NAPA COUNTY AGREEMENT NO. 240310B

AGREEMENT BETWEEN NAPA COUNTY LIBRARY AND THE IMPERIAL COUNTY OFFICE OF EDUCATION FOR THE PROVISION, INSTALLATION, AND MAINTENANCE OF ADVANCED NETWORK (DATA) SERVICES

This Agreement, hereinafter referred to as "Agreement," is entered into as of 12th day of March, 2024, by and between the Imperial County Office of Education, hereinafter referred to as "ICOE," and Napa County Library, hereinafter referred to as "Library". ICOE and Library are sometimes referred to in this Agreement individually as "Party" and collectively as "Parties." All written communications between the parties shall be addressed as follows unless and until amended in writing by the respective party.

Napa County Library
Anthony Halstead
Library Director
580 Coombs Street
Napa, CA 94559
anthony.halstead@countyofnapa.org

Imperial County Office of Education
Luis Wong
CEO, Network Initiatives
1398 Sperber Road
El Centro, CA 92243
admin@californialibraryconnect.org

WITNESS THAT

WHEREAS, ICOE is the Statewide Broadband Access Administrator for the California State Library Broadband Services Project ("Project") and

WHEREAS, ICOE, on behalf of the California State Library, has contracted with the Corporation for Education Network Initiatives in California ("CENIC") and its subsidiaries to provide high-speed networking to libraries in California and

WHEREAS, the Library desires to enter into an agreement with ICOE to obtain one or more data circuits to connect the Library to the CENIC high-speed broadband fiber network, CalREN, and, if specified in Appendix #1, attached, to connect the Library to other library sites as identified in said Appendix for the purpose of connecting to CalREN.

NOW, THEREFORE, Library and ICOE enter into this Agreement:

1. Purpose

The purpose of this Agreement is to set forth the terms and conditions applicable to the provision of communications and related network services to the Library under the Project.

2. Services to be Provided

Parties understand that the primary communications infrastructure CENIC provides is the California Research and Education Network ("CalREN"). Services that CENIC will provide to

Libraries will include the use of CalREN and contracting for and provision of data circuits supplied by network service providers.

ICOE, on behalf of Library, will contract with CENIC for such data circuits. Specific circuits and their costs are included in Appendix #1 attached, which may be amended from time to time by mutually signed Addenda ("Services"). ICOE assures Library that CENIC or ICOE will notify Library of installation requirements and necessary maintenance instructions. Neither CENIC nor ICOE shall be responsible for operating or maintaining software, equipment, or cabling that connects equipment or network services not provided by CENIC for the Services unless specifically agreed to in writing by CENIC.

Parties agree to provide notice to the other Party within 10 calendar days of a failure by CENIC or the network service provider to deliver Services or otherwise comply with the terms described in this Agreement, including Appendix #1 and subsequent Addenda. If noticed non-performance is not cured in a timely manner, Parties agree to meet within 10 days of said notice and discuss appropriate remedies, including but not limited to cancellation of related services or service credits as specified in the underlying agreements between CENIC and its network service provider and ICOE and CENIC.

Library is responsible for calculating and paying any early termination penalties that might apply due to the cancellation of existing connections so that it may receive Services under this Agreement.

Library is responsible for completing, signing, and submitting any required Letter of Agency, or related documentation, to confirm its participation in and eligibility for the E-rate Consortia and to authorize CENIC, as the E-rate Consortia lead, to act on its behalf as described under the Letter of Agency for the purpose of securing E-rate discounts.

Library is further responsible for completing, signing, and submitting any responsible Letter of Authorization, or related documentation, to the California Public Utilities Commission to authorize ICOE and CENIC to act on its behalf to submit an application and supporting documentation for the purpose of receiving discounts on eligible network services as part of the California Teleconnect Fund program.

If Library is currently receiving E-rate funding for its existing services, Library remains responsible for continuing to apply for that E-rate funding until all CENIC Services are turned up and existing E-rate supported services are canceled.

3. Term and Termination of this Agreement

(a) TERM OF THIS AGREEMENT. This Agreement shall be in effect from March 12, 2024 to July 1, 2029, unless otherwise terminated by a Party pursuant to the terms of this Agreement. Specific terms for the circuits provided pursuant to this Agreement shall depend on the specific date such circuit is "handed off" to Library pursuant to Appendix #1 or subsequent Addenda or as noticed in writing by CENIC to Library.

(b) TERMINATION. Termination of this Agreement prior to the end date of any given circuit, as described in Appendix #1 or subsequent Addenda, shall result in Library paying any applicable circuit telecommunications carrier termination charges or similar early termination charges that ICOE incurs under its agreement with CENIC resulting from early termination of the Service.

(c) Notwithstanding the above, upon a sixty (60) days written notice prior to the second and each following June 30 after a circuit is installed, Library may cancel a circuit without penalty if it verifies to ICOE and CENIC that funding to pay for that circuit is not available and Library agrees that for at least 12 months after said notice it will not order or otherwise obtain a replacement circuit or substantially similar services in place of the canceled circuit.

(d) Library may terminate this Agreement with no penalty if non-recurring, one-time costs for all circuits included in Appendix #1 and any subsequent Addenda are materially increased by the telecommunications carrier from the amount shown in Appendix #1.

(e) ICOE may terminate this Agreement or assign its rights and responsibilities under this Agreement to a third party upon no less than sixty (60) days written notice to Library in the event of termination or expiration of its duties and obligations under the Project and with written approval of the California State Library.

4. Payment

ICOE bills quarterly in arrears. Payment for services shall be due within thirty (30) days of receipt of an ICOE invoice reflecting the provision of the services for which the invoice is sent or as otherwise agreed to by the Library and ICOE. Except for non-recurring costs, if any, costs in Appendix #1 and any subsequent Addenda shall only begin upon installation of circuit(s). The Library will put forth reasonable efforts to make payments within thirty (30) days after receipt of the invoice. The Library understands and agrees that ICOE will only make payment to CENIC for services upon receipt of related payments from the Library. If the Library fails to make payments within thirty (30) days after receipt of the invoice, it agrees to pay any reasonable late payment fees incurred by ICOE under its agreement with CENIC. The maximum payments under this Agreement shall not exceed a total of **Two Hundred Thousand Dollars ($200,000)** in total; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

Unless otherwise agreed to between the Parties, all circuit deployment fees, if any, as set forth in Appendix #1 and subsequent Addenda, are non-cancelable and non-refundable. Upon termination of this Agreement, or any Services provided under this Agreement, any outstanding circuit deployment fees, outstanding recurring charges, non-recurring fees, applicable circuit termination charges, and applicable early termination penalties shall become due and payable immediately upon termination.

5. Miscellaneous

(a) CONDITIONS OF USE. Library agrees to conform to the CENIC Appropriate Use Policy located at https://cenic.org/network/policies/acceptable-use-policy (revised September 13, 2004) and to any specific conditions of use imposed by network service providers or

subcontractors providing communications services to CENIC as may be in force at the time such services are made available, including pursuant to an Addendum to this Agreement. If CENIC, subcontractors, or network service provider conditions of use are modified, Library will be notified and if Library believes it can no longer conform to their requirements, Library shall have one hundred eighty (180) days from the notice of the modification to terminate the affected Service(s) without penalty. Library must provide a 30-day written notice of its termination under this provision to ICOE and CENIC. If Library does not elect to terminate the Service(s), Library must conform to the revised conditions of use. If Library fails to conform to the revised conditions of use, the Services may be subject to termination upon sixty (60) day notice to Library from ICOE or CENIC.

(b) CONFLICTING CLAUSES. If any clause in this Master Agreement is in conflict with a clause in an Addendum to this Agreement, the language in the Addendum shall take precedence only for the service defined in that Addendum.

(c) FORCE MAJEURE. Neither Party shall be responsible for the performance of its obligations hereunder where prevented, delayed, or hindered by war, riots, embargoes, strikes involving third parties, acts of third-party communications service providers, including any local access provider, or of their vendors, or suppliers unrelated to the services offered under this Agreement, acts of unrelated third parties, accidents, cable cuts by third parties not related to services provided under this Agreement, natural disasters, act(s) of God or any other event beyond the reasonable control of the Parties.

(d) GOVERNING LAW. The laws of the State of California shall govern this Agreement.

(e) NON-LIBRARY USES: Library understands that this agreement covers only library use of CalREN and of circuits provided hereunder and Library agrees that no other uses will be made of the services provided herein.

6. Entire Agreement

This Agreement and any Addenda contemporaneously or subsequently executed by the parties constitute the entire Agreement between the parties regarding the subject matter of this Agreement and supersede all prior written or oral agreements with respect to such. This Agreement may not be modified orally, and no modification or amendment shall be binding unless in writing and signed by authorized representatives of both parties.

7. General Provisions

7.1 Nondiscrimination: During the performance of this Agreement,

(a) ICOE and its subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex.

(b) ICOE shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

7.2 Severability: It is expressly agreed and understood by the Parties hereto that if any provision of this Agreement is held to be or invalid under any applicable statute or rule of law, it is deemed to that extent to be omitted. However, the balance of the Agreement shall remain in full force and effect.

7.3 Rights and Remedies: The rights and remedies of the Parties provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

7.4 Prior Agreements: The Library agrees that any prior agreements entered between any entity that previously served as the Broadband Administrator and the Library for the purpose of participating in the CENIC E-Rate Consortium or receiving services pursuant to that program have been terminated.

8. **Indemnification.** Library agrees to indemnify, defend and save harmless ICOE, its officers, agents, and employees from any and all claims, losses, and liabilities accruing or resulting to ICOE and any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Library in the performance of this Agreement, but only in proportion to and in the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Library, its officers, agents, or employees. ICOE agrees to indemnify, defend, and save harmless Library, its trustees, officers, agents, and employees from any and all liabilities accruing or resulting to Library and any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by ICOE in the performance of this Agreement, but only in proportion to and in the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of ICOE, its officers, agents, or employees.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Imperial County Office of Education

By: _____ 2/29/24

Luis Wong
CEO, Network Initiatives

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California.

By: _____
JOELLE GALLAGHER,
Chair of the Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Susan B. Altman*, Deputy County Counsel Date: February 28, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: __ _____

Appendix #1
Provision, Installation, and Maintenance Of Advanced Network (Data) Services: Reimbursement of Circuit Costs

This Appendix lists the circuits contracted for by CENIC on behalf of ICOE and the Library for connecting CENIC's fiber optic backbone to the Library and for library connections that are not direct connections to CENIC's fiber optic backbone, e.g., direct connections between libraries (defined as "Services" in the Agreement). Library understands that CENIC will bill ICOE, and ICOE will bill the Library for the costs of circuits charged by network service providers, including any taxes and surcharges and any one-time installation fees. Prior to approval of CENIC's E-rate Consortium Library Application, not all applicable E-rate and CTF discounts will be reflected on invoices. After the E-rate Application for any given year is approved, the network service provider will coordinate with CENIC to provide appropriate credits, and such credits will be passed from CENIC to ICOE and from ICOE to the Library. Such credits are typically issued sometime during the fiscal year after the year in which the circuits are installed, and Services are first provided. In subsequent years, credits continue to be issued in the fiscal year after the year for which Services have been provided. Library further understands that the exact discounted cost of circuits will not be known until after the E-rate Consortium Library Application is approved. The actual start date of the Service, and therefore of circuit costs, will depend on coordination among CENIC, the Library, and the network service provider. Any one-time (Non-recurring or NRC) costs included below are typically invoiced by carriers prior to circuit installation and will be invoiced to the Library upon receipt of the invoice to CENIC from the network service provider.

CENIC

Associate: Napa County Library

Budget Summary Description: Renewal of Existing Services

Quote Date: 11/30/2023

Quote Expiration: 2/28/2024

Contract Number:

		Line Item	NRC Non-Recurring Cost	MRC Monthly Recurring Cost	ARC Annual Recurring Cost	Term Length
[1]	1	Equipment	$29,742.88			
[2]	2	Equipment Maintenance - New			$4,523.58	
[3]	3	Equipment Maintenance - Existing			$1,110.78	Until existing CPE is returned to CENIC
	4	Facilities				
	5	Membership				
[4]	6	Circuit deployment Fee				
	7	Circuit		$3,252.60		
		Total	$29,742.88	$3,252.60	$5,634.36	
		Annual Cost	$44,665.56			
		Discounted Annual Cost	$10,023.48			
		Total for Year 1	$74,408.44			
		Discounted Annual Cost Year 1	$39,766.36			

Pricing does not include applicable taxes, surcharges, and fees. These costs may vary and will be included in invoices at CENIC's actual cost.

[1] The cost of this replacement CPE is covered by the California Library Connect grant.

[2] The cost of 3 years of equipment maintenance is covered by the California Library Connect grant. Library will be responsible for ongoing ARC after the initial 3 year term.

[3] The cost of existing equipment maintenance will be removed once the new CPE is installed and existing CPE is returned to CENIC for asset reconcillation and disposal.

[4] The California State Library requested, and received funding through the Budget Act of 2021, AB 128, Chapter 21, 2021 Statute, to pay for Circuit Deployment Fees (CDF) on behalf of public libraries connecting to CalREN. The full text can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB128

Version 2.1

CENIC

*Pricing does not include applicable taxes, surcharges, and fees. These costs may vary and will be included in invoices at CENIC's actual cost.

E-rate discount: percent discount indicated is an estimate based on data available at the time the quote was generated. Actual discount percentage will be identified by the E-rate authorities at a later point

LOC A	LOC Z	Carrier Info							CENIC - Cross Connect		E-rate Discount	80.00%	Total Discounted MRC (CTF & E-rate)*	Total Discounted NRC*	
Site Name	Site Name	Service Provider	Service Type	Requested Bandwidth (1)	Est Contract End Date	Non Recurring Cost*	MRC for 5 year term*	Add'l MRC (e.g. Collector Circuit)	NRC	MRC	Discounted NRC*	Discounted MRC*	$565.76	$0.00	
Napa County Library	CalREN	AT&T	Lit Circuit	1 Gbps	7/1/25	$0.00	$801.90	$0.00	$0.00	$0.00	$0.00	$80.19			Renewal
Napa County Library - American Canyon	Napa County Library	AT&T	Lit Circuit	1 Gbps	7/1/29	$0.00	$801.90	$0.00			$0.00	$80.19			Renewal
Napa County Library - Calistoga Public Library	Napa County Library	AT&T	Lit Circuit	1 Gbps	7/1/29	$0.00	$801.90	$0.00			$0.00	$80.19			Renewal
Napa County Library - Yountville	Napa County Library	AT&T	Lit Circuit	1 Gbps	7/1/29	$0.00	$801.90	$0.00			$0.00	$80.19			Renewal
Napa County Library			POTS			$0.00	$45.00	$0.00			$0.00	$45.00			Existing

[1] 100Mbps, 250Mbps, 500Mbps, 1Gbps, 10Gbps, 100Gbps,