

FIFTH AMENDATORY AGREEMENT

THIS FIFTH AMENDATORY AGREEMENT made and entered into by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“City”) and CENTURYLINK COMMUNICATIONS, LLC, f/k/a Qwest Communications Company, LLC d/b/a CenturyLink QCC, a Delaware corporation whose address is 1801 California Street, Denver, CO 80202 (“Consultant”) (the City and Consultant collectively referenced as the “Parties”).

WITNESSETH:

WHEREAS, the parties entered into a Master Service Agreement dated November 5, 2009 (Pramata ID 686702), as amended on or about August 12, 2011, by Amendment 1 to Master Service Agreement (Pramata ID 555442), and on or about December 16, 2013, by Second Amendatory Agreement (Pramata ID 839067), and on or about September 12, 2014, by Third Amendatory Agreement (Pramata ID 870005), and on or about May 15, 2018 by Fourth Amendatory Agreement (Pramata ID 1161663) (collectively referenced as the “Agreement”), to provide various services to the City and County of Denver on a menu-based pricing structure; and

WHEREAS, the Agreement allows the City’s Technology Services Department to place orders via an email request for the price listed in CenturyLink’s Service Catalog; and

WHEREAS, the Parties wish to further amend the Agreement to extend the Term of the Agreement for two additional years, to delete and replace the provisions of Article 15, to extend services under the QC Intrastate Metro Optical Ethernet Service Exhibit, and to modify the Pricing Attachment for the service.

NOW, THEREFORE, the Parties agree to amend the Agreement, effective as of the date of the last signature below, as follows:

1. Modifications to Article 2. Article 2 of the Agreement, titled “Term,” is amended to read as follows:

“2. **TERM:** The term of the Agreement is from one hundred and forty-four (144) months from the Effective Date of the Agreement, unless terminated earlier pursuant to the provisions of this Agreement.”

2. Article 3, Section D, Subsection (i) of the Agreement entitled “Maximum Contract Liability” is amended to read as follows:

“D. Maximum Contract Liability:

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of THIRTY MILLION DOLLARS (\$30,000,000) (the “Maximum Contract Amount”). The Consultant acknowledges that the City is not obligated to execute an agreement or an amendment to Consultant for any further services and that any services performed by Consultant beyond that specifically described in the attached Exhibits or contained in an Order are performed at Consultant’s risk and without authorization under this Agreement.”

2. Modifications to Article 15. Article 15 of the Agreement, titled “Taxes, Charges and Penalties,” is deleted in its entirety, and replaced with the following:

“Excluding taxes based on CenturyLink's net income, and those taxes from which Customer is exempt by law and provided documentation noted below, Customer 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 CenturyLink or a CenturyLink 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 Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to CenturyLink, then, notwithstanding anything to the contrary in this Agreement, the gross amount payable by Customer will be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by CenturyLink will not be less than CenturyLink would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present CenturyLink with an exemption certificate eliminating CenturyLink’s liability to pay certain Taxes and Fees. The exemption will apply prospectively

3. Modifications to Article 29. Article 29 of the Agreement, titled “Survival of Certain Provisions,” is amended to add the following sentence to the end of the paragraph:

“With respect to the Intrastate Metro Optical Ethernet Service (“MOE”), the term of the Service shall survive beyond the termination of the Agreement for twenty-four (24) months following the last Start of Service Date, unless terminated earlier pursuant to the provisions of this Agreement. All representations and warranties made by the parties under this Agreement applicable to the Service shall survive the expiration or termination of this Agreement.”

4. Revision and extension of MOE Services. The terms and rates set forth below modifies Exhibit B-8, titled QC Intrastate Metro Optical Ethernet Service Exhibit, and its Pricing Attachment. Any provision of Exhibit B-8 and its Pricing Attachment not modified below will continue in full force and effect. These Services are modified and constitute a part of the Agreement and the existing Service as follows:

“3.1 Term. This Service Exhibit will begin on the Effective Date of the Agreement and shall expire twenty-four (24) months from the last Start of Service Date as ordered under this Service Exhibit, unless sooner terminated. The Minimum Service Term for the Service will be indicated on the Pricing Attachment. Each Service ordered will have its own Minimum Service Period. All orders for Service must be placed prior to the termination of the Agreement.”

Bandwidth Profile	MRC Rates for Service with Minimum Service Term of 24 months
3 Mbps	\$204.00
5 Mbps	\$240.00
7 Mbps	\$281.00

10 Mbps	\$345.00
20 Mbps	\$464.00
30 Mbps	\$496.00
40 Mbps	\$528.00
50 Mbps	\$560.00
60 Mbps	\$567.00
70 Mbps	\$572.00
80 Mbps	\$577.00
90 Mbps	\$582.00
100 Mbps	\$587.00
200 Mbps	\$668.00
300 Mbps	\$856.00
400 Mbps	\$1,045.00
500 Mbps	\$1,233.00
600 Mbps	\$1,422.00
700 Mbps	\$1,610.00
800 Mbps	\$1,799.00
900 Mbps	\$1,987.00
1000 Mbps	\$2,176.00

5. This Amendment may be executed in counterparts, each of which will be deemed an original, and all of which, taken together, will constitute one and the same instrument.

6. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

Contract Control Number: TECHS-201950540-Alfresco No. CE95035-05
Contractor Name: CENTURYLINK COMMUNICATIONS, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

TECHS-201950540-Alfresco No. CE95035
CENTURLINK COMMUNICATIONS, LLC

By:  _____
5913602349EE459...

Name: Sue Baker
(please print)

Title: Director - Offer Management
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)