

2016-35

**PUBLIC SAFETY PRODUCT
SALES/INSTALLATION/MAINTENANCE AGREEMENT**

CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC and Keith County 911 ("Customer"), a public entity organized under the laws of the State of Nebraska, hereby enter into this Public Safety Product Sales/Installation/Maintenance Agreement ("Agreement"). Customer's current address, facsimile number, and person designated for notices are:
Pete Peterson
501 North Spruce Street
Ogallala, NE, 69153

1. Products and Services Supplied under this Agreement.

- 1.1 CenturyLink will provide and Customer will purchase the Public Safety Product hardware and/or software ("Product") specified in Attachment 1 to this Agreement. Customer will purchase Product(s) to provide public safety emergency communications services.
- 1.2 CenturyLink will install Product(s) specified in Attachment 1 according to the terms described in Attachment 2 to this Agreement, titled, Installation.
- 1.3 CenturyLink will provide maintenance services for the Public Safety Product(s) specified in Attachment 1 according to the terms described in Attachment 3 to this Agreement, titled, Maintenance Provision.

2. Sales Price and Payment Terms.

- 2.1 CenturyLink's prices for Product(s) and installation appear in Attachment 1 to this Agreement. CenturyLink's prices for maintenance appear in Attachment 3 to this Agreement. All charges will be paid within 30 days of the invoice date and in accordance with the payment schedules referenced in Attachment 4 to this Agreement, titled, Payment Summary. Prices quoted in this Agreement will be good until September 30th, 2016. After such date, prices are subject to change. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those functions and obligations is explicitly identified and agreed to by the parties in this Agreement or in an amendment to this Agreement.
- 2.2 **Late Payment Charge.** CenturyLink will apply a service charge of 1½% per month on any unpaid balance not received by CenturyLink within 30 days of the invoice date.

3. **Taxes and Fees.** Prices do not include taxes or fees, of any kind, established by governmental authorities. Customer will pay all such applicable taxes and fees when billed by CenturyLink. Alternatively, Customer may supply CenturyLink a tax exemption certificate in a form satisfactory to CenturyLink.

4. Customer Responsibilities.

- 4.1 Customer will ensure that its personnel are available to receive delivery of Product(s) at site, at a date and time to be determined between CenturyLink and Customer. Risk of loss and damage to Product(s) passes to Customer upon delivery of Product(s) to Customer at site.
- 4.2 Customer agrees to grant reasonable right of entry to CenturyLink's representatives to deliver the Product(s) or perform all services contemplated under or by virtue of this Agreement, or both, and will make available a reasonable amount of appropriate, secure space for storage of Product(s) or parts as necessary.
- 4.3 Customer is responsible for proper site preparation, meeting and maintaining proper environmental conditions, including but not limited to, air conditioning, cleanliness, temperature requirements, and electrical requirements as indicated by the manufacturers of Product(s) in Attachment 1. Customer agrees to follow the National Emergency Numbering Association ("NENA") recommendations and guidelines for site preparation as set forth in the NENA Technical Information Document 04-502, which can be found at www.nena.org.
- 4.4 Product(s) delivered to Customer will be available at site on the installation date. The estimated installation begin and complete dates are identified in Attachment 2 to this Agreement.

5. **Health and Safety Compliance.** CenturyLink and Customer will adhere to all applicable health and safety laws, rules and regulations including the Occupational Safety and Health Administration's ("OSHA") rules and regulations. Customer agrees to certify that there is no asbestos on any premises in any areas where CenturyLink will be working. In the event Customer will not certify an asbestos free environment or asbestos is discovered in the CenturyLink work area, there may be additional costs to perform under this Agreement in compliance with OSHA's rules and regulations. Customer understands and agrees this Agreement does not include the prices attributable to working in an asbestos environment including, but not limited to, asbestos sampling, testing, cleanup, or rerouting or delays caused by any of the above. Customer understands and agrees that prices attributable to any of the above will be in addition to the price agreed to herein and Customer agrees to pay the additional amounts. Customer's non-compliance with this provision will be considered as Customer's default under this Agreement.

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6. Customer Acceptance. CENTURYLINK AND CUSTOMER MUST REVIEW AND SIGN THE CUSTOMER ACCEPTANCE FORM. THE CUSTOMER ACCEPTANCE FORM OUTLINES CENTURYLINK'S ACCEPTANCE POLICY AND IS INCORPORATED BY REFERENCE INTO THIS AGREEMENT. IF THERE IS A CONFLICT BETWEEN THE TERMS OF THE CUSTOMER ACCEPTANCE FORM AND THE TERMS OF THIS AGREEMENT, THE TERMS OF THIS AGREEMENT WILL CONTROL. CUSTOMER MUST NOTIFY CENTURYLINK IN WRITING AND SPECIFY ANY PORTIONS OF THE PRODUCT(S) LISTED IN ATTACHMENT 1 THAT ARE UNACCEPTABLE. IF CUSTOMER DOES NOT NOTIFY CENTURYLINK WITHIN 10 BUSINESS DAYS FROM THE INSTALLATION DATE OR DELIVERY DATE, WHICHEVER IS APPLICABLE, PRODUCT(S) WILL BE DEEMED ACCEPTED. ANY PRODUCT INSTALLED BY CENTURYLINK IS CONSIDERED ACCEPTABLE AND BILLABLE IF IT IS INSTALLED AND OPERATES MATERIALLY IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS. CENTURYLINK RESERVES THE RIGHT TO CORRECT ANY PORTION OF A PRODUCT THAT HAS BEEN REJECTED BY CUSTOMER. ANY PORTION OF A PRODUCT THAT HAS NOT BEEN REJECTED BY CUSTOMER AND IS FUNCTIONALLY DIVISIBLE WILL BE DEEMED ACCEPTED AND MAY BE INVOICED SEPARATELY. MOVES AND CHANGES ARE CONSIDERED ACCEPTED WHEN THE DESCRIBED WORK IS MATERIALLY COMPLETED. ANY PORTION OF A PRODUCT THAT IS FOUND TO BE UNACCEPTABLE AFTER THE 10-DAY ACCEPTANCE PERIOD MAY BE REPORTED TO THE CENTURYLINK E911 CALL CENTER AT 1-800-357-0911.

7. Adds; Changes. Any changes to a Product order or installation request and any additional Product orders or installation requests must be by written amendment or by submitting a 911 CPE purchase order ("Purchase Order") to CenturyLink. The amendment or Purchase Order will be signed by authorized representatives of both parties and made a part of this Agreement.

8. Right to Subcontract. It is specifically agreed that CenturyLink may subcontract all or any portion of the work without the prior written consent of Customer. CenturyLink will remain responsible for the work of any subcontractor.

9. Confidentiality; Publicity. Neither party will, without the prior written consent of the other party: (a) disclose any of the terms of the Agreement or use the name or marks of the other party or its Affiliates; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information of the other party. Each party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the party would use to protect its own. CenturyLink's consent may only be given by its Legal Department. "Affiliate" means any entity controlled by, controlling, or under common control with a party. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, by Requirement of Public Records Requests or if necessary in any proceeding to establish rights or obligations under the Agreement. "Confidential Information" means any information that is not generally available to the public, whether of a technical, business or other nature and that: (c) the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party; and/or (d) is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Agreement by the receiving party or is already known or is independently developed by the receiving party.

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

11. Limitation of Liability.

11.1 OPERATION OF PUBLIC SAFETY SYSTEMS, CUSTOMER PREMISES SERVICES AND PRODUCT(S) IS THE SOLE RESPONSIBILITY OF CUSTOMER. CENTURYLINK'S SOLE UNDERTAKING IS LIMITED TO PROVIDING THE PRODUCT(S) SOLD AND INSTALLATION AND MAINTENANCE OF THE PRODUCT(S) IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE PROVISION OF PRODUCT(S) SOLD AND SERVICES PERFORMED BY CENTURYLINK TO CUSTOMER WILL NOT BE INTERPRETED, CONSTRUED, OR REGARDED, EITHER EXPRESSLY OR IMPLIED, AS BEING FOR THE BENEFIT OF, OR CREATING ANY CENTURYLINK OBLIGATION TOWARD ANY THIRD PARTY OR LEGAL ENTITY OTHER THAN CUSTOMER. CENTURYLINK'S OBLIGATIONS EXTEND SOLELY TO CUSTOMER.

11.2 CENTURYLINK WILL IN NO EVENT BE LIABLE TO CUSTOMER, OR TO ANY PERSON OR COMPANY USING ANY PRODUCT OR SERVICE SUPPLIED UNDER THESE TERMS AND CONDITIONS OR TO WHOM CUSTOMER FURNISHES A PRODUCT OR SERVICE, FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING AS A RESULT OF THIS AGREEMENT. CENTURYLINK'S ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE OR EXPENSE FROM ANY CAUSE WHATSOEVER WILL IN NO EVENT EXCEED THE HIGHER OF THE REPAIR OR REPLACEMENT COST OF THE ITEM WHICH DIRECTLY GIVES RISE TO THE CLAIM.

11.3 Personal Injury; Death; Property Damage. CENTURYLINK, ITS AFFILIATES, AGENTS AND CONTRACTORS (INCLUDING WITHOUT LIMITATION, ANY SERVICE PROVIDER PROVIDING SERVICES ASSOCIATED WITH ACCESS TO 911 EMERGENCY SERVICE) WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY PERSONAL INJURY TO OR DEATH OF ANY

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PERSON, FOR ANY LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY RELATING TO THE USE, LACK OF ACCESS TO OR PROVISION OF, 911 EMERGENCY SERVICE.

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12. Disclaimer of Warranties. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS." CENTURYLINK DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN BY CENTURYLINK, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE A WARRANTY. CenturyLink is not responsible for any Solution defects or damages resulting from mishandling, abuse, misuse, accident, electrical power surges or current fluctuations, Force Majeure Events, improper storage, or operation, including use in conjunction with equipment electrically or mechanically incompatible with or of inferior quality to the supplied equipment or failure to maintain the environmental conditions specified by the manufacturer or licensor.

13. Software License. One or more of the Product(s) may be or may contain software. In some cases the Product(s) manufacturer (CenturyLink'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 end-user (CenturyLink's Customer), 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 requirement of creator, developer, manufacturer or copywriter to execute a Software License Agreement or Software Sub-License Agreement by end-user and/or CenturyLink, such license must be executed by CenturyLink's Customer as required, and will become a part of this Agreement by reference.

14. Default by Customer. In the event Customer fails or neglects to comply with any term or condition of this Agreement or to pay for services as provided herein, CenturyLink will have the right, after written notice, to cease performance hereunder. This remedy will be in addition to any other remedies, including termination, available to CenturyLink in law or equity. CenturyLink will be entitled to recover reasonable attorneys' fees and costs of collection associated with enforcing its rights hereunder.

15. Governing Law; Dispute Resolution.

15.1 Governing Law; Forum. Nebraska state law, without regard to choice-of-law principles, governs all matters arising out of, or relating to, this Agreement. Any legal proceeding relating to this Agreement will be brought in a Nebraska District Court, or in a state court of competent jurisdiction, in the location of the party to this Agreement not initiating the action, as indicated in the Notices section. But CenturyLink may, at its discretion, initiate proceedings in Denver, Colorado to collect undisputed amounts billed.

16. Notices. Unless otherwise provided herein, all required notices to CenturyLink must be in writing, sent to 1801 California St., #900, Denver, CO 80202; Fax #: 888-778-0054; Attn.: Legal Dep't, and to Customer at its then current address as reflected in CenturyLink's records; Attn.: General Counsel or other person designated for notices. Unless otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after delivered via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

17. General. Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws. Customer's use of Service must comply with all applicable laws. Customer may not assign the Agreement or any of its rights or obligations under the Agreement without the prior written consent of CenturyLink, which consent will not be unreasonably withheld. Customer may not assign to a reseller or a telecommunications carrier under any circumstances. The Agreement is intended solely for CenturyLink and Customer and not to benefit any other person or entity, (e.g., End Users). If any term of the Agreement is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of the Agreement will be construed as a waiver of any of its rights hereunder. All terms of the Agreement that should by their nature survive the termination of the Agreement will so survive. Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. "Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, flood, labor strike, sabotage, fiber cuts, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services. Except for Tariff or Service modifications initiated by CenturyLink, all amendments to the Agreement must be in writing and signed by the parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. Each party reserves the right at any time to reject any handwritten change to the Agreement.

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18. Entire Agreement. This Agreement constitutes the entire agreement between Customer and CenturyLink and supersedes all prior oral or written agreements or understandings relating to this subject matter.

CenturyLink and Customer execute and authorize this Agreement as of the last date shown below. Electronic signatures on this Agreement will be accepted only in the form and manner prescribed by CenturyLink.

Keith County 911

CenturyLink Communications, LLC

C.W. Baltzell
Authorized Signature

Authorized Signature

C.W. Baltzell
Name Typed or Printed

Name Typed or Printed

Chairman, Co. Bd.
Title

Title

8-17-16
Date

Date

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ATTACHMENT 2
TO PUBLIC SAFETY PRODUCT
SALES/INSTALLATION/MAINTENANCE AGREEMENT
BETWEEN CUSTOMER AND CENTURYLINK

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CONFIDENTIAL INFORMATION

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INSTALLATION

1. **CenturyLink's Responsibilities.** CenturyLink will ensure that the Product(s) set forth in Attachment 1 have been installed according to the manufacturer's specifications.

2. **Customer's Responsibilities.** Customer is responsible for:

2.1 Preparing the site properly, including, but not limited to, allowing compliance with manufacturer's specifications of floor plan requirements, as well as providing necessary openings, ducts, 4' x 8' sheet of 3/4" plywood for terminals and cross connect field, and conduits in floors and walls.

2.2 Meeting and maintaining proper environmental requirements as indicated by manufacturer of Product(s) listed in Attachment 1.

2.3 Providing electric current and grounds for any necessary purpose, related to this Agreement, with suitable outlets in rooms where required, including, but not limited to, providing proper lighting for installation personnel.

3. **Time and Materials Charges.** Additional time and materials charges are applicable under the following circumstances:

3.1 Any modifications to building's electrical system required to install listed Product(s) that are not properly performed or provided by Customer;

3.2 Drilling of access holes and provisioning of suitable conduit (if required) from equipment room to dispatch center for cable access that are not properly performed or provided by Customer;

3.3 Customer requests that CenturyLink connect the Product(s) to voice recorder equipment which was not purchased under this Agreement.

4. **Target Dates.**

4.1 Installation begin date: (estimated) TBD

4.2 Installation complete date: (estimated) TBD

Customer CWB
(Initials)

CenturyLink _____
(Initials)

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**ATTACHMENT 3
To PUBLIC SAFETY PRODUCT
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CONFIDENTIAL INFORMATION

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MAINTENANCE PROVISION

General. All Product(s) listed in Attachment 1 will be maintained in accordance with the manufacturer's original performance specifications.

1. Service and Scope.

- 1.1 CenturyLink will provide remedial maintenance on Product(s) listed in Attachment 1, 24 hours a day, seven days a week on a call out basis.
- 1.2 CenturyLink will target a response time of two hours from receipt of a call to respond to service-affecting call outs.
- 1.3 Remedial maintenance means maintenance CenturyLink deems reasonably appropriate and necessary to return Product(s) listed in Attachment 1 to proper operating condition as specified by manufacturer's specifications.
- 1.4 Prior to call out, Customer must follow routine test procedures, as specified by CenturyLink, to localize the cause of a problem.
- 1.5 After localization of trouble to the Product(s), Customer will immediately notify CenturyLink, by phone, of any Product(s) malfunction.

2. Term of Maintenance Provision.

- 2.1 The term of this Maintenance Provision will be one year (12) months and will begin upon Customer Acceptance of Product(s).
- 2.2 If CenturyLink's agreement with the equipment manufacturer terminates before the end of this Agreement, CenturyLink may discontinue maintenance service with reasonable notice to Customer.

3. Repair and Replacement of Parts.

- 3.1 CenturyLink will have the option to repair or replace Product(s) specified in Attachment 1, or parts thereof.
- 3.2 When CenturyLink replaces part(s) or Product(s), the replacement part(s) become the property of Customer, and the replaced part(s) become the property of CenturyLink.
- 3.3 CenturyLink may, at its option, use new, reconditioned, or a later version of the parts or components of Product(s) to replace parts.
- 3.4 If CenturyLink uses parts or Product(s) from a Customer-owned spare parts inventory, the defective part(s) or Product(s) will remain the property of Customer. Customer may, at its option, purchase replacement spare part(s) or Product(s) from CenturyLink. In the case of such exchange, the defective part(s) or Product(s) become the property of CenturyLink and the purchased part(s) or Product(s) become the property of Customer.
- 3.5 Prices for replacement spare part(s) or Product(s) will be the then current CenturyLink list price.

4. Software Upgrades (Optional). Customer may select the software upgrade program listed on Attachment 4. The availability of this option is contingent on the type of Product used. If Customer selects the software upgrade program, the manufacturer, through CenturyLink, will make new versions and releases of the Product software available for deployment beginning upon Customer Acceptance described in Section 6 of the Agreement and continuing through the term of this Maintenance Provision. Customer must agree to the software license agreement(s) provided by the Product manufacturer. If Customer is not willing to agree to a manufacturer's software license terms, CenturyLink will not offer the software upgrade program. The software upgrade program is limited to only the software. If any additional hardware or equipment is required to use the software upgrade program, the cost of such additional hardware or equipment will be Customer's responsibility. Any required labor that is provided by a vendor and/or CenturyLink will be billed on a time & material basis at then-current rates and charges. Rates for the software upgrade program are shown in Attachment 4.

5. Exclusions.

- 5.1 This Agreement does not cover service calls for Product(s) listed in Attachment 1 that are damaged as a result of misuse of the Product(s), abusive environment, Customer modification, Customer interfaces with peripheral Product(s), moves, fire, vandalism, operator error, use of improper supplies, Force Majeure events, or other causes beyond normal usage of the Product(s). However, if

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PAYMENT SUMMARY

1. PRODUCTS.

1.1 Product and Installation Pricing Summary.

Description	Charges
Product	\$ 7744.74
Installation	\$ 350.00
Total for Product and Installation	\$ 8141.62

2. Product Payment Schedule.

Description	Percentage of Total Payment Due	Amount Due
Contract Signing	20%	\$ 1628.32
Equipment Delivery	50%	\$ 4070.81
Date of Acceptance	30 %	\$ 2442.49

2. MAINTENANCE.

2.1 Term. The maintenance term is shown below.

Description	Maintenance Term
Maintenance Term	One Year

2.2 Maintenance Payment Schedule. Customer will pay the following maintenance charges in accordance with the following payment schedule.

Description	Charges	Billing Schedule
First Year Maintenance	\$	[SELECT BILLING SCHEDULE]
Second Year Maintenance	\$	[SELECT BILLING SCHEDULE]
Third Year Maintenance	\$	[SELECT BILLING SCHEDULE]
Fourth Year Maintenance	\$	[SELECT BILLING SCHEDULE]
Fifth Year Maintenance	\$	[SELECT BILLING SCHEDULE]

3. SOFTWARE UPGRADE PROGRAM.

3.1 Software Upgrade Program. Customer will pay the following software upgrade program charges in accordance with the following payment schedule.

Term	Charges*	Billing Schedule
N/A-Software Upgrade Program has not been selected	\$0.00	100% Billed upon Acceptance

*Any labor required and provided by a vendor or CenturyLink will be billed on a time & material basis at then-current rates and charges.

Customer CW
(Initials)

CenturyLink _____
(Initials)