configured VPN Extension. VPN Extensions are available with layer 3 MPLS Private Ports and Enhanced Ports. CenturyLink will configure the CenturyLink-approved Rental CPE and facilitate the IP Sec tunnel between the CenturyLink-approved Rental CPE and the CenturyLink IPSec device based on information that is submitted to CenturyLink by Customer. CenturyLink will configure up to two IPSec tunnels per Rental CPE device. Customer is responsible for providing accurate information. CenturyLink will provide the Customer with detailed configuration information upon request. CenturyLink will select the provider for IP access and assign a static public IP address. The CenturyLink-approved Rental CPE will be installed as designated by CenturyLink or as otherwise agreed upon by the parties. Customer will cooperate with CenturyLink in setting the initial configuration for the CenturyLink-approved Rental CPE interface with the VPN Extension Service and comply with CenturyLink's instructions in connection therewith. CenturyLink-Managed and Customer-Managed VPN Extension options are not available as part of a CenturyLink IQ Delta Port bundle. Standard VPN Extension MRCs and NRCs apply. Customer understands and acknowledges that VPN Extensions must be in place before the nationwide CenturyLink IQ Delta Port solution is fully functional. Therefore, Customer must complete the installation of the Rental CPE within five days after delivery of the device. CenturyLink will not delay billing if Customer fails to install the Rental CPE within that timeframe.

6.2 Rental CPE. As part of this offer, CenturyLink will configure the CenturyLink-approved Rental CPE and send it to Customer to install. Customer is responsible for physically connecting the Rental CPE, and CenturyLink will provide remote support. Customer may request up to 10 configuration changes per year. In some cases, CenturyLink may use repackaged Rental CPE, or substitute the CenturyLink-approved Rental CPE shown below with another CPE device at CenturyLink's sole discretion. Rental CPE maintenance is provided under the terms and conditions of the applicable Detailed Description available at centurylinkselectadvantage.com. CenturyLink will provide 8x5 NBD Pro-MET® Remote Standard Service. Customer may request password access for Rental CPE. If CenturyLink grants password access to Customer: (a) Customer waives any claim against CenturyLink or the manufacturer for maintenance, configuration support, repair, loss, or damage to the Rental CPE device if a problem is caused by Customer's acquisition of the password; (b) CenturyLink will no longer provide any CPE configuration assistance; (c) any Customer requests for CPE configuration assistance after obtaining password access will be at CenturyLink's then-current time and material rates; and (d) Customer will not be entitled to any SLA service credits. Customer must promptly return all Rental CPE to CenturyLink upon termination, as specified in the Rental CPE Service Exhibit.

Description	CenturyLink-approved Rental CPE – All Bandwidths
Rental CPE	Cisco 861W Router

6.3 Local Access Service. Local Access Offer Pricing applies only to the DSL Local Access Service speeds shown in the Pricing Tables in Addendum A ("DSL Local Access Service"). DSL Local Access Service is subject to availability. CenturyLink may discontinue providing DSL Local Access service with 30 days notice. Service speeds are "up to" and are not guaranteed. Customer must not use the DSL Local Access Service for high volume or excessive use or in a way that impacts network resources or CenturyLink's ability to provide services.

(a) DSL Modem. "DSL Modem" means a modem(s) that is provided by CenturyLink for use by Customer or Customer's End Users solely in connection with the DSL Local Access Service. The DSL Modem is separate and apart from the CenturyLink-approved Rental CPE (Cradle Point MBR1200B) that is provided under the Rental CPE Service. Customer will not obtain any ownership interests in the DSL Modem. Customer bears entire risk of loss or damage of the DSL Modem after delivery. If the DSL Modem is replaced due to loss or damage (for example, damage from accident, misuse or abuse), Customer will pay the replacement value for the damaged DSL Modem. If Customer requires on-site assistance from CenturyLink to install the replacement DSL Modem, an additional dispatch charge will apply at all times. CenturyLink will quote the charges in advance, obtain Customer's approval, and invoice the charges within 60 days. The terms and conditions in this Service Exhibit will continue to apply. Replacement DSL Modem may or may not be the same model. Upon termination, Customer must promptly return the DSL Modem to CenturyLink.

(b) Installation. CenturyLink will provide on-site installation for the DSL Modem. CenturyLink may ship the DSL Modem to Customer or the End User before a scheduled installation, or CenturyLink may deliver the DSL Modem at the time of installation. Customer agrees to allow CenturyLink access to Customer's premises at reasonable hours as necessary. If Customer misses a scheduled installation, or tries to cancel a schedule installation with less than one full business day prior notice, Customer will be billed an additional \$150 non-refundable charge for the missed appointment. Installation includes installation of an RJ11 wall jack, installation and configuration of the DSL Modem, testing the End User circuit, and up to 30 minutes of inside wiring from the RJ11 wall jack to the Network Interface Device ("NID") or for tracing or toning across phone closets between the RJ11 wall jack and the NID. Installation does not include End User premises equipment or inside wiring beyond the first 30 minutes. Installation visits are limited to two hours. If more inside wiring is required, Customer is responsible for completing any necessary inside wiring or for contracting a 3rd party to do so. CenturyLink will not delay billing because of incomplete extensive inside wiring. If Customer requests subsequent installation-related visits from CenturyLink, Customer will pay any additional charges associated with the additional work.

(c) AUP. All use of the DSL Local Access Service must comply with the AUP, posted at qwest.centurylink.com/legal/ and incorporated by reference into this Attachment. CenturyLink may reasonably modify the AUP to ensure compliance with applicable laws and regulations and to protect CenturyLink's network and customers, and such change will be effective upon posting to the Web site. Any changes to the AUP will be consistent with the purpose of the AUP to encourage responsible use of CenturyLink's networks, systems, services, Web sites, and products. In addition to the provisions specified in the AUP, CenturyLink may hold Customer liable for CenturyLink's actual damages in any way arising from, or related to, any Spam transmitted by or in any way connected to Customer or Customer's account, to the extent such actual damages can be reasonably calculated. If actual damages cannot be reasonably calculated, Customer agrees to pay CenturyLink liquidated damages of five U.S. dollars (\$5.00) for each piece of Spam transmitted from or otherwise connected with Customer or Customer's account. Customer will not, however, be liable for actual or liquidated

CENTURYLINK IQ® DELTA PORT™ OFFER ATTACHMENT

damages arising from Spam generated from Customer or Customer's account if Customer establishes that the Spam was sent as a result of a virus or worm or other malicious software infection and if Customer has taken reasonable actions to prevent and resolve such infections and stop the Spam.

7 Customer Support. Customer support is provided Monday through Friday, 8:00 to 5:00 Central Time. The Customer support telephone number for nationwide CenturyLink IQ Delta Port service is (877) 886-6515, option 6. Charges may apply for certain maintenance, trouble isolation, and support services, and if a technician is dispatched. CenturyLink technician dispatch to the Customer premises will be charged at current time and material rates.

8. Miscellaneous. All other terms not specifically set forth in this Attachment, including without limitation, any other rate elements, are as stated in the Agreement and Service Exhibit(s). This Attachment will be effective as of the date it is executed by CenturyLink ("Attachment Effective Date"). The Offer Pricing will become effective as soon as practicable, but in no event later than the second full billing cycle following the Attachment Effective Date. If Customer has an existing Agreement that does not include the applicable Service Exhibits, the Service Exhibit(s) are hereby added with this Attachment and by signing this Attachment, Customer understands that the Service Exhibits' Effective Dates will be the same as the Attachment Effective Date and agrees to and accepts the terms of the Service Exhibits, which are hereby incorporated into the Agreement. If Customer has an existing Agreement that includes the Service Exhibits, this Attachment is hereby added to the Agreement. In the event of any conflict between any of the following documents, the order of control is this Attachment, the Service Exhibits, the Agreement, and any CenturyLink-accepted Order Form. All other terms set forth in the Agreement will remain in effect. This Attachment, the Local Access Service Exhibit, the Rental CPE Service Exhibit, the CenturyLink IQ Networking Service Exhibit, and the Agreement set forth the entire understanding between the parties as to the subject matter herein and supersede any prior written or verbal statements, representations, and agreements concerning the subject matter hereof. Using CenturyLink's electronic signature process for the Agreement is acceptable.

Agreed to and Accepted:

CUSTOMER: SANTA FE COUNTY

CENTURYLINK COMMUNICATIONS, LLC

Authorized Signature

Name Typed or Printed

Title

Date

Authorized Signature

Name Typed or Printed
Offer Management

Title

Date

CENTURYLINK IQ® DELTA PORT™ OFFER ATTACHMENT

ADDENDUM A

NATIONWIDE CENTURYLINK IQ DELTA PORT BUNDLE PRICING

1. **Pricing.** Customer will pay the following charges. The CenturyLink IQ Networking VPN Extension and Rental CPE Offer Pricing MRCs will be used to calculate Contributory Charges, if applicable.

1.1 **60 Month Service Term.**

Term (Months)	Promotion Code	Connection Speed*	Delta Port Bundled MRC**	Delta Port Bundled NRC***	
				DSL Seif Install	DSL Onsite Install
60 months	NSP-99057	Up to 7 Mbps	\$135.00	\$250.00	\$550.00

*Uplink speeds will vary depending on Customer location. Customer's location must qualify.

**Bundle MRC includes VPN extension, DSL Local Access, and Rental CPE. Connection to the CenturyLink IQ Networking MPLS network via a VPN Extension (IPsec tunnel) is optional.

*** Optional onsite DSL installation is available for an additional NRC of \$300. An onsite DSL installation request must be included on the initial order.

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
CENTURYLINK TS SERVICE EXHIBIT**

1. General; Definitions. CenturyLink will, through its affiliate, Savvis Communications Corporation DBA CenturyLink TS and its affiliates ("CenturyLink TS"), provide CenturyLink TS services under the terms of the Agreement, this Service Exhibit, a Service Order and/or Statement of Work ("SOW"). For clarification, CenturyLink TS shall be used when it is necessary to specify the CenturyLink TS affiliate, and otherwise CenturyLink and its affiliates shall hereinafter be referred to as "CenturyLink". In the event of a conflict in any term of any documents that govern the provision of Services hereunder, the following order of precedence will apply in descending order of control: the Service Schedule, this Service Exhibit, the Agreement, any Service Guide, the SLA, the Service Order(s) and SOW(s). Capitalized terms not defined herein are defined in the Agreement.

"BCD" or "Billing Commencement Date" means the date on which CenturyLink begins billing for a Service, as further defined in Billing Section 3.2.

"Service" means the service provided by CenturyLink through its affiliate, including CenturyLink TS or Tier 3 and/or their licensors and contractors as set forth on the Service Order or SOW.

"Service Guide" (or "SG") means the product-specific Service guide that includes technical specifications which can be found at <http://www.centurylink.com/technology/service-guides>, which CenturyLink TS may modify from time to time, effective upon posting on the Web site.

"Service Order" means a service order request submitted on a form issued by CenturyLink and signed by Customer that includes the type and details of the specific Services ordered by Customer.

"Service Schedule" means those service descriptions providing additional terms pursuant to which CenturyLink will provide and Customer shall purchase the Services described therein. The applicable Service Schedules are included in this Service Exhibit.

"SLA" or "SLA Attachment" means the service level agreement applicable to each individual Service, if any, which provides Customer's sole and exclusive remedies for any Service quality or performance deficiencies or failures of any kind (e.g., uptime, latency). To clarify, such sole and exclusive SLA remedies shall not apply to breaches of unrelated obligations under the Agreement such as infringement, confidentiality, etc. CenturyLink may modify SLAs during a renewal term upon 60 days' notice.

2. Term. Services have a minimum term which begins on the BCD and continues for the period set forth in the relevant Service Order or SOW ("Initial Service Term"), at the conclusion of which the Service will automatically renew for successive periods equal to 12 months, unless terminated by either party in writing at least 60 days prior to the expiration of the then-current Service Term. The Initial Service Term and any renewal terms are collectively referred to as the "Service Term".

3. Rates; Billing.

3.1 Rates. Customer will pay all applicable rates and fees set forth in the relevant Service Order and/or SOW. Notwithstanding any other provision to the contrary and not more than once per calendar year, CenturyLink may increase the charges applicable to any Service provided hereunder in an amount not to exceed the latest annual increase in the Consumer Price Index, specifically, the U.S. Department of Labor, Bureau of Labor Statistics "All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average". Such increase shall be effective upon the date set forth in CenturyLink's written notice thereof to Customer. CenturyLink may otherwise increase applicable charges as set forth on a particular Service Order or upon prior written notice during any automatic renewal term.

3.2 Billing. The BCD for the Service is the earlier of (i) the date on which Customer uses (except during the Acceptance Period) the Service or (ii) the date CenturyLink notifies Customer in writing that the initial installation or a usable part thereof (such as a data circuit between two points or an individual data center installation on a multi-data center project) is complete. For Professional Services in a SOW, the BCD shall be the date CenturyLink begins performing the Services or as specified in the SOW. Customer shall have three business days after such use or notification to notify CenturyLink of any deficiency ("Acceptance Period"). Such notice shall include a written description that specifically demonstrates the deficiency in Service to the reasonable satisfaction of CenturyLink. The Service shall be deemed accepted unless Customer provides CenturyLink with notice to the contrary during the Acceptance Period. Upon timely notice to CenturyLink of a deficiency, CenturyLink will remedy the Service deficiency and provide Customer notification of such remedy at which time a new Acceptance Period shall begin, and CenturyLink will delay billing until accepted in accordance with this provision. Notwithstanding anything to the contrary in the Agreement, if CenturyLink partially installs or activates a Service, CenturyLink reserves the right to commence billing for such Service on a pro rata basis.

4. Compliance and Security. Each party shall comply with all laws and regulations applicable to the provision (in the case of CenturyLink) and use (in the case of Customer) of the Services provided hereunder. CenturyLink has adopted and implemented, and shall maintain throughout the Term, a corporate information security program designed to comply with applicable laws and protect Customer's information, materials and data ("Customer Data") from loss, misuse and unauthorized access or disclosure. Such program includes annual employee security awareness training and formal information security policies and/or procedures. The CenturyLink information security program is subject to reasonable changes by CenturyLink from time to time. Customer will ensure that all Customer Data stored or transmitted via the Service complies with all applicable laws and reasonable information security practices, including without limitation those relating to the encryption of data. As of the Effective Date, CenturyLink has completed an AICP/ sanctioned Type II audit report (i.e., SSAE16/ISAE3402 SOC 1 or AT-101 SOC 2) in certain data centers and intends to continue to conduct such audits pursuant to a currently sanctioned or successor standard. Customer will be entitled to receive a copy of the then-

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
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available report, which is CenturyLink Confidential Information. Customer may make such report available to its End Users subject to confidentiality terms provided by CenturyLink.

5. Use of Service. Customer and its End Users will not use or access the Services or any data center in a manner that materially interferes with or harms the CenturyLink infrastructure or any third parties; or is tortious or violates any third party right. CenturyLink may suspend the affected Service in the event Customer violates the preceding sentence. CenturyLink will attempt to notify Customer in writing prior to suspending Service; provided, however, CenturyLink may suspend Service without notice if CenturyLink becomes aware of a violation of any applicable law or regulation or of activity that exposes CenturyLink to criminal or civil liability or that exposes the CenturyLink network, CenturyLink property or CenturyLink customers' network or property to harm as identified in the CenturyLink TS AUP. Customer agrees to defend, indemnify and hold CenturyLink harmless from third party claims, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees arising from non-compliance with this section.

6. Termination. Either party may terminate this Service Exhibit or affected Services (i) upon 30 days' prior written notice for Cause; or (ii) in accordance with any other express term contained in the Agreement. If Customer terminates an ordered Service prior to its BCD, Customer will pay a Cancellation Charge equal to one month's projected MRC, plus all out-of-pocket costs incurred by or imposed upon CenturyLink (e.g., ordered equipment, licenses, carrier termination charges). If the Service or this Agreement is terminated either by CenturyLink for Cause or by Customer for Convenience prior to the conclusion of the applicable Service Term, then Customer shall be liable for a Cancellation Charge equal to: (a) unless otherwise set forth on a Service Order, 50% of the then current MRC for the affected Services multiplied by the number of months remaining in the Service Term; (b) Service charges accrued but unpaid as of the termination date; (c) any NRC discount or waiver granted by CenturyLink, and (d) any out-of-pocket costs incurred by or imposed upon CenturyLink (e.g., ordered equipment, licenses, carrier termination charges). If a particular Service is terminated upon which another service is dependent, all such dependent services shall be deemed to be terminated as well.

7. Intellectual Property. Nothing in the Agreement or the performance thereof shall convey, license, or otherwise transfer any right, title, or interest in any intellectual property or other proprietary rights held by either party or its licensors. CenturyLink's intellectual property and proprietary rights include any skills, know-how, modifications or other enhancements developed or acquired in the course of configuring, providing, or managing the Service. Each party agrees that it will not, directly or indirectly, reverse engineer, decompile, reproduce or otherwise attempt to derive source code, trade secrets, or other intellectual property from any information, material, or technology of the other party or its licensors.

8. Equipment. If the Service includes access to or the use of CenturyLink-provided equipment ("CenturyLink Equipment"), Customer: (a) will not assert any ownership interest whatsoever in the CenturyLink Equipment; (b) will keep the CenturyLink Equipment free and clear from all liens, claims and encumbrances; (c) shall protect and use all CenturyLink Equipment in accordance with the Agreement; and (d) will cooperate with CenturyLink to allow installation, maintenance and, upon termination, removal of the CenturyLink Equipment. Unless otherwise set forth in the applicable SG or Service Order, Customer is responsible for selecting, supplying, installing and maintaining any equipment used in connection with the Service and not provided by CenturyLink ("Customer Equipment") including any related applications, systems, or software.

9. No Transfer of Undertakings. CenturyLink and Customer agree that the provision and subsequent expiry, cancellation or termination of the Services are not intended to be transfers of undertakings within the meaning of the Transfer of Undertaking (Protection of Employment) Regulations 2006 and related legislation ("TUPE"), and consequently there will be no transfer of employees between Customer and CenturyLink (or any other subsequent service provider of Customer) as a result of the operation of this Agreement. Notwithstanding the above, Customer shall indemnify and hold CenturyLink harmless for any losses, claims, liabilities, awards, damages, costs and expenses (including any fines, legal expenses and costs of settlement) CenturyLink may incur through the operation of TUPE in connection with this Agreement. This provision applies only to Services delivered by CenturyLink in the United Kingdom.

10. Maintenance. Customer acknowledges that the Services may be subject to routine maintenance or repair and agrees to cooperate in a timely manner and provide reasonable access and assistance as necessary to allow such maintenance or repair.

11. Notice. Any notices to be provided to CenturyLink under this Service Exhibit should also be copied to CenturyLink TS at the following address:

Savvis Communications Corporation DBA CenturyLink TS
1 Solutions Parkway
Town & Country, Missouri 63017
United States
Attn: Legal Department

CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
CENTURYLINK TS SERVICE EXHIBIT
SERVICE SCHEDULE: COLOCATION SERVICES

1. Definitions.

"CenturyLink Premises" means any CenturyLink data center or other CenturyLink facility.

"Customer Area" means the space within a CenturyLink Premises specifically identified as available to Customer for the placement and operation of Customer Equipment.

2. Notwithstanding anything to the contrary in the Agreement, CenturyLink may increase the rates associated with existing Colocation Service at any time after twelve months of the initial installation date for such Service in order to pass through increases in such Service's underlying power facility costs and such increase shall be effective upon the date set forth in CenturyLink's written notice thereof to Customer.

3. Customer or Customer's employees, agents, contractors, or End Users who access any CenturyLink Premises on Customer's behalf ("Authorized Representatives") must be designated in writing. Customer, its Authorized Representatives and all Customer Equipment and any related materials used in connection with the Service shall comply with all CenturyLink data center operating policies (including the "CenturyLink TS Customer Handbook and Information Guide" ("Customer Guide")), a current copy of which is located on <http://www.savvisstation.com> and which CenturyLink may change from time to time. If CenturyLink reasonably believes that Customer is not complying with this section, CenturyLink will notify Customer thereof and Customer shall remedy such non-compliance within 5 days of receiving such notice. If Customer fails to remedy such non-compliance within such period, then, notwithstanding any other rights in the Agreement, CenturyLink may immediately (i) suspend the Service and/or restrict Customer's access to the CenturyLink Premises for so long as deemed reasonably necessary by CenturyLink or (ii) terminate the affected Service if such non-compliance is recurring. CenturyLink may likewise restrict access to the CenturyLink Premises if Customer fails to timely cure any breach of the Agreement.

4. Subject to the rest of this section, CenturyLink may enter the Customer Area and/or access Customer Equipment only to the extent necessary to provide a Service or otherwise exercise its rights under the Agreement. If Customer Equipment needs to be moved to another area within the same CenturyLink Premises or to another CenturyLink Premises due to either Customer's requirements for additional space or CenturyLink's reasonable business needs, the parties will cooperate to complete and minimize the impact of the relocation. CenturyLink may temporarily store Customer Equipment pending its installation at a CenturyLink Premises ("Equipment Storage"). If Equipment Storage continues for more than 30 days, CenturyLink may return, at Customer's expense, the Customer Equipment. The risk of loss or damage for any Customer Equipment during any Equipment Storage shall be upon Customer. If an Authorized Representative or Customer Equipment presents any material risk of harm to CenturyLink, its employees, agents, contractors, or customers, or the CenturyLink Premises, Customer shall take prompt action to eliminate such risk. If Customer fails to do so or if there is risk of material and imminent harm, CenturyLink may, without prior notice or liability to Customer, take appropriate action itself, including accessing the Customer Area. Customer, its Authorized Representatives and Customer Equipment will not cause personal injury or property damage at a CenturyLink Premise.

5. Customer shall within five days of the end of the Service Term: (a) remove all Customer Equipment and any other Customer property ("Customer Materials") from the CenturyLink Premises; and (b) return the Customer Area to CenturyLink in the same condition as it was on the BCD, normal wear and tear excepted. If Customer fails to remove the Customer Materials within such period or if Customer has an outstanding balance at the end of the Service Term, CenturyLink may remove any Customer Materials (without liability) and, at Customer's expense, either: (a) store it until Customer remits all amounts owed (including storage expenses) or (b) ship such Customer Materials FOB Origin to Customer at Customer's last address of record.

6. Network Connectivity.

6.1 **Hosting Network Infrastructure.** The Colocation network infrastructure provides connectivity from Customer's environments to the available networks within each facility, including the CenturyLink backbone(s), and other Colocation customers or Alternate Carrier Network Connections. With valid orders, Customer is permitted to interconnect to other customers or alternate carriers as described; however, all connections from Customer environment to any other customer or any network infrastructure must be performed by CenturyLink.

6.1.1 **Alternate Carrier Network Connection.** An Alternate Carrier Network Connection is a connection to a non-CenturyLink network. Depending on the particular data center's configuration, Alternate Carrier Network Connections can be made at either the data center's carriers' premises or at the data center's servicing point of presence. Depending on the data center and alternate carrier availability, the rates and required components may vary. In the event that a carrier of interest to Customer is not available at the data center's carriers' premises Customer is encouraged to inform its CenturyLink sales representative or the data center manager so that CenturyLink may inform such carrier of potential demand for carrier's services which may lead to a CenturyLink agreement with such carrier to establish a presence at the data center.

7. This is a service agreement and does not constitute a lease of any real property or create any tenant or other real property rights. Customer has been granted only a license to occupy the Customer Area and use the CenturyLink Premises and any CenturyLink Equipment in accordance with the Agreement and agrees that this Service Schedule, to the extent it involves the use of OMR #N99057 (QLAGESZ)

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
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space leased by CenturyLink, shall be subordinate to any lease between CenturyLink and its landlord(s). Customer hereby waives and releases any claims that it may have against the landlord(s) under any lease by CenturyLink with respect to any Customer Equipment or property located in the CenturyLink Premises demised to CenturyLink by such landlord(s). If the CenturyLink Premises becomes the subject of a taking by eminent domain by any authority having such power, CenturyLink shall have the right to terminate any or all of the affected Services without liability; provided, however, that CenturyLink will use commercially reasonable efforts to move Customer to another, comparable CenturyLink Premises prior to exercising such termination right. CenturyLink shall have the right to terminate any or all of the Services without liability of any kind on the earlier of (i) the expiration of or earlier termination of CenturyLink's underlying lease for the CenturyLink Premises, or (ii) expiration or earlier termination of this Service Schedule. The parties agree that any renewal of the Services shall be contingent on the election by CenturyLink, in its sole discretion, to continue to own or lease the CenturyLink Premises.

8. Insurance. As a condition to providing Customer with physical access to the data centers and/or the placement of Customer Equipment within the data center, Customer will at all times during the term of this Agreement, and at its own cost and expense, carry and maintain the following insurance coverage with insurers having a minimum "Best's" rating of A VII (A-7), provided however, if local and/or regional laws stipulate higher values than those defined herein, then Customer must comply with the applicable higher value as required by law:

(a) "All Risk" Property insurance covering all Customer Equipment located in the CenturyLink Premises in an amount not less than its full replacement cost;

(b) 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 the data center by Customer, including coverage for premises-operation, products/completed operations, and contractual liability with respect to the liability assumed by Customer hereunder. The limits of insurance will not be less than: (i) Each Occurrence - \$2,000,000, or local currency equivalent; (ii) General Aggregate - \$4,000,000, or local currency equivalent ; (iii) Products/Completed Operations - \$2,000,000, or local currency equivalent; and (iv) Personal & Advertising Injury - \$2,000,000, or local currency equivalent ;

(c) In the US, Workers' Compensation insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee entering onto the CenturyLink Premises, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$100,000 each accident; and internationally, Employers' Liability insurance with limits of not less than \$1,000,000 USD, or local currency equivalent; and

(d) In the US, 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; and internationally, Automobile Liability insurance as required by law, covering the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles used in connection with this Agreement.

The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. If applicable, Customer will require its subcontractors and agents to maintain the same insurance. Upon written request from CenturyLink, Customer will forward to CenturyLink certificate(s) of such insurance. The certificate(s) will provide that: (e) CenturyLink (and its participating affiliates) be named as additional insured as their interest may appear with respect to this Agreement; and (f) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by CenturyLink.

9. Marketing. Notwithstanding anything to the contrary elsewhere in the Agreement, Customer agrees that (i) CenturyLink has the right to use Customer's name, trademarks, or other proprietary identifying symbol for its marketing communication activities and (ii) CenturyLink may issue a mutually acceptable press release (approval of which shall not be unreasonably withheld) announcing Customer's selection or expansion with CenturyLink as its provider of colocation services.

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
CENTURYLINK TS SERVICE EXHIBIT
SERVICE SCHEDULE: HOSTING SERVICES**

1. If a particular Service does not require "installation", the BCD will be the date on which CenturyLink begins providing such Service.

**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT
CENTURYLINK® SELECT ADVANTAGE SERVICE EXHIBIT**

1. General; Definitions. This Service Exhibit for Products and Services (collectively "Solutions") is attached to and subject in all respects to the CenturyLink Total Advantage or CenturyLink Loyal Advantage agreement between CenturyLink QCC and Customer. Capitalized terms not defined herein are defined in the Agreement. CenturyLink QCC will provide Solutions under the terms of the Agreement, the Service Exhibit, Purchase Order and/or SOW. This Service Exhibit may not be used for the purchase of voice, data or IP services. In the event of a conflict in any term of any documents that govern the provision of Solutions hereunder, the following order of precedence will apply in descending order of control: any SOW, any Detailed Description(s), this Service Exhibit, the Agreement, and any PO. With respect to the Agreement, "Service" is replaced by "Solution" as defined herein, and "Order Form" is replaced with "Purchase Order" as defined herein.

"Change Order" means any change, submitted by Customer to CenturyLink or CenturyLink to Customer, to a SOW that was previously agreed upon by CenturyLink and Customer. Customer will be responsible for all charges related to such SOW Change Order.

"CPE" means either: (a) Customer Purchased Equipment, or (b) Customer Premises Equipment; and consists of hardware, software and materials used in the transport and/or termination/storage of data and voice transmission.

"Detailed Description(s)" means the terms and conditions of the Solution provided by CenturyLink which are posted at <http://www.centurylinkselectadvantage.com/>.

"Products" means CPE and Software offerings from CenturyLink.

"Purchase Order" or "PO" means either (a) a written document issued by Customer for the procurement of Solutions from CenturyLink; or (b) a CenturyLink quote or service order signed by Customer.

"Services" means offerings from CenturyLink that (a) install, maintain or manage CPE; or (b) support Customer network management objectives, or (c) are consulting, professional, technical, development, and/or design services.

"Software" means software license offerings.

"SOW" means a statement of work that provides specific details, agreed to by CenturyLink and Customer, relating to the Solution purchased under a PO or the SOW. Agreement on the terms of the SOW will be satisfied by CenturyLink sending the final version of the SOW to Customer; and Customer's signature on the SOW.

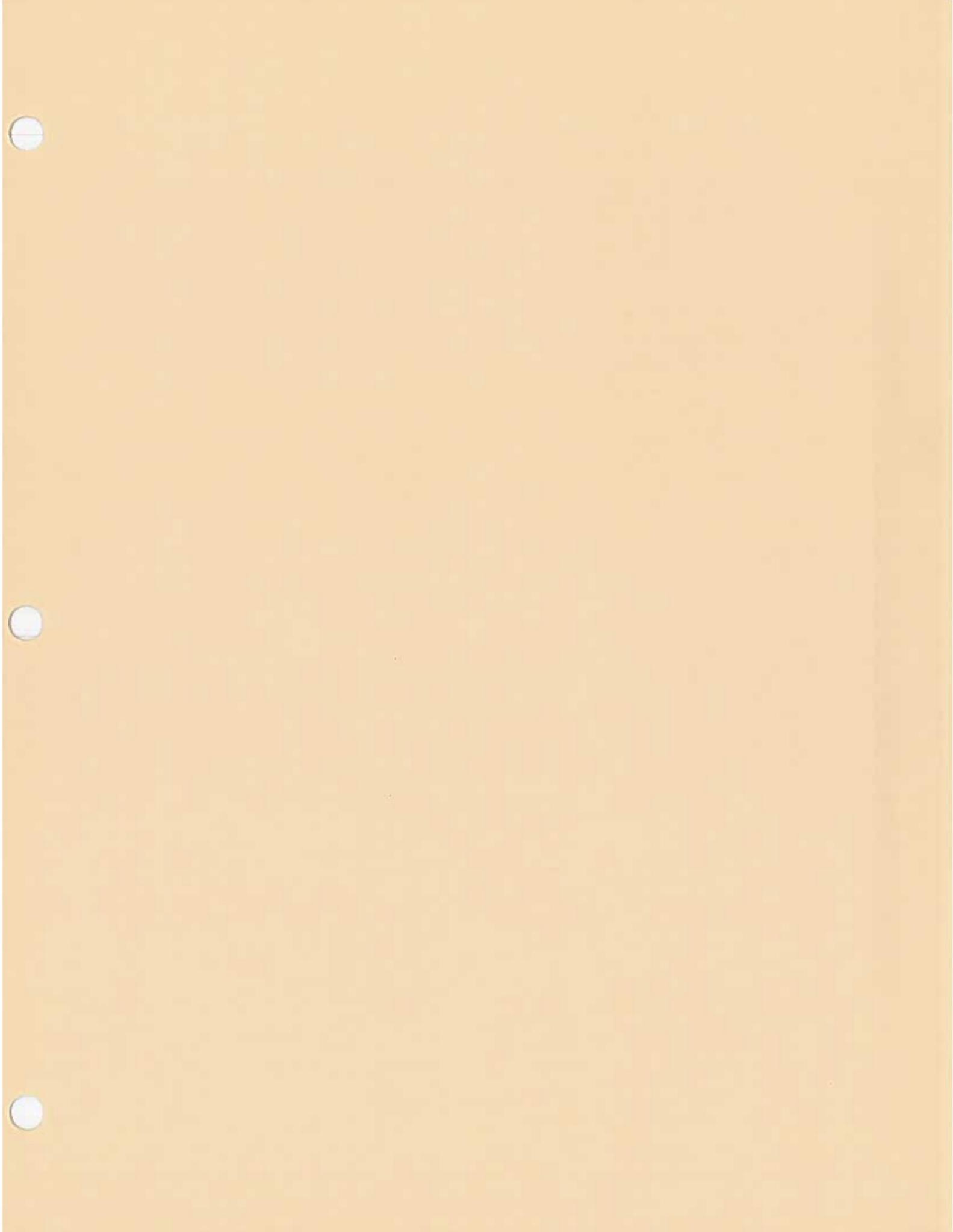
2. CenturyLink Select Advantage Solutions.

2.1 Purchase. Customer may purchase Solutions by issuing a PO to CenturyLink, or executing an SOW. Customer's purchase of Solutions is subject to and controlled by Detailed Description(s) which are posted at <http://www.centurylinkselectadvantage.com/> and are incorporated by this reference. Customer must register to create a username and password the first time the Web site is accessed to view these Detailed Descriptions. By issuing a PO or executing an SOW with CenturyLink, Customer warrants that Customer has read and agrees to the terms and conditions of the Detailed Description(s). CenturyLink reserves the right to amend the Detailed Description(s) effective upon posting to the Web site. Customer's continued use of the Solution constitutes acceptance of those changes. If a PO issued by Customer contains any preprinted terms, those terms will not amend, modify or supplement this Service Exhibit in any way whatsoever, notwithstanding any provisions in a PO to the contrary. Any PO or SOW must (a) reference and incorporate this Service Exhibit and its Effective Date, (b) contain the Customer's exact legal name, and (c) include any other requirements as may be further described in the Detailed Description(s).

2.2 Limitation of Liability. IN ADDITION TO THE LIMITATION OF LIABILITY UNDER THE AGREEMENT, CENTURYLINK'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO SOLUTIONS PURCHASED UNDER THIS SERVICE EXHIBIT, UNLESS OTHERWISE STATED IN THE DETAILED DESCRIPTIONS OR SOW, WILL IN NO EVENT EXCEED: (A) FOR CLAIMS ARISING OUT OF PRODUCTS, THE AMOUNT OF THE PRODUCTS SET FORTH IN THE PO RELATING SOLELY TO THE AFFECTED PRODUCT; AND (B) FOR CLAIMS ARISING OUT OF NONRECURRING SERVICES, THE AMOUNT OF THE SERVICE SET FORTH IN THE PO OR SOW.

3. Term; Termination. This Service Exhibit will commence on the Effective Date of the Agreement (or, if applicable, an amendment to the Agreement if this Service Exhibit is added to the Agreement after its Effective Date), and will remain in effect until canceled by either party upon 30 days prior written notice to the other party, or as otherwise stated in the SOW. If Service is terminated for any reason other than Cause, Service may be subject to Termination Charges as set forth in the Detailed Descriptions or SOW. Termination will not affect obligations under Purchase Orders accepted prior to the effective date of termination, and this Service Exhibit will remain in effect as to such obligations in the event it would otherwise have terminated.

4. Charges. Charges for Solutions will be specified in each PO or SOW and are due and payable upon Customer's receipt of the invoice or as otherwise stated in the PO or SOW. Any payment not received within 30 days after the invoice date may be subject to interest charges as permitted by applicable law. Customer will not be eligible for any discounts or promotional offers other than those specifically set forth in an executed PO.



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: February 11, 2015

To: Board of County Commissioners

From: Bill Taylor, Procurement Manager

Via: Katherine Miller, County Manager *KM*
Jeff Trujillo, ASD Director
Adam Leigland, Public Work Director
Mark Hogan, Projects & Facilities Director

ITEM AND ISSUE: BCC Meeting February 24, 2015

REQUEST APPROVAL OF AGREEMENT NO. 2015-0195-PW/PL WITH ACCENT LANDSCAPE CONTRACTORS, INC. FOR THE ROMERO PARK LANDSCAPE IMPROVEMENTS PHASE I IN THE AMOUNT OF \$453,738 EXCLUSIVE OF GRT AND REQUEST COUNTY MANAGER SIGNATURE AUTHORITY ON THE PURCHASE ORDER / Bill Taylor-Procurement

SUMMARY

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2015-0195-PW/PL with Accent Landscape Contractors, Inc. in the amount of \$453,738 exclusive of GRT for the Romero Park Landscape Improvements Phase I.

BACKGROUND

The Purchasing Division issued IFB# 2015-0195-PW/PL Romero Park Landscape Improvements Phase I in conjunction with IFB# 2015-0194-PW/PL Romero Park Phase I Civil Improvements in order to complete the project within a sequence timeframe. Construction of the Romero Park Improvements was divided into two bids to separate the different disciplines and corresponding licensure requirements for the civil improvements and the landscape improvements for the purpose of creating a more competitive bidding climate for the project.

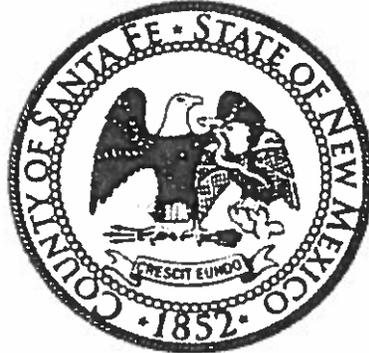
The landscape improvements include site furnishings, play area, shade structure, signage, fencing and access control, landscape surfacing, planting and irrigation around existing facilities and improvements.

The Purchasing Division issued Invitation for Bid (IFB) No. 2015-0195-PW/PL on December 28, 2014. This solicitation was advertised in the Santa Fe New Mexican and in the Albuquerque Journal and posted on the County's Website. Eight (8) contractors attended the mandatory pre-bid conference and one bid was received from Accent Landscape Contractor, Inc. at the January 28, 2015 Public Bid Opening. Their bid was reviewed for responsiveness by the Purchasing staff and was determined to a responsive bid.

ACTION REQUESTED

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2015-0195-PW/PL with Accent Landscape Contractor, Inc. in the amount of \$453,738 exclusive of GRT and request County Manager signature authority on the purchase order.

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**



**SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2014 EDITION**

[Changes, additions, deletions and/or any modifications other than those agreed upon by the parties upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.]

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Hereafter "County":

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200
FAX: 505-985-2740

Hereafter "Contractor":

Accent Landscape Contractor, Inc.
3525 Girard Blvd. NE
Albuquerque, New Mexico 87107
TELEPHONE: 505-881-4880
E-MAIL ADDRESS: cstevens@accentsls.org

LANDSCAPE ARCHITECT

NAME: Design Office, LLC
ADDRESS: 1300 Luisa Street Suite 24
Santa Fe, New Mexico 87505
TELEPHONE: (505) 983-1415
E-MAIL ADDRESS: chorn@do-designoffice.com

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RECITALS

WHEREAS, in accordance with Section 13-1-103 through Section 13-1-110 NMSA 1978, the County issued Invitation for Bid (IFB) No. 2015-0195-PW/PL for construction services for Romero Park Landscape Improvements Phase I; and

WHEREAS, the Contractor submitted its bid, dated January 28, 2015 in response to IFB No. 2015-0195-PW/PL; and

WHEREAS, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100, NMSA 1978; and

WHEREAS, the Contractor hereby represents that it is a licensed contractor of the State of New Mexico pursuant to Chapter 60, Article 13 NMSA 1978; and

WHEREAS, the Owner agrees to hire the Contractor, and the Contractor agrees to provide Construction Services as required herein for the Project in accordance with the terms and conditions set forth in this Agreement; 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.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 DOCUMENTS

The contract documents consist of the following:

- Agreement between County and Contractor
- General Conditions of the Construction Contract
- Conditions of the Work of the Construction Contract
- Bid Sheet
- Addenda and Modifications issued
before and after execution of this Contract

Attachment A
Attachment B

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are hereby attached as exhibits as follows:

Project Manual	Exhibit A
Technical Specifications as listed in Plan Set	Exhibit B
Labor and Material Payment Bond	Exhibit C
Performance Bond	Exhibit D
Assignment of Antitrust Claims	Exhibit E
Certificate of Insurance	Exhibit F

Notice of Award
Notice to Proceed
Change Order
Certificate of Substantial Completion

Exhibit G
Exhibit H
Exhibit I
Exhibit J

ARTICLE 2 THE WORK

2.1 THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

The Romero Park Landscape Improvements Phase I located at County Road 62, Santa Fe, New Mexico consists of, but is not limited to, the complete construction of: site improvements to include site furnishings, north playground, shade structure, signage, landscape surfacing, planting, irrigation around existing facilities and improvements and perimeter fencing and access control.

ARTICLE 3 EFFECTIVE DATE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND AMENDMENTS

3.1 EFFECTIVE DATE

The Effective Date of this Agreement is the date of signature by the County.

3.2 TIME OF COMMENCEMENT

The work to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed issued by the County, hereto attached as Exhibit H.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the entire work no later than ninety (90) calendar days from the date of the Notice to Proceed, except as hereafter extended by valid written Change Order. A Certificate of Substantial Completion, attached hereto as Exhibit J, will be issued by the County to the Contractor, as adjusted by any Change Order, attached hereto as Exhibit I.

3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages in the amount of three hundred dollars (\$300.00) shall be assessed per each calendar day that expires after the date of

substantial completion, as adjusted by any change order, and until issuance by the County of a certificate of Substantial Completion in accordance with Paragraph 7 EFFECTIVE DATE AND TERM of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract and it is further mutually understood and agreed that the work outlined in this contract shall be commenced on a date to be specified in the "Notice to Proceed."
- B. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and the amount is agreed to be the amount of damages which the County would sustain and the amount shall be retained from time to time by the County from current periodical estimates.
- E. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:
 - 1. To any preference, priority or allocation order duly issued by the County;
 - 2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a

contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.

F. Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of the contract, notify the County in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

3.5 AMENDMENTS

This Agreement may be amended by mutual agreement by both parties upon issuance of a Change Order by the County to the Contractor. Any such amendment shall be in accordance with Paragraph 10 AMENDMENTS-CHANGE ORDERS of the General Conditions. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

**ARTICLE 4
CONTRACT SUM**

4.1 CONTRACT SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon amount of Four hundred fifty-three thousand seven hundred thirty-eight dollars (\$453,738.00), exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

Base Bid	\$ 326,869.00
Additive Alternate #1	\$ 126,869.00

Total Contract Amount **\$ 453,738.00 exclusive of GRT**

ARTICLE 5 PROGRESS PAYMENTS

5.1 PROGRESS PAYMENTS

Based upon an Application for Payment submitted to the County by the Contractor and Certificates for Payment issued by the County, the County shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

- A. No later than (21) working days following receipt by the County of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the County; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978).
- B. When making payments, the County, Contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act (refer to Section 57-28-5, NMSA 1978).
- C. Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within twenty-one days after receipt of payment from the County, contractor or subcontractor. If the contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one days after receipt of an undisputed request for payment, the contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the County to require the fulfillment of all of the terms of the contract.

- F. County's right to withhold certain amounts and make application thereof. The Contractor agrees that it will indemnify and hold the County harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills, of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 6 FINAL PAYMENT

6.1 FINAL PAYMENT

The entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor within thirty (30) calendar days after notification of the County by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the County a certified statement of Release of Liens and Consent of Surety.

6.2 ACCEPTANCE OF FINAL PAYMENT CONTITUTES RELEASE

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 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. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

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

SANTA FE COUNTY

Robert A. Anaya, Board Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM:



Gregory S. Shaffer
Santa Fe County Attorney

2-9-15
Date

FINANCE DEPARTMENT APPROVAL:



Teresa C. Martinez
Santa Fe County Finance Director

2/12/15
Date

CONTRACTOR

Signature

Date

Print Name

Print Title

**GENERAL CONDITIONS
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND CONTRACTOR
FOR CONSTRUCTION SERVICES**

1.0 DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- 1.1 *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.2 *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the work or an adjustment in the contract sum or the contract time. A change order may be signed by the Architect or Engineer, provided they have written authority from the County for such procedure and that a copy of such written authority is furnished to the Contractor upon request. The contract sum and the contract time may be changed only by change order. A change order may be in the form of additional compensation or time; or less compensation or time known as a Deduction (from the contract) the amount deducted from the contract sum by change order.
- 1.3 *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.4 *Contract Period* The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.
- 1.5 *Contractor* is a person, firm or corporation with whom the contract is entered into with the County.
- 1.6 *Construction Documents* All drawings, specifications and addenda associated with a specific construction project.
- 1.7 *Construction Schedule* A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.8 *Day* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.9 *Labor and Material Payment Bond* A written form of security from a surety (bonding) company to the County, on behalf of an acceptable prime Contractor or

subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract. (see Performance Bond and Surety Bond).

- 1.10 Lump Sum Agreement (See Stipulated Sum Agreement)**
- 1.11 Lump Sum Bid** A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.12 Lump Sum Contract** A written contract between the County and Contractor wherein the County agrees to pay the contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.13 Payment Bond** A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.
- 1.14 Performance Bond** A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of the contract.
- 1.15 Progress Payment** A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).
- 1.16 Progress Schedule** A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.
- 1.17 Punch list** a list of items to be completed or corrected, prepared by the Architect/Engineer, checked and augmented as required by the Contractor or Construction Manager is appended hereto as Exhibit J. Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the contract documents.
- 1.18 Schedule of Values** A statement furnished by the Contractor to the Architect or Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.19 Services** Includes services performed, workmanship, and material furnished or utilized in the performance of services.

- 1.20 *Stipulated Sum Agreement* A written agreement in which a specific amount is set forth as the total payment for completing the contract (See Lump Sum Contract).
- 1.21 *Subcontractor* is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.
- 1.22 *Unit Price Contract* A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in the contract.
- 1.23 *Unit Prices* A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.24 *Working Day* means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Architect or Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect or Engineer may charge a Working Day.
- 1.25 *Work on (at) the project* is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

2. CONTRACT AND CONTRACT DOCUMENTS

- 2.1 *Entire Agreement.* This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this written Agreement.
- 2.2 *Relationship of Contract Documents.* The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3 *Conflicting Conditions.* Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

3. PLANS, SPECIFICATIONS AND ADDENDA

- 3.1** The plans, specifications and addenda, hereinafter enumerated in Article 1 of the Agreement Between County and Contractor for Construction shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.
- 3.2** Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

4. CONTRACT SECURITY – BONDS

- 4.1** Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the faithful performance of this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.
- 4.2** Payment Bond. The Contractor shall provide payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract, furnishing materials in connection with this contract and all of Contractor's requirements as specified in the contract documents. The Payment Bond shall remain in effect until one year after the date when final payment becomes due.
- 4.3** Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the County.
- 4.4** Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

5. TERMS AND MEANINGS

Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

- 5.1 Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 5.2 Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 5.3 Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 5.4 Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

- 6.1** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.
- 6.2** In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- 6.3** **Minimum Wage Rates.** The Contractor, all subcontractors and subsubcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.
- 6.4** 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 federal and state district courts of New Mexico.
- 6.5** Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.
- 6.6** **New Mexico Tort Claims Act.** By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, as amended. The County and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not

waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

- 6.7 Provision Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1 This Agreement shall, upon due execution by all parties, become effective in accordance with the Agreement Between County and Contractor for Construction, Article 3 - Effective Date, Time of Commencement and Substantial Completion. This Agreement shall not become effective until: (1) approved by the Santa Fe County Commissioners and/or the County Manager or their designee; and (2) signed by all parties required to sign this Agreement.
- 7.2 This Contract shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless earlier terminated pursuant to Section 8 (Termination) or 9, (Appropriations and Authorizations) of these General Conditions.

8. TERMINATION

- 8.1 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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (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.
- 8.2 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 fifteen (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.

8.3 Right of the County to Terminate Contract In the event that any of the provisions of this contract are violated by the Contractor, or by any of its subcontractors, the County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the County shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the County may take over the work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety shall be liable to the County for any excess cost occasioned the County thereby, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

9. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the New Mexico State Legislature. 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.

10. AMENDMENTS – CHANGE ORDERS

Contract Documents may be amended by a Change Order, hereto attached as Exhibit I to allow for additions, deletions, and revision as specified in Article 2 "The Work" of the Agreement between Santa Fe County and the Contractor or to amend the terms and conditions by a Change Order.

11. INDEMNIFICATION

11.1 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.

- 11.2 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 can 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.
- 11.3 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.

12. AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

- 12.1 Any claims, disputes, or other matters in question between the Contractor and the County, except those which have been waived by the making or acceptance of final payment as provided in Paragraph 6.2 of the Agreement Between Santa Fe County and Contractor for Construction, shall be presented in the form of a written request accompanied by supporting data to the Architect/Engineer for formal decision, with a copy to the other party. Such formal decision of the Architect/Engineer is binding upon the Contractor and the Owner unless either or both notify each other and the Architect/Engineer in writing within fifteen (15) days of their receipt of the decision that they are unwilling to abide by the Architect's/Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect/Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.
- 12.2 A settlement agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- 12.3 Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13. DISPUTE RESOLUTION

- 13.1 Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 12.1.
- 13.2 County and Contractor shall participate in the mediation process in good faith. The process shall be completed within Sixty (60) days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation Act.

13.3 If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

14. INSURANCE

14.1 The Contractor shall not commence work under this contract until they have obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.

14.2 Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".

14.3 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.

14.4 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. The Santa Fe County shall be a named additional insured on the policy.

14.5 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.

14.6 Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70 NMSA 1978. The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as required by applicable State law for all of its employees to be engaged in work at the site of

the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation law, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.

14.7 Scope of Insurance and Special Hazards. The insurance require under subparagraphs 14.4 and 14.5 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.

14.8 Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.

14.9 Increased Limits. If, during the life of this Agreement, the New Mexico State Legislature 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.

14.10 Additional insured. Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.

15. INDEPENDENT CONTRACTOR

15.1 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to employees of the County as a result of this Agreement.

15.2 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.

15.3 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

16. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

16.1 No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

16.2 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

16.3 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

17. ASSIGNMENT

17.1 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.

18. SUBCONTRACTING

18.1 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.

- 18.2 Contractor shall provide to the County a listing of subcontractors within ten (10) days of the Contract award.
- 18.3 Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4 Contractor shall provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.5 The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.
- 18.6 The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the contract documents.
- 18.8 Nothing contained in this contract shall create any contractual relation between any subcontractor and the County.
- 18.9 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

19. PERSONNEL

- 19.1 All work performed under this Agreement shall be performed by the Contractor or under its supervision.

19.2 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.

20. NOTICES

20.1 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
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Accent Landscape Contractor, Inc.
 3525 Girard Boulevard NE
 Albuquerque, New Mexico 87107

20.2 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

21. RELEASE

The Contractor, upon final payment of the amounts due under this Agreement, releases the County, the County's officers and employees from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

22. WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

CONDITIONS OF THE WORK

1. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 1.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer/County will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/ Engineer/County in accordance with the schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each schedule to be subject to change from time to time in accordance with progress of the work.

2. SHOP OR SETTING DRAWINGS

- 2.1 The Contractor shall submit promptly to the Architect/Engineer/County two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer/County and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/ Engineer/County with two corrected copies. If requested by the Architect/Engineer/County the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer/County, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Architect/Engineer/County in writing of any deviations at the time the Contractor furnishes such drawings.

3. MATERIALS, SERVICES AND FACILITIES

3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

3.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the County.

4. CONTRACTOR'S TITLE TO MATERIALS

- 4.1 No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other

agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

5. INSPECTION AND TESTING OF MATERIALS

- 5.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of the Contract.
- 5.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "OR EQUAL" CLAUSE

- 6.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer/County, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer/County's written approval.

7. PATENTS

- 7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.
- 7.2 License and/or Royalty Fees for the use of a process which is authorized by the County of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the County and not by or through the Contractor.
- 7.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the County of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with

work agreed to be performed under this Contract, and shall indemnify the County for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

8. SURVEYS, PERMITS AND REGULATIONS

- 8.1 Unless otherwise expressly provided for in the Specifications, the County will furnish to the Contractor all surveys necessary for the execution of the work.
- 8.2 Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.
- 8.3 The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

9. CONTRACTOR'S OBLIGATIONS

- 9.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer/County as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2 The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the County.

10. WEATHER CONDITIONS

- 10.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer/County shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer/County, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

11. PROTECTION OF WORK AND PROPERTY-EMERGENCY

- 11.1 The Contractor shall at all times safely guard the County's property from injury or loss in

connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the County, or its duly authorized representatives.

11.2 In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer/County, in a diligent manner. The Contractor shall notify the Architect/Engineer/County immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer/County for approval.

11.3 Where the Contractor has not taken action but has notified the Architect/Engineer/County of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Architect/Engineer/County.

11.4 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of these Conditions of the Work.

12. INSPECTION

12.1 The authorized representatives and agents of the County shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTS, RECORDS AND DATA

13.1 The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request concerning work performed or to be performed under this Contract.

14. SUPERINTENDENT BY CONTRACTOR

14.1 At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/ Engineer/County and shall be one who can be continued in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.

15. CHANGES IN WORK

15.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the County. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of

the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The County's or rental cost of construction equipment during the time of use on the extra work;
 - 4) Power and consumable supplies for the operation of power equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions.
- D. To the costs for changes in work a fixed fee will be added to be agreed upon but not to exceed ten percent (10%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. EXTRAS

16.1 Without invalidating the contract, the County may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the County or the Architect/Engineer, acting officially for the County, and the price is stated in such order.

17. INSPECTION OF SERVICES

17.1 The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.

17.2 The County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The County shall perform inspections and tests in a manner that will not unduly delay the work.

17.3 If the County performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

17.4 If any of the services do not conform with the Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in contract amount. When the defects in services cannot be

corrected by re-performance, the County may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the Contract sum to reflect the reduced value of the services performed.

17.5 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the County may by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the County that is directly related to the performance of such service, or terminate the Contract for default.

18. CORRECTION OF WORK

18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer/County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer/County, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer/County shall be equitable.

19. WARRANTY OF CONSTRUCTION

19.1 In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

19.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.

19.3 The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.

19.4 The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

- 19.5 The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 19.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 19.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8 In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9 Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County or for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10 This warranty shall not limit the County's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.

20. SUBSURFACE CONDITIONS FOUND DIFFERENT

- 20.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, the Contractor shall immediately give notice to the Architect/Engineer/County of such conditions before they are disturbed. The Architect/Engineer/County will thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the Plans or indicated in the Specifications, they will at once make such changes in the Plans and/or Specifications as they may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 above.

21. CLAIMS FOR EXTRA COST

- 21.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the County, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

22.1 Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the County an estimated construction progress schedule in a form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the County (a) a detailed estimate giving a complete breakdown of the Contract sum and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

22.2 Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor.

23. ASSIGNMENTS

23.1 The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

24. MUTUAL RESPONSIBILITY OF CONTRACTORS

24.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the County on account of any damage alleged to have been sustained, the County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

25. SEPARATE CONTRACT

25.1 The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Architect/Engineer/County immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

26. ARCHITECT/ENGINEER'S AUTHORITY

26.1 The Architect/Engineer/County shall give all orders and directions contemplated under this Contract and specifications, relative to the execution of the work. The Architect/Engineer/County shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer/County's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer/County shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

26.2 The Architect/Engineer/County shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the County shall be adjusted and determined by the Architect/Engineer/County.

27. STATED ALLOWANCES

27.1 It is understood that Contractor has included in its proposal for the Contract sum all allowances including "Allowed Materials" The Contractor shall purchase the "Allowed Materials" as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

28. USE OF PREMISES AND REMOVAL OF DEBRIS

28.1 The Contractor expressly undertakes at its own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition.
- F. to effect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer/County, not to cut or otherwise alter the work of any other Contractor.

29. QUANTITIES OF ESTIMATE

29.1 Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the County to complete the work contemplated by this Contract, and such increase or diminution shall in no way void this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. LANDS AND RIGHTS-OF-WAY

30.1 Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this Contract.

31. GENERAL GUARANTY

31.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the work unless a longer period is specified. The

County will give notice of observed defects with reasonable promptness.

32. PROTECTION OF LIVES AND HEALTH

32.1 The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

33. INTEREST OF MEMBER

33.1 No member of Santa Fe Board of County Commissioners shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

34. OTHER PROHIBITED INTERESTS

34.1 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

35. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY COUNTY

35.1 The Contractor agrees to the use and/or occupancy of a portion or unit of the project before formal acceptance by the County, provided the County:

- A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/ Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction.
- C. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

ATTACHMENT A
BID SHEETS

REVISED BID SHEETS

IFB# 2015-0070-PW/PL

**ROMERO PARK LANDSCAPE IMPROVEMENTS
PHASE I**

Please offer your best price for the work required for the construction of the Romero Park Landscape Improvements Phase I. The Lump Sum Base Bid and all Alternates are inclusive of any and all items and costs necessary to furnish, install, or complete the work, including, but not limited to, necessary superintendence, labor, equipment, tools, machinery, mobilization, insurance, profit and overhead.

PART 1 - LUMP SUM BASE BID AND LUMP SUM ALTERNATES

<u>Item</u>	<u>Description</u>
1.	The work designated as Romero Park Landscape Improvements Phase I consists of, but is not limited to the complete construction of: site improvements (site furnishings, north playground, signage, fencing and access control, landscape surfacing, planting, irrigation) around existing facilities and improvements.

Lump Sum Base Bid: \$326,869.00

Lump Sum Base Bid Written in Words: Three Hundred Twenty Six Thousand Eight Hundred Sixty Nine Dollars and no cents

<u>Additive Alternate #1</u>	<u>Description - Shade Structure</u>
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#A1	Install steel shade structure and architectural building improvements per sheets A1-01 and A1-02. Coordinate architectural installation with surface paving installation to be completed by others. Install cobble swale on north side of building per detail 7/L3-02. Base bid assumes no shade structure or building improvements and no improvements in the cobble swale location.
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Lump Sum Additive Alternate #1: \$126,869.00

Lump Sum Additive Alternate #1 Written in Words: One hundred Twenty Six Thousand Eight hundred Sixty Nine Dollars and zero cents

Additive Alternate #2

Description - North Area Landscaping

#A2

Install landscape improvements in drainage swale area as indicated on sheet L2-02. Improvements include check dam, bioswale surfacing, boulders and crusher fines paving. Install plants per sheet L4-02 and irrigation system per sheet IR1-01 for this area. Coordinate installation of irrigation sleeving with civil improvements. Base bid assumes hydroseeding for this area and a fence / gate alignment at the end of the truncated access road / parking area.

Lump Sum Additive Alternate #2: \$22,500.00

Lump Sum Additive Alternate #2 Written in Words: Twenty Two Thousand Five hundred Dollars and zero cents

Additive Alternate #3

Description - Reseeding

#A3

Scarify existing dirt parking area (73,500 sf) and install reclamation seeding (hydroseed, non-irrigated). Base bid assumes no improvements in this area.

Lump Sum Additive Alternate #3: \$14,379.00

Lump Sum Additive Alternate #3 Written in Words: Fourteen Thousand Three Hundred Seventy Nine Dollars and zero

ALL LUMP SUM BIDS ARE EXCLUSIVE OF GROSS RECEIPTS TAX

REVISED BID SHEETS, CONT'D

PART 2 – UNIT PRICES (for Additions or Deletions Only)

In the event changes in the Project Scope require additions to or deletions from the BASE BID CONTRACT PRICE, Bidder agrees to provide Owner or delete from the Contract the items listed in the Unit Prices worksheet below. The Unit Prices provided will be used only for additions to and deletions from the contract price which may have to be made as the performance under this contract proceeds. The Unit Prices are inclusive of any and all items and costs necessary to furnish, install, or complete the work, including, but not limited to, necessary superintendence, labor, equipment, tools, machinery, mobilization, insurance, profit and overhead. The Unit Prices are "Complete-In-Place" Costs.

Item	Description	Unit	Unit Cost
1	Clearing & Grubbing	SY	\$ <u>.68</u>
2	Crusher Fines Paving	SF	\$ <u>1.00</u>
3	Timber Steps	LF	\$ <u>43.50</u>
4	Timber Edging	LF	\$ <u>30.00</u>
5	Boulders	EA	\$ <u>200.00</u>
6	Picnic Table, 8 ft.	EA	\$ <u>1973.00</u>
7	Picnic Table, 8 ft. Accessible	EA	\$ <u>1937.00</u>
8	Picnic Table, 6 ft.	EA	\$ <u>1793.00</u>
9	Bench, 8 ft.	EA	\$ <u>896.00</u>
10	Bench, 8 ft. Backless	EA	\$ <u>698.00</u>
11	Bollard, Removeable	EA	\$ <u>1297.00</u>
12	Bollard, Fixed	EA	\$ <u>973.00</u>
13	Trash / Recycling Receptacles	EA	\$ <u>937.39</u>
14	Bike Loop	EA	\$ <u>318.00</u>
15	BBQ Grill	EA	\$ <u>750.00</u>
16	Ranch Fence	LF	\$ <u>49.37</u>
17	Post & Cable Fence	LF	\$ <u>25.68</u>
18	Five Strand Barbless Fence	LF	\$ <u>7.93</u>
19	Handrail, 2.5" O.D.	LF	\$ <u>38.00</u>
20	Backboard. Rim + Net	EA	\$ <u>293.75</u>
21	Swing Gates (Double Leaf)	EA	\$ <u>2793.00</u>
22	Prescription Trail Sign (Single Panel)	EA	\$ <u>300.00</u>
23	Entry Monument Sign	EA	\$ <u>6869.00</u>
24	Asphalt Patching	SF	\$ <u>7.39</u>
25	Metal Stock Tank - 2' dia. (concrete filled)	EA	\$ <u>1168.00</u>
26	Metal Stock Tank - 3' dia. (concrete filled)	EA	\$ <u>225.00</u>
27	Metal Stock Tank - 5' dia. (concrete filled)	EA	\$ <u>275.00</u>
28	Metal Stock Tank - 3' dia. (cobble/sand/gravel filled)	EA	\$ <u>215.00</u>
29	Metal Stock Tank - 5' dia. (cobble/sand/gravel filled)	EA	\$ <u>250.00</u>
30	Metal Stock Tank - 8' dia. (cobble/sand/gravel filled)	EA	\$ <u>650.00</u>

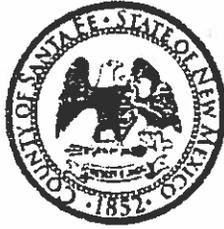
31.	Metal Stock Tank – 15" dia. bottomless (sand filled)	EA	\$ <u>973.80</u>
32.	Large Deciduous Trees (3"- 3 1/2" cal.)	EA	\$ <u>468.00</u>
33.	Medium Deciduous Trees (2.5" 0 3" cal.)	EA	\$ <u>379.00</u>
34.	Small Deciduous Trees (1.5"- 2" cal.)	EA	\$ <u>268.00</u>
35.	Evergreen Tree (8'-10' B+B)	EA	\$ <u>468.00</u>
36.	Shrub / Ornamental Grass – 5 gal.	EA	\$ <u>36.00</u>
37.	Perennial / Grass – 1 gal.	EA	\$ <u>13.00</u>
38.	Native Grass Seeding	AC	\$ <u>8,800.00</u>
39.	Lawn	SF	\$ <u>.97</u>
40.	Landscape Bed Preparation	SF	\$ <u>.43</u>
41.	Organic Mulch	CY	\$ <u>40.00</u>
42.	Gravel Mulch, 7/16" (3" depth)	CY	\$ <u>137.95</u>
43.	Gravel Mulch, 1" (4" depth)	CY	\$ <u>119.73</u>
44.	Cobble, 2"- 4" (12" depth)	CY	\$ <u>137.95</u>
45.	Cobble, 4"- 8" (12" depth)	CY	\$ <u>156.86</u>
46.	Stone Creek Dam	EA	\$ <u>875.00</u>
47.	Rain Bird 1812 PRS w/plastic nozzle spray head	EA	\$ <u>39.75</u>
48.	Hunter 1-20 Rotor	EA	\$ <u>46.00</u>
49.	Hunter 1-20 12" Rotor	EA	\$ <u>56.00</u>
50.	CL200 PVC Lateral Pipe - .75"	LF	\$ <u>2.00</u>
51.	CL200 PVC Lateral Pipe - 1"	LF	\$ <u>2.45</u>
52.	CL200 PVC Lateral Pipe - 1.25"	LF	\$ <u>2.80</u>
53.	CL200 PVC Lateral Pipe - 1.5"	LF	\$ <u>3.05</u>
54.	CL200 PVC Lateral Pipe - 2"	LF	\$ <u>3.50</u>
55.	CL200 PVC Mainline - 2"	LF	\$ <u>4.75</u>
56.	CL200 PVC Mainline - 2.5"	LF	\$ <u>5.50</u>
57.	CL160 PVC Sleeve - 2"	LF	\$ <u>3.80</u>
58.	CL160 PVC Sleeve - 3"	LF	\$ <u>4.75</u>
59.	CL160 PVC Sleeve - 4"	LF	\$ <u>4.95</u>
60.	Febco 825YA BFP - 2"	EA	\$ <u>2,686.00</u>
61.	Guard Shack GS-1 enclosure	EA	\$ <u>593.75</u>
62.	Rainbird PESB - 1" valve	EA	\$ <u>300.00</u>
63.	Rainbird PESB - 1.5" valve	EA	\$ <u>389.75</u>
64.	Rainbird 44LRC Quick Coupler	EA	\$ <u>268.69</u>
65.	Gate Valve - 2"	EA	\$ <u>188.00</u>
66.	Gate Valve - 2.5"	EA	\$ <u>225.00</u>
67.	Drain Valve - 1/4"	EA	\$ <u>150.00</u>
68.	AWG Wire #14	EA	\$ <u>.10</u>
69.	Hunter I-Core – 400 – 4 Station Module	EA	\$ <u>400.00</u>
70.	Radio Remote w/Tranceiver	EA	\$ <u>225.00</u>
71.	Drip Valve Assembly w/ 1 P1 PRV	EA	\$ <u>325.00</u>
72.	Inline Emitter Tubing	LF	\$ <u>.68</u>
73.	Drip Blow-Out Box w/Operator	EA	\$ <u>139.75</u>
74.	Tubular Skylight	EA	\$ <u>973.00</u>

ATTACHMENT B
ADDENDA & MODIFICATION

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathleen Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

January 16, 2015

SANTA FE COUNTY
IFB# 2015-0195-PW/PL
ROMERO PARK LANDSCAPE IMPROVEMENT PHASE I

ADDENDUM #1

Dear Bidders,

This addendum is issued to reflect the following immediately. It shall be the responsibility of interested bidders to adhere to any changes or revisions to the IFB as identified in this Addendum No. 1. This documentation shall become permanent and made part of the departmental files.

IMPORTANT NOTICE:
**THIS ADDENDUM CONTAINS REVISED BID SHEETS TO BE
USED IN BID SUBMITTAL**

ATTACHMENT 1: REVISED BID SHEETS
ATTACHMENT 2: PRE-BID CONFERENCE SIGN-IN SHEET
ATTACHMENT 3: ALLOWANCES / SECTION 01 21 00
ATTACHMENT 4: SITE WORK / SECTION 02 10 00
ATTACHMENT 5: IRRIGATION PLAN / REVISED SHEET IR1-01
ATTACHMENT 6: COVERSHEET 150108

On January 6, 2015 Santa Fe County held the pre-bid conference for the above referenced Invitation for Bid (IFB). Listed below are questions asked at the conference and received via email.

Question #1- What is the budget amount for this project?

Answer #1- *The MACC for this project is \$400,000 for the base bid plus all of the alternates.*

Question #2- If the contract time for the civil improvements project is 90 days, what is the estimated start-up for this project? Is the expectation to begin before the civil portion is completed?

Answer #2- *It is anticipated that there would be some coordination before the civil improvements are complete and accepted and when landscape improvements begin. Full landscape construction activities are anticipated to begin once the civil has achieved substantial completion.*

Question #3- Please clarify the irrigation requirements for this project?

Answer #3- *See irrigation plans for details. As part of base bid, irrigation will not be installed in area north of shade structure outlined as Additive Alternate 2.*

Question #4- Will the SWPPP be required for both the landscape and the civil contractor?

Answer #4- *Yes. The landscape contractor will assume maintenance of SWPPP components for the duration of landscape construction activities as outlined in revised technical specifications 01 21 00 Allowances and 02 10 00 Site Work.*

Question #5- Please clarify where the fencing stops on Sheet L2-02?

Answer #5- *Fencing ends at the bollard at the van accessible parking space.*

Question #6- Will the native planting require irrigation?

Answer #6- *It is assumed that native grass seeding installed in areas without irrigation will not receive additional watering.*

Question #7- Is all the demolition work contained in the civil improvements project?

Answer #7- *Yes. The Landscape Contractor shall coordinate demolition activities with Civil Contractor.*

Question #8- Are all the fencing requirements contained in this project? Is any fencing required in the civil improvements project?

Answer #8- All permanent fencing is included in the landscape scope of work as per the contract documents.

Question #9- Clarify the effort required for the re-surfacing of the basketball courts? What type of sealant will be required?

Answer #9- The basketball court is to be re- striped and new nets and rims are to be installed on the remaining existing backboards. Prior to restriping, cracks are to be sealed. See plans.

Question #10- Have the prairie dogs been relocated?

Answer #10- Yes.

Question #11- Will the basketball backboards be replaced? Are the poles to be replaced?

Answer #11- Backboards will not be replaced. Poles will not be replaced. Basketball replacement elements are outlined in 12 93 00 Site Furnishings spec and on the plans.

Question #12- Who will be responsible for the shade structure footings?

Answer #13- The Landscape Contractor is responsible for the structure footings and shall coordinate work with the Civil Contractor.

Question #14- How much patching will be required for the installation of the skylights in the concession/restroom building?

Answer #14- Skylights penetrating the existing concession/restroom building shall be installed to prevent leakage with appropriate flashing. Skylights locations penetrating shade structure shall be sealed / installed according to manufacturer's specifications.

Question #15- What components are required in the playground area?

Answer #15- See plan L2-05. The Landscape Contractor is responsible for furnishing and installing the north play area, with the exception of the pump, which will be supplied by the Owner. The Landscape Contractor is responsible for installing round concrete components in the playground area. Landscape Contractor to coordinate installation with Civil Contractor.

Question #16- Is the playground structure to be purchased and installed by others?

Answer#16- Pre-manufactured playground equipment elements and safety surfacing to be installed by others.

Question #17- Due to changes/clarifications discussed at pre-bid conference, will revised Bid Sheets be issued?

*Answer #17- Yes, this Addendum contains **REVISED BID SHEETS** that must be used in your bid submittal.*

Please add this Addendum #1 to the original bid documents and refer to bid documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect.

Bidders are reminded that any questions or need for clarification must be addressed to Pamela Lindstam, Senior Procurement Specialist at plindsta@santafecountynm.gov.

ATTACHMENT 1

**REVISED BID SHEETS
(PAGES 1-4)
TO BE USED IN BID SUBMITTAL**

REVISED BID SHEETS

IFB# 2015-0070-PW/PL

**ROMERO PARK LANDSCAPE IMPROVEMENTS
PHASE I**

Please offer your best price for the work required for the construction of the Romero Park Landscape Improvements Phase I. The Lump Sum Base Bid and all Alternates are inclusive of any and all items and costs necessary to furnish, install, or complete the work, including, but not limited to, necessary superintendence, labor, equipment, tools, machinery, mobilization, insurance, profit and overhead.

PART I – LUMP SUM BASE BID AND LUMP SUM ALTERNATES

<u>Item</u>	<u>Description</u>
1.	The work designated as Romero Park Landscape Improvements Phase I consists of, but is not limited to the complete construction of: site improvements (site furnishings, north playground, signage, fencing and access control, landscape surfacing, planting, irrigation) around existing facilities and improvements.

Lump Sum Base Bid: _____

Lump Sum Base Bid Written in Words: _____

<u>Additive Alternate #1</u>	<u>Description – Shade Structure</u>
#A1	Install steel shade structure and architectural building improvements per sheets A1-01 and A1-02. Coordinate architectural installation with surface paving installation to be completed by others. Install cobble swale on north side of building per detail 7/L3-02. Base bid assumes no shade structure or building improvements and no improvements in the cobble swale location.

Lump Sum Additive Alternate #1: _____

Lump Sum Additive Alternate #1 Written in Words: _____

Additive Alternate #2

Description – North Area Landscaping

#A2

Install landscape improvements in drainage swale area as indicated on sheet L2-02. Improvements include check dam, bioswale surfacing, boulders and crusher fines paving. Install plants per sheet L4-02 and irrigation system per sheet IR1-01 for this area. Coordinate installation of irrigation sleeving with civil improvements. Base bid assumes hydroseeding for this area and a fence / gate alignment at the end of the truncated access road / parking area.

Lump Sum Additive Alternate #2: _____

Lump Sum Additive Alternate #2 Written in Words: _____

Additive Alternate #3

Description - Reseeding

#A3

Scarify existing dirt parking area (73,500 sf) and install reclamation seeding (hydroseed, non-irrigated). Base bid assumes no improvements in this area.

Lump Sum Additive Alternate #3: _____

Lump Sum Additive Alternate #3 Written in Words: _____

ALL LUMP SUM BIDS ARE EXCLUSIVE OF GROSS RECEIPTS TAX

REVISED BID SHEETS, CONT'D

PART 2 – UNIT PRICES (for Additions or Deletions Only)

In the event changes in the Project Scope require additions to or deletions from the BASE BID CONTRACT PRICE, Bidder agrees to provide Owner or delete from the Contract the items listed in the Unit Prices worksheet below. The Unit Prices provided will be used only for additions to and deletions from the contract price which may have to be made as the performance under this contract proceeds. The Unit Prices are inclusive of any and all items and costs necessary to furnish, install, or complete the work, including, but not limited to, necessary superintendence, labor, equipment, tools, machinery, mobilization, insurance, profit and overhead. The Unit Prices are "Complete-In-Place" Costs.

Item	Description	Unit	Unit Cost
1	Clearing & Grubbing	SY	\$ _____
2	Crusher Fines Paving	SF	\$ _____
3	Timber Steps	LF	\$ _____
4	Timber Edging	LF	\$ _____
5	Boulders	EA	\$ _____
6	Picnic Table, 8 ft.	EA	\$ _____
7	Picnic Table, 8 ft. Accessible	EA	\$ _____
8	Picnic Table, 6 ft.	EA	\$ _____
9	Bench, 8 ft.	EA	\$ _____
10	Bench, 8 ft. Backless	EA	\$ _____
11	Bollard, Removeable	EA	\$ _____
12	Bollard, Fixed	EA	\$ _____
13	Trash / Recycling Receptacles	EA	\$ _____
14	Bike Loop	EA	\$ _____
15	BBQ Grill	EA	\$ _____
16	Ranch Fence	LF	\$ _____
17	Post & Cable Fence	LF	\$ _____
18	Five Strand Barbless Fence	LF	\$ _____
19	Handrail, 2.5" O.D.	LF	\$ _____
20	Backboard, Rim + Net	EA	\$ _____
21	Swing Gates (Double Leaf)	EA	\$ _____
22	Prescription Trail Sign (Single Panel)	EA	\$ _____
23	Entry Monument Sign	EA	\$ _____
24	Asphalt Patching	SF	\$ _____
25	Metal Stock Tank - 2' dia. (concrete filled)	EA	\$ _____
26	Metal Stock Tank - 3' dia. (concrete filled)	EA	\$ _____
27	Metal Stock Tank - 5' dia. (concrete filled)	EA	\$ _____
28	Metal Stock Tank - 3' dia. (cobble/sand/gravel filled)	EA	\$ _____
29	Metal Stock Tank - 5' dia. (cobble/sand/gravel filled)	EA	\$ _____
30	Metal Stock Tank - 8' dia. (cobble/sand/gravel filled)	EA	\$ _____

31.	Metal Stock Tank – 15" dia. bottomless (sand filled)	EA	\$ _____
32.	Large Deciduous Trees (3"- 3 1/2" cal.)	EA	\$ _____
33.	Medium Deciduous Trees (2.5" 0 3" cal.)	EA	\$ _____
34.	Small Deciduous Trees (1.5"- 2" cal.)	EA	\$ _____
35.	Evergreen Tree (8'-10' B+B)	EA	\$ _____
36.	Shrub / Ornamental Grass – 5 gal.	EA	\$ _____
37.	Perennial / Grass – 1 gal.	EA	\$ _____
38.	Native Grass Seeding	AC	\$ _____
39.	Lawn	SF	\$ _____
40.	Landscape Bed Preparation	SF	\$ _____
41.	Organic Mulch	CY	\$ _____
42.	Gravel Mulch, 7/16" (3" depth)	CY	\$ _____
43.	Gravel Mulch, 1" (4" depth)	CY	\$ _____
44.	Cobble, 2"- 4" (12" depth)	CY	\$ _____
45.	Cobble, 4"- 8" (12" depth)	CY	\$ _____
46.	Stone Creek Dam	EA	\$ _____
47.	Rain Bird 1812 PRS w/plastic nozzle spray head	EA	\$ _____
48.	Hunter 1-20 Rotor	EA	\$ _____
49.	Hunter 1-20 12" Rotor	EA	\$ _____
50.	CL200 PVC Lateral Pipe - .75"	LF	\$ _____
51.	CL200 PVC Lateral Pipe - 1"	LF	\$ _____
52.	CL200 PVC Lateral Pipe - 1.25"	LF	\$ _____
53.	CL200 PVC Lateral Pipe - 1.5"	LF	\$ _____
54.	CL200 PVC Lateral Pipe - 2"	LF	\$ _____
55.	CL200 PVC Mainline - 2"	LF	\$ _____
56.	CL200 PVC Mainline - 2.5"	LF	\$ _____
57.	CL160 PVC Sleeve - 2"	LF	\$ _____
58.	CL160 PVC Sleeve - 3"	LF	\$ _____
59.	CL160 PVC Sleeve - 4"	LF	\$ _____
60.	Febco 825YA BFP - 2"	EA	\$ _____
61.	Guard Shack GS-1 enclosure	EA	\$ _____
62.	Rainbird PESB - 1" valve	EA	\$ _____
63.	Rainbird PESB - 1.5" valve	EA	\$ _____
64.	Rainbird 44LRC Quick Coupler	EA	\$ _____
65.	Gate Valve - 2"	EA	\$ _____
66.	Gate Valve - 2.5"	EA	\$ _____
67.	Drain Valve - 3/4"	EA	\$ _____
68.	AWG Wire #14	EA	\$ _____
69.	Hunter I-Core – 400 – 4 Station Module	EA	\$ _____
70.	Radio Remote w/Tranceiver	EA	\$ _____
71.	Drip Valve Assembly w/ 1 PI PRV	EA	\$ _____
72.	Inline Emitter Tubing	LF	\$ _____
73.	Drip Blow-Out Box w/Operator	EA	\$ _____
74.	Tubular Skylight	EA	\$ _____

ATTACHMENT 2

PRE-BID CONFERENCE SIGN-IN SHEET

PRE-BID CONFERENCE
IFB #2015-0195-PW/PL
ROMERO PARK LANDSCAPE IMPROVEMENTS PHASE I
JANUARY 6, 2015
2:00 PM (MST)

NAME	COMPANY	TELEPHONE	E-MAIL ADDRESS
<i>Amelia Ludstark</i>	<i>SFC</i>	<i>992-6759</i>	<i>A.ludstark@santafecountynm.gov</i>
<i>Raymond Moya</i>	<i>Seg voig Landscaping</i>	<i>505-977-2767</i>	<i>r.segvoig.land@live.com</i>
<i>Brent Bower</i>	<i>R M C I INC</i>	<i>505-345-0008</i>	<i>bbower@rmciinc.com</i>
<i>Scott McCloy</i>	<i>BlueLine Const. Inc.</i>	<i>505-216-7909</i>	<i>smcloy@bluelinenw.com</i>
<i>Kelly Chittenden</i>	<i>IONE mountain</i>	<i>505-909-2996</i>	<i>Sales@ionemountain.com</i>
<i>MATTIS BURMAN</i>	<i>MAXTEK CONTRACTORS</i>	<i>505-880-2753</i>	<i>mattis@maxtek.com</i>
<i>Julie Rodrigg</i>	<i>Am, Inc.</i>	<i>505-242-4848</i>	<i>julie@aminc.net</i>
<i>Cameron Stevens</i>	<i>Accent Landscape</i>	<i>505-881-4880</i>	<i>cstevens@ACCENTLS.ORG</i>
<i>Ally BZ</i>	<i>SFC</i>	<i>(505) 992-9868</i>	<i>clankov@santafecountynm.gov</i>
<i>Rick Cassidy</i>	<i>Cassidy's Landscaping</i>	<i>(505) 474-4500</i>	<i>rick@cassidyslandscaping.com</i>
<i>Clarewin Horn</i>	<i>design office</i>	<i>505-983-1915</i>	<i>claworn@do-designoffice.com</i>
<i>Patrol Sinnott</i>	<i>design office</i>	<i>505-983-1915</i>	<i>psinnott@do-designoffice.com</i>

PART 1 – GENERAL

1.01 SUMMARY

- A. Lump-sum allowances shall be included in the Bid by the Contractor.
 - 1. Miscellaneous Graphics
 - 2. SWPPP Maintenance

1.02 ALLOWANCES

- A. The following Allowances are to be included in the Bid and Contract Sum:
 - 1. Miscellaneous Graphics - \$1,200.00
 - 2. SWPPP - \$5,000.00
- B. Advise the Landscape Architect of the date when selection and purchase of each product, system, or services described by an Allowance must be completed to avoid delaying the Work.
- C. Submit invoices to show cost of products and services furnished under each allowance. Reconciliation of Allowance amounts with actual costs will be by Change Order.

1.03 SCHEDULE OF ALLOWANCES

- A. The Allowance includes materials, labor, installation, liability insurance, and gross receipts tax for the work provided by the subcontractor. In all cases, the Contractor shall be the responsible party for coordinating between the Contractor's work and the subcontractor. The Contractor shall also be responsible for protection and repair of any damage to the work of the subcontractor once installed within the project site.

The general description of the work provided by the subcontractor includes:

1. Miscellaneous Graphics: Subcontractor shall provide all materials and installation services for graphics such as exterior vinyl print graphics on metal surfaces, sign panels with graphics, and graphics painted on exterior surfaces. Final installation locations, templates (as required), and digital graphic files to be provided by the landscape architect.
2. SWPPP Maintenance: Subcontractor shall manage and maintain SWPPP activities in accordance with regulatory requirements as set forth in the contract documents. These activities will begin after the Civil Contractor has completed civil improvements as part of a separate contract and as landscape improvement work begins. Subcontractor to ensure there is no gap in inspection activities. Subcontractor to coordinate with SWPPP plans already in place for the project, if any. SWPPP management includes but is not limited to monthly inspections, paperwork filing, repairs and maintenance of SWPPP plan components, and removal of SWPPP components upon acceptance of the project.

END OF SECTION

PART 1 - GENERAL**1.01 INTRODUCTION**

- A. This work shall consist of fine grading, landscape surfacing, irrigation pipe installation, fencing and access control, steel structures, architectural improvements, permanent signing, designating and potholing for utility conflicts, structural backfill, and overall project coordination and project scheduling required by the construction documents for this project.

PART 2 – TECHNICAL SPECIFICATIONS**2.01 GENERAL**

- A. For all site work the "New Mexico Standard Specifications for Public Works Construction", 2006 Edition, are hereby incorporated by reference, the same as if fully written herein and shall govern this project except where revised, amended, or supplemented by the construction plans, or superseded by the specifications and contract documents.
- B. All work shall be paid for as a lump sum for base bid and any selected alternative. All work as part of additions or deletions shall be paid for or deducted as per Contractor submitted unit cost per item.

PART 3 – NPDES PERMITTING**3.01 GENERAL**

- A. This item will be paid on an at cost basis out of the allowance set forth in Section 01 21 00 for the duration of this project. This includes excavation for temporary sediment basins, straw bales, silt fence, temporary gravel construction entrance/exit installed prior to any construction and removed at completion of project, use of temporary earth swales, implementation of the Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section 603 of the New Mexico Department of Transportation 2005 Interim Specifications and as amended by the Supplemental Technical Specifications Section 603 and all other materials and equipment required to complete erosion control plan and SWPPP.

END OF SECTION

EXHIBIT A
PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C

LABOR AND MATERIAL PAYMENT BOND (SAMPLE)

KNOW ALL MEN BY THESE PRESENT, THAT WE

_____ as PRINCIPAL hereinafter called the "PRINCIPAL" and _____ as SURETY hereinafter called the "SURETY", are held and firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in the amount of _____ (\$.) dollars for the payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2015, with the COUNTY for the construction services for the Romero Park Landscape Improvements Phase I in Santa Fe County, New Mexico, which must be constructed in accordance with drawings and specifications which contract is referenced and made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include but not be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the COUNTY that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The COUNTY shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL, shall have written notice in the form of an sworn statement to the COUNTY and any one or both of the following: the PRINCIPAL or SURETY above named, within ninety (90) days after such said claim is made or suit filed, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or SURETY, at any place where an office is regularly maintained by said COUNTY,

PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

- 4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
- 5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

(seal)

NOTARY PUBLIC

My Commission expires: _____

SURETY (signature)

(Printed name and title)

(seal)

NOTARY PUBLIC

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT D

PERFORMANCE BOND (SAMPLE)

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the "CONTRACTOR" and _____, as SURETY

hereinafter called the "SURETY", are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the "COUNTY", in the sum of _____ (\$ _____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2015, with the COUNTY for the construction services for the Romero Park Landscape Improvements Phase I in Santa Fe County, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the "Contract."

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY'S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS,
AND SUBSUBCONTRACTORS OF CONTRACTORS ON COUNTY CONTRACTS.

FIRM NAME:
ADDRESS:

PROJECT: Romero Park Landscape
Improvements Phase I

PHONE NO.:

PROJECT NO: 2015-0195-PW/PL

_____ agrees that any and all claims which it may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to Santa Fe County, but only to the extent that such overcharges are passed on to the County. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers,
Subcontractors or Subsubcontractors

TITLE: _____

EXHIBIT F

CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT G

NOTICE OF CONTRACT AWARD

TO:

FROM: _____, Public Works Department

CONTRACT NO. 2015-0195-PW/PL

This is to inform that you that you have been awarded the Contract for:

Project Name: Romero Park Landscape Improvements Phase I

Date of Award _____ **Amount of Award** _____

Contractor Information:

Firm Name: _____ **License#** _____

Address: _____ **Phone #** _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ **Approximate Completion Date:** _____

Santa Fe County hereby accepts your offer on the solicitation No. _____ as reflected in this award document. The rights and obligations of the parties shall be subject to and governed by this document and any documents attached or incorporated by reference.

SANTA FE COUNTY

Name of Public Works Director or designee: _____
(Print Name)

Signature

EXHIBIT H

NOTICE TO PROCEED

TO: DATE:
PROJECT: Romero Park Landscape
Improvements Phase I

ATTN: PROJECT NO. 2015-0195-PW/PL
CONTRACT NO. 2015-0195-PW/PL
IFB NO. 2015-0195-PW/PL

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

Your firm shall commence work within ten (10) calendar days of the above date and shall achieve Substantial Completion [REDACTED] calendar days thereafter, which shall be [REDACTED], 2015, unless modified by Change Order.

It is essential that you make reference to the above-stated project number on all documents sent to the Architect/Engineer from your office. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Architect/Engineer for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER: Santa Fe County
SFC [REDACTED] DEPARTMENT

By: [REDACTED]
Director, SFC Department

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

ARCHITECT/ENGINEER

PROJECT NO:

Contractor Telephone:
Contractor e-mail:
ENGINEER'S/ARCHITECT'S PROJECT NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE COUNTY AND THE ARCHITECT/ENGINEER.
Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was	
Net change by previously authorized Change Orders	\$0.00
The Contract Sum prior to this Change Order was he Contract Sum will be increased/decreased/unchanged	
by this Change Order in the amount of	\$0.00
The new contract Sum including this Change Order will be	\$0.00
The Contract Time will be increased/decreased/unchanged by <input type="text"/> days.	
The date of Substantial Completion as of the date of this Change Order therefore is: <input type="text"/>	

CHANGE ORDER SIGNATURE PAGE

REVIEWED

Santa Fe County By: _____ Date: _____

AGREED AND RECOMMENDED

CONTRACTOR By: _____ Date: _____

Title: _____

ARCHITECT/ENGINEER By: _____ Date: _____

APPROVED

SANTA FE COUNTY By: _____ Date: _____

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY – PUBLIC WORKS DEPARTMENT

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

ARCHITECT/ENGINEER: _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Santa Fe County and Contractor (include address and project location description):

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the County to make use of the Work as intended.

By its signature below the Contractor further requests Architect/Engineer and County to inspect the Work and to concur in the Work's substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within ___ days from date of receipt from Architect/Engineer.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

Signature (Public Works Director or Designee) Print Name Date

Inspected/Concurrence Architect/Engineer

Signature Print Name Date

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Architect/Engineer and County, is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____ (Date)

The punch list consists of _____ (indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Director of Public Works who has hereby established the Date of Substantial Completion as _____ (date) which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the Director of Public Works (or designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the County may occupy the Work, or designated portion thereof, for the use for which it is intended.

The County accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

Punch List Items: (Use additional sheets if necessary)

