

Daniel "Danny" Mayfield
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: *November 26, 2014*

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 December 9, 2014*

REQUESTING BCC APPROVAL TO UTILIZE THE EXISTING STATE PRICE AGREEMENT WITH CENTURYLINK TO PURCHASE VOICE AND DATA COMMUNICATION SERVICES PURSUANT TO SECTION 1 OF ORDINANCE 2012-5 AND AUTHORIZING THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER. (Bill Taylor, Purchasing/Daniel Sanchez, IT Division)

Issue:

Voice and Data Communication services are available at a significant discounted rate on the existing Statewide Price Agreement.

Pursuant to 13-1-129 (A), (2) NMSA 1978, **Procurement under existing contracts**, of the State Procurement Code, *a local public body may procure services by utilizing existing State Price Agreements; and;*

Pursuant to Santa Fe County Ordinance 2012-5, Section One - Outside Contracts – Procurement pursuant to NMSA 1978, Section 13-1-129, should not be used unless the Chief Procurement Officer makes a specific finding that competitive bidding for the particular product would not be advantageous to the County. In no event shall a contract in total value exceeding \$250,000 be awarded without competitive bidding unless the Board of County Commissioners specifically approves.

Background:

CenturyLink is the current provider of voice and data communication equipment and software support for Santa Fe County. Santa Fe County has been utilizing CenturyLink services for several years which connect the County's various remote locations. In keeping with Century Link services and support the County will realize a significant cost savings as well as having the capability to provide services to locations that would otherwise not be able to obtain network connectivity. CenturyLink is the best solution for data/voice and networking for Santa Fe County and will have the ability to support future growth needs by the County with high speed bandwidth as well as for Data Center support and Cloud based services which include Disaster Recovery Colocations.

Recommendation:

Purchasing Division and the IT Division recommend that the Board of County Commissioners approve the utilization of the existing Statewide Price Agreement for the purchase of voice and data communication equipment and software support and authorize the County Manager to sign the Purchase Order to CenturyLink Total Advantage.

Agreement Number: _____

This CenturyLink Metro Ethernet Service Agreement ("Agreement") between the State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") is effective on the date of execution by State of New Mexico.

1. Scope.

1.1 Metro Ethernet Service ("Service") is a flexible transport service that uses established Ethernet transport technology. The Service provides connections between multiple Customer locations within a metropolitan area using native Ethernet protocol. The transmission speed depends on the Ethernet port ("Port") selected and the amount of bandwidth ordered over the Port ("Bandwidth Profile"). Service extends to the Demarcation Point. "Demarcation Point" means the CenturyLink-designated physical interface between the CenturyLink-owned network and Customer's telecommunications equipment. Service is available over three designs: (a) Customer Premises, supporting transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) and up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps, and in increments of 100 Mbps from 100 to 1,000 Mbps; (b) Central Office, supporting transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps; and (c) Ethernet with Extended Transport (DS3 required), supporting transmission speeds as low as 5 Mbps and up to 40 Mbps. Service is subject to technical publication 77411 located at <http://www.qwest.centurylink.com/techpub/> ("Tech Pub"). "SLA" means the service level agreement specific to the Service, located at <http://www.qwest.centurylink.com/legal/> and attached as Exhibit 2, which is controlled by the Tariff and Tech Pub, which are subject to change. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for Service.

1.2 Any CenturyLink tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules (hereinafter, whether individually or together, "Tariff") applicable to the Service is incorporated into this Agreement by reference and made a part of this Agreement. The Service will be governed by: (a) the Tariff applicable to the Service; and (b) the statewide price agreement number 30-000-00-00002 (the "NMSPA"); and (c) to the extent a comparable Tariff term or condition does not apply to the Service, the terms and conditions set forth in this Agreement. CenturyLink reserves the right to amend, change, withdraw, or file additional Tariffs in its sole discretion, with such updated Tariffs effective upon posting or upon fulfillment of any necessary regulatory requirements.

1.3 For clarity, to determine whether CenturyLink has offered a more favorable warranty to another customer under the statewide NMSPA, the parties will only compare the warranties for identical services and supplies which are delivered by CenturyLink using the same equipment and software in the state of New Mexico. Customer hereby grants CenturyLink permission to subcontract portions of this Agreement for construction services.

1.4 Service provided herein is subject to network infrastructure availability and may require the expenditure of CenturyLink capital funds ("Funding") to provide Service to Customer. If a location requires Funding, CenturyLink will only provide Service if Funding has been approved as evidenced on the signature page of this Agreement. Such approval will be granted at the sole discretion of CenturyLink. In the event this Agreement is executed and the required Funding is not approved, CenturyLink agrees to cooperate with Customer in good faith to develop an alternative service solution and may terminate this Agreement immediately without penalty.

1.5 Customer understands and agrees that CenturyLink supplies Service as an intrastate, IntraLATA telecommunications service, as defined by State and/or Federal Communications Commission ("F.C.C.") regulations, which are incorporated herein by this reference. It is Customer's responsibility to ensure that Customer uses Service as an intrastate, intraLATA telecommunications service consistent with such regulations. F.C.C. regulations permit interstate usage of Service if such usage does not exceed 10% of the total usage. If Customer should use this Service for any other purpose, or if interstate usage exceeds 10%, it is Customer's responsibility to immediately notify CenturyLink of such use and to place an order for appropriate service. CenturyLink will bill, and Customer will promptly pay, appropriate monthly recurring charges, for such use of and changes to Customer's telecommunications service including, but not limited to all applicable CenturyLink Rates and Services Schedule No. 1 Interstate access charges or Intrastate Tariff access charges.

1.6 "Construction" means when Service may not be available due to facilities limitations and it is necessary for CenturyLink to construct facilities. "Funding" means charges to Customer over the term of a Service contract covering CenturyLink's calculated costs for providing Service and its expected rate of return when network infrastructure is not available to provide Service to Customer. CenturyLink may assess separate Construction charges if facilities are not available to meet an order for Service and CenturyLink constructs facilities under one or more of the following circumstances: (a) the amount of Customer's expected payments over the term of the Agreement does not exceed CenturyLink's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that CenturyLink would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; and (d) Customer requests that Construction be expedited, resulting in added cost to CenturyLink. Service provided under this Agreement is subject to Funding approval and that approval will be evidenced in the Funding Concurrence block on this Agreement. That approval will be granted at the sole discretion of CenturyLink. In the event contract documents are signed under which Customer is ordering Service for which Funding is not approved, CenturyLink will cooperate with Customer in good faith to develop an alternative service solution if Funding cannot be achieved on the contracted solution and CenturyLink may immediately terminate this Agreement, without penalty, if Funding of the contracted and alternate Service solutions are determined to not be possible.

2. Term.

2.1 This Agreement is effective on the date it is signed by State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") ("Effective Date"), and it expires sixty (60) months from the date Service is available to Customer, as evidenced by CenturyLink records ("Initial Term"). The Service shall have a "Minimum Service Period" of 12 months. After the expiration of the Initial Term, this Agreement will continue automatically on a month-to-month basis unless a party notifies the other

party in writing of its desire not to renew this Agreement at least 60 calendar days, and no more than 120 calendar days, prior to the end of the Initial Term. After the Initial Term, either party may terminate this Agreement upon 30 calendar days prior written notice. The Initial Term and any month-to-month period thereafter will be collectively referred to as the "Term." If special construction is required for Service, then the Minimum Service Period may not apply and will be determined at the time of such request.

2.2 After the Initial Term, Customer will pay for Service at CenturyLink's then-current rates. CenturyLink will inform Customer of its then-current rates for Service upon written request.

2.3 If CenturyLink materially offers rates to any customers ordering products or services under the statewide NMSPA (other than school districts that are eligible for E-Rate funding) that are materially less than the rates listed in Exhibit 1 for identical products and services delivered by CenturyLink using the same technology in the state of New Mexico, then Customer and CenturyLink will amend Exhibit 1 to reflect the more beneficial offer

3. Installation/Provisioning of Service.

3.1 CenturyLink will provide the Service at the locations specified in Exhibit 1, attached hereto and made a part of this Agreement.

3.2 CenturyLink will notify Customer of the date Service is available for use. In the event Customer informs CenturyLink that it is unable or unwilling to accept Service at such time, the subject Service will be held available for Customer for a period not to exceed 30 business days from such date ("Grace Period"). If after the Grace Period, Customer still has not accepted Service, CenturyLink may either: (a) commence with regular monthly billing for the subject Service; or (b) cancel the subject Service. If Customer cancels an order for Service prior to the date the Service is available for use, or is unable to accept the Service during the Grace Period and CenturyLink cancels the Service at the end of the Grace Period, the Tariff cancellation charges may apply.

3.3 Start of service for each Service ("Start of Service Date") will begin on the date on which Customer accepts delivery of such Service. CenturyLink will provide notice that a Service is ready for acceptance. At Customer's request, mutual testing may be performed in accordance to the service parameters outlined in the Tariff.

4. Payment.

4.1 Customer must pay CenturyLink all charges by the payment due date on the invoice. Any amount not paid when due will be subject to a late charge as specified by the Tariff, or if there is no such late charge specified in the Tariff, the amount due will be subject to late interest at the lesser of 1½% per month or the highest rate permitted by applicable law. Customer must also pay CenturyLink any applicable federal, state, and local taxes, surcharges, and other similar charges ("Taxes") assessed in connection with Customer's Service. Taxes are subject to change. CenturyLink may reasonably modify the payment terms or require other assurance of payment based on Customer's payment history or a material and adverse change in Customer's financial condition. Customer will pay the charges listed on Exhibit 1, including the charges for any Service optional features on Exhibit 1. The charges for Services under this Agreement, including any and all discounts to which Customer may be entitled, will be offered and charged to Customer independently from, and regardless of, Customer's purchase of any customer premises equipment or enhanced services from CenturyLink. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those functions and obligations is explicitly identified and agreed to by the parties in this Agreement or in an amendment to this Agreement.

4.2 The monthly recurring charge ("MRC") and nonrecurring charge ("NRC") for Service, specified on Exhibit 1, reflect the rates currently in effect in the Tariff. Service's MRC and NRC will be those in effect in the Tariff on the first date of installation of Service. CenturyLink will fix the MRCs during the Term so that CenturyLink will not pass through any CenturyLink initiated price increases to Customer during the Term. Any rate increases directed or mandated by a regulatory body will be applied as required.

Promotional Pricing: Yes No Promotion Expiration Date: _____
Promotion Description, Title, or Code: _____

5. Changes to Service.

5.1 Subsequent orders to add new Service port(s) will be for the remainder of the Term, provided the Minimum Service Period can be met. All Service ports ordered under this Agreement will expire on the same date regardless of when they are ordered (e.g., if the original Service is in month 10 of a 60-month Term when Customer orders a new Service port for a 60-month fixed period rate plan, the new Service port will be billed at the 60-month rate for the next 50-months). In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.2 A subsequent order to change or add a Service port during Term will be assessed an NRC only if such a move or change is within an area where CenturyLink's facilities do not exist.

5.3 A subsequent order to change Service Bandwidth during the Term will not be assessed the NRC, however, the MRC will be changed to the new Service bandwidth profile charge provided Customer's total bandwidth does not fall below 15%. Customer may be assessed an early Termination liability charge for any decrease in bandwidth during the Term of the Agreement.

5.4 If Customer requests a physical move of Service to a new location, the move will be treated as a termination of service at the original location. NRC's will apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.5 If Customer requests a physical move of Service to a location within the same building, there will be no changes to the Minimum Service Period.

6. Customer Termination Rights

6.1 **Appropriations.** This Agreement may be terminated by the Customer, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement and Customer 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). If the Customer terminates this Agreement pursuant to this subsection, the Customer shall provide CenturyLink written notice of such termination at least twenty (20) Business Days prior to the effective date of the termination. 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 may choose to reallocate funds appropriated for the Services to other products or services, if permitted by law, to the extent that the other products or services are not functionally equivalent to the Services and, in that case, deem the appropriations insufficient for the performance of this Agreement if no other funding source is available for such purpose. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose

6.2 **Failure to Provide Product or Service.** If CenturyLink materially fails to provide a Product or Service and CenturyLink fails to cure after Customer provides CenturyLink with written notice of the failure and a reasonable opportunity to cure within 30 days from receipt of notice, Customer may terminate the affected Products or Services without early termination liability 5 days after CenturyLink's receipt of Customer's written notice to terminate. CenturyLink's material failure does not include a failure caused by circumstances outside CenturyLink's sole control, a failure caused by a third party access provider, a Force Majeure Event, or Customer or Customer-provided software or equipment.

6.3 **Reconfiguration.** In the event that the Customer needs to reconfigure the mix of Services purchased under this Agreement in order to meet the requirements of changing technologies, CenturyLink will waive associated Termination Charges, provided the following conditions are met: (1) Customer's purchase level of Services under this Agreement does not decrease more than 15% below Customer's total bandwidth(2) any replacement services are purchased from CenturyLink or one of its affiliates; and (3) any local, state, and federal regulatory agencies permit the waiver to take effect through any required filings or approvals.

6.4 **Technology Upgrade** Customer may, at its sole option and discretion, elect, in writing, to replace all of a Service type with Comparable Services (a "Technology Migration") at (A) CenturyLink's published rates, whether by Tariff or otherwise, for the Comparable Services, or (B) such other rates as may be mutually agreed upon between the parties. "Comparable Service(s)" means any service of a "higher level", as compared to the existing Service, that is functionally equivalent or superior to the Service(s) and that is first generally offered by CenturyLink at any time during the applicable Order Term after the Service's Commencement Date. For purposes of this section, "higher level" means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards. Upon Customer's election of this option, the parties will amend the Agreement to add the Comparable Services, and Customer's Commitment Level may be adjusted as may be relevant under the circumstances, by Customer's commitment to maintain an identical pro-rata portion of the Comparable Services until the end of the Agreement Term or the applicable Order Term. Notwithstanding any other provision hereof, Customer will not be liable for any termination charges or other similar charges of CenturyLink under this Agreement, any tariff or any other agreement or instrument whatsoever, by virtue of replacing Services by a Technology Migration.

7. Termination for Cause

Either party may terminate Service and/or this Agreement in accordance with the applicable Tariff or for Cause. "Cause" means the failure of a party to perform a material obligation under this Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default (unless a different notice period is specified in the Tariff); or (b) for any other material breach, within 30 days of written notice (unless a different notice period is specified in the Tariff or this Agreement). Customer will remain liable for charges accrued but unpaid as of the termination date. If, prior to the conclusion of the Term, Service and/or this Agreement is terminated either by CenturyLink for Cause or by Customer for any reason other than Cause, then Customer will also be liable for any termination charges ("Termination Charge").

8. Obligations and Waiver.

By termination pursuant to Sections 6 or 7, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS SECTION DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND

REMEDIES AFFORDED THE A PARTY CAUSED BY THE OTHER PARTY'S DEFAULT OR BREACH OF THIS AGREEMENT. This Section 8 is intended to be in addition to and not conflicting with the terms of the NMSPA and will be interpreted to fullest extent possible to be consistent with the NMSPA.

9. EARLY TERMINATION LIABILITY.

- 9.1 **Calculation of Early Termination Liability for Termination of Orders.** If Customer terminates a Product or Service in whole or in part, before expiration of the Order Term except as expressly permitted under Section 6 without liability, or CenturyLink terminates a Product or Service or applicable Order for Cause under Section 7, Customer will pay the following early termination charges, which represent CenturyLink's reasonable liquidated damages and not a penalty:
- A. **General Liability.** A lump sum equal to a) 40% of the applicable monthly charges, multiplied by the number of months remaining in the Order Term, plus b) a pro rata amount of i) any waived installation charges and ii) initialization fees waived based upon the number of months remaining in the applicable Order Term at the time of termination; and
 - B. **Third Party Liability.** Any liabilities imposed on CenturyLink by third parties, such as other local exchange carriers and all nonrecoverable costs incurred by CenturyLink as a result of ordering third party products and services required to operate the Product or Service, and are imposed on CenturyLink as a result of Customer's early termination. In no event shall Customer be assessed charges under this Section B to the extent the same charges are assessed under Subsection A above.
- 9.2 **Waiver of Early Termination Liability.** With CenturyLink's written approval, Customer will not be liable for the early termination liability described in this Section for a Service if Customer purchases another Service at the same time with the same or greater monthly recurring charge for an Order Term at least equal to the greater of: the remaining months in the original Order Term or one year.

10. Licenses; Dispatch Fee.

10.1 If CenturyLink must access a building that houses Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment, Customer will provide or secure at Customer's expense the following items: (a) appropriate space and power; and (b) rights or licenses.

10.2 Any facility or equipment repairs on Customer's side of the demarcation point are Customer's responsibility. If Customer requests a technician visit for a problem that CenturyLink determines: (a) not to be caused by CenturyLink facilities or equipment on the CenturyLink side of the demarcation point; or (b) is on Customer's side of the demarcation point, CenturyLink will assess a separate dispatch fee. CenturyLink will notify Customer and obtain Customer's authorization before dispatching a technician.

11. **Disclaimer Of Warranties.** CENTURYLINK DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY CENTURYLINK, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE.

12. **Personal Injury, Death, and Property Damage.** Each party will be responsible for the actual, physical damages it directly causes to the other party in the course of its performance under the Agreement, limited to damages resulting from personal injury or death to a party's employees and loss or damage to a party's personal tangible property arising from the negligent acts or omissions of the liable party; **Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.**

12.1 **Indemnification.** - CenturyLink shall defend, indemnify and hold harmless the Customer and its employees from all actions, proceedings, claims, demands, costs, damages, reasonable attorneys' fees and all other liabilities and expenses of any kind arising out of a claim by a third party which may arise out of the performance of this Agreement, and which is caused by the negligent act or failure to act of CenturyLink, its officers, employees, servants, subcontractors or agents, during the time when CenturyLink, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement.

12.2 The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for CenturyLink or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to CenturyLink under this Agreement may be retained by the Customer, as necessary, to satisfy any outstanding claim that the Customer may have against CenturyLink.

13. **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. §164.501 under the Health Insurance Portability and Accountability Act of 1996

("HIPAA Rules"). Any exposure to PHI will be random, infrequent and incidental to CenturyLink's provision of Service and is 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). As such, if Customer is a Covered Entity or Health Care Provider under the HIPAA Rules or supports the health care industry, CenturyLink and Customer agree that CenturyLink is not a "Business Associate" or "Covered Entity" under the HIPAA Rules for the purposes of this Agreement.

14. Governing Law; Dispute Resolution.

14.1 Governing Law; Forum. This Agreement will be governed by the laws of the state of New Mexico, except with regard to matters which are within the exclusive jurisdiction of the state or federal regulatory agency. Those matters alone will be governed by the laws of the appropriate jurisdiction. Any legal proceeding relating to this Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in the location of the party to this Agreement not initiating the action, as indicated in the Notices section. But CenturyLink may, at its discretion, initiate proceedings in Denver, Colorado to collect undisputed amounts billed. This provision is not intended to deprive a small claims court or state agency of lawful jurisdiction that would otherwise exist over a claim or controversy between the parties.

15. Notices. Unless otherwise provided herein, 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 at its then current address as reflected in CenturyLink's records Attn.: General Counsel or other person designated for notices. Unless otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

16. General Provisions. 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. Customer may not assign to a reseller or a telecommunications carrier under any circumstances, and represents that it will not resell the Service. Customer expressly consents to allow CenturyLink to assign the Agreement in accordance with this Section. This Agreement is intended solely for CenturyLink and Customer, and not to benefit any other person or entity (e.g., End User). If any term of this Agreement is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. In the event of a conflict in any term or condition of any documents that govern the provision of the Service hereunder, the following order of precedence will apply in descending order of control: NMSPA, the Tariff, this Agreement, and CenturyLink records. Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. "Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, flood, labor strike, sabotage, fiber cuts, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services. Except for Tariff or Service modifications initiated by CenturyLink, all amendments to this Agreement must be in writing and signed by the parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract.

17. Entire Agreement. This Agreement together with the Statewide Price Agreement constitutes the entire agreement between Customer and CenturyLink and supersedes all prior oral or written agreements or understandings relating to this subject matter, including the prior Qwest Metro Optical Ethernet Service Agreement (Content ID: 236283) with an effective date of February 7, 2008, as may have been previously amended, ("Prior Agreement") without liability, as of the Effective Date and provided Customer is in compliance with its obligations under the Prior Agreement.

The parties have read, understand and agree to all of the above terms and conditions of this Agreement and hereby execute and authorize this Agreement. Electronic signatures on this Agreement will be accepted only in the form and manner prescribed by CenturyLink.

State of New Mexico

Jacqueline Miller

Authorized Signature
Jacque Miller

Name Typed or Printed
Deputy CIO – State of New Mexico

Title
Nov 7, 2012

Date
Address for Notices:
715 Alta Vista St
Santa Fe, NM

Qwest Corporation d/b/a CenturyLink QC

Betty Reynolds

Authorized Signature
Betty Reynolds

Name Typed or Printed
Area Vice President

Title
11/7/12

Date

FOR CQC INTERNAL USE ONLY
FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION FOR NEW SERVICE (NOT REQUIRED FOR RENEWALS AND IN SITUATIONS WHERE THE AQCB PROCESS IS NOT NECESSARY)
AQCB Quote No.
Date Concurred:

Agreement Number: _____

State of New Mexico

EXHIBIT 1

Bandwidth Profiles available on 10/100 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
3 Mbps Bandwidth Profile	\$285.00	\$0.00
5 Mbps Bandwidth Profile	\$352.00	\$0.00
7 Mbps Bandwidth Profile	\$358.00	\$0.00
10 Mbps Bandwidth Profile	\$504.00	\$0.00
20 Mbps Bandwidth Profile	\$542.00	\$0.00
30 Mbps Bandwidth Profile	\$579.00	\$0.00
40 Mbps Bandwidth Profile	\$617.00	\$0.00
50 Mbps Bandwidth Profile	\$654.00	\$0.00
60 Mbps Bandwidth Profile	\$692.00	\$0.00
70 Mbps Bandwidth Profile	\$729.00	\$0.00
80 Mbps Bandwidth Profile	\$767.00	\$0.00
90 Mbps Bandwidth Profile	\$804.00	\$0.00
100 Mbps Bandwidth Profile	\$840.00	\$0.00

Bandwidth Profiles available on 1000 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
100 Mbps Bandwidth Profile	\$875.00	\$0.00
200 Mbps Bandwidth Profile	\$944.50	\$0.00
300 Mbps Bandwidth Profile	\$1,170.00	\$0.00
400 Mbps Bandwidth Profile	\$1,427.40	\$0.00
500 Mbps Bandwidth Profile	\$1,648.02	\$0.00
600 Mbps Bandwidth Profile	\$1,941.42	\$0.00
700 Mbps Bandwidth Profile	\$2,198.82	\$0.00
800 Mbps Bandwidth Profile	\$2,456.62	\$0.00
900 Mbps Bandwidth Profile	\$2,713.62	\$0.00
1000 Mbps Bandwidth Profile	\$2,970.24	\$0.00

(COCC MRC required for Central Office design)

(EwET Customer Interface MRC and Total Chan Term & Transport Mileage MRC required for Ethernet with Extended Transport design)

(Show N/A, if an MRC does not apply)

Location (Address, City, State)	Band-width Profile	Band-width MRC per each	Port Speed	Port Speed NRC per each	COCC MRC		EwET Customer Interface MRC	DS3 Total Chan Term & Transport Mileage	
					MRC	NRC		MRC	NRC
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$

**EXHIBIT 2
CENTURYLINK DOMESTIC METRO ETHERNET ("Metro Ethernet" or "Service")
SERVICE LEVEL AGREEMENT ("SLA")**

Any Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") intrastate tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules, whether individually or together, will be referred to as "Tariff" in this SLA. CenturyLink offers this SLA in accordance with the applicable Tariff and Technical Publication 77411 ("Tech Pub"). All customer-provided backup power, racks, and cabinets must meet the requirements described in CenturyLink Technical Publication Nos. 77368 and 77419. Any service disruption deemed by CenturyLink in its sole discretion to have resulted from issues related to Customer-provided backup power, racks, or cabinets relieves CenturyLink of all its obligations under this SLA. In the event of a conflict between the terms of this SLA and the Tariff or Tech Pub, the terms of the Tariff and Tech Pub will control. If Service becomes de-Tariffed, this SLA will be offered in accordance with this SLA and the Tech Pub, rather than the applicable Tariff. Interstate Metro Ethernet is offered in accordance with this SLA and the Tech Pub. Capitalized terms not defined in this SLA are defined in customer's agreement for Metro Ethernet.

Metro Ethernet is a flexible, easy-to-use, transport service that uses established Ethernet transport technology. Metro Ethernet allows customers to connect multiple enterprise locations within a service area using native Ethernet protocol. Metro Ethernet is available over three distinct designs: Customer Premises, Central Office, and Ethernet with Extended Transport (EwET).

Customer Premises Metro Ethernet supports transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps and in increments of 100 Mbps from 100 to 1,000 Mbps. Central Office Metro Ethernet supports transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps. EwET Metro Ethernet supports transmission speeds as low as 5 Mbps and up to 40 Mbps.

1. Service Availability Objective.

Service availability is defined as the ability of a customer to exchange data packets with the Metro Ethernet network at the User-Network Interface ("UNI") via customer provided equipment ("CPE"). Availability specifies the percentage of time the customer's Metro Ethernet meets (or exceeds) the throughput, latency, and packet loss performance objectives over any calendar month and may be expressed as:

$$\% \text{ Availability} = \frac{\text{Total Time} - \text{Outage Time}}{\text{Total Time}} \times 100$$

All User-Network Interfaces	Availability Objective (Monthly)
With Single Cable Entrance	99.9%
With Dual Cable Entrances (see Note a. below)	99.95%

Notes:

- a. Equipment located on the customer's premises will have a single cable entrance unless the building owner elects to provide two physically separated cable entrances into the building. A second entrance to the customer's premises affords further diversity protection. When desired, it is a customer's responsibility to provide a second entrance. That second entrance must meet existing CenturyLink entrance facility standards. For additional information see CenturyLink Technical Publication 77344, *Diversity and Avoidance*.
- b. Service availability includes all components of the Metro Ethernet network from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro.
- c. Service interruptions caused by CenturyLink planned network maintenance activities, maintenance at the customer premises, or loss of customer traffic due to malfunction of CPE are excluded from the availability calculation. The Metro Ethernet availability objective assumes two hours every six months for the network maintenance window.

2. Throughput Objective.

The Metro Ethernet bandwidth profile is a limit on the rate at which Ethernet frames can traverse the User Network Interface ("UNI"). Metro Ethernet offers a better than best effort bandwidth or throughput for each customer network access link. Specifically, the Metro Ethernet Committed Information Rate (CIR) is the minimum bandwidth or throughput that the Metro Ethernet network will deliver for at least 256 byte frames in both ingress and egress directions under normal operating conditions. For smaller frame sizes customer packets may be dropped.

Through CIR, bandwidth will be available in the increments ordered by the customer. CIR rates will be met by adequate rate-limiting of the Metro Ethernet Layer 2 edge and core switches, and SONET transport infrastructure where applicable.

3. Latency Objective.

Latency or delay is defined as the time interval between the transmission of a signal at one point and the reception or detection of the same signal at another point. Unidirectional or One-Way Delay ("OWD") is the elapsed time between when a node sends a packet and when the packet is received by another node. OWD is also referred to as end-to-end transit delay.

For Metro Ethernet service, the one-way delay is the time measured between when the first bit of an Ethernet frame enters the ingress User-Network Interface to when the last bit of the same frame leaves the egress UNI. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. The latency performance objective across a single Metro Ethernet network will be as indicated below:

Latency (One-Way)	Objective (Monthly Average)
Maximum	Less than 25 milliseconds
Typical	Less than 15 milliseconds

Thus, over any calendar month, 100% of the successfully delivered egress frames (discarded or lost frames are not counted) will have an average one-way delay of less than 25 milliseconds. This Metro Ethernet performance parameter applies to all supported Ethernet line / data rates (at the UNI), i.e. access ports and bandwidth profiles, frame sizes, alternate fiber routes where applicable and represents the total delay attributable to the Metro Ethernet network.

4. Packet Loss Objective.

The packet loss performance parameter identifies the percentage of in-profile Ethernet frames ("green" frames that are within CIR) not reliably delivered between UNIs over a given measurement interval. Any frames that are out-of-profile ("yellow" or "red" frames, i.e. exceeding the CIR) are not counted towards the number of lost frames.

Customer frames that may additionally be blocked or discarded at the UNI and not counted towards the packet loss objective include the following:

- Runts or frame size less than 64 bytes
- Jumbo frames with a maximum transmission unit greater than 1522 bytes
- Corrupted frames with cyclic redundancy check, frame check sequence or alignment errors

Packet loss is defined as the percentage of packets that are dropped within, or between switches that are a part of, the Metro Ethernet network. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. CenturyLink will engineer the Metro Ethernet network to minimize packet loss such that the performance objective will not exceed the following:

Performance Parameter	Dropped Packets Objective (Monthly Average)
Packet Loss Ratio	No more than 0.1%
	No more than 0.001% for priority 1 ("P1") packets in the Metro Ethernet core network

Note: The Metro Ethernet core network is defined as from the first (CenturyLink-provided) core switch to the last core switch in a metro for a particular Ethernet Virtual Connections ("EVC") traffic flow. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.9% of the customer's packets from UNI to UNI or 99.999% for P1 traffic in the core.

5. VLAN Leakage Objective.

There will be zero VLAN or MAC address leakage across the Metro Ethernet network. Metro Ethernet does not currently support the routing or communication of traffic between VLANs or EVCs.

6. Quality of Service Objective.

When Quality of Service is purchased by the customer then the following applies:

- The service level availability commitment for Quality of Service is that 99.999% of the packets will conform to the bandwidth profile delivered across the core network, without being dropped or lost as a result of a fault within the Virtual Ethernet Network. This equates to a Quality of Service Pack loss ratio of no more than 0.001%. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.999% of a customer's packets from core to core.
- When the SLA is not met, the SLA credit will apply to the monthly recurring charge ("MRC") for every increment of 3 Mbps (in select markets) or 5 Mbps of P1 traffic.
- The credit will equal 1/30th of the MRC for every 5 Mbps of affected Priority 1 traffic.
- The maximum amount of credit provided in a given month will not exceed the total MRC for the affected Service.

7. Protect Routing Objective.

When protect routing is purchased by the customer then the following applies:

- The service guarantee will be for a 99.99% circuit availability over a 30 day period which equates to 4 minutes 20 seconds of downtime.
- No credit will be allowed for an interruption of less than 4 minutes 20 seconds, multiple outages of each less than 4 minutes 20 seconds will not be added together.
- A credit of 1/30th of the MRC will be paid out for any outage occurrence that exceeds 4 minutes 20 seconds. Credit will be limited to one credit for each 24 hour period in which an outage(s) occur. Credit will be comprised of all affected MRC elements.
- The Maximum amount of credit provided in a given month will not exceed the total MRC for the affected Metro Ethernet.

8. Mean Time to Repair Objective.

CenturyLink is responsible for maintaining all equipment and cable on the Metro Ethernet network side of the UNI at customer locations, and the transmission facility between UNIs.

CenturyLink will furnish the customer with a trouble reporting telephone number.

Upon receipt of a trouble alarm or report, CenturyLink will initiate action within 20 minutes to clear the trouble and will commit to the following service restoral times for Metro Ethernet:

- Four hours maximum in the event of a service interruption due to an electronic component failure

- Eight hours maximum if the trouble is caused by a cable failure

Agreement Number: _____

This CenturyLink Metro Ethernet Service Agreement ("Agreement") between the State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") is effective on the date of execution by State of New Mexico.

1. Scope.

1.1 Metro Ethernet Service ("Service") is a flexible transport service that uses established Ethernet transport technology. The Service provides connections between multiple Customer locations within a metropolitan area using native Ethernet protocol. The transmission speed depends on the Ethernet port ("Port") selected and the amount of bandwidth ordered over the Port ("Bandwidth Profile"). Service extends to the Demarcation Point. "Demarcation Point" means the CenturyLink-designated physical interface between the CenturyLink-owned network and Customer's telecommunications equipment. Service is available over three designs: (a) Customer Premises, supporting transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) and up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps, and in increments of 100 Mbps from 100 to 1,000 Mbps; (b) Central Office, supporting transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps; and (c) Ethernet with Extended Transport (DS3 required), supporting transmission speeds as low as 5 Mbps and up to 40 Mbps. Service is subject to technical publication 77411 located at <http://www.qwest.centurylink.com/techpub/> ("Tech Pub"). "SLA" means the service level agreement specific to the Service, located at <http://www.qwest.centurylink.com/legal/> and attached as Exhibit 2, which is controlled by the Tariff and Tech Pub, which are subject to change. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for Service.

1.2 Any CenturyLink tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules (hereinafter, whether individually or together, "Tariff") applicable to the Service is incorporated into this Agreement by reference and made a part of this Agreement. The Service will be governed by: (a) the Tariff applicable to the Service; and (b) the statewide price agreement number 30-000-00-00002 (the "NMSPA"); and (c) to the extent a comparable Tariff term or condition does not apply to the Service, the terms and conditions set forth in this Agreement. CenturyLink reserves the right to amend, change, withdraw, or file additional Tariffs in its sole discretion, with such updated Tariffs effective upon posting or upon fulfillment of any necessary regulatory requirements.

1.3 For clarity, to determine whether CenturyLink has offered a more favorable warranty to another customer under the statewide NMSPA, the parties will only compare the warranties for identical services and supplies which are delivered by CenturyLink using the same equipment and software in the state of New Mexico. Customer hereby grants CenturyLink permission to subcontract portions of this Agreement for construction services.

1.4 Service provided herein is subject to network infrastructure availability and may require the expenditure of CenturyLink capital funds ("Funding") to provide Service to Customer. If a location requires Funding, CenturyLink will only provide Service if Funding has been approved as evidenced on the signature page of this Agreement. Such approval will be granted at the sole discretion of CenturyLink. In the event this Agreement is executed and the required Funding is not approved, CenturyLink agrees to cooperate with Customer in good faith to develop an alternative service solution and may terminate this Agreement immediately without penalty.

1.5 Customer understands and agrees that CenturyLink supplies Service as an intrastate, intraLATA telecommunications service, as defined by State and/or Federal Communications Commission ("F.C.C.") regulations, which are incorporated herein by this reference. It is Customer's responsibility to ensure that Customer uses Service as an intrastate, intraLATA telecommunications service consistent with such regulations. F.C.C. regulations permit interstate usage of Service if such usage does not exceed 10% of the total usage. If Customer should use this Service for any other purpose, or if interstate usage exceeds 10%, it is Customer's responsibility to immediately notify CenturyLink of such use and to place an order for appropriate service. CenturyLink will bill, and Customer will promptly pay, appropriate monthly recurring charges, for such use of and changes to Customer's telecommunications service including, but not limited to all applicable CenturyLink Rates and Services Schedule No. 1 Interstate access charges or Intrastate Tariff access charges.

1.6 "Construction" means when Service may not be available due to facilities limitations and it is necessary for CenturyLink to construct facilities. "Funding" means charges to Customer over the term of a Service contract covering CenturyLink's calculated costs for providing Service and its expected rate of return when network infrastructure is not available to provide Service to Customer. CenturyLink may assess separate Construction charges if facilities are not available to meet an order for Service and CenturyLink constructs facilities under one or more of the following circumstances: (a) the amount of Customer's expected payments over the term of the Agreement does not exceed CenturyLink's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that CenturyLink would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; and (d) Customer requests that Construction be expedited, resulting in added cost to CenturyLink. Service provided under this Agreement is subject to Funding approval and that approval will be evidenced in the Funding Concurrence block on this Agreement. That approval will be granted at the sole discretion of CenturyLink. In the event contract documents are signed under which Customer is ordering Service for which Funding is not approved, CenturyLink will cooperate with Customer in good faith to develop an alternative service solution if Funding cannot be achieved on the contracted solution and CenturyLink may immediately terminate this Agreement, without penalty, if Funding of the contracted and alternate Service solutions are determined to not be possible.

2. Term.

2.1 This Agreement is effective on the date it is signed by State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") ("Effective Date"), and it expires sixty (60) months from the date Service is available to Customer, as evidenced by CenturyLink records ("Initial Term"). The Service shall have a "Minimum Service Period" of 12 months. After the expiration of the Initial Term, this Agreement will continue automatically on a month-to-month basis unless a party notifies the other

party in writing of its desire not to renew this Agreement at least 60 calendar days, and no more than 120 calendar days, prior to the end of the Initial Term. After the Initial Term, either party may terminate this Agreement upon 30 calendar days prior written notice. The Initial Term and any month-to-month period thereafter will be collectively referred to as the "Term." If special construction is required for Service, then the Minimum Service Period may not apply and will be determined at the time of such request.

2.2 After the Initial Term, Customer will pay for Service at CenturyLink's then-current rates. CenturyLink will inform Customer of its then-current rates for Service upon written request.

2.3 If CenturyLink materially offers rates to any customers ordering products or services under the statewide NMSPA (other than school districts that are eligible for E-Rate funding) that are materially less than the rates listed in Exhibit 1 for identical products and services delivered by CenturyLink using the same technology in the state of New Mexico, then Customer and CenturyLink will amend Exhibit 1 to reflect the more beneficial offer

3. Installation/Provisioning of Service.

3.1 CenturyLink will provide the Service at the locations specified in Exhibit 1, attached hereto and made a part of this Agreement.

3.2 CenturyLink will notify Customer of the date Service is available for use. In the event Customer informs CenturyLink that it is unable or unwilling to accept Service at such time, the subject Service will be held available for Customer for a period not to exceed 30 business days from such date ("Grace Period"). If after the Grace Period, Customer still has not accepted Service, CenturyLink may either: (a) commence with regular monthly billing for the subject Service; or (b) cancel the subject Service. If Customer cancels an order for Service prior to the date the Service is available for use, or is unable to accept the Service during the Grace Period and CenturyLink cancels the Service at the end of the Grace Period, the Tariff cancellation charges may apply.

3.3 Start of service for each Service ("Start of Service Date") will begin on the date on which Customer accepts delivery of such Service. CenturyLink will provide notice that a Service is ready for acceptance. At Customer's request, mutual testing may be performed in accordance to the service parameters outlined in the Tariff.

4. Payment

4.1 Customer must pay CenturyLink all charges by the payment due date on the invoice. Any amount not paid when due will be subject to a late charge as specified by the Tariff, or if there is no such late charge specified in the Tariff, the amount due will be subject to late interest at the lesser of 1½% per month or the highest rate permitted by applicable law. Customer must also pay CenturyLink any applicable federal, state, and local taxes, surcharges, and other similar charges ("Taxes") assessed in connection with Customer's Service. Taxes are subject to change. CenturyLink may reasonably modify the payment terms or require other assurance of payment based on Customer's payment history or a material and adverse change in Customer's financial condition. Customer will pay the charges listed on Exhibit 1, including the charges for any Service optional features on Exhibit 1. The charges for Services under this Agreement, including any and all discounts to which Customer may be entitled, will be offered and charged to Customer independently from, and regardless of, Customer's purchase of any customer premises equipment or enhanced services from CenturyLink. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those functions and obligations is explicitly identified and agreed to by the parties in this Agreement or in an amendment to this Agreement.

4.2 The monthly recurring charge ("MRC") and nonrecurring charge ("NRC") for Service, specified on Exhibit 1, reflect the rates currently in effect in the Tariff. Service's MRC and NRC will be those in effect in the Tariff on the first date of installation of Service. CenturyLink will fix the MRCs during the Term so that CenturyLink will not pass through any CenturyLink initiated price increases to Customer during the Term. Any rate increases directed or mandated by a regulatory body will be applied as required.

Promotional Pricing: Yes No Promotion Expiration Date: _____
Promotion Description, Title, or Code: _____

5. Changes to Service.

5.1 Subsequent orders to add new Service port(s) will be for the remainder of the Term, provided the Minimum Service Period can be met. All Service ports ordered under this Agreement will expire on the same date regardless of when they are ordered (e.g., if the original Service is in month 10 of a 60-month Term when Customer orders a new Service port for a 60-month fixed period rate plan, the new Service port will be billed at the 60-month rate for the next 50-months). In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.2 A subsequent order to change or add a Service port during Term will be assessed an NRC only if such a move or change is within an area where CenturyLink's facilities do not exist.

5.3 A subsequent order to change Service Bandwidth during the Term will not be assessed the NRC, however, the MRC will be changed to the new Service bandwidth profile charge provided Customer's total bandwidth does not fall below 15%. Customer may be assessed an early Termination liability charge for any decrease in bandwidth during the Term of the Agreement.

5.4 If Customer requests a physical move of Service to a new location, the move will be treated as a termination of service at the original location. NRC's will apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.5 If Customer requests a physical move of Service to a location within the same building, there will be no changes to the Minimum Service Period.

6. Customer Termination Rights

6.1 **Appropriations.** This Agreement may be terminated by the Customer, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement and Customer 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). If the Customer terminates this Agreement pursuant to this subsection, the Customer shall provide CenturyLink written notice of such termination at least twenty (20) Business Days prior to the effective date of the termination. 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 may choose to reallocate funds appropriated for the Services to other products or services, if permitted by law, to the extent that the other products or services are not functionally equivalent to the Services and, in that case, deem the appropriations insufficient for the performance of this Agreement if no other funding source is available for such purpose. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose

6.2 **Failure to Provide Product or Service.** If CenturyLink materially fails to provide a Product or Service and CenturyLink fails to cure after Customer provides CenturyLink with written notice of the failure and a reasonable opportunity to cure within 30 days from receipt of notice, Customer may terminate the affected Products or Services without early termination liability 5 days after CenturyLink's receipt of Customer's written notice to terminate. CenturyLink's material failure does not include a failure caused by circumstances outside CenturyLink's sole control, a failure caused by a third party access provider, a Force Majeure Event, or Customer or Customer-provided software or equipment.

6.3 **Reconfiguration.** In the event that the Customer needs to reconfigure the mix of Services purchased under this Agreement in order to meet the requirements of changing technologies, CenturyLink will waive associated Termination Charges, provided the following conditions are met: (1) Customer's purchase level of Services under this Agreement does not decrease more than 15% below Customer's total bandwidth; (2) any replacement services are purchased from CenturyLink or one of its affiliates; and (3) any local, state, and federal regulatory agencies permit the waiver to take effect through any required filings or approvals.

6.4 **Technology Upgrade** Customer may, at its sole option and discretion, elect, in writing, to replace all of a Service type with Comparable Services (a "Technology Migration") at (A) CenturyLink's published rates, whether by Tariff or otherwise, for the Comparable Services, or (B) such other rates as may be mutually agreed upon between the parties. "Comparable Service(s)" means any service of a "higher level", as compared to the existing Service, that is functionally equivalent or superior to the Service(s) and that is first generally offered by CenturyLink at any time during the applicable Order Term after the Service's Commencement Date. For purposes of this section, "higher level" means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards. Upon Customer's election of this option, the parties will amend the Agreement to add the Comparable Services, and Customer's Commitment Level may be adjusted as may be relevant under the circumstances, by Customer's commitment to maintain an identical pro-rata portion of the Comparable Services until the end of the Agreement Term or the applicable Order Term. Notwithstanding any other provision hereof, Customer will not be liable for any termination charges or other similar charges of CenturyLink under this Agreement, any tariff or any other agreement or instrument whatsoever, by virtue of replacing Services by a Technology Migration.

7. Termination for Cause

Either party may terminate Service and/or this Agreement in accordance with the applicable Tariff or for Cause. "Cause" means the failure of a party to perform a material obligation under this Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default (unless a different notice period is specified in the Tariff); or (b) for any other material breach, within 30 days of written notice (unless a different notice period is specified in the Tariff or this Agreement). Customer will remain liable for charges accrued but unpaid as of the termination date. If, prior to the conclusion of the Term, Service and/or this Agreement is terminated either by CenturyLink for Cause or by Customer for any reason other than Cause, then Customer will also be liable for any termination charges ("Termination Charge").

8. Obligations and Waiver.

By termination pursuant to Sections 6 or 7, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS SECTION DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND

REMEDIES AFFORDED THE A PARTY CAUSED BY THE OTHER PARTY'S DEFAULT OR BREACH OF THIS AGREEMENT. This Section 8 is intended to be in addition to and not conflicting with the terms of the NMSPA and will be interpreted to fullest extent possible to be consistent with the NMSPA.

9. EARLY TERMINATION LIABILITY.

9.1 **Calculation of Early Termination Liability for Termination of Orders.** If Customer terminates a Product or Service in whole or in part, before expiration of the Order Term except as expressly permitted under Section 6 without liability, or CenturyLink terminates a Product or Service or applicable Order for Cause under Section 7, Customer will pay the following early termination charges, which represent CenturyLink's reasonable liquidated damages and not a penalty:

- A. **General Liability.** A lump sum equal to a) 40% of the applicable monthly charges, multiplied by the number of months remaining in the Order Term, plus b) a pro rata amount of i) any waived installation charges and ii) initialization fees waived based upon the number of months remaining in the applicable Order Term at the time of termination; and
- B. **Third Party Liability.** Any liabilities imposed on CenturyLink by third parties, such as other local exchange carriers and all nonrecoverable costs incurred by CenturyLink as a result of ordering third party products and services required to operate the Product or Service, and are imposed on CenturyLink as a result of Customer's early termination. In no event shall Customer be assessed charges under this Section B to the extent the same charges are assessed under Subsection A above.

9.2 **Waiver of Early Termination Liability.** With CenturyLink's written approval, Customer will not be liable for the early termination liability described in this Section for a Service if Customer purchases another Service at the same time with the same or greater monthly recurring charge for an Order Term at least equal to the greater of: the remaining months in the original Order Term or one year.

10. Licenses; Dispatch Fee.

10.1 If CenturyLink must access a building that houses Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment, Customer will provide or secure at Customer's expense the following items: (a) appropriate space and power; and (b) rights or licenses.

10.2 Any facility or equipment repairs on Customer's side of the demarcation point are Customer's responsibility. If Customer requests a technician visit for a problem that CenturyLink determines: (a) not to be caused by CenturyLink facilities or equipment on the CenturyLink side of the demarcation point; or (b) is on Customer's side of the demarcation point, CenturyLink will assess a separate dispatch fee. CenturyLink will notify Customer and obtain Customer's authorization before dispatching a technician.

11. **Disclaimer Of Warranties.** CENTURYLINK DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY CENTURYLINK, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE.

12. **Personal Injury, Death, and Property Damage.** Each party will be responsible for the actual, physical damages it directly causes to the other party in the course of its performance under the Agreement, limited to damages resulting from personal injury or death to a party's employees and loss or damage to a party's personal tangible property arising from the negligent acts or omissions of the liable party; **Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.**

12.1 **Indemnification.** - CenturyLink shall defend, indemnify and hold harmless the Customer and its employees from all actions, proceedings, claims, demands, costs, damages, reasonable attorneys' fees and all other liabilities and expenses of any kind arising out of a claim by a third party which may arise out of the performance of this Agreement, and which is caused by the negligent act or failure to act of CenturyLink, its officers, employees, servants, subcontractors or agents, during the time when CenturyLink, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement.

12.2 The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for CenturyLink or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to CenturyLink under this Agreement may be retained by the Customer, as necessary, to satisfy any outstanding claim that the Customer may have against CenturyLink.

13. **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. §164.501 under the Health Insurance Portability and Accountability Act of 1996

("HIPAA Rules"). Any exposure to PHI will be random, infrequent and incidental to CenturyLink's provision of Service and is 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). As such, if Customer is a Covered Entity or Health Care Provider under the HIPAA Rules or supports the health care industry, CenturyLink and Customer agree that CenturyLink is not a "Business Associate" or "Covered Entity" under the HIPAA Rules for the purposes of this Agreement.

14. Governing Law; Dispute Resolution.

14.1 Governing Law; Forum. This Agreement will be governed by the laws of the state of New Mexico, except with regard to matters which are within the exclusive jurisdiction of the state or federal regulatory agency. Those matters alone will be governed by the laws of the appropriate jurisdiction. Any legal proceeding relating to this Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in the location of the party to this Agreement not initiating the action, as indicated in the Notices section. But CenturyLink may, at its discretion, initiate proceedings in Denver, Colorado to collect undisputed amounts billed. This provision is not intended to deprive a small claims court or state agency of lawful jurisdiction that would otherwise exist over a claim or controversy between the parties.

15. Notices. Unless otherwise provided herein, 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 at its then current address as reflected in CenturyLink's records Attn.: General Counsel or other person designated for notices. Unless otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

16. General Provisions. 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. Customer may not assign to a reseller or a telecommunications carrier under any circumstances, and represents that it will not resell the Service. Customer expressly consents to allow CenturyLink to assign the Agreement in accordance with this Section. This Agreement is intended solely for CenturyLink and Customer, and not to benefit any other person or entity (e.g., End User). If any term of this Agreement is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. In the event of a conflict in any term or condition of any documents that govern the provision of the Service hereunder, the following order of precedence will apply in descending order of control: NMSPA, the Tariff, this Agreement, and CenturyLink records. Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. "Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, flood, labor strike, sabotage, fiber cuts, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services. Except for Tariff or Service modifications initiated by CenturyLink, all amendments to this Agreement must be in writing and signed by the parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract.

17. Entire Agreement. This Agreement together with the Statewide Price Agreement constitutes the entire agreement between Customer and CenturyLink and supersedes all prior oral or written agreements or understandings relating to this subject matter, including the prior **Qwest Metro Optical Ethernet Service Agreement** (Content ID: 236283) with an effective date of February 7, 2008, as may have been previously amended, ("Prior Agreement") without liability, as of the Effective Date and provided Customer is in compliance with its obligations under the Prior Agreement.

The parties have read, understand and agree to all of the above terms and conditions of this Agreement and hereby execute and authorize this Agreement. Electronic signatures on this Agreement will be accepted only in the form and manner prescribed by CenturyLink.

State of New Mexico

Jacqueline Miller

Authorized Signature
Jacque Miller

Name Typed or Printed
Deputy CIO – State of New Mexico

Title
Nov 7, 2012

Date
Address for Notices:
715 Alta Vista St
Santa Fe, NM

Qwest Corporation d/b/a CenturyLink QC

Betty Reynolds

Authorized Signature
Betty Reynolds

Name Typed or Printed
Area Vice President

Title
11/7/12

Date

FOR CQC INTERNAL USE ONLY
PENDING CONCURRENCE REQUIRED PRIOR TO EXECUTION FOR NEW SERVICE (NOT REQUIRED FOR RENEWALS AND IN SITUATIONS WHERE THE AQCB PROCESS IS NOT NECESSARY)
AQCB Quote No.
Date Concurred:

Agreement Number: _____

State of New Mexico

EXHIBIT 1

Bandwidth Profiles available on 10/100 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
3 Mbps Bandwidth Profile	\$285.00	\$0.00
5 Mbps Bandwidth Profile	\$352.00	\$0.00
7 Mbps Bandwidth Profile	\$358.00	\$0.00
10 Mbps Bandwidth Profile	\$504.00	\$0.00
20 Mbps Bandwidth Profile	\$542.00	\$0.00
30 Mbps Bandwidth Profile	\$579.00	\$0.00
40 Mbps Bandwidth Profile	\$617.00	\$0.00
50 Mbps Bandwidth Profile	\$654.00	\$0.00
60 Mbps Bandwidth Profile	\$692.00	\$0.00
70 Mbps Bandwidth Profile	\$729.00	\$0.00
80 Mbps Bandwidth Profile	\$767.00	\$0.00
90 Mbps Bandwidth Profile	\$804.00	\$0.00
100 Mbps Bandwidth Profile	\$840.00	\$0.00

Bandwidth Profiles available on 1000 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
100 Mbps Bandwidth Profile	\$875.00	\$0.00
200 Mbps Bandwidth Profile	\$944.50	\$0.00
300 Mbps Bandwidth Profile	\$1,170.00	\$0.00
400 Mbps Bandwidth Profile	\$1,427.40	\$0.00
500 Mbps Bandwidth Profile	\$1,648.02	\$0.00
600 Mbps Bandwidth Profile	\$1,941.42	\$0.00
700 Mbps Bandwidth Profile	\$2,198.82	\$0.00
800 Mbps Bandwidth Profile	\$2,456.62	\$0.00
900 Mbps Bandwidth Profile	\$2,713.62	\$0.00
1000 Mbps Bandwidth Profile	\$2,970.24	\$0.00

(COCC MRC required for Central Office design)

(EwET Customer Interface MRC and Total Chan Term & Transport Mileage MRC required for Ethernet with Extended Transport design)

(Show N/A, if an MRC does not apply)

Location (Address, City, State)	Band-width Profile	Band-width MRC per each	Port Speed	Port Speed NRC per each	COCC MRC		EwET Customer Interface MRC	DS3 Total Chan Term & Transport Mileage	
					MRC	NRC		MRC	NRC
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$

EXHIBIT 2
CENTURYLINK DOMESTIC METRO ETHERNET ("Metro Ethernet" or "Service")
SERVICE LEVEL AGREEMENT ("SLA")

Any Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") intrastate tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules, whether individually or together, will be referred to as "Tariff" in this SLA. CenturyLink offers this SLA in accordance with the applicable Tariff and Technical Publication 77411 ("Tech Pub"). All customer-provided backup power, racks, and cabinets must meet the requirements described in CenturyLink Technical Publication Nos. 77368 and 77419. Any service disruption deemed by CenturyLink in its sole discretion to have resulted from issues related to Customer-provided backup power, racks, or cabinets relieves CenturyLink of all its obligations under this SLA. In the event of a conflict between the terms of this SLA and the Tariff or Tech Pub, the terms of the Tariff and Tech Pub will control. If Service becomes de-Tariffed, this SLA will be offered in accordance with this SLA and the Tech Pub, rather than the applicable Tariff. Interstate Metro Ethernet is offered in accordance with this SLA and the Tech Pub. Capitalized terms not defined in this SLA are defined in customer's agreement for Metro Ethernet.

Metro Ethernet is a flexible, easy-to-use, transport service that uses established Ethernet transport technology. Metro Ethernet allows customers to connect multiple enterprise locations within a service area using native Ethernet protocol. Metro Ethernet is available over three distinct designs: Customer Premises, Central Office, and Ethernet with Extended Transport (EwET).

Customer Premises Metro Ethernet supports transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps and in increments of 100 Mbps from 100 to 1,000 Mbps. Central Office Metro Ethernet supports transmission speeds of 100 Mbps, 800 Mbps and 1,000 Mbps. EwET Metro Ethernet supports transmission speeds as low as 5 Mbps and up to 40 Mbps.

1. Service Availability Objective.

Service availability is defined as the ability of a customer to exchange data packets with the Metro Ethernet network at the User-Network Interface ("UNI") via customer provided equipment ("CPE"). Availability specifies the percentage of time the customer's Metro Ethernet meets (or exceeds) the throughput, latency, and packet loss performance objectives over any calendar month and may be expressed as:

$$\% \text{ Availability} = \frac{\text{Total Time} - \text{Outage Time}}{\text{Total Time}} \times 100$$

All User-Network Interfaces	Availability Objective (Monthly)
With Single Cable Entrance	99.9%
With Dual Cable Entrances (see Note a. below)	99.95%

Notes:

- a. Equipment located on the customer's premises will have a single cable entrance unless the building owner elects to provide two physically separated cable entrances into the building. A second entrance to the customer's premises affords further diversity protection. When desired, it is a customer's responsibility to provide a second entrance. That second entrance must meet existing CenturyLink entrance facility standards. For additional information see CenturyLink Technical Publication 77344, *Diversity and Avoidance*.
- b. Service availability includes all components of the Metro Ethernet network from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro.
- c. Service interruptions caused by CenturyLink planned network maintenance activities, maintenance at the customer premises, or loss of customer traffic due to malfunction of CPE are excluded from the availability calculation. The Metro Ethernet availability objective assumes two hours every six months for the network maintenance window.

2. Throughput Objective.

The Metro Ethernet bandwidth profile is a limit on the rate at which Ethernet frames can traverse the User Network Interface ("UNI"). Metro Ethernet offers a better than best effort bandwidth or throughput for each customer network access link. Specifically, the Metro Ethernet Committed Information Rate (CIR) is the minimum bandwidth or throughput that the Metro Ethernet network will deliver for at least 256 byte frames in both ingress and egress directions under normal operating conditions. For smaller frame sizes customer packets may be dropped.

Through CIR, bandwidth will be available in the increments ordered by the customer. CIR rates will be met by adequate rate-limiting of the Metro Ethernet Layer 2 edge and core switches, and SONET transport infrastructure where applicable.

3. Latency Objective.

Latency or delay is defined as the time interval between the transmission of a signal at one point and the reception or detection of the same signal at another point. Unidirectional or One-Way Delay ("OWD") is the elapsed time between when a node sends a packet and when the packet is received by another node. OWD is also referred to as end-to-end transit delay.

For Metro Ethernet service, the one-way delay is the time measured between when the first bit of an Ethernet frame enters the ingress User-Network Interface to when the last bit of the same frame leaves the egress UNI. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. The latency performance objective across a single Metro Ethernet network will be as indicated below:

Latency (One-Way)	Objective (Monthly Average)
Maximum	Less than 25 milliseconds
Typical	Less than 15 milliseconds

Thus, over any calendar month, 100% of the successfully delivered egress frames (discarded or lost frames are not counted) will have an average one-way delay of less than 25 milliseconds. This Metro Ethernet performance parameter applies to all supported Ethernet line / data rates (at the UNI), i.e. access ports and bandwidth profiles, frame sizes, alternate fiber routes where applicable and represents the total delay attributable to the Metro Ethernet network.

4. Packet Loss Objective.

The packet loss performance parameter identifies the percentage of in-profile Ethernet frames ("green" frames that are within CIR) not reliably delivered between UNIs over a given measurement interval. Any frames that are out-of-profile ("yellow" or "red" frames, i.e. exceeding the CIR) are not counted towards the number of lost frames.

Customer frames that may additionally be blocked or discarded at the UNI and not counted towards the packet loss objective include the following:

- Runts or frame size less than 64 bytes
- Jumbo frames with a maximum transmission unit greater than 1522 bytes
- Corrupted frames with cyclic redundancy check, frame check sequence or alignment errors

Packet loss is defined as the percentage of packets that are dropped within, or between switches that are a part of, the Metro Ethernet network. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. CenturyLink will engineer the Metro Ethernet network to minimize packet loss such that the performance objective will not exceed the following:

Performance Parameter	Dropped Packets Objective (Monthly Average)
Packet Loss Ratio	No more than 0.1%
	No more than 0.001% for priority 1 ("P1") packets in the Metro Ethernet core network

Note: The Metro Ethernet core network is defined as from the first (CenturyLink-provided) core switch to the last core switch in a metro for a particular Ethernet Virtual Connections ("EVC") traffic flow. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.9% of the customer's packets from UNI to UNI or 99.999% for P1 traffic in the core.

5. VLAN Leakage Objective.

There will be zero VLAN or MAC address leakage across the Metro Ethernet network. Metro Ethernet does not currently support the routing or communication of traffic between VLANs or EVCs.

6. Quality of Service Objective.

When Quality of Service is purchased by the customer then the following applies:

- The service level availability commitment for Quality of Service is that 99.999% of the packets will conform to the bandwidth profile delivered across the core network, without being dropped or lost as a result of a fault within the Virtual Ethernet Network. This equates to a Quality of Service Pack loss ratio of no more than 0.001%. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.999% of a customer's packets from core to core.
- When the SLA is not met, the SLA credit will apply to the monthly recurring charge ("MRC") for every increment of 3 Mbps (in select markets) or 5 Mbps of P1 traffic.
- The credit will equal 1/30th of the MRC for every 5 Mbps of affected Priority 1 traffic.
- The maximum amount of credit provided in a given month will not exceed the total MRC for the affected Service.

7. Protect Routing Objective.

When protect routing is purchased by the customer then the following applies:

- The service guarantee will be for a 99.99% circuit availability over a 30 day period which equates to 4 minutes 20 seconds of downtime.
- No credit will be allowed for an interruption of less than 4 minutes 20 seconds, multiple outages of each less than 4 minutes 20 seconds will not be added together.
- A credit of 1/30th of the MRC will be paid out for any outage occurrence that exceeds 4 minutes 20 seconds. Credit will be limited to one credit for each 24 hour period in which an outage(s) occur. Credit will be comprised of all affected MRC elements.
- The Maximum amount of credit provided in a given month will not exceed the total MRC for the affected Metro Ethernet.

8. Mean Time to Repair Objective.

CenturyLink is responsible for maintaining all equipment and cable on the Metro Ethernet network side of the UNI at customer locations, and the transmission facility between UNIs.

CenturyLink will furnish the customer with a trouble reporting telephone number.

Upon receipt of a trouble alarm or report, CenturyLink will initiate action within 20 minutes to clear the trouble and will commit to the following service restoral times for Metro Ethernet:

- Four hours maximum in the event of a service interruption due to an electronic component failure

- Eight hours maximum if the trouble is caused by a cable failure

**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: _____

**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").

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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. _____

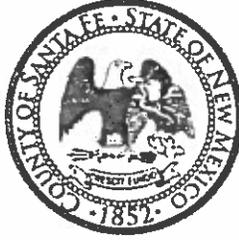
Date Concurred: _____



Daniel "Danny" Mayfield
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: November 26, 2014

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Katherine Miller, County Manager
Jeff Trujillo, ASD Director
Daniel Sanchez, IT Director

ITEM AND ISSUE: *BCC Meeting December 9, 2014*

REQUEST BCC APPROVAL TO MODIFY THE TERM OF THE AGREEMENT WITH CENTURYLINK FOR PRIMARY RATE INTERFACE (PRI) SERVICE AND ALLOW THE COUNTY TO ENTER INTO A SIXTY (60) MONTH OR 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.* CenturyLink and the IT Division is request to enter into a sixty (60) month, or five (5) year agreement rather that the standard forty-eight (48) month or four (4) year agreement pursuant to the County Purchasing Regulations and Policy.

Background:

CenturyLink currently provides PRI connectivity for Santa Fe County voice and data. A competitive solicitation was performed by the Purchasing and IT Divisions for this service as a small purchase and obtaining three written quotes from IT Providers. CenturyLink provided the best optimum price for the County for this service.

Recommendation:

Purchasing Division and the IT Division recommend that the Board of County Commissioners approve the modified term of the agreement with CenturyLink for PRI connectivity for the County pursuant to Section 2 of Ordinance 2012-5.

**ADDENDUM TO CENTURYLINK TOTAL ADVANTAGE EXPRESS AGREEMENT
REGARDING SERVICES
FOR PRIMARY RATE INTERFACE**

THIS ADDENDUM to CenturyLink Total Advantage Express Agreement is made and entered into this _____ day of _____, 2014 by and between the County of Santa Fe, (hereinafter referred to as the "Customer"), a political subdivision of the State of New Mexico and Century Link, Inc., (hereinafter referred to as "CenturyLink"), whose principal address is 100 CenturyLink Drive, Monroe, LA 71203.

WHEREAS, the Santa Fe County's Information Technology Division requires the services for Integrated Services Digital Network (ISD)/Primary Rate Interface Circuits (PRI) and,

WHEREAS, pursuant to NMSA 1978, Section 13-1-125, this is a "small purchase," for the provision of the Primary Rate Interface (PRI) services; and

WHEREAS, Santa Fe County's Information Technology Division requested and received three (3) quotes regarding services for Primary Rate Interface and CenturyLink was the lowest responsive quote; and

WHEREAS, CenturyLink has proposed a Total Advantage Express Agreement (hereinafter the "CenturyLink Agreement") for PRI services with modified and additional terms as indicated by this Addendum, and therefore the parties agree as follows:

The CenturyLink Agreement is modified as follows:

- A. 1. Services, a subpart "a. Compensation, Invoicing and Set-Off" is inserted to read as follows:**
- a. Compensation, Invoicing and Set-Off**
 - 1) In consideration of its obligations under this Agreement, CenturyLink shall be compensated as indicated in Exhibit I ISDN PRS ICB Pricing Offer included in the "Total Advantage Express Agreement" and accompanying "Terms and Conditions Applicable to all Services".
 - 2) In no event shall the total compensation paid to CenturyLink by the Customer under this Agreement exceed **One Hundred Forty-Seven Thousand dollars (\$147,000.00)**, exclusive of gross receipts tax. This amount is based on the following: 5 (Service Locations) X \$490.00 (Per Location) X 60 (Months) = \$147,000.00.
 - 3) Rather than adopting the payment terms set forth in CenturyLink Agreement, CenturyLink shall submit a written request for payment to County at the conclusion of each month of service. Within fifteen (15) days of Customer's receipt of the written request, Customer shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

CenturyLink acknowledges and agrees that Customer may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, Customer shall tender payment for the accepted items or services. In the event Customer fails to tender payment within thirty (30) days of the written certification Customer shall pay late payment charges of one and one-half (1.5%) per month, until the amount due is paid in full.

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

B. 3. Term and Termination, 3.1 Term, a subpart "a. Effective Date and Term" is inserted to read as follows:

- a. This Agreement shall become effective for sixty (60) months upon due execution by all parties and shall terminate 60 months from the date of execution by the Customer, unless earlier terminated pursuant to Section (3) Term and Termination or Section 11 (Appropriations and Authorizations). There shall be no pre-payment of services. Services shall be paid in accordance with Section 1.a. (Compensation, Invoicing and Set-Off) during the term of the Agreement. The Customer shall have the option to extend the term of this Agreement in one-year increments not to exceed a total of three (3) years. The Customer shall notify CenturyLink in writing in no less than sixty (60) days before the expiration of the initial term of this Agreement or extension thereof.

C. 3. Term and Termination, 3.2 Termination, subparts "3.a. to 3.c." are inserted to read as follows:

- a. **Termination of Agreement for Cause.** Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 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.
- b. **Termination for Convenience of the Customer.** The Customer may, in its discretion, terminate this Agreement at any time for any reason by giving

CenturyLink written notice of termination. The notice shall specify the effective date of termination, which shall be not less than fifteen (15) days from CenturyLink's receipt of the notice. Customer shall pay CenturyLink for acceptable work, determined in accordance with the specification 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.

- c. Notwithstanding the above, CenturyLink shall not be relieved of liability to the Customer for damages sustained by the Customer by virtue of any breach of the Agreement by CenturyLink, and the Customer may withhold any payments to CenturyLink for the purpose of set-off until such time as the exact amount of damages due the Customer from CenturyLink is determined.

D. Paragraphs "5. to "28" are inserted to read as follows:

5. Independent Contractor

CenturyLink, its agents and employees are independent contractors performing services for the Customer, and are not employees or agents of the Customer. Notwithstanding that CenturyLink enters into and performs under this Agreement, CenturyLink and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use Customer vehicles, or participate in any other benefits afforded to employees of the Customer. Except as may be expressly authorized elsewhere in this Agreement, CenturyLink has no authority to bind, represent, or otherwise act on behalf of Customer and agrees not to purport to do so.

6. Personnel

6.1 All work performed under this Agreement shall be performed by CenturyLink or under its supervision.

6.2 CenturyLink 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 nor have any contractual relationships with Customer and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state and local law to perform such work.

7. Assignment

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

8. Subcontracting

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

9. Indemnity

- 9.1 CenturyLink shall defend, indemnify, and hold harmless Customer 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 CenturyLink's performance of non-- performance of its obligation under this Agreement, including but not limited to CenturyLink's breach of any representation or warranty made herein.
- 9.2 CenturyLink agrees (i) that Customer 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 Customer and (ii) that such suit will not be settled without Customer's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of Customer and CenturyLink in such demand, suit, or cause of action, counsel shall be retained to represent the Customer's interest.
- 9.3 CenturyLink's obligations under this section shall not be limited by the provisions of any insurance policy CenturyLink is required to maintain under this Agreement.

10. Records and Inspections

- 10.1 To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to Customer as part of the procurement process, CenturyLink agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow Customer or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").
- 10.2 To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to Customer as part of the procurement process, CenturyLink also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow Customer or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

11. Appropriations and Authorization

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by Customer to CenturyLink. Such termination shall be without penalty to Customer, and Customer shall have no duty to reimburse CenturyLink for expenditures made in the performance of this Agreement. Customer is expressly not committed to expenditure of any funds

until such time as they are programmed, budgeted, encumbered and approved for expenditure by Customer. Customer'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 CenturyLink in any way or forum, including a lawsuit.

12. Insurance

12.1 General Conditions: CenturyLink 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.

12.2 General Liability Insurance Including Automobile: CenturyLink 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 \$1,050,000 combined single limits of liability for bodily injury, including death and property damage for anyone occurrence. Said policies of insurance shall include coverage for all operations performed for the County of Santa Fe by CenturyLink; 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. County of Santa Fe shall be a named additional insured on the policy.

12.3 Worker's Compensation Insurance: CenturyLink shall comply with the provisions of the Worker's Compensation Act.

12.4 Increased Limits: If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-27, as amended), CenturyLink shall increase the maximum limits of any insurance required herein.

13. Permits and Licenses

CenturyLink shall procure all permits and licenses, pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work.

14. Release

CenturyLink, upon final payment of the amount due under this Agreement, releases the Customer, its officers, agents and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. CenturyLink agrees not to purport to bind the Customer to any obligation not agreed to herein unless CenturyLink has express written authority from the Customer to do so, and then only within the strict limitations of that authority.

15. Publication, Reproduction and use of Material

The Customer shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other material prepared under this Agreement. CenturyLink acknowledges and agrees that any material produced in

whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, Customer shall own any such copyright.

16. Conflict of Interest

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

17. Amendment

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. CenturyLink specifically acknowledges and agrees that Customer shall not be responsible for any changes to this Agreement unless such changes are set forth in a duly executed written amendment.

18. Integration

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

19. Equal Opportunity Compliance

19.1 CenturyLink agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, CenturyLink specifically agrees not to discriminate against any person with regard to employment with CenturyLink or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

19.2 CenturyLink acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

20. Severability

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

21. Applicable Law

21.1 In performing its obligation outlined in the Agreement and herein, CenturyLink shall comply with all applicable Federal, State of New Mexico and local

governments' laws and ordinances. 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. CenturyLink and the Customer agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be State District Courts of New Mexico, located in Santa Fe County.

21.2 CenturyLink shall comply with the requirements of Santa Fe County Ordinance No. 2014-1 (Establishing a Living Wage).

22. Notice of Penalties

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

23. No Third-Party Beneficiaries

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

24. Signatures

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes. The parties further agree that execution of the Agreement and Addendum shall be accomplished simultaneously and in conjunction with each other and unless this Addendum is signed the Agreement shall not be valid.

25. Limitation of Liability

Customer's liability to CenturyLink for any breach of this Agreement by Customer shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in the section on compensation above. In no event shall Customer be liable to CenturyLink for special or consequential damages, even if Customer was advised of the possibility of such damages prior to entering into this Agreement.

26. New Mexico Tort Claims Act

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

27. CenturyLink's Representations and Warranties

CenturyLink hereby represents and warrants that:

27.1 It is a corporation duly organized and in good standing under the laws of the state of New Mexico.

27.2 This Agreement has been duly authorized by CenturyLink, the person executing this Agreement has authority to do so, and, once executed by CenturyLink, this Agreement shall constitute a binding obligation of CenturyLink.

27.3 This Agreement and CenturyLink's obligations hereunder do not conflict with CenturyLink's articles of incorporation or by-laws or any corporate resolution adopted by CenturyLink.

28. Survival

The provisions of the following paragraphs shall survive termination of this Agreement: Indemnification; Release; Compliance with Applicable Law; Choice of Law; No Third-Party Beneficiaries; and, Survival.

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

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

Date

APPROVED AS TO LEGAL FORM:

Gregory S, Shaffer
Santa Fe County Attorney

Date

FINANCE DEPARTMENT APPROVAL:

Teresa Martinez
Santa Fe County Finance Director

Date

CENTURYLINK, INC.

Signature

Date

Print Name and Title

FEDERAL IDENTIFICATION NUMBER:

CENTURYLINK® TOTAL ADVANTAGE® EXPRESS – AGREEMENT – Summary Page

This CenturyLink® Total Advantage™ Express Agreement ("Agreement") is between CenturyLink Sales Solutions, Inc. as contracting agent on behalf of the applicable CenturyLink company providing the Services under this Agreement ("CenturyLink") and SANTA FE COUNTY - NM ("Customer" or "You"). The name of the CenturyLink operating company providing Services to Customer is listed in the service-specific terms and conditions. CenturyLink may withdraw this offer if Customer does not execute and deliver the Agreement to CenturyLink on or before January 9, 2015. Using CenturyLink's electronic signature process for the Agreement is acceptable.

1. **Services.** CenturyLink will charge Customer the following rates for the Services described below. CenturyLink provides Services under the General Terms Applicable to All Services found in the Detailed Terms and Conditions ("DT&C") at: <http://www.centurylink.com/legal/rmgctae/DTCA/58.pdf> and the service-specific terms and conditions listed below each pricing table, incorporated into the Agreement by this reference. Provisions that are applicable to a specific CenturyLink company are so indicated. All general provisions are applicable to services provided by the CenturyLink company providing the Services under this Agreement. For an interim period of time until all work is completed to update the Service-specific provisions, various on-line offer provisions, 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 f/k/a Qwest Communications Company, LLC.

Monthly Revenue Commitment	Contributory Charges of \$100 (Beginning in the 4 th month of the Term, failure to meet the Revenue Commitment will result in a Shortfall charge).
Term Commitment (or "Term")	60 months

"Contributory Charges" means: (a) all monthly recurring charges ("MRCs") and usage charges for CenturyLink QCC (other than Local Access Service) and/or CenturyLink QC Services ordered under the Agreement after the Effective Date and incurred during the Term; and (b) all MRCs and usage charges for CenturyLink QC Contributory Services ordered before or after the Effective Date under separate agreements and incurred during the Term. "CenturyLink QC Contributory Services" are defined in the DT&C. Contributory Charges do not include non-recurring charges ("NRCs"), CPE, Taxes, pass-through, worldcard® payphone surcharges, other surcharges, issued credits, any charges for Local Access Services, or other charges not specified as Contributory Charges under the Agreement. "Shortfall" is the difference between the Revenue Commitment and Customer's Contributory Charges paid during a Measurement Period.

The following Services are incorporated into the Agreement:

ISDN PRS, DSS

The following additional terms and conditions apply to ISDN PRS, DSS Service, and are incorporated herein by reference: the General Terms Applicable to All Services and ISDN PRS, DSS sections in the DT&C.

See Exhibit 1 for ISDN PRS pricing Details

2. Rates

2.1 Rate Changes. Rates apply only for the above Services and Service Address(es) and will not apply if Customer moves a Service Address or changes any of the Bundle or Service Details. The rates for Local Access Service and CPE Purchase may be subject to valid quote forms, which control if they conflict with the rates listed on this Summary Page, all of which are subject to change.

2.2 Additional Charges. Additional charges may apply. Rates and charges for Service elements not identified appear in the applicable terms and conditions. Rates do not include foreign, federal, state or local taxes, surcharges, fees, EAS, Zone, CALC, or other similar charges.

3. Term and Termination.

3.1 Term. This Agreement is effective on the date all parties have signed below ("Effective Date"). The initial Term Commitment is shown with Customer's Revenue Commitment above. After the expiration of the Term Commitment, this Agreement will renew on a month-to-month basis. Service Terms begin on their Start of Service Date and automatically renew unless terminated by either party. The Start of Service Date, renewal periods and renewal period rates are described in the DT&C, Bundle or Package Provisions, Service Provisions, or in an applicable Tariff, RSS or ISS.

3.2 Termination. If Customer gives notice of cancellation or termination, disconnects any portion of a Service or otherwise breaches this Agreement resulting in the termination of a Service before the end of the applicable Service Term, an Early Termination Charge or Cancellation Charges will apply as set forth in the applicable terms and conditions.

4. Amendments. At CenturyLink's sole discretion, the parties may amend the Agreement to add additional CenturyLink services. Except as otherwise expressly permitted in the Agreement, amendments must be in writing and signed by both parties' authorized representatives.

CENTURYLINK® TOTAL ADVANTAGE® EXPRESS – AGREEMENT – Summary Page

TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES

1. Additional Terms and Conditions. Customer understands that the DT&C and other provisions identified in this Agreement ("Other Provisions") contain additional important terms and conditions that apply to the Services, including, among other things, confidentiality obligations, disclaimer of warranties, indemnification, shortfall charges, minimum-service terms, early termination charges, and jury-trial and class-action waiver.

2. Payment. Customer must pay all charges within 30 days of the invoice date except for CenturyLink QC charges, which Customer must pay by the due date on the invoice. Charges not paid by their due date are subject to late payment charge of the lesser of 1.5% per month or the maximum rate allowed by law or required by Tariff. In addition to payment of charges for Services, Customer must also pay CenturyLink any applicable Taxes (which is defined in the DT&C and may include surcharges, fees, and other similar charges) assessed in connection with Services. 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.

3. Credit Approval. Provision of Services is subject to CenturyLink's credit approval of Customer. As part of the credit approval process, CenturyLink may require Customer to provide a deposit or other security. Additionally during the Term, if Customer's financial circumstance or payment history becomes reasonably unacceptable to CenturyLink, CenturyLink may require adequate assurance of future payment as a condition of continuing CenturyLink's provision of Services. Customer's failure to provide adequate assurances required by CenturyLink is a material breach of the Agreement. CenturyLink may provide Customer's payment history or other billing/charge information to credit reporting agencies or industry clearinghouses.

4. 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.

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

(a) 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.

(b) 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 apply.

(c) 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 is limited to proven direct damages.

(d) 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 indemnification obligations or Customer's payment obligations under the Agreement.

6. Entire Agreement. This Agreement, including DT&C, Other Provisions, and any CenturyLink-accepted Order Forms constitute the entire agreement between the parties. This Agreement supersedes all prior oral or written agreements or understandings relating to the same service, ports, or circuits at the same locations as covered under this Agreement. Capitalized terms are defined in the DT&C and Other Provisions.

7. Purchase Orders. This Agreement controls over any Customer-issued purchase order, and any terms or conditions contained in a Customer-issued purchase order or other Customer ordering document will have no force or effect.

8. Uniform Resource Locators (URLS). References to URLs in this Agreement include any successor URLs designated by CenturyLink.

CENTURYLINK® TOTAL ADVANTAGE® EXPRESS – AGREEMENT – Summary Page

CUSTOMER: SANTA FE COUNTY - NM

CENTURYLINK SALES SOLUTIONS, INC.

Authorized Signature

Authorized Signature

Name Typed or Printed

Name Typed or Printed

Title

Date

Title

Date

Customer's Address for Notices: 102 Grant Ave, Attn: General Counsel, Santa Fe, NM 87507;
Customer's Facsimile Number: (150) 598 - 6627

CENTURYLINK TOTAL ADVANTAGE™ EXPRESS AGREEMENT

Exhibit 1

ISDN PRS ICB PRICING OFFER
FOR THE STATE OF NM

SANTA FE COUNTY - NM
Customer

This ISDN PRS is provided by Qwest Corporation d/b/a CenturyLink QC ("CenturyLink QC") and is subject to the CenturyLink Total Advantage™ Express Agreement between Customer and CenturyLink.

Filing Concurrence

CenturyLink may be required to submit the pricing herein to certain regulatory agencies for approval because the rates are being offered on an individual case basis ("ICB Rates"). Although the general terms and conditions of this Agreement are effective on the Effective Date, the ICB Rates will not become effective for a given jurisdiction until the filing and approval requirements for that jurisdiction are fulfilled. Service will be offered in accordance with the applicable Tariff until the ICB Rates become effective. Approved ICB Rates will take precedence over the Tariff. If Customer receives reduced pricing under this Agreement and a regulatory agency later invalidates the ICB Rates after they had become effective, Customer will pay to CenturyLink any difference in the amounts listed in the applicable Tariff for Service and the amounts Customer was charged for Service. When approved by the regulatory agencies, Customer may add additional quantities of Service pursuant to the Service Changes Section under the same terms and conditions with no further filing required. If a regulatory agency does not approve this Agreement, the parties will enter into good faith negotiations to mutually resolve the failure to receive the necessary approval. This Agreement will remain in full force and effect for Service in all other jurisdictions.

AQCB# (Internal use only): _____

Service Location Including City and State	Circuit ID/BTN	USOC	Term	NRC	Qty.	Total MRC Per Location
102 GRANT AVE, SANTA FE, NM 87501, USA		ZPG65	60mo	\$0.00	1	\$490
102 GRANT AVE, SANTA FE, NM 87501, USA		ZPG65	60mo	\$0.00	1	\$490
102 GRANT AVE, SANTA FE, NM 87501, USA		ZPG65	60mo	\$0.00	1	\$490
35 CAMINO JUSTICIA, SANTA FE, NM 87508, USA		ZPG65	60mo	\$0.00	1	\$490
4250 AIRPORT RD, SANTA FE, NM 87507, USA		ZPG65	60mo	\$0.00	1	\$490



Daniel "Danny" Mayfield
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: *November 26, 2014*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager*

Via: *Katherine Miller, County Manager*
Tony Flores, Deputy County Manager
Jeffrey Trujillo, ASD Director
Teresa Martinez, Finance Director
David Madrid, Project Manager III

ITEM AND ISSUE: *BCC Meeting December 9, 2014*

REQUEST AUTHORIZATION FROM THE BOARD OF COUNTY COMMISSIONERS (BCC) TO UTILIZE THE DESIGN BUILD PROJECT DELIVERY METHOD FOR THE PUBLIC SAFETY COMPLEX RENOVATION AND IMPROVEMENT PROJECT. (Bill Taylor, Purchasing/David Madrid, Projects)

Issue:

An alternative for construction of projects is available through the design-build delivery method. The objective of design-build contracting is to complete construction projects more efficiently than the conventional design-bid-build delivery method. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

Pursuant to 13-1-119.1, NMSA 1978 *Public works project delivery system; design and build projects authorized*. "A design and build project delivery system may be authorized when the state purchasing agent or central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project."; and pursuant to Section 34 DESIGN BUILD PROJECTS, REQUEST FOR PROPOSALS, paragraph C. Written Determination, subparagraph 5. "If approved by the Purchasing Manager, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

Background:

The Santa Fe County Public Safety Complex facilitates the Regional Emergency Communications Center (RECC), Sheriff's Office, Fire Department and the Corrections Department. The RECC is a 24 hour, 7 days a week operation that receives calls and dispatches emergency information for Sheriff, fire, medical, animal control, emergency 911 and non-

emergency calls for three jurisdictions and is one of the more critical operations within Santa Fe County. This operation initiates all public safety communications and direction.

A recent assessment of the operational functionality of the Complex has identified certain space and infrastructure needs at the facility.

Santa Fe County Public Safety and Public Works staff first initiated the process of evaluating options for expansion of the Complex to provide additional space for the RECC. Staff contracted with an Architectural Firm to provide the County with a Programming Study that has identified specific needs. The following items were identified in the Program:

RECC

- RECC Expansion for Staff offices and work stations
- Infrastructure improvements – HVAC and Mechanical Redundancy
- Dispatch Area access and egress
- Full Kitchen and Break room
- IT Tech Office
- Decompression Area
- File Storage
- Conference Training Room

Information Technology Disaster Recovery Center (ITDRC)

- House the ITDRC at the SFC Safety Complex (requires RECC Board Approval). Requires 384 GSF
- Adequate power supply, emergency generator back-up
- HVAC redundancy
- Fire Suppression system
- 4 server racks and 3 UPS racks
- Work station
- Access control

Sheriff's Office

- Evidence Storage currently utilizes 3,494 GSF
- There are currently 45,461 pieces of evidence being stored.
- Program recommends expansion but no specific GSF provided.

Building Improvements

- Overall mechanical system Upgrade
- Emergency Power Installation
- Fire Alarm System Replacement

The Architects preliminary, estimated construction cost is \$ 2,839,920.00. The BCC has allocated \$2.5 million for this project in 2012 through the Long-Term GRT projects Capital Improvement Plan, of which Staff requested and was granted approval from the BCC on 11/25/14 \$2.145 million and an additional \$350 thousand from GRT. There will still be a budget shortfall based on the estimate. Projects Management may have to consider eliminating some aspects of the project scope in order to meet the available funding.

Recommendation:

The Purchasing Division and Public Works Department are requesting BCC approval and authorization to proceed with the procurement process under design-build project delivery method.

Daniel "Danny" Mayfield
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: November 26, 2014

To: Katherine Miller, County Manager

From: Bill Taylor, Procurement Manager *BT*

Via: Tony Flores, Deputy County Manager
Jeffrey Trujillo, ASD Director
Teresa Martinez, Finance Director
David Madrid, Project Manager III

Subject: **Determination for the Proposed Use of Design Build Project Delivery Method for the Public Safety Complex Improvement Project.**

An alternative for construction of projects is available through the design-build delivery method. The objective of design-build contracting is to complete construction projects more efficiently than the conventional design-bid-build delivery method. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

Background:

The Santa Fe County Public Safety Complex facilitates the Regional Emergency Communications Center (RECC), Sheriff's Office, Fire Department and the Corrections Department. The RECC is a 24 hour, 7 days a week operation that receives calls and dispatches emergency information for Sheriff, fire, medical, animal control, emergency 911 and non-emergency calls for three jurisdictions and is one of the more critical operations within Santa Fe County. This operation initiates all public safety communications and direction.

A recent assessment of the operational functionality of the Complex has identified certain space and infrastructure needs at the facility.

Issue:

Santa Fe County Public Safety and Public Works staff first initiated the process of evaluating options for expansion of the Complex to provide additional space for the RECC. Staff contracted with an Architectural Firm to provide the County with a Programming Study that has identified specific needs. The following items were identified in the Program:

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Recommendation:

Pursuant to 13-1-119.1, NMSA 1978 *Public works project delivery system; design and build projects authorized*. "A design and build project delivery system may be authorized when the state purchasing agent or central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project."

Pursuant to Section 34 DESIGN BUILD PROJECTS, REQUEST FOR PROPOSALS, paragraph C. Written Determination, subparagraph 5. "If approved by the Purchasing Manager, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County

Commissioners for concept approval to proceed with the procurement process under design-build.

It is the recommendation of this County Office and as the Procurement Manager that the Public Safety Complex Improvement Project utilize the Design-Build (D-B) Project Delivery Method as the most practical and advantageous to the County. When executed properly this delivery method can provide the County with a project completion that is on time and within budget. The critical operations that are facilitated in the Complex must be able to continue to function as a Communications Center for County safety operations. The solution from the selected Design-Build Team will be to complete the improvements without interruption to the function of Government in that respect.

Design-build delivery allows the Owner to negotiate the design and implementation solution that is proposed by the D-B Team, value engineer the cost of the project (negotiate price) resulting with a best value solution.

There is a significant time-savings with this delivery method through an expedited construction process by combining the capabilities of both the designer and builder working together. After contract award the D-B Team must deliver the project within the original contract amount.

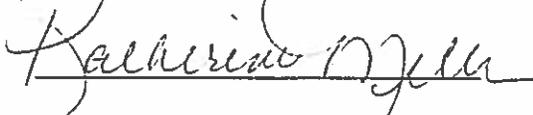
The only negative risk with this method is that once the Notice to Proceed (NTP) is issued the Owner releases certain direct control of the construction process. There is a significant cost increase for any Owner-directed change order. Again, if executed appropriately this risk can be eliminated during the negotiation and value engineering stage of procurement prior to the award and issuance the NTP.

It is also recommended that the County begin the solicitation for professional design services from an Architectural Firm with strong experience and expertise in the Design-Build Project Delivery Method, who would prepare the design parameters necessary for the Design-Building Request for Proposal (RFP) or Competitive Sealed Proposal as well as provide direction and assistance to the County through project completion.

I respectfully submit for your approval, the recommendation of the proposed use of the design-build project delivery method. If approved, the recommendation would then be submitted to be placed on the December 9, 2015, BCC Agenda for final approval.

Approved

Denied



Katherine Miller, County Manager



