



# City of Santa Fe, New Mexico


## Memorandum



**DATE:** February 3, 2023

**TO:** John Blair, City  
Manager  
Finance  
Budget  
Purchasing

**VIA:** Emily Oster, Finance Department Director  
Joann Lovato, Contracts Supervisor  
Manuel Gonzales, ITT Department Director   
MG

**FROM:** Michelle A. Gurule, Contracts Administrator 

---

### ITEM AND ISSUE:

ITT Department Request for the Approval of Telecommunications Agreement in the Total Amount of \$86,400.00 for 36 months \$2,400.00 per month for Voice and Long-Distance Services; (Century Link/Lumen); (Manuel Gonzales, [mmgonzales@santafenm.gov](mailto:mmgonzales@santafenm.gov) 505955-5576).

### BACKGROUND AND SUMMARY:

ITT is requesting approval for the attached contract amendment with Lumen/Century Link. The existing voice circuits and Long-Distance services provided by Lumen/Century Link are based on an aging non-resilient structure. To bring the Voice circuits up to reliable and modern Digital circuits, the City is required to upgrade our voice and Long-Distance circuit agreement. This change will reduce the monthly network costs to \$2,400.00 per month with added resilience and digital clarity.

### PROCUREMENT METHOD:

The procurement method is the NM Statewide Price Agreement (SWPA) # 00-00000-19-00027AA which expires on July 1, 2026.

### CONTRACT NUMBER:

The FY20 Munis contract number is 3203884.

### FUNDING SOURCE:

The funding source is:

**Fund Name/Number:** Services of Other Departments/Fund 650

**Munis Org Name/Number:** ITT ISV/6203650

**Munis Object Name/Number:** Communications/514100

### ACTION REQUESTED:

ITT respectfully requests your review and approval.

**PARTICIPATING ADDENDUM  
FOR  
CENTURYLINK Outbound Long Distance, Toll Free and Other Related Services  
Contract No. 00-36100-19-03428 (Pramata 1402873)  
City of Santa Fe - NM  
AND  
CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN TECHNOLOGIES GROUP**

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 State of New Mexico Department of Information Technology Price Agreement No. 00-36100-19-03428 (CenturyLink internal reference ID: Pramata 1402873) for Outbound Long Distance, Toll Free and Other Related Services which was entered into with CenturyLink Communications, LLC d/b/a Lumen Technologies Group ("CenturyLink" or "Lumen") and which was approved and signed by the State of New Mexico Department of Information Technology on or about June, 25, 2020, as the same may have been amended from time to time, including its Exhibits and Attachments (hereafter the "Underlying Agreement").
2. Customer is executing this Participating Addendum for the purpose of purchasing Service from CenturyLink pursuant to the Underlying Agreement. 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 Outbound Long Distance, Toll Free and Other Related 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. Prior to installation, CenturyLink may notify Customer in writing (including by e-mail) of price increases due to off-net vendors or construction costs. Customer has two business days following notice to terminate this Participating Addendum without liability; or otherwise, Customer is deemed to accept the increase. In the event of a price increase, the parties will work together to execute a new Participating Addendum or other documentation mutually deemed necessary to reflect the increase.
4. **TERM AND TERMINATION.** This Participating Addendum is effective on the latest signature date ("Effective Date"), and shall continue in effect for so long as Customer receives Services under this Participating Addendum ("Term"). Notwithstanding anything to the contrary in the Underlying Agreement, the Term of this Participating Addendum may continue after the termination or expiration of the Underlying Agreement, and the terms of the Underlying Agreement shall apply to the Services delivered under this Participating Addendum for the duration of the Term. CenturyLink's records will document the actual date of installation of the Service. Customer may terminate Service in accordance with the Underlying Agreement and applicable Service Exhibit. The Service Term for the Services is set forth in Exhibit 1 attached.
5. **PRIMARY CONTACT.** The primary Customer contact individual for this Participating Addendum is as follows:  
  
**Larry Worstell Ifworstell@ci.santa-fe.nm.us Work Phone: 505-955-5580 Mobile Phone: 505-231-2367**
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. Notwithstanding anything to the contrary in the Underlying Agreement, in the event of any conflict between this Participating Addendum and the Underlying Agreement, the terms of this Participating Addendum will prevail.

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

**City of Santa Fe - NM**  
**"Customer"**

**CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN**  
**TECHNOLOGIES GROUP**  
**("CenturyLink")**

  
Alex Khanin (Jan 25, 2023 16:24 MST)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Alex Khanin

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed  
Manager Offer Management

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title  
Jan 25, 2023

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Address for Notices:

Address for Notices:  
Lumen  
931 14<sup>th</sup> Street, 9<sup>th</sup> Floor  
Denver, Colorado 80202  
Fax: 888-778-0054  
Attn.: Notice Coordinator

**Customer Information and Contract Specifications**

**Customer Name:** City of Santa Fe - NM  
**Account Number:** 3-A72803

**Currency:** USD  
**Monthly Recurring Charges (MRC):** \$2,400.00  
**Non Recurring Charges (NRC):** 0  
 Thirty six months total \$86,400.00

**Service Order**

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
400 TIJERAS AVE NW ALBUQUERQUE NEW MEXICO 87102 3234 UNITED STATES	IP VPN Port and Access	New	36	1	\$0.00	\$0.00	\$0.00	\$0.00
	- Standard Delivery - To the MPoE (Customer Provided)							
	Port - 1 Gbps			1	\$0.00	\$0.00	\$0.00	\$0.00
	Transport	New	36	1			\$300.25	\$0.00
	<b>Subtotal</b>						<b>\$300.25</b>	<b>\$0.00</b>
400 TIJERAS AVE NW ALBUQUERQUE NEW MEXICO 87102 3234 UNITED STATES	IP VPN Logical Interface (100 Mbps CIR, Flat Rate)	New	36	1	\$899.75	\$0.00	\$899.75	\$0.00
	- Committed Information Rate (CIR) = 100 Mbps							
	- Billing Percentile=90%							
	- Billing Direction= Ingress							
	<b>Subtotal</b>						<b>\$899.75</b>	<b>\$0.00</b>
715 ALTA VISTA ST SANTA FE NEW MEXICO 87505 4108 UNITED STATES	IP VPN Port and Access	New	36	1	\$0.00	\$0.00	\$0.00	\$0.00
	- Standard Delivery - To the MPoE (Customer Provided)							
	Port - 100 Mbps			1	\$0.00	\$0.00	\$0.00	\$0.00
	Transport	New	36	1			\$689.92	\$0.00
	<b>Subtotal</b>						<b>\$689.92</b>	<b>\$0.00</b>
715 ALTA VISTA ST SANTA FE NEW MEXICO 87505 4108 UNITED STATES	IP VPN Logical Interface (30 Mbps CIR, Flat Rate)	New	36	1	\$510.08	\$0.00	\$510.08	\$0.00
	- Committed Information Rate (CIR) = 30 Mbps							
	- Billing Percentile=90%							
	- Billing Direction= Ingress							

**EXHIBIT 1**  
**Attached**

OMR337121

Underlying Contract No. 00-36100-19-03428 (Pramata 1402873)

Page 1  
**CONFIDENTIAL**

© CenturyLink. All Rights Reserved.  
07152020

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
	Subtotal						\$510.08	\$0.00
	Totals						\$2,400.00	\$0.00
	36 Month Total						\$86,400.00	

\*If the Service Address column above is blank, no Service Address is required for the Service or the Service Address is identified as a data center in the Description column.

**SLED Terms and Conditions Governing This Order**

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group and its affiliated entities providing Services under this Order. Notwithstanding any statements to the contrary, this Order is not confidential and is subject to the applicable state or municipal public records laws governing Customer. This Order is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen. Pricing is valid for 90 calendar days from the date indicated unless otherwise specified.

2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors or increased construction costs. Customer has 5 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.

3. If a generic demarcation point (such as a street address) is provided, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.

4. The service(s) identified in this Order (the "Service(s)") is/are subject to the current, unexpired services agreement between Customer and Lumen ("Existing Agreement") provided that, if a service attachment describing the Services is not included in the Existing Agreement, then the current standard applicable Lumen Service Attachment(s) will apply in addition to the Existing Agreement. If Customer and Lumen do not have a current Existing Agreement, then the current applicable Lumen Master Service Agreement(s), State, Local and Education Government Agencies Version, Public Safety Version for public safety services, or E-Rate Version for E-Rate eligible services (each, a "Lumen MSA"), and applicable Service Attachment(s) for the Services described in this Order will govern, copies of which are available upon request. Customer will accept and pay all charges indicated on invoices for the Services.

Notwithstanding anything in any Existing Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a "Connection Notice"), at which time billing will commence. At the expiration of the Service Term, Service will continue month-to-month at the existing rates, subject to adjustment by Lumen on 30 days' written notice. If the Existing Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen's uncured default or if Lumen terminates due to Customer's uncured default, then Customer will pay Lumen's standard early termination liability charges as identified in the Ancillary Fee Schedule at: [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees).

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

---

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end points for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a monthly property tax surcharge and (b) a monthly cost recovery fee per month to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit [www.lumen.com/taxes](http://www.lumen.com/taxes).

8. Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at <https://www.centurylink.com/business/login/>) and (b) unless otherwise set forth in a Service Attachment, the ancillary charges for additional activities, features or options as set forth in the Ancillary Fee Schedule, available at [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. For certain services, equipment provided by Lumen to be located in Customer's premises ("CPE") is subject to the terms of the Customer Premise Equipment Addendum. A copy of the CPE Addendum and a list of services to which it applies is available upon request. For colocation, data center and/or hosting services, pre-arranged escorted access may be required at certain locations, and cross connect services are subject to whether facilities are available at the particular location to complete the connection.

10. Compliance with Laws. The parties comply with all laws and regulations applicable to the execution of this Order and to the provision of Services by Lumen, including, as applicable, procurement laws or regulations regarding cumulative purchases of Services by Customer.

11. E-Rate and/or RHC/HCF Funding. If Customer applies for or seeks E-Rate and/or RHC/HCF funding for the Service(s) to be provided under this Order, Customer's Service(s) will be governed by a current eligible Existing Agreement, or if Customer and Lumen do not have a current eligible Existing Agreement, the Lumen E-Rate MSA or Lumen SLED MSA with the E-Rate and/or RHC/HCF Program Addendum will apply and must be executed contemporaneously with this Order.

## **Additional Order Terms**

### **Invoices**

Single prices shown above for bundled Services, or for Services provided at multiple locations, will be allocated among the individual services for the purpose of applying Taxes and regulatory fees and also may be divided on Customer's invoice by location served.

### **Activation Support**

If requested by Customer, and for an additional charge, Lumen will provide assistance with activating and/or configuring equipment on Customer's side of the Demarcation Point ("Activation Support").

---

**Signature Block**

<b>Customer: City of Sante Fe - NM</b>	
<b>Total MRC:</b>	<b>\$2,400.00</b>
<b>Total 36 Month MRC:</b>	<b>\$86,400.00</b>
Signature:	
Name:	
Title:	
Date:	

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

**Document Generation Date: 10-13-2021**



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:

John Blair  
John Blair (Apr 9, 2023 17:49 MDT)

Alex Khanin  
Alex Khanin (Mar 31, 2023 11:04 MDT)

JOHN BLAIR, CITY MANAGER

Alex Khanin  
NAME

DATE: Apr 9, 2023

Manger Offer Management  
TITLE

DATE: 2/6/2023

CRS# \_\_\_\_\_

Registration # \_\_\_\_\_

ATTEST:

Kristine Mihelcic  
KRISTINE MIHELICIC, CITY CLERK *xiv*

CITY ATTORNEY'S OFFICE:

Marcos Martinez  
Marcos Martinez (Jan 19, 2023 09:05 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

Emily K. Oster  
Emily K. Oster (Apr 5, 2023 18:33 MDT)

EMILY OSTER, FINANCE DIRECTOR

Org.Name/Org.#



# State of New Mexico General Services Department

## Statewide Price Agreement Cover Page

**Awarded Vendor**  
**000006161**  
**CenturyLink Communications LLC**  
**PO Box 52124**  
**Phoenix, AZ 85072**

**Contact: Connie Roberts**  
**Email: connie.roberts@centurylink.com**  
**Telephone No.: (602) 716-3613**

Price Agreement Number: 00-00000-19-00027AA

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

**Ship To:**  
**All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.**

Procurement Specialist: Vanessa LeBlanc *VL*

Telephone No.: (505) 827-0266

Email: Vanessa.LeBlanc@state.nm.us

**Invoice:**  
**As Requested**

Title: **NG-911 Systems and Related Hardware, Software and Services**

Term: **7/1/2020 through 7/1/2025**

**This Price Agreement is made subject to the “terms and conditions” shown on the reverse side of this page, and as indicated in this Price Agreement.**

*JDL*

**STATE OF NEW MEXICO**

**Statewide Price Agreement**

**INFORMATION TECHNOLOGY AGREEMENT**  
Statewide Price Agreement No. ~~00-00000-19-00027AA~~

THIS INFORMATION TECHNOLOGY AGREEMENT (“Agreement” or “Contract”) is made by and between the **State of New Mexico, General Services Department, State Purchasing Division on behalf of the Department of Finance and Administration, Local Government Division (DFA/LGD)**, hereinafter referred to as “Procuring Agency” and **CenturyLink Communications, LLC**, hereinafter referred to as “Contractor” and collectively the parties are hereinafter referred to as the “Parties.” This Agreement must be approved by the Department of Information Technology (“DoIT”).

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as an expert in implementing the Scope of Work attached hereto and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State; and

WHEREAS, all terms and conditions of the **RFP #00-00000-19-00027 NG-911 Systems and Related Hardware, Software, and Services** and the Contractor’s response to such document(s) are incorporated herein by reference.

**THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**ARTICLE 1 – DEFINITIONS**

1. **“Acceptance.” “Accept” or “Accepted”** means the approval, following Quality Assurance, of all the Deliverables by Procuring Agency’s ELR (“ELR”).
2. **“Agency CIO”** means Procuring Agency’s Chief Information Officer.
3. Intentionally deleted.
4. **“Business Days”** means Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for Federal and State holidays.
5. **“Change Request”** means a written document utilized by either Party to request changes or revisions in the Scope of Work – Exhibit A, attached hereto.
6. **“Complete Working Order”** means the uninterrupted, defect free operation of the system, to include major and minor failures as defined in the “Failure Prioritization Schedule”, and related (hardware, software to include software subscription, and related services/labor) that meets all applicable specifications and other requirements of the awarded agreement.
7. **“Computer Aided Dispatch/Records Management System”** a computer-based system, which aids PSAP dispatchers by automating selected dispatching and record keeping activities.
8. **“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential

Procuring Agency or client information as the term is defined in State and/or Federal statutes or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by Procuring Agency or any other State office or agency as confidential, including all information designated as confidential under Federal and State statutes or regulations; (5) unless publicly disclosed by Procuring Agency or the State, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that has not been publicly disclosed and that is utilized, received, or maintained by Procuring Agency, Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation hereunder.

9. **“Contract Manager”** means a Qualified Person designated by Procuring Agency who is responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager will be the State Purchasing Division or his/her Representative.
10. **“Data”** means a compilation, body, set or sets, of discrete information gathered by Procuring Agency and/or Contractor which Procuring Agency owns and/or controls and which concerns, and may be utilized or manipulated by Procuring Agency and/or Contractor, to further Procuring Agency’s governmental interests, role and mission (“Mission”). Data includes, but is not limited to, Procuring Agency’s information, whether or not stored in one or more databases, Confidential Information and other internal information which affects or may affect Procuring Agency’s ability to further its Mission. For purposes of Contractor’s obligations under this Agreement, “Data” means any of the foregoing that is accessed, stored, or otherwise processed by Contractor in the course of providing the Services.
11. **“Default”** means a violation or breach of this Agreement by a Party’s either: (1) failing to perform one’s own contractual obligations hereunder, or (2) by interfering with the other Party’s performance of its obligations hereunder.
12. **“Deliverable”** means the verifiable outcomes, results, the Services or products that Contractor will develop, perform, and/or produce and deliver to Procuring Agency according to the Scope of Work.
13. **“DEA”** mean the Department of Finance and Administration for the State of New Mexico.
14. **“Dispatch Console”** means commercial grade workstation furniture that supports 911 equipment, such as keyboard, mouse, and screens, capable of being adjusted to the height and ergonomic requirements of the individual dispatcher.
15. **“DoIT”** means the New Mexico State Department of Information Technology.
16. **“DoIT CIO”** means DoIT’s Cabinet Secretary or Chief Information Officer, who also serves as the State’s Chief Information Officer.
17. **“Emergency medical, fire, and law enforcement dispatch software”** mean software used in a PSAP that provides prompts for the dispatcher for emergency situations pertaining to fire, law enforcement and medical, based on nationally established protocols.
18. **“Employees”** means stockholders, directors, officers, employees and agents.
19. **“Enhancement”** means any modification including addition(s), modification(s), or deletion(s) that, when Contractor makes or adds to a Deliverable, materially improves the Deliverable’s utility, efficiency, functional capability, or application (“Utility”). An error correction is not an Enhancement unless the Deliverable’s Utility is improved in Contractor’s process of making the error correction.

20. “Escrow” Not Applicable. The Parties agree there is no Escrow.
21. “ESInet” (Emergency Services IP network) means a managed IP network that is used for emergency services communications, and which can be shared by all public safety agencies. It provides the IP transport infrastructure upon which independent application platforms and core services can be deployed, including, but not restricted to, those necessary for providing NG-911 services. ESInets may be constructed from a mix of dedicated and shared facilities. ESInets may be interconnected at local, regional, state, federal, national and international levels to form an IP-based inter-network (network of networks). The term ESInet designates the network, not the services that ride on the network, as defined by the NENA master glossary of 911 terminology, revision date 4/13/2018.
22. “Executive Level Representative” or “ELR” means the individual designated and empowered with the authority to represent and make decisions on behalf of Procuring Agency or the Representative of the Executive Level Representative.
23. “Failure Prioritization Schedule” means the following failure priority levels shall be used during the system and acceptance testing process, for any installation period, warranty period, and post warranty maintenance and support provided to the PSAPs or purchasing entity:
  - A. For Major failures which render the system 50% unusable and/or inoperable, call processing function is decreased, prevents a 911 caller from making voice contact with the PSAP, or prevents the PSAP from viewing Automatic Number Identification/Automatic Location Identification (ANI/ALI) information of the caller, the Contractor shall guarantee the following:
    1. A response by telephone to the PSAP or purchasing entity upon receipt of a problem.
    2. If the issue cannot be resolved through verbal contact or remote diagnostics and repair, the Contractor shall provide a manufacturer certified technician on-site for hardware and software support within a four (4) hour maximum response time from receipt of the problem reported. Any waiver from this requirement must be approved in writing by the PSAP Director/Manager for the PSAP or purchasing entity.
  - B. For Minor failures which have little or no effect on call processing but for which there is a work around. This would include punch list items which have little or no effect on call processing, the Contractor shall guarantee the following:
    1. A response by telephone to the PSAP or purchasing entity upon receipt of a problem.
    2. If the issue cannot be resolved through verbal contact, remote diagnostics and repair, the Contractor shall provide a manufacturer certified technician on-site within a 24-hour maximum response time from the receipt of the problem reported. Any waiver from this requirement must be approved in writing by the PSAP Director/Manager for the PSAP or purchasing entity.
24. “Fully Certified Reseller” means an entity known as a reseller that is certified and authorized by the manufacturer to sell NG-911 systems and related hardware, software, and services for only the manufacturer types proposed by the Contractor.
25. “Fund” (E-911) means the Enhanced 911 fund.

26. “Generators” a stand-alone device that generates electrical power in the event of a power outage.
27. “Geo-Diverse Systems” means solutions that “split” a controller between two or more geographically diverse locations such as a Police Department or Sheriff’s Office that has a second location that can serve as a backup or two or more agencies that partner together on a regional/shared system.
28. “GRT” means New Mexico gross receipts tax.
29. “GSD” means the General Services Department; “GSD/CRB” means the General Services Department, Contracts Review Bureau.
30. “Hosted” and/or “Remote” means a single controller supporting multiple PSAPs.
31. “Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel , per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
32. “Independent Verification and Validation (“IV&V”)” means the process whereby Procuring Agency retains an independent expert to evaluate, verify and issue a written validation opinion concerning Contractor’s performance of the Project and to determine Contractor’s compliance with the requirements stated in the Scope of Work, whether with respect to evaluating certain stages of the Deliverables, or to evaluating the body of the Deliverables as a whole, or both.
33. “Installation” means the written acceptance and approval from the PSAP Director/Manager to include the following:
  - A. onsite project management services; onsite project manager,
  - B. site survey,
  - C. design,
  - D. equipment order and tracking,
  - E. shipment to site,
  - F. inventory control,
  - G. staging,
  - H. installing the equipment,
  - I. master clock device such as Netclock to provide a central clocking to all devices in the PSAP environment,
  - J. cabling/wiring to include but not limited to all cables such as cabling to printers, modems, terminals, workstations, and station/house wiring,
  - K. coordination with PSAP,
  - L. system testing and turn-up,
  - M. integration of system and hardware interfaces,
  - N. quality assurance review,
  - O. any other activities to complete the installation, and
  - P. decommission of existing system at the request of the PSAP.
34. “Intellectual Property (IP)” means any and all proprietary information or material, whether tangible or intangible, whether derived, embodied, composed or comprised of any hard copy, soft copy, electronic format, hardware, firmware, software or manifested in any other form, whether solid, liquid or vapor, that consists of, or is directly or indirectly related to, Know How, trade secrets, copyrightable material, patent protected or protectable inventions and/or information, U.S. and foreign patent applications and patents, service marks, trademarks, and trade names, any of which is conceptualized, created or developed

by either one or both of the Parties. For the purposes of this Agreement each Party shall have exclusive ownership rights and control over Intellectual Property that the Party owns or controls prior to the commencement of this Agreement or that the Party owns or develops during the term of this Agreement that is not a Work Made for Hire (“Pre-Owned IP”). Intellectual Property that Contractor creates during the course of Contractor’s performance of work hereunder that is created exclusively for Procuring Agency and for which Procuring Agency pays Contractor, and which is a Deliverable set forth in the Scope of Work will be deemed work made for hire (“Work Made for Hire”). Procuring Agency will be considered to be the creator and sole and exclusive owner of all Work Made for Hire. Together, any and all combinations of Procuring Agency’s Pre-Owned IP and Work Made for Hire shall comprise “Agency IP.”

35. “Know How” means the idea(s), technical information and knowledge including, but not limited to, documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating to, or causing the enablement of the Work Made for Hire and the Intellectual Property developed hereunder.
36. “Language Translation Services” a third party, off-site provider of voice translation service, over the phone, for foreign language speaking 911 callers.
37. “Local Governing Body” means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code [Chapter 3 NMSA 1978, except Article 66].
38. “Local Public Body” pursuant to 13-1-99 NMSA, means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code [Section 13-1-28 through 13-1-199 NMSA 1978].
39. “Logging Recorders” means a stand-alone device that records, stores and is capable of playing back all telephony and radio communications to a PSAP, both in-bound and out-bound. Logging recorders have the capability of simultaneously recording from several sources.
40. “Maintenance and Support/Post Warranty Maintenance and Support” means the Contractor guarantees the NG-911 system and related hardware, software to include software subscription, and any labor related services for maintenance and support shall be in **Complete Working Order as defined in this Agreement** during the post warranty maintenance and support period and after the one-year warranty period. The Contractor shall repair all major and minor failures as defined in the “Failure Prioritization Schedule” to include but not limited to:
- A. keeping the latest version of the system software operational;
  - B. providing software upgrades to keep the system(s) operational;
  - C. providing software patches to keep the system(s) operational; and
  - D. replacing any defective hardware to keep the system(s) operational.

Exclusions from Maintenance and Support:

1. UPS Systems and batteries may be included in the NG-911 systems catalog.
2. Any external and/or ancillary devices to the NG-911 system such as recorders, generators, and Computer Aided Dispatch.

Professional Services Agreement Template 2019.11 Over \$60K

41. “Manufacturer” means an original equipment producer of branded or unbranded integrated products.
42. “Manufacturer Certified Technician” means technicians that are trained and certified by the manufacturer on its proposed system(s).
43. “Manufacturer’s Suggested Retail Price” or “MSRP” means the advertised price which the manufacturer recommends the retailer/reseller sell the product.
44. “Map Server” means a server that houses maps which are propagated to each workstation in a specific PSAP.
45. “Monthly Recurring Cost” means the maximum cost for post warranty maintenance and support excluding gross receipts tax.
46. “Next Generation 911 System” or “NG-911 System” means a system consisting of network, hardware, software, data and operational policies and procedures that; (1) provides standardized interfaces from call and message services; (2) processes all types of emergency calls, including non-voice (multimedia) messages; (3) acquires and integrates additional data useful to call routing and handling; (4) delivers the calls, messages and data to appropriate public safety answering points and other appropriate emergency entities; (5) supports data and communications needs for coordinated incident response and management; and (6) provides a secure environment for emergency communications.
47. “NG-911 Professional Services” means the work made for hire services of system architects, engineers, management and system analysts, project managers, planners, researchers, technical specialists, or any other persons or businesses providing similar professional/technical services related to NG-911 emergency systems, referenced in Appendix H.
48. “Onsite Project Manager” means an NG-911 solution-focused project manager assigned by the vendor to achieve the project and/or operational objective to include but not limited to leading, coordinating, performing the pre-installation planning, project management, coordination of data acquisition for the mapping system, documentation delivery, attend meetings, provide requested reports, prior to the delivery of the NG-911 System(s) for a complete and successful installation. This onsite project manager shall not be the installation technician. Any waiver from this requirement must be approved by the PSAP Director/Manager.
49. “Payment Invoice” means each of Contractor’s detailed, certified and written requests for payment concerning the Deliverables that Contractor renders to Procuring Agency. Each Payment Invoice must identify each Deliverable for which the Payment Invoice is submitted and must include the price stated in the Scope of Work (Deliverables section), and in Article 3, below, as well as Contractor’s actual charge, for each Deliverable.
50. “Performance Bond” Not Applicable. The Parties agree there is not performance bond.
51. “Pre and Post System Acceptance Training” means onsite end user and technical user training that includes but not limited to system operation.
52. “Price Agreement” means an indefinite quantity contract which requires the contractor to furnish items of tangible personal property or services to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
53. “Prime Contractor” means the Contractor solely responsible for the fulfillment of the contract with the State. The State will make contract payments only to the prime contractor.

Professional Services Agreement Template 2019.11 Over \$60K



54. “Project” means the sum of Contractor’s efforts necessary to produce and deliver the Deliverables to Procuring Agency according to the Scope of Work.
55. “Project Manager” means a Qualified Person appointed by Procuring Agency who oversees and manages Contractor’s efforts to produce and deliver the Deliverables to Procuring Agency.
56. “PSAP” or “public safety answering point” means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.
57. “Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver products or services pursuant to a Price Agreement.
58. “Purchasing Entity” means a PSAP, state agency, educational institution, or a non-state entity, properly authorized by the State to purchase the goods described in this solicitation.
59. “Qualified Person” means a person who has demonstrated experience performing and completing activities and tasks similar to the Project.
60. “Quality Assurance” or “Quality Assurance Review” means the planned and systematic pattern of rules, measures, procedures and process established by Procuring Agency to ensure that each Deliverable conforms to the requirements stated in the Scope of Work.
61. “Radio” means wireless transmission and reception of electric impulses or signals by means of electromagnetic waves.
62. “Refurbished” means previously used equipment and/or parts that have been restored to like-new working condition.
63. “Related Services” or “Related Services/Labor” means onsite project management services, installation, 1 year warranty on the NG-911 system, training of existing/new systems to include pre and post system acceptance training for end-users and technical users as defined in Appendix E, and any mandatory requirements in support of the NG-911 system. *Excluding post warranty maintenance and support of existing/new NG-911 systems.*
64. “Remote Diagnostics” means the ability to evaluate an NG-911 system problem through network access to the site for the purpose of diagnosing the problem.
65. “Replacement Parts” means parts provided by the contracted vendor during warranty and post warranty maintenance and support to repair any major and minor failures of the system.
66. “Representative” means one or more substitute person(s) for a title or role, e.g. Project Manager or Contract Manager, when the Party’s primary contact person is unavailable.
67. “Scope of Work” or “SOW” means the statements of Purpose and the Deliverables attached to this Agreement as Exhibit “A.”
68. “Service” or “the Services” means the task(s), function(s), and responsibility(ies) assigned to, and performed by Contractor according to the SOW.
69. “Software” means the operating system and/or application software used by Contractor to provide the Deliverables hereunder. Software may include, but is not limited to, Third Party Software. “Third Party Software” means software owned by third parties which is utilized by Contractor and/or Procuring Agency hereunder.
70. “Software Maintenance” means the set of activities that result in changes to the Accepted (baseline) product set of Software. These activities consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline Software and operating system.

71. “Software Patches” means to correct known bugs or problems within the software that makes it perform less than optimally. All patches are included in the software subscription at no added cost to the monthly cost of maintenance and support services.
72. “Software Subscription” means an annual license fee made available to users for NG-911 software services to include software patches and upgrades and any labor services related to the software subscription.
73. “Software Upgrades” means a major revision to the most recently installed version of software bundled with the NG-911 system by adding more features and functionality to the program. All software upgrades are included in the software subscription at no added cost to the monthly cost of maintenance and support services.
74. “Source Code” Not Applicable. The Parties agree there is no Source Code.
75. “Spare Parts” means cache of parts that are included with the purchase of an NG-911 system and are owned by the PSAP and/or purchasing entity.
76. “State” means the State of New Mexico.
77. “State Purchasing Agent (NMSPA)” means the New Mexico State Purchasing Agent or his/her Representative.
78. “State Purchasing Division (SPD)” means the State Purchasing Division of the New Mexico General Services Department.
79. “Training” means any formal courses/classes that are designed to deliver the guidance to operate the NG-911 system(s). The training excluded from the scope of this Agreement are any courses for PSAP related licensure and certification training programs.
80. “Turnover Plan” means the written plan developed by Contractor and approved by Procuring Agency to continue the Project in the event the Deliverables stated in the SOW are transferred, either directly to Procuring Agency or to a third party.
81. “Uninterruptable Power Supply” or “UPS” means a device that provides emergency power, while the generator is turning on, to a load when the input power source or main power fails or falls to unacceptable levels.
82. “Warranty” means the Contractor guarantees the NG-911 system and related hardware, software to include software subscription, and related services/labor shall be in **Complete Working Order as defined in this Agreement** for a minimum of 1 year or 12 months starting from the date of final acceptance by the PSAP Director/Manager (Warranty Period). The Contractor shall repair all major and minor failures as defined in the “Failure Prioritization Schedule” after final acceptance during the Warranty Period.

## **ARTICLE 2 – SCOPE OF WORK**

- A. The Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
  1. The Contractor will be limited to the NG-911 systems and related hardware, software, and services/labor awarded in this Agreement as outlined in Exhibit A, to include any future amendments. There are no volume or purchase commitments by the PSAPs or purchasing entities or the State of New Mexico as to any specific dollar amount. The awarded NG-911 systems and related hardware, software, and services/labor must be available to the PSAPs or purchasing entities should they elect to make any purchases and/or request quotes.

Professional Services Agreement Template 2019.11 Over \$60K

2. The PSAPs' fiscal agent shall retain ownership of any awarded system and related hardware, and software purchased pursuant to this Agreement. Other than PSAPs, other purchasing entities shall retain ownership of any system, hardware, and software purchased pursuant to this Agreement.
  3. The NG-911 systems and related hardware, software, and services/labor awarded in this Agreement as outlined in Exhibit A shall not increase for the first two (2) calendar years. Anytime during the term of the agreement pricing reductions for the products awarded are encouraged and if Contractor offers such pricing reductions, they shall be submitted to DFA, GSD, and DoIT for review and approval resulting in a written amendment to the agreement.
  4. The PSAP or purchasing entity are encouraged to negotiate pricing, not to exceed the maximum price for products awarded, with any one of the awarded Contractors during the term of the agreement. Any price increases to existing products awarded in the agreement shall be submitted only at the time of the price agreement renewal.
  5. For new products or discontinued products, the Contractor may submit a request to update the awarded price agreements. The DFA, GSD, and DoIT will evaluate requests and coordinate with the SPD contract administrator to update the agreement through a written amendment. Any cost/pricing changes shall use the same pricing format that was awarded in the price agreement. The amendment must clearly identify the items that are discontinued and/or replaced with the proper item number, description, and related cost.
  6. During the term of the agreement, the awarded agreement may be amended to include any federal requirements that may result from any federal funds awarded for any 911 Services related to the products and/or services outlined in Exhibit A. It is the responsibility of the Procuring Agency to notify the Contractor of any changes to the terms and conditions prior to any purchases. The Procuring Agency is required to utilize the amendment process for any changes impacted from utilizing federal funds if it impacts the awarded price agreement.
- B. Contractor Default. Contractor will deliver the Deliverables as stated in the SOW. In the event Contractor materially fails to deliver the Deliverables according to the SOW, Procuring Agency may declare Contractor to be in Default hereunder. In the event Procuring Agency declares Contractor to be in Default, Procuring Agency will give written notice to Contractor describing the Default and will specify a reasonable period of time during which Contractor will remediate the Default, which such period available for remediation will be no less than 30 days. Contractor will then give Procuring Agency a written response that advises Procuring Agency concerning the measures Contractor will take to cure the Default as well as Contractor's proposed timetable for implementing those measures. Nothing in this Section will be construed to prevent Procuring Agency from exercising Procuring Agency's rights pursuant to Article 6 or Article 16, below.
- C. Schedule. Contractor will deliver the final Deliverables to Procuring Agency on or before the due dates stated in the SOW. The due dates will not be altered or waived by Contractor absent Procuring Agency's prior written consent, according to the Amendment process stated in Article 25, below.
- D. License. Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, license to use, modify, and copy the Software and any and all updates, corrections and revisions as stated in Article 2 and the SOW for the term of this Agreement.

Professional Services Agreement Template 2019.11 Over \$60K

Motorola:

Manufacturers

- The approved manufacturer for the NG9-1-1 system equipment is Motorola
- All equipment supplied as part of this project shall be fully compatible with Motorola's VESTA® 9-1-1 system.
- All servers (application(s) and file storage servers) shall be manufactured by Hewlett Packard (HP).
- Licensing for all components, including virtual machines/software, shall be provided and coordinated with the manufacturer and Procuring Agency, as required.
- Contractor shall conduct a visual inspection of all installations to verify that the installations are in accordance with specifications and manufacturer's specifications.

Intrado:

Software	Description	Version	License Type
Power 911	Client 911 Application	7.0	Perpetual and Proprietary
VIPER	System software	7.0	Perpetual and Proprietary
PowerOps (Optional)	Message Board software	1.1	Perpetual and Proprietary
MapFlex	Client Mapping Application	5.4	Perpetual
Sentry CPE Manager	Alarm system software	2.2 SP2	Perpetual and Proprietary
ITRR	Instant playback recorder	2	Perpetual and Proprietary
Windows professional	Workstation Operating System	10, embedded	Perpetual and Proprietary
Windows Server	Server Operating System	2012 R2 64bit	Perpetual and Proprietary
Windows Security 2012	Domain administration software	2.2	Perpetual and Proprietary

Procuring Agency's right to copy the Software is limited to Procuring Agency's archival, backup and training purposes only. All of Procuring Agency's archival and backup copies of the Software are subject to the provisions of this Agreement, and Procuring Agency will reproduce all Software related titles, patent numbers, trademarks, copyright and other restricted rights notices on Procuring Agency's Software copies.

E. Source Code. Not Applicable. The Parties agree there is no Source Code.

F. Procuring Agency's Rights.

1. Rights to Software. Not Applicable.
2. Protection of Proprietary Rights. Contractor will reproduce and attach the State's copyright, product identifications and other proprietary notices on the copies

Professional Services Agreement Template 2019.11 Over \$60K

Contractor makes and delivers of the Deliverables for Procuring Agency, in whole or in part, or on any electronic, hard copy or other tangible form of the Deliverables.

3. Protection of Data. Contractor will implement security controls and measures designed to protect and safekeep all of Procuring Agency's Data to the same or a higher degree of care that Contractor takes with respect to its own information and data. Contractor will implement all reasonable and customary measures to protect Procuring Agency's Data from any and all harm while being accessed, stored, or processed by Contractor in connection with the Services, including but not limited to, breach, intrusion, contamination, corruption, loss, leak, theft, disintegration, viral attack, denial-of-service, malware, worms, trojans, ransomware, hacking, phishing, skimming and other damage of any kind (collectively "Data Damage"), whether caused by Contractor, Contractor's Employees or one or more third parties other than the Procuring Agency, its other contractors, or other parties acting on its behalf. In the event a Data Damage incident occurs while Procuring Agency's Data is within Contractor's purview and/or control, within seventy-two (72) hours of Contractor's discovery of a Data Damage incident, Contractor will notify the Project Manager concerning the Data Damage incident, including sufficient information for the Project Manager to determine, in conjunction with Contractor, which measures, if any, Contractor must implement to mitigate the Data Damage.
4. Rights to Data. Any and all of Procuring Agency's Data that is stored upon Contractor's servers or lies within Contractor's custody hereunder, is Procuring Agency's sole and separate property and inures to Procuring Agency's exclusive benefit. None of Contractor or Contractor's Employees, subcontractor(s), affiliates and/or assigns will make use of, disclose, sell, copy, license or reproduce Procuring Agency's Data in any manner, or provide of Procuring Agency's Data to any third party absent Procuring Agency's prior written authorization.

### **ARTICLE 3 - COMPENSATION**

- A. Compensation. Procuring Agency or purchasing entity will pay Contractor according to the fixed price set for each Deliverable per Appendices H-N as outlined in Exhibit A – Scope of Work.
- B. Payment. Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by DFA or the purchasing entity no later than forty-five (45) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.
- C. Taxes. Contractor will be reimbursed by Procuring Agency for applicable New Mexico gross receipts taxes ("GRT"), excluding interest or penalties assessed on Contractor by the New Mexico Taxation and Revenue Department. Contractor is solely responsible for the Professional Services Agreement Template 2019.11 Over \$60K

payment of GRT for any money Contractor receives hereunder. Contractor must report its GRT, income tax and other tax obligations under Contractor's Federal and State tax identification number(s).

Contractor and its subcontractors, if any, will pay all Federal, State and local income and other taxes and government fees applicable to its operation(s) as well as the taxes and fees associated with Contractor's employment of its Employees. Contractor will require its subcontractors, if any, to hold Procuring Agency harmless from any responsibility for taxes, damages, fees and interest, if applicable, as well as any and all contributions required under Federal and/or state and local laws and regulations, including any other costs, transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

Excluding taxes based on Contractor's net income, Procuring Agency is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service. This includes value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (e.g., regulatory and 911 surcharges), whether imposed on Contractor or a Contractor affiliate, along with similar charges stated in a Service Attachment (collectively "Taxes and Fees"). Some Taxes and Fees, and costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Procuring Agency is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Contractor, then, notwithstanding anything to the contrary in this Agreement, the gross amount payable by Procuring Agency will be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Contractor will not be less than Contractor would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Procuring Agency may present Contractor with an exemption certificate eliminating Contractor's liability to pay certain Taxes and Fees. The exemption will apply prospectively.

Charges for certain Services are subject to (a) a property tax surcharge of 5.55% and (b) a cost recovery fee of 5.85% per month to reimburse Contractor for various governmental taxes and surcharges. Such charges are subject to change by Contractor and shall be applied regardless of whether Procuring Agency has delivered a valid tax exemption certificate. For clarity, Contractor will invoice for taxes and fees in accordance with applicable law at the time of invoice and the guidelines set forth on Contractor's website at [www.centurylink.com/taxes](http://www.centurylink.com/taxes).

- D. Retainage. Not Applicable. The Parties agree there is no retainage.
- E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond requirement.

## ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon Contractor’s completion and delivery of each Deliverable stated in the SOW, Contractor will submit a Payment Invoice, together with an accurate description of the Deliverable, to Procuring Agency. Contractor will submit its Payment Invoices to Procuring Agency according to, or lower than, the Deliverable price stated in the SOW. Contractor will not submit Payment Invoices to Procuring Agency for any amount(s) that exceed the amount(s) stated in the SOW absent Procuring Agency’s prior written permission.
- B. Acceptance. According to Section 13-1-158 NMSA 1978, the ELR together with the Contractor’s Project Manager will determine whether the Deliverable(s) meet(s) the specifications stated in the SOW. Procuring Agency will not pay for any Deliverable until the ELR Accepts the Deliverable in writing. In order to Accept a Deliverable, the ELR, in conjunction with the Project Manager, will perform a Quality Assurance Review of the Deliverable to determine, at a minimum, whether the Deliverable:
1. Meets or exceeds the Deliverable requirements stated in the SOW; and
  2. Complies with the terms and conditions of RFP #00-00000-19-00027; and
  3. Meets or exceeds the generally accepted industry standards and procedures applicable to the Deliverable(s); and
  4. Complies with all other of Contractor’s requirements, duties and obligations hereunder.

In the event the ELR Accepts a Deliverable according to the ELR’s Quality Assurance Review, the ELR will be deemed to have provided Acceptance unless the ELR notifies Contractor within **fifteen (15) Business Days** (the “Acceptance/Rejection Period”) from the date the ELR receives each of Contractor’s Payment Invoice(s).

- C. Rejection. If the ELR fails to give Contractor notice of Procuring Agency’s rejection of a Payment Invoice within the Acceptance/Rejection Period, the Deliverable, together with its corresponding Payment Invoice will be deemed to be Accepted by Procuring Agency. In the event the ELR rejects the Deliverable following the ELR’s Quality Assurance Review within the Acceptance/Rejection Period, the ELR will send Contractor a rejection notice together with a consolidated set of comments (“Comments”) indicating the issues, unacceptable items, and/or requested revisions that Contractor should make or perform with respect to the rejected Deliverable. Upon Contractor’s receipt of the ELR’s rejection and Comments, Contractor will have twenty (20) Business Days to resubmit the rejected Deliverable to Procuring Agency together with Contractor’s revisions, corrections and/or modifications made according to the ELR’s Comments. Upon receipt of Contractor’s revised, corrected or modified (“Revised”) Deliverable, the ELR will determine whether the Revised Deliverable is Acceptable by conducting a second Quality Assurance Review. The ELR will then issue a written determination of Procuring Agency’s acceptance or rejection of the Revised Deliverable within fifteen (15) Business Days of Procuring Agency’s receipt of the Revised Deliverable. In the event the ELR rejects the Revised Deliverable according to the second Quality Assurance Review, Contractor will be then

Professional Services Agreement Template 2019.11 Over \$60K

required to provide a remediation plan that will include a list of Contractor's planned corrective measures and an associated timeline for Contractor to complete its remediation of the Deliverable. Contractor's remediation plan must be accepted by the ELR prior to Contractor's implementation of its Deliverable remediation plan. At the same time, Contractor will also be subject to pay Procuring Agency all of Procuring Agency's monetary damages, subject to Article 18 below, associated with Contractor's failure to timely deliver an Acceptable Deliverable and must complete all remedies attributable to Contractor's late delivery of the Deliverable. In the event ELR rejects a Deliverable three times, Procuring Agency may declare Contractor to be in Default and may immediately terminate this Agreement. Procuring Agency may then seek to recover from Contractor any and all damages and remedies available hereunder and otherwise available in law or equity.

#### **ARTICLE 5 – TERM**

THIS AGREEMENT WILL BECOME EFFECTIVE AND BINDING ONLY UPON THE APPROVAL SIGNATURES OF DoIT AND THE STATE PURCHASING AGENT.

This Agreement will be for five (5) calendar years in duration, unless terminated pursuant to Article 6, below. In no case will the Agreement exceed a total of (5) five calendar years.

#### **ARTICLE 6 – TERMINATION**

- A. **Grounds.** Procuring Agency may terminate this Agreement at any time for cause in the event of a material default by Contractor that remains uncured after written notice and a reasonable opportunity to cure the default in accordance with Article 6, Section C. below. Contractor may only terminate this Agreement in the event Procuring Agency materially Defaults hereunder and subsequently fails to cure its Default within ninety (90) days from the date Contractor first declares Procuring Agency to be in Default. In the event of an early termination for convenience, the State will remain liable for all charges for services accrued but unpaid as of the termination date, including any third party costs and/or installation charges incurred by CenturyLink up to the termination date.
- B. **Appropriations.** Procuring Agency may terminate this Agreement if required by changes in State or federal law, or so ordered by a court of competent jurisdiction, or due to insufficient appropriations made available by the United States Congress and/or the State Legislature concerning the Parties' performance hereunder. Procuring Agency's determination concerning whether sufficient appropriations are available will be deemed fully accepted by Contractor and will be final. In the event Procuring Agency terminates this Agreement pursuant to this subparagraph B, Procuring Agency will provide Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination. Upon termination and to the extent of lawfully available funds, Procuring Agency will remit all amounts due and all costs reasonably incurred by CenturyLink through the date of termination including any third party costs and/or - installation charges.
- C. **Notice: Opportunity to Cure.**



1. Except as otherwise provided in Paragraph (B), immediately above, Procuring Agency will give Contractor written notice of Procuring Agency's intended termination at least thirty (30) days prior to the effective termination date.
  2. Contractor will give Procuring Agency written notice of Contractor's termination at least thirty (30) days prior to Contractor's effective termination date, which notice will (i) identify Procuring Agency's material Default(s) upon which Contractor bases its termination, and (ii) state the measures Procuring Agency should implement to cure such material Default(s). Contractor's termination notice to Procuring Agency will only take effect: (i) if Procuring Agency fails to commence curing Procuring Agency's material Default(s) within Contractor's thirty (30) day notice period, or (ii) in the event Procuring Agency cannot commence to cure its material Default(s) within Contractor's thirty (30) day notice period, Procuring Agency will issue a written notice to Contractor concerning: (a) Procuring Agency's intent to cure, and (b) Procuring Agency's commencement of the due diligence necessary to cure its material Default.
  3. Notwithstanding the foregoing, Procuring Agency may terminate this Agreement immediately upon its written notice sent to Contractor: (i) in the event Contractor becomes patently unable to deliver the Deliverables, as Procuring Agency may, in its sole and exclusive discretion, determine; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; or (iii) this Agreement is terminated pursuant to Article 5, above.
  4. Procuring Agency will give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Contractor's material breaches of this Agreement upon which the termination is based and (ii) state what the Contractor must do to cure such material breaches. Agency's notice of termination shall only be effective (i) if the Contractor does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Contractor does not, within the thirty (30) day notice period, notify the Agency of its intent to cure and begin with due diligence to cure the material breach.
- D. Liability. Except as otherwise expressly allowed or provided hereunder, Procuring Agency's sole liability upon termination by either Party will be to compensate Contractor for Contractor's Acceptable work performed prior to Contractor's receipt or issuance of a written termination notice; provided, however, that a notice of termination issued by either Party will not nullify or otherwise affect either Party's liability for pre-termination defaults hereunder. Contractor will make reasonable efforts to submit a Payment Invoice to Procuring Agency for Contractor's Acceptable work within forty-five (45) days of receiving or issuing a notice of termination.

THE PROVISIONS CONTAINED WITHIN THIS ARTICLE 6 ARE NOT EXCLUSIVE AND DO NOT ACT TO WAIVE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND EQUITABLE REMEDIES ENGENDERED BY CONTRACTOR'S DEFAULT HEREUNDER.

## ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor's Duties. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all of Procuring Agency's other rights to receive Deliverables and other property that the Procuring Agency owns hereunder, Contractor will:
1. Transfer, deliver, and/or make readily available to Procuring Agency every Deliverable, partially completed Deliverable, and any and all other property that the Procuring Agency owns including but not limited to, any and all Procuring Agency Data and/or Procuring Agency Intellectual Property;
  2. Not incur any further financial obligations for materials, services, or facilities hereunder absent Procuring Agency's prior written approval;
  3. Terminate all of Contractor's purchase orders, procurements and subcontractors and will cease all work, except as Procuring Agency may direct, for the orderly completion of the Deliverables and the transition, if any, to a third party;
  4. Take and effect all reasonable actions as Procuring Agency may direct, for the protection and preservation of the Deliverables, the Procuring Agency's Data, Procuring Agency's Intellectual Property and all other all Procuring Agency-owned property as well as any and all records pertaining to, related to and/or required hereunder;
  5. Agree in writing that Procuring Agency is not liable for any costs arising out of the termination other than the costs related to the Deliverables Accepted by Procuring Agency prior to the termination. However, Agency shall remain liable for any third-party costs and installation charges incurred by Contractor in relation to provisioning services and any applicable early termination charges pursuant to Article 6;
  6. Cooperate fully in the closeout or transition of Contractor's activities to facilitate Procuring Agency's administration continuity with respect to Procuring Agency's ongoing projects and programs;
  7. In the event this Agreement is terminated due to Contractor's Default, lack of performance and/or negligence or willful misconduct, which result(s) in funding reduction(s) to Procuring Agency from any governmental or other source, Contractor will remit the full amount of the funding reduction(s) to Procuring Agency subject to Article 18 below;
  8. Should this Agreement terminate due to Contractor's Default, Contractor will reimburse Procuring Agency for all costs directly arising from retaining one or more third party(ies) at potentially higher rates as well as for all other direct costs incurred by Procuring Agency following Contractor's Default that could not otherwise be reasonably mitigated under the circumstances, subject to Article 18 below;
  9. In the event this Agreement is terminated for any reason, or upon its expiration, Contractor will develop and submit for Procuring Agency's Acceptance a turnover plan ("Turnover Plan") at least ten (10) Business Days prior to the effective date of termination or expiration of this Agreement. Contractor's Turnover Plan will state Contractor's policies, procedures, and measures necessary to ensure: (1) the least disruption in the delivery of the Deliverables during Procuring Agency's transition

of the Project to a third party; and (2) Contractor's cooperation with Procuring Agency and the third party with respect to Contractor's orderly transfer of all partial or completed Deliverables to Procuring Agency and the third party.

Contractor's Turnover Plan will consist of Contractor's orderly and timely transfer or return to Procuring Agency of any and all of the following items that are owned by Producing Agency under this Agreement: documents, files, Procuring Agency Data, the Software, the Source code, all other related software, documentation, the system turnover plan, Procuring Agency IP and other materials. Upon receipt of Procuring Agency's written request for such transfer or return, Contractor will, within five (5) Business Days, provide to Procuring Agency a copy of Contractor's most recent versions of all pertinent documents, files, Procuring Agency's Data, the Software, the Source Code, all other related software, documentation, the system turnover plan, Procuring Agency IP and other materials, whether provided by Procuring Agency or created by Contractor specifically for Procuring Agency hereunder.

- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, Procuring Agency will:
1. Retain ownership of all Deliverables, Procuring Agency's Intellectual Property, and Work Made For Hire; and
  2. Pay Contractor all amounts due for the Deliverables Accepted by Procuring Agency prior to the effective date of such termination or expiration.

## **ARTICLE 8 – INDEMNIFICATION**

- A. General. Contractor will defend, indemnify and hold harmless Procuring Agency, the State and their Employees free from all actions, proceedings, claims, demands, costs, damages, reasonable attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of a third party claim with respect to the Contractor's performance of this Agreement, which is directly caused by Contractor's or Contractor's Employees' grossly negligent act(s) or willful misconduct, during the time when Contractor, and/or any of Contractor's Employees, has delivered or is delivering the Deliverables hereunder. In the event that any action, suit or proceeding related to the Deliverables is brought against Contractor and/or any of Contractor's Employees, Contractor will, as soon as practicable, but no later than two (2) Business Days after Contractor receives notice thereof, will notify, by certified mail, the legal counsel of Procuring Agency, the Risk Management Division of GSD, and DoIT.
- B. The indemnification obligation hereunder will not be limited by the existence of any insurance policy and will survive the termination of this Agreement. Money due or to become due to Contractor hereunder may be retained by Procuring Agency, as necessary, to satisfy any outstanding claim that Procuring Agency may have against Contractor.

## ARTICLE 9 – INTELLECTUAL PROPERTY

Ownership. Not Applicable. The Parties agree there is no Intellectual Property.

## ARTICLE 10 – INTELLECTUAL PROPERTY LICENSE AND INDEMNIFICATION

- A. Reserved.
- B. Intellectual Property Indemnification. At Contractor’s sole expense, Contractor will defend Procuring Agency, the State and/or any other State entity against any claim brought or made by a third party alleging that any product, Service or Deliverable as provided by Contractor hereunder infringes the third party’s patent, copyright, trademark, trade secret or other intellectual property right (an “Infringement Claim”). Contractor will pay all costs of settlement or any monetary damages that may be finally awarded by a court of competent jurisdiction against Procuring Agency and payable to such third party that brought the claim as a result of such Infringement Claim(s). To qualify to receive Contractor’s defense cost(s) and/or other payment(s) related to any Infringement Claim(s), Procuring Agency will:
1. Give Contractor written notice, within forty-eight (48) hours, of Procuring Agency’s receipt of an Infringement Claim;
  2. Provide Contractor with the sole control and authority over the defense and settlement of the Infringement Claim(s), except that Procuring Agency shall have an approval right of any settlement that admits liability on the part of the Procuring Agency; and
  3. Cooperate with Contractor, in a reasonable manner, to facilitate Contractor’s defense or settlement of the Infringement Claim(s).

Notwithstanding the foregoing, any third-party service, system, CPE, equipment or software provided under this Agreement (each, a “Third Party Item”) is provided without any obligation of Contractor to defend or indemnify Procuring Agency against an Infringement Claim arising in connection with any such Third Party Item, except that Contractor shall pass through to Procuring Agency any contractual obligations of a third party provider of any such Third Party Item to defend or indemnify Procuring Agency against such claims. The foregoing states Contractor’s only obligations (and Procuring Agency’s sole and exclusive remedy) for any claims, actions, liabilities, damages or losses arising in connection with alleged or actual infringement, violation or misappropriation of an intellectual property right by the services.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR’S TOTAL AND CUMULATIVE LIABILITY UNDER THIS ARTICLE 10, INCLUDING DEFENSE RELATED COSTS AND PAYMENT OBLIGATIONS (COLLECTIVELY, “INTELLECTUAL PROPERTY INFRINGEMENT COSTS”), WILL NOT EXCEED THE GREATER OF: (a) \$1 MILLION UNITED STATES DOLLARS AND (b) ANY FEES PAID BY PROCURING AGENCY HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE UPON WHICH THE

Professional Services Agreement Template 2019.11 Over \$60K

CONTRACTOR IS FIRST NOTIFIED OF A CLAIM, IN EACH CASE (a) AND (b), LESS AGGREGATE INTELLECTUAL PROPERTY INFRINGEMENT COSTS PREVIOUSLY PAID BY THE CONTRACTOR UNDER THIS SECTION.

- C. Procuring Agency's Rights. In the event any product, Service or Deliverable that Contractor provides to Procuring Agency hereunder becomes, or in Contractor's opinion is likely to become, the subject of an Infringement Claim, Contractor may, at its sole option and expense:
1. Obtain for Procuring Agency the right to continue using the product, Service or Deliverable consistent with this Agreement;
  2. Replace or modify the product, Service or Deliverable so that such product, Service or Deliverable becomes non-infringing and in compliance with this Agreement; or
  3. Accept the return of the product, Service or Deliverable and refund an amount equal to the value of the returned product, Service or Deliverable, less the unpaid portion of the purchase price and any other amounts, which Procuring Agency owes to Contractor. Contractor's obligation will be void with respect to any product, Service or Deliverable modified by Procuring Agency to the extent the modification is the direct cause of the Infringement Claim

#### **ARTICLE 11 - WARRANTIES**

- A. General. Contractor hereby expressly warrants the Deliverable(s) will be correct in all aspects according to the specifications stated in the SOW and the Industry Standards identified in Article 33, Section 5 (the combination of which comprise the "Applicable Specifications"). Contractor's warranty includes, but is not limited to, Contractor's making correction(s) of defective Deliverable(s) and revision(s) of those defective Deliverables, as necessary, including Contractor's repair of deficiencies in the Deliverables that are discovered during testing, implementation, or post-implementation phases. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR NON- INFRINGEMENT, AND PROCURING AGENCY ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE, IF CONTRACTOR INTEGRATES ANY RECORDS PROVIDED TO CONTRACTOR BY ANY OTHER DATA PROVIDER, FOR INCLUSION IN THE PROCURING AGENCY'S 9-1-1 DATA, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY AND ASSUMES NO LIABILITY REGARDING THE ACCURACY OF THE DATA PROVIDED BY ANY OTHER DATA PROVIDER. IN ADDITION TO ANY OTHER DISCLAIMERS OF WARRANTY STATED IN THE AGREEMENT, CONTRACTOR MAKES NO WARRANTY, GUARANTEE, OR REPRESENTATION, EXPRESS OR IMPLIED, THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE PERFORMANCE OF THE SERVICES WILL RENDER PROCURING AGENCY'S SYSTEMS INVULNERABLE

TO SECURITY BREACHES, OR THAT THE SERVICES WILL BE PROVIDED ERROR-FREE.

- B. NG-911 System(s) and Related Hardware, Software to include Software Subscription, and Related Services/Labor. The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s), the technical specifications of this Agreement, and all generally accepted industry standards. The Contractor guarantees the NG-911 system(s) and related hardware, software to include software subscription, and related services/labor shall be in **Complete Working Order as defined in this Agreement** for a minimum of 1 year or 12 months starting from the date of final acceptance by the PSAP Director/Manager (Warranty Period). The Contractor shall repair all major and minor failures as defined in the "Failure Prioritization Schedule" after final acceptance during the Warranty Period. If the NG-911 system, hardware, software to include software subscription fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software or products meets the applicable specifications.

**ARTICLE 12 – CONTRACTOR PERSONNEL**

- A. Key Personnel. Contractor will use commercially reasonable efforts so that Contractor's key personnel ("Key Personnel") will not be diverted from this Agreement absent consulting the Procuring Agency. Key Personnel are those individuals Procuring Agency considers to be mandatory to the work to be performed hereunder. Contractor's Key Personnel hereunder will be:

- Wes Horn, Account Director I  
Phone: (303) 883-8900 Email: [wes.horn@centurylink.com](mailto:wes.horn@centurylink.com)
- Kevin Newton, Senior Sales Engineer  
Phone: (303)880-7818 Email: [kevin.newton@centurylink.com](mailto:kevin.newton@centurylink.com)
- Sue Gonzales, Account Consultant  
Phone: (505) 306-2617 Email: [Sue.Gonzales@insnetworks.com](mailto:Sue.Gonzales@insnetworks.com)
- Robbin Arradondo, Client Support Manager  
Phone: (763) 424-5657 Email: [Robbin.Arradondo@Centurylink.com](mailto:Robbin.Arradondo@Centurylink.com)
- Rick Murillo, Service Manager  
Phone: (505) 259-0290 Email: [Richard.Murillo@Centurylink.com](mailto:Richard.Murillo@Centurylink.com)
- David Muniz, Technician
- Phillip Yard, Technician
- Kevin Riley, Technician
- Manny Chavez, Technician
- Sean Mattney, Technician

- B. Personnel Changes. In the event Contractor replaces any of its personnel, Contractor will make such replacement(s), with Contractor's other personnel of equal or superior ability, experience, and qualifications. For all of Contractor's personnel, Procuring Agency reserves the right to require submission of their resumes. In the event Contractor reduces the number of its personnel assigned to the Project for any reason, Contractor will, within ten (10) Business Days of its personnel reduction, replace those persons with the same or a greater number of persons with equal or superior ability, experience, and qualifications. Procuring Agency, in its sole and exclusive determination, may extend the time Contractor is allowed beyond the required ten (10) Business Day period concerning Contractor's replacement of its personnel. Contractor will include status reports to Procuring Agency concerning Contractor's personnel replacement efforts as well as the impact upon the progress of the Project due to the absence of Contractor's personnel. In addition, Contractor will make interim arrangements to assure that the progress of the Project remains unimpeded by the loss of any of Contractor's personnel. Procuring Agency may request, in writing, a change in Contractor's personnel in the event Contractor's personnel are not, in Procuring Agency's sole and exclusive determination, meeting Procuring Agency's standards and/or expectations. Contractor agrees to discuss the request with the Procuring Agency but does not guarantee the change will be granted.

### **ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS**

- A. Independent Contractor. For the purposes of this Agreement, Contractor and Contractor's Employees are independent Contractors who produce and deliver the Deliverables to Procuring Agency. Contractor's Employees are neither employees nor agents of the State ("State Employees"). None of Contractor and Contractor's Employees will accrue State benefits, including but not limited to, leave, retirement, insurance, bonding, use of state vehicles, or any other benefits that may be afforded to State Employees as a result of Contractor's entering this Agreement. Contractor acknowledges and agrees that all sums received hereunder are either reportable as a separate business entity or are, in the event Contractor operates as a sole proprietorship, personally reportable by Contractor for income and GRT tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither Contractor nor any of Contractor's Employees are presently subject to any litigation or administrative proceeding before any court or administrative body which could adversely affect Contractor's ability to perform hereunder; nor, to the best of Contractor's knowledge, information or belief, is any such litigation or proceeding presently threatened against Contractor or any of Contractor's Employees. In the event any such proceeding is initiated or threatened during the term of this Agreement, Contractor will immediately disclose such initiation or threat to Procuring Agency.

## **ARTICLE 14 - CHANGE MANAGEMENT**

**Change Request Process.** In the event circumstances warrant Contractor making a Change to accomplish the SOW, Contractor will submit a Change Request to Procuring Agency. Each Change Request must meet the following criteria:

1. The Project Manager will draft a written Change Request for the ELR's review and approval, including:
  - (a) the name of the person requesting the Change;
  - (b) a summary of the requested Change;
  - (c) the start date for the requested Change;
  - (d) the reason and necessity for the requested Change;
  - (e) the elements in the Deliverable(s) and/or the SOW that must be altered in order for Contractor to produce and deliver the Change; and
  - (f) the impact of the Change upon the Project.
2. The ELR will provide a written decision concerning each Change Request to Contractor within ten (10) Business Days of the ELR's receipt of each Change Request. All decisions made by the ELR concerning a Change Request will be deemed final. Each Change Request, once approved by the ELR, will be integrated into the SOW through an Amendment executed by the Parties if required by Article 25, Section 2.

## **ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION**

- A. In the event IV&V Professional Services are used for the Project associated with this Agreement, Contractor will fully comply and cooperate with the IV&V vendor. Contractor's cooperation includes, but is not limited to:
  1. Providing the Project documentation;
  2. Allowing the IV&V vendor to attend Project related meetings; and
  3. Supplying the IV&V vendor with any/all other information and/or material(s) as may be directed by the Project Manager.
- B. In the event the purpose of this Agreement is for Contractor to provide IV&V Professional Services, then Contractor will:
  1. Submit its IV&V reports directly to DoIT's Project Oversight and Compliance Division ([EPMO@state.nm.us](mailto:EPMO@state.nm.us)) according to DoIT's IV&V Reporting Template and Guidelines located on DoIT's webpage: [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html), with a copy to Procuring Agency.
  2. Use a report format consistent with DoIT's IV&V Reporting Template and Guidelines located on the same DoIT website.



## **ARTICLE 16 – DEFAULT**

In case of Contactor's Default, for any reason whatsoever, Procuring Agency and/or the State may procure the Deliverables from another source and hold Contractor responsible for any resulting excess costs and/or direct damages to the extent that the Procuring Agency could not have reasonably mitigated the costs or damages under the circumstances. Procuring Agency and/or the State may also seek all other available remedies against Contractor hereunder or which may be otherwise available under law or equity.

## **ARTICLE 17 – EQUITABLE REMEDIES**

Contractor acknowledges that its failure to materially comply with any provision hereunder may cause Procuring Agency irrevocable harm and that a remedy at law for such a failure may constitute an inadequate remedy for Procuring Agency. Contractor consents to Procuring Agency's seeking from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's right to seek equitable relief pursuant to this Agreement will be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

## **ARTICLE 18 - LIABILITY**

A. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement. PROCURING AGENCY'S EXCLUSIVE REMEDIES FOR CLAIMS WILL BE LIMITED TO THE TOTAL MRCs OR USAGE CHARGES PAID BY PROCURING AGENCY TO CONTRACTOR FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. CONTRACTOR'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING FROM ERRORS, INTERRUPTIONS, DEFECTS, FAILURES, OR MALFUNCTIONS OF ANY SERVICE OR ANY PART THEREOF CAUSED BY THE NEGLIGENCE OF CONTRACTOR WILL NOT EXCEED THE GREATER OF \$50.00 OR AN AMOUNT EQUIVALENT TO THE PRO RATA CHARGES FOR THE SERVICE AFFECTED DURING THE TIME THE SERVICE WAS FULLY OR PARTIALLY INOPERATIVE. FURTHER CONTRACTOR, ITS AFFILIATES, AGENTS AND SUBCONTRACTORS PROVIDING SERVICES ASSOCIATED WITH ACCESS TO 911 EMERGENCY SERVICE WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY PERSONAL INJURY TO OR DEATH OF ANY PERSON, FOR ANY LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY RELATING TO THE USE, LACK OF ACCESS TO OR PROVISION OF, 911 EMERGENCY SERVICE, EXCEPT, IF AND TO THE EXTENT APPLICABLE, FOR SUCH DAMAGES CAUSED BY INTENTIONAL ACTS AS SET FORTH IN SECTION 63-9D-10 NMSA. IN ADDITION, CONTRACTOR WILL NOT BE LIABLE FOR ANY DAMAGE THAT RESULTS FROM INFORMATION PROVIDED TO PROCURING AGENCY BY ANY OTHER DATA PROVIDER(S).

Professional Services Agreement Template 2019.11 Over \$60K

- B. Immunity. The parties acknowledge that Section 63-9D-10 NMSA (and any successor or similar statute) applies to the Contractor and the Services and Deliverables. Nothing in this Agreement or in the RFP response will be construed as a waiver of immunity by either Contractor or the Procuring Agency.

#### **ARTICLE 19 – ASSIGNMENT**

Contractor will not assign or transfer any of Contractor's interests, rights, responsibilities, duties, obligations and/or liabilities hereunder or assign any of Contractor's claims for money due or that might become due hereunder absent Procuring Agency's prior written approval, which will not be unreasonably withheld. Notwithstanding the foregoing, if otherwise permitted by applicable law, Contractor may assign its rights and obligations under this Agreement without the consent of the Procuring Agency: (1) to any subsidiary, parent, or affiliate that controls, is controlled by, or is under common control with that party; (2) pursuant to the sale or transfer of substantially all of the business or relevant assets of that party; or (3) pursuant to any financing, merger, or reorganization of that party.

#### **ARTICLE 20 – SUBCONTRACTING**

- A. General Provision. Contractor may subcontract or assign any portion of this Agreement or the SOW to any subcontractor absent Procuring Agency's prior written approval; however, no such subcontracting or assignment will relieve Contractor of its direct responsibilities, duties, obligations and/or liabilities hereunder, nor will any such subcontracting trigger or obligate Procuring Agency to make a payment, either directly or indirectly, to any subcontractor. The subcontractors under this Agreement shall be:

Motorola Solutions, Inc.  
Intrado Corporation

- C. Responsibility for Subcontractors to Maintain Confidentiality. Contractor will not disclose any of Procuring Agency's or State's Confidential Information to a subcontractor until such subcontractor has agreed in writing to protect and keep confidential any and all Confidential Information in the same manner required of Contractor stated in Article 22, below.

#### **ARTICLE 21 – RELEASE**

Contractor's Acceptance of Procuring Agency's final payment made hereunder will operate as Contractor's full release of Procuring Agency, the State, and their officers, employees and agents from any and all liabilities, claims and obligations whatsoever arising hereunder.

## **ARTICLE 22 – CONFIDENTIALITY**

Contractor will protect and keep confidential any and all Confidential Information that Procuring Agency provides to Contractor as well as any and all Confidential Information that Contractor develops based upon information provided by Procuring Agency during Contractor's performance hereunder. Contractor will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval, except to subcontractors as provided for in Article 20 when such Confidential Information is necessary for such subcontractors to complete their work. Upon termination of this Agreement, Contractor will: (a) deliver all Confidential Information in its possession to Procuring Agency or destroy, at the Procuring Agency's direction, within thirty (30) Business Days of the termination, and (b) Contractor will protect and will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval for a period of five (5) years commencing on the termination or expiration date. Contractor acknowledges that Contractor's failure: (a) to destroy or deliver such Confidential Information to Procuring Agency, or (b) to protect and keep Confidential Information secret may result in Procuring Agency's seeking to obtain direct, special and/or incidental damages from Contractor.

## **ARTICLE 23 – CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with Contractor's delivery of the Deliverables required hereunder. Contractor certifies that it has followed the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee.

## **ARTICLE 24 - RECORDS AND AUDIT**

Contractor will maintain detailed time and expenditure records, which indicate the date, time, nature and cost of the Deliverables rendered during this Agreement's term and will retain those records for a period of three (3) years from the date of Procuring Agency's final payment to Contractor hereunder. Contractor's records will be subject to inspection by Procuring Agency, DoIT's CIO, NMSPA, GSD, Department of Finance Authority and the New Mexico State Auditor's Office. Procuring Agency will have the right to audit Contractor's billings prior and subsequent to each of Procuring Agency's payments made to Contractor. Procuring Agency's payment for the Deliverables hereunder will not foreclose Procuring Agency's right to recover Procuring Agency's payments made to Contractor or its affiliates against Contractor's excessive or illegal Payment Invoices, if any.

## **ARTICLE 25 - AMENDMENT**

This Agreement will not be altered, changed, or amended except by an instrument in writing executed by the Parties. No amendment will be effective or binding unless approved by all of the State's and Contractor's approval authorities. Amendments are required for the following:

1. Deliverable requirements stated in the SOW;

Professional Services Agreement Template 2019.11 Over \$60K

2. Due Date of any Deliverable stated in the SOW only if due date change requires extension of Article 5 termination date;
3. Compensation for any Deliverable stated in the SOW;
4. Agreement Compensation, pursuant to Article 3; or
5. Agreement termination, pursuant to Article 5.

#### **ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE**

- A. In the event Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period on the Project during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees in the event the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor will maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. Contractor's records are subject to review and audit by a representative of the State.
- C. Contractor will advise Contractor's Employees concerning the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (statewide or agency price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against them); Contractor agrees those requirements will become applicable on the first day of the second month after Contractor reports its combined sales (to the State and, if applicable, to local public bodies in the event those sales are made pursuant to a statewide or agency price agreement) in the aggregated amount of \$250,000 or more.

#### **ARTICLE 27 – SEVERABILITY, MERGER, SCOPE, ORDER OF PRECEDENCE**

- A. Severability. The provisions of this Agreement are severable, and in the event for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court, agency or commission having jurisdiction over the subject matter hereof, such invalidity will not affect the other provisions of this Agreement, which will be given effect absent the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees will be valid or enforceable unless stated in this Agreement. In the event of any

inconsistencies between various documents comprising this Agreement, the order of precedence will apply in the following order of control: (1) This Agreement, (2) Exhibit A, (3) Contractor's RFP response, and (4) the RFP.

**ARTICLE 28 – NOTICES**

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement will be in writing and will be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or by email addressed to the other Party's Representative.

Notices will be addressed as follows:

**For PROCURING AGENCY**

To SPA:

State Purchasing Agent

Purchasing Division

Phone: (505) 827-0472

Joseph M. Montoya State Building, Room 2016

1100 St. Francis Drive

Santa Fe, NM 87505

**With a copy to DFA:**

Stephen Weinkauff, E-911 Bureau Chief  
Department of Finance and Administration

Local Government Division

E-mail: [stephen.weinkauff@state.nm.us](mailto:stephen.weinkauff@state.nm.us)

Phone: (505) 827-8060

407 Galisteo Street

Bataan Memorial Building, Room 202

Santa Fe, NM 87501

**For CONTRACTOR**

CenturyLink

931 14<sup>th</sup> Str., #900

Denver, CO 80202

Fax: 888-778-0054

Attn.: Notice Coordinator

**With a copy to:**

Connie Roberts

Lead Project Manager

CenturyLink

20 East Thomas Road

Phoenix, AZ 85012

602.716.3613

[connie.roberts@centurylink.com](mailto:connie.roberts@centurylink.com)

Any change made concerning either a change of address or a replacement of a Party's Representative must be made in an email or a hard copy letter addressed to the other Party's Representative.

### **ARTICLE 29 – GENERAL PROVISIONS**

- A. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
  2. Equal Opportunity Compliance. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, pertaining to equal employment opportunity. In accordance with all such laws of the State, Contractor will assure that no person in the United States will, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed hereunder. In the event Contractor is found to be out of compliance with these requirements during the life of this Agreement, Contractor will take appropriate measures to correct its deficiencies.
  3. Workers Compensation. Contractor will comply with state laws and rules applicable to workers compensation benefits for its employees. In the event Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by Procuring Agency.
- B. Applicable Law. The laws of the State will govern this Agreement. Venue will be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By executing this Agreement, Contractor acknowledges and will submit to the jurisdiction of the courts of the State over any and all such lawsuits arising hereunder.
- C. Waiver. A Party's failure to require strict performance of any provision of this Agreement will not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights hereunder will be effective unless made in writing, and no effective waiver by a Party of any of its rights will be effective to waive any of its other rights, duties or obligations hereunder.
- D. Headings. Any and all headings within this Agreement are inserted for convenience and ease of reference and will not be considered in the construction or interpretation of any article, section or provision of this Agreement or the SOW. Numbered or lettered provisions, sections and subsections contained herein refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

- E. Dispute Resolution. In the event dispute arises between the Parties, either Party may send a letter to the other Party requesting the other Party to enter into a dispute resolution process, such as mediation or arbitration, in accordance with NMSA 1978 12-8A-1 through 12-8A-3.

### **ARTICLE 30 - SURVIVAL**

The Articles titled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties will survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into by the Parties in conjunction with this Agreement will survive the expiration or termination of this Agreement.

### **ARTICLE 31 - TIME**

Calculation of Time. Any time period herein calculated by reference to a “day” or “days” means a calendar day or calendar days, unless Business Days are used; provided, however, that in the event the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State, the day for such given act will be the first day following that is not a Saturday, Sunday, or a State observed holiday.

### **ARTICLE 32 – FORCE MAJEURE**

Neither Party will be liable for damages or have any right to terminate this Agreement for any delay or Default in performing hereunder in the event such delay or Default is caused by conditions beyond the Party’s control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), war, insurrection and/or any other cause beyond the reasonable control of the Party whose performance is affected thereby.

### **ARTICLE 33 – OTHER ADDITIONAL PROVISIONS**

1. **Work Location:** The Contractor and any of their personnel will physically perform any services contracted by the State of New Mexico in the United States, this includes any work that is performed offsite or remote.
2. **Quote Requirements:** The Contractor will provide a quote with the following separate line items to the PSAP or purchasing entity when requested:
  - A. If any, description and related cost of the hardware and/or software to be purchased from the NG-911 Catalog per Appendix L;
  - B. If any, description and related cost for professional services being contracted per Appendix H;
  - C. Description and related cost for NG-911 system by position size to include related hardware and software per Appendix I;
  - D. Annual post warranty maintenance and support package cost per Appendix J, only after the 1 year warranty and if applicable;
  - E. Description and related cost for any formal training per Appendix K;
  - F. If any, description and related cost for additional options for NG-911 per Appendix M and N;
  - G. Shipping costs, if applicable; and

Professional Services Agreement Template 2019.11 Over \$60K

- H. Gross receipts tax.
3. **Invoice Requirements:** The Contractor will provide an invoice with the following separate line items to the E-911 Program Manager on behalf of the approved PSAP or to the purchasing entity that approved the purchase:
    - A. If any, description and related cost of the hardware and/or software purchased from the NG-911 Catalog per Appendix L;
    - B. If any, description and related cost for professional services being contracted for per Appendix H;
    - C. Description and related cost for NG-911 system by position size to include related hardware and software per Appendix I;
    - D. Annual post warranty maintenance and support package cost per Appendix J, only after the 1 year warranty and if applicable;
    - E. Description and related cost for any formal training per Appendix K;
    - F. If any, description and related cost for additional options for NG-911 per Appendix M and N;
    - G. Shipping costs, if applicable; and
    - H. Gross receipts tax, and other taxes or surcharges permissible under Article 3 (C) above.
  4. **Fully Certified Resellers or Manufacturers:** The Contractor will be a fully certified reseller or manufacturer for the proposed NG-911 systems and related hardware, software, and services.
  5. **Industry Standards:** The Contractor's NG-911 systems and related hardware, software, and services will meet current industry standards and will remain current with industry standards during the term of this Agreement to include the National Emergency Number Association (NENA i3) standards, see link [https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA-STA-010.2\\_i3\\_Architectu.pdf](https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA-STA-010.2_i3_Architectu.pdf).
  6. **Onsite Project Manager:** The Contractor will provide an onsite project manager prior to delivery of the NG-911 systems and related hardware, software, and services through the duration of the project and operational activities resulting in a fully accepted operational system. Any waiver from this requirement will be approved in writing by the PSAP Director/Manager or purchasing entity contracting for the services.
  7. **System and Hardware Interfaces Minimum Requirement:** The Contractor's NG-911 system(s) will restrict connection to the public internet and support, through its interfaces, the following listed devices, networks, and databases at a minimum:
    - A. Computer Aided Dispatch (CAD), Records Management Systems (RMS).
    - B. Master clock devices such as Netclock®.
    - C. Network Interfaces to include: (1) Traditional Centralized Automated Message Accounting (CAMA) trunks, (2) Lines and trunks for local telephone service provided by the Local Exchange Company (LEC), (3) ESInet i3 interface.
    - D. Automatic Location Information (ALI) database(s).
  8. **Provide Replacement Parts from a NG-911 System Installation:** The Contractor will provide availability for any replacement parts from a NG-911 system installation during the one (1) year warranty period and during post warranty maintenance and



support. Any replacement parts meant to support the specific PSAP must not be used to support another PSAP's system.

- 9. NG-911 Pre and Post System Acceptance Training for End-Users and Technical Users:** The Contractor will provide initial on-site pre and post system acceptance training for its NG-911 system(s) for end-users and the technical users that will be included as part of any system purchase. The Contractor will provide at a minimum the training described in Appendix E of this Agreement.
- 10. NG-911 System Standard Features:** The Contractor will provide the standard system features for its NG-911 system(s) as listed in Appendix F of this Agreement.
- 11. Support 24/7 365 Days a Year including Holidays and Weekends:** The Contractor will provide 24/7 365 days a year, to include holidays and weekends, warranty and post warranty maintenance and support services on its NG-911 systems and related hardware, software, and services as defined by the "Failure Prioritization Schedule" found in Article 1 - Definitions of this Agreement.
- 12. NG-911 System Availability:** The Contractor will provide NG-911 system(s) that are available to users 24 hours a day, 7 days per week, 365 days per year including holidays and weekends. The Contractor will provide the PSAP or purchasing entity with NG-911 system availability of no less than 99.999%. The downtime resulting from external causes, including, but not limited to 911 network outages, acts of God, fire, PSAP or purchasing entity's negligence will be excluded from downtime calculations.
- 13. Replacement Parts for Installation Requires a Manufacturer Certified Technician:** The Contractor will provide a manufacturer certified technician for installation of any replacement parts for the PSAP or purchasing entity during the 1 year warranty period and during post warranty maintenance and support.
- 14. New Replacement Parts:** The Contractor will provide only parts that are new, not refurbished, for any given PSAP or purchasing entity. Refurbished parts will be allowed only upon a written statement from the manufacturer stating the new parts are no longer available and the refurbished parts have been tested. Any waiver from this requirement will be approved in writing by the PSAP Director/Manager or purchasing entity.
- 15. Replacement Onsite Spares Guarantee:** The Contractor will replace the onsite spares to restore the inventory levels that came with the system upgrade within thirty (30) days of using parts from the spare part inventory.
- 16. Intentionally omitted**
- 17. NG-911 System(s) and Related Hardware and Software Repair Response Times:** The Contractor will provide the repair response times (in hours) for warranty and maintenance support for PSAPs as listed in Appendix G of this Agreement where Contractor provides Hardware and Software.
- 18. NG-911 VPN Access to New Mexico PSAPs:** The Contractor agrees to a single method of remote VPN access to New Mexico PSAPs, using only the state 911 Multiprotocol Label Switching (MPLS) network. The Contractor will register with the New Mexico E-911 Program Manager/Director with each individual technician having their own unique password. The Contractor will notify the E-911 Program Manager/Director within 24 hours of termination of employment of any of its employees, subcontractors, and technicians with VPN access, registered with the E-911

Program Manager/Director. Any contractor that does not adhere to this requirement will be subject to statewide price agreement cancellation.

**19. End-User License Agreements (EULA) for Software:**

One of more of the Product(s) may be or contain software. In some cases the Product(s) manufacturer (Contractor's vendor) has embedded such software into the hardware as an integral part of the Product(s). All software remains the property and full ownership of the creator, developer, manufacturer, or copywriter, whichever the case may be. If required by creator, developer, manufacturer, or copywriter, a license must be agreed to by the Procuring Entity, to use such software and may contain specific terms and conditions for such use. These specific terms and conditions for use are governed entirely by said creator, developer, manufacturer, or copywriter, and will be adhered to by both parties. Upon the requirements of creator, developer, manufacturer, or copywriter to execute a Software License Agreement or Software Sub-License Agreement by end-user and/or Contractor, such license must be executed by Procuring Entity as required, and will become a part of this Agreement by reference.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: Deborah K Romero  
Deborah Romero, Cabinet Secretary Designate  
Department of Finance and Administration

Date: 7/1/2020

By: Susan Baker  
Sue Baker, Manager, Offer Management  
CenturyLink Communications, LLC

Date: 6/29/2020

By: Joseph Baros  
Joseph Baros, Chief Information Officer  
Department of Finance and Administration

Date: 6/30/2020

Approved for legal sufficiency:

By: Andrew Baranowski  
Andrew Baranowski, General Counsel  
Department of Finance and Administration

Date: 6/30/2020

Approved for financial sufficiency:

By: Elena Tercero  
Elena Tercero, Chief Financial Officer  
Department of Finance and Administration

Date: 6/30/2020

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

CRS ID Number: 03-167543-00-3

By: Ann Marie Lucero  
Taxation & Revenue Department

Date: 6/30/2020

Approved with respect to the information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State.

By: John Salazar Date: 7/1/2020  
John Salazar, Cabinet Secretary and State Chief Information Officer  
Department of Information Technology

This Agreement has been approved by the State Purchasing Agent:

By: Valerie Paulk Date: 7/1/2020  
Purchasing Agent  
for the State of New Mexico

**This contract was signed on behalf of the State Purchasing Agent**

## **EXHIBIT A – SCOPE OF WORK**

**Scope of Work:** The scope of work shall consist of the maximum costs awarded in support of the NG-911 Systems, Related Hardware, Software, and Services to support the existing 911 PSAP environments within the State of New Mexico not to exceed the maximum costs awarded and outlined in the Cost Response Forms below. The maximum costs outlined below are all inclusive of mandatory business and technical specifications published, amended, incorporated in this awarded price agreement at no added cost, and must include any discounts, related travel, and any other related expenses.

**Exclusions from the Scope of Work:** The 911 equipment and related services NOT included in this scope of work include the following:

1. ESInet and Related Core Services
2. Logging recorders
3. Dispatch consoles
4. Emergency medical, fire, and law enforcement dispatch software
5. Language translation services
6. Generators
7. PSAP related licensure and certification training programs
8. Radio
9. Computer Aided Dispatch/Records Management System
10. Bundled or Managed Services
11. New Hosted and/or Remote Systems is not in scope. However, the maintenance and support of any existing Hosted and/or Remote Systems are within the scope.
12. Networking Services/Network Connectivity Services
13. Routing Services
14. Database Services

### **Appendices:**

Appendix E – NG-911 Pre and Post System Acceptance Training for End-Users and Technical Users  
Appendix F – NG-911 System Standard Features  
Appendix G – NG-911 System(s) and Related Hardware and Software Repair Response Times  
Appendix H – NG-911 Professional Services Cost Response Form  
Appendix I – NG-911 System(s) by PSAP Position Size Cost Response Form  
Appendix J – NG-911 Post Warranty Maintenance and Support Package Cost Response Form  
Appendix K – NG-911 Formal Course Training Cost Response Form  
Appendix L – NG-911 MSRP Catalog Listing by Manufacturer Type Response Form  
Appendix M – Additional Options for NG-911 System(s) Cost Response Form  
Appendix N – Additional Network Interface Options for NG-911 System(s) Cost Response Form

Professional Services Agreement Template 2019.11 Over \$60K



# CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Century Link/Lumen

Procurement Title: State Price Agreement #00-00000-19-00027AA Expires July 1, 2025

Procurement Method: State Price Agreement  Cooperative  Sole Source  Other

Exempt  Request For Proposal (RFP)  Invitation To Bid (ITB)  Contract under 60K  Contract over 60K

Department Requesting ITT Staff Name Michelle A. Gurule

### Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

### REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING\*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Michelle A. Gurule Contracts Administrator 02/03/23

Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Mar 6, 2023

Purchasing Officer (attesting that all information is reviewed)	Title	Date
	ITT Director	Mar 6, 2023

ITT Representative (attesting that all information is reviewed)	Title	Date
---	-------	------

Include all other substantive documents and records of communication that pertain to the procurement and contract.



# City of Santa Fe

## Real Estate Summary of Contracts, Agreements, Amendments & Leases

### Section to be completed by department

1. Munis Contract # 3203884

Contractor: Century Link/Lumen

Description: ITT is requesting approval for the attached contract amendment with Lumen/Century Link. The existing voice circuits and Long-Distance services provided by Lumen/Century Link are based on an aging non-resilient structure. To bring the Voice circuits up to reliable and modern Digital circuits, the City is required to upgrade our voice and Long-Distance circuit agreement. This change will reduce the monthly network costs to \$2,400.00 per month with added resilience and digital clarity.

Contract  Agreement  Lease / Rent  Amendment

Term Start Date: 03/01/23 Term End Date: 03/31/26

Approved by Council Date: \_\_\_\_\_

### Contract / Lease:

Amendment # \_\_\_\_\_ to the Original Contract / Lease # \_\_\_\_\_

Increase/(Decrease) Amount \$ 86,400.00

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

### Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. Procurement History: State Price Agreement #00-00000-19-00027AA Expires July 1, 2026

Mar 6, 2023  
Purchasing Officer Review: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: \_\_\_\_\_

4. Funding Source: ITT ISV Org / Object: 6203650.514100

Feb 28, 2023  
Budget Officer Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: \_\_\_\_\_

Staff Contact who completed this form: Michelle A. Gurule Phone # 505-955-5533

Email: magurule@santafenm.gov

### To be recorded by City Clerk:

Clerk # \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Manuel Gonzales (Mar 6, 2023 10:57 MST)

ITT Representative (attesting that all information is reviewed)

ITT Director

Title

Mar 6, 2023

Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/13/2022

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

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

<b>PRODUCER</b> Marsh USA Inc. CA License #0437153 1301 5th Avenue, Suite 1900 Seattle, WA 98101-2682 Attn: Seattle.certrequest@marsh.com / Fax: 212-948-4326 CN102197661-STND-ALL-22-23 091123	<b>CONTACT NAME:</b> ...	
	<b>PHONE (A/C, No. Ext):</b>	<b>FAX (A/C, No):</b>
<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Greenwich Insurance Company		22322
<b>INSURER B :</b> XL Specialty Insurance Co.		37885
<b>INSURER C :</b> Allianz Underwriters Ins Co		36420
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** SEA-003574399-25                      **REVISION NUMBER:** 2

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>CONTRACTUAL LIABILITY</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		RGD500033310	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 15,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		RAD500033410 Auto Physical Damage - Self Insured	09/01/2022	09/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		U5Z000023220	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		RWD500032910 (AOS) RWR500033010 (WI) RWE500033110 (WA) RWE500033210 (OH)	09/01/2022 09/01/2022 09/01/2022 09/01/2022	09/01/2023 09/01/2023 09/01/2023 09/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Technology E&O incl. Cyber/Privacy Liability		U5Z000022330	09/01/2022	09/01/2023	Each Claim/Aggregate Retention \$ 10,000,000 5,000,000

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

Start Date: 09/11/2018  
End Date: 09/11/2023

## CERTIFICATE HOLDER

City of Santa Fe  
Attn: Larry Worstell  
200 Lincoln Ave  
Santa Fe, NM 87501

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc

*William J. Stephen*

© 1988-2016 ACORD CORPORATION. All rights reserved.





**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Marsh USA Inc.		<b>NAMED INSURED</b> Lumen Technologies, Inc. and all subsidiaries, including but not limited to: Qwest Corporation; Embarq Corporation; Level 3 Communications, LLC and CenturyLink Communications, LLC 100 CenturyLink Dr. Monroe, LA 71203	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

----- GENERAL LIABILITY -----

Automatic Additional Insured's Primary Coverage  
 Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement.  
 Coverage provided by the above General Liability policy shall be primary and is limited to liability arising out of Named Insured's ownership and/or operations. Any insurance carried by the additional insured shall not be contributory insurance.  
 Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have entered into a contract or agreement, or by statute, law or code of ordinance. Separation of Insureds Applies. Insurance covers incidents that occur within 50' of railroad property, any railroad exclusions have been deleted per endorsement CG2417.

----- AUTOMOBILE LIABILITY -----

Any person or organization you are required in a written contract, agreement, statute, law or code of ordinances provided the "bodily injury" or "property damage" occurs subsequent to the executive of the contract, agreement, statute, law or code of ordinances.  
 Lessor - Additional Insured and Loss Payee - All Lessors  
 Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have waived prior to the "accident" or the "loss" under a contract with that person or organization, or under statute, law or code of ordinances.

----- WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY AND EXCESS WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY (OH & WA - SELF-INSURED - \$1,000,000 RETENTION) -----

Waiver of Our Right to Recover from others Endorsement - Where required by written agreement signed prior to loss, or required by statute, law or code of ordinances executed prior to loss.

----- EXCESS/UMBRELLA -----

Coverage applies per occurrence. Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement. Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Separation of Insureds Applies.

----- COMMERCIAL CRIME - FIDELITY BOND -----

Carrier: XL Specialty Insurance Company  
 Policy Number: ELU18499022  
 Effective Dates: 09/01/2022 - 09/01/2023  
 Deductible: \$2,500,000  
 Each Occurrence: \$15,000,000

----- U.S. PROPERTY -----

Carrier: Allianz Underwriters Insurance Company  
 Policy Number: U5Z000023220  
 Effective Dates: 09/01/2022 - 09/01/2023  
 Limit: \$25,000,000  
 Deductible: \$25,000,000

Property Coverage: "All Risk" of Direct Physical Loss or Damage to All Real and Personal Property, including Boiler & Machinery, Earthquake, Flood and Wind - Replacement Cost Basis, and Business Interruption - Actual Loss Sustained.  
 Loss Payee or mortgagee as required by written contract/loan agreement to the the extent of your insurable interest. Waiver of Subrogation - Any person or organization whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Other deductibles may apply as per policy terms and conditions.



**City of Santa Fe**  
Treasury Department  
200 Lincoln Ave.  
Santa Fe, New Mexico 87504-0909  
505-955-6551

## BUSINESS REGISTRATION

**Business Name:** CENTURYLINK COMMUNICATIONS,  
LLC  
DBA: LUMEN TECHNOLOGIES  
GROUPS & ITS AFFILIATED ENTITIES

**Business Location:** 2701 SAWMILL RD  
SANTA FE , NM 87505

**CRS Number:** 01-602313-00-7

**Owner:** CENTURYLINK COMMUNICATIONS, LLC

**License Number:** 32485

**License Type:** Business License - Renewable

**Issued Date:** April 04, 2023

**Classification:** Business Registration - Standard

**Expiration Date:** April 04, 2024

**Fees Paid:** \$35.00

CENTURYLINK COMMUNICATIONS, LLC  
400 TIJERAS AVE NW 530  
ALBUQUERQUE, NM 87102

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.  
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY  
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO  
COMMENCEMENT OF ANY CONSTRUCTION OR THE  
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO  
OTHER BUSINESSES OR PREMISES.

**TO BE POSTED IN A CONSPICUOUS PLACE**












# 23-0137 CenturyLink - Lumen

Final Audit Report

2023-04-11

Created:	2023-04-05
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtx_2u5cHUYxhLdGu3-rjphNgzdDir11

## "23-0137 CenturyLink - Lumen" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)  
2023-04-05 - 10:27:11 PM GMT- IP address: 63.232.20.2
-  Document emailed to ekoster@santafenm.gov for signature  
2023-04-05 - 10:30:03 PM GMT
-  Email viewed by ekoster@santafenm.gov  
2023-04-06 - 0:30:13 AM GMT- IP address: 104.47.64.254
-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster  
2023-04-06 - 0:33:05 AM GMT- IP address: 63.232.20.2
-  Document e-signed by Emily K. Oster (ekoster@santafenm.gov)  
Signature Date: 2023-04-06 - 0:33:07 AM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to jwblair@santafenm.gov for signature  
2023-04-06 - 0:33:12 AM GMT
-  Email viewed by jwblair@santafenm.gov  
2023-04-09 - 11:38:28 PM GMT- IP address: 104.47.65.254
-  Signer jwblair@santafenm.gov entered name at signing as John Blair  
2023-04-09 - 11:49:55 PM GMT- IP address: 76.113.49.66
-  Document e-signed by John Blair (jwblair@santafenm.gov)  
Signature Date: 2023-04-09 - 11:49:57 PM GMT - Time Source: server- IP address: 76.113.49.66
-  Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature  
2023-04-09 - 11:50:02 PM GMT
-  Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)  
2023-04-11 - 11:54:42 PM GMT- IP address: 104.47.65.254



Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2023-04-11 - 11:54:52 PM GMT - Time Source: server- IP address: 63.232.20.2



Agreement completed.

2023-04-11 - 11:54:52 PM GMT

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.

