

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
SONOMA, THE COUNTY OF MARIN, THE COUNTY OF
MENDOCINO, AND THE COUNTY OF NAPA
FOR THE NORTH BAY NORTH COAST BROADBAND
CONSORTIUM**

This Memorandum of Understanding ("MOU"), dated _____ ("Effective Date"), is made by and between the County of Sonoma ("Sonoma"), the County of Marin ("Marin"), the County of Mendocino ("Mendocino") and the County of Napa ("Napa") (collectively referred to as the "Parties").

RECITALS

Whereas, broadband access, capacity, speeds, and services to the citizens and entities in the region of Marin, Mendocino, Napa, and Sonoma ("North Coast Region") are insufficient and inequitably distributed; and

Whereas, broadband access below the Federal Communication Commission ("FCC") standard speeds in any portion of the North Coast Region damages the local economy, impairs the quality of life for residents, degrades visitor experience, and discourages economic development; and

Whereas, coordination among the Parties' efforts improves broadband access in the North Coast Region and is in the public interest; and

Whereas, the Parties have previously entered into Memorandums of Understanding to cooperate and participate as the North Bay North Coast Broadband Consortium ("NBNCBC"), to facilitate joint broadband initiatives, coordinate efforts and programs, and receive broadband-related funding, including from the California Public Utilities Commission's ("CPUC") Advanced Services Fund Rural and Urban Regional Broadband Consortia Grant Account; and

Whereas, the NBNCBC has been approved for at least one new round of funding from the CPUC's Advanced Services Fund Rural and Urban Regional Broadband Consortia Grant Account ("CASF Grant"), to continue to work together as NBNCBC to implement the [2023-2025 NBNCBC CASF Consortium Grant](#) work plan; and

Whereas, the NBNCBC has also been approved for a California Emerging Technology Funds ("CETF") Regional Broadband Consortium Leadership Grant for Digital Equity Planning and regional efforts to streamline broadband permitting,

consistent with regional strategic planning as outlined in the corresponding work plan; and

Whereas, the CASF Grant and the CETF funding each are subject to use, performance, and accountability terms and conditions as required by the respective grant and funding programs and regulations, and each of the Parties is prepared to comply with those terms and conditions with regard to their use of the funds; and

Whereas, the Parties are generally empowered to engage in public broadband and internet access service activities, including pursuant to Government Code sections 26231 and 53167. Government Code section 6500 et seq, authorizes Parties to enter this MOU to coordinate efforts to assist with strategic planning and community outreach to improve broadband access to the North Coast Region.

Now, Therefore, Be It Understood as follows:

1. The Parties authorize the continuation of the North Bay North Coast Broadband Consortium and its Oversight Committee ("Oversight Committee"). The Oversight Committee shall be comprised of one supervisor from each NBNCBC county, designated by the respective Board of Supervisors, and a NBNCBC Project Manager. The NBNCBC Project Manager shall be a non-voting member of the Oversight Committee. Each of the Oversight Committee Members ("Committee Members") shall serve at the pleasure of the governing board of the Party who appointed the Committee Member and may be removed by such governing body at any time. If at any time a vacancy occurs on the Oversight Committee, a replacement shall be appointed by the respective governing body to fill the position of the previous Committee Member within 90 days of the date that such position becomes vacant.
2. The roles of the NBNCBC Oversight Committee include the following.
 - a. Monitor the progress of the NBNCBC grants' work plans and ensure compliance with the grant restrictions and all federal, state, and local laws.
 - b. Develop and maintain an Action Plan. The Action Plan will focus on the following: 1) work to facilitate planning for the project areas; 2) coordination with various community, county, state, and federal agencies on broadband goals and policies; 3) planning activities associated with future broadband funding and other grants; and 4) planning efforts and community outreach for middle-mile broadband infrastructure access to benefit each county and the region. The Oversight Committee shall consider whether policy support

from each of the respective Boards of Supervisors and revenue funding for the projects described in the NBNCBC Action Plan are available.

- c. Act as the common interface to the NBNCBC counties and their Boards of Supervisors. As part of this role, provide ongoing leadership in the development and deployment of broadband capabilities and services that will drive economic development in the region and to better serve the residents, businesses, and anchor institutions.
- d. Provide representation of the interests of the NBNCBC counties with the major incumbent and potential broadband/Internet providers.
- e. Represent the interests of the Parties, subject to the authority limitations stated in the following paragraphs, in best efforts to ensure the broadband goals and needs of this region are met. Notwithstanding, neither the Oversight Committee or the NBNCBC have authority to:
 - i. Set public policy. Public policy for broadband issues and plans that affect a single Party is to be made by the respective governing body. When public policy decisions for broadband issues and plans affect other NBNCBC counties, the Parties will work to reach consensus.
 - ii. Make or enter into contracts or employ agents or employees.
 - iii. Acquire, entitle, contract, manage, maintain, or operate any buildings, infrastructure, works, real property, or improvements, or acquire property by eminent domain.
 - iv. Sue or be sued in its own name or incur debts, liabilities, and obligations.

3. The Oversight Committee shall meet quarterly and receive quarterly reports from the NBNCBC Management Team. All meetings of the Oversight Committee shall comply with the Ralph M. Brown Act (Government Code section 54950 et seq.), the California Public Records Act (Government Code section 7920.000 et seq.), and all federal and state conflicts of interest laws, including grant requirements and the California Political Reform Act (Government Code section 81000 et seq.).

4. A majority of the Committee Members shall constitute a quorum of the Oversight Committee, except that less than a quorum may adjourn from time to time in accordance with law.
5. The Oversight Committee is authorized to adopt bylaws to otherwise govern its procedures.
6. Committee Members shall serve without compensation but may be paid actual expenses incurred in the performance of their duties. Any such payments of expenses shall fully comply with applicable grant or funding terms and all applicable laws and regulations.
7. A NBNCBC Management Team shall be constituted, comprised of officials and staff from each of the participating Parties/ The Management Team shall provide reports to the Oversight Committee, and perform duties as needed in furtherance of this MOU and as directed by the Oversight Committee.
8. The County of Sonoma, through its Economic Development Board, shall serve as the fiscal agent ("Fiscal Agent") for the Parties for purposes of grants and outside funding. The Fiscal Agent shall perform limited financial services associated with the administration of grants as set forth in the grant's terms and requirements. The Fiscal Agent shall establish a bank account solely for grant funds. The Fiscal Agent and the County of Sonoma shall not be responsible for paying any reimbursement requests or other expenditures that are not in compliance with this MOU or any involved grant. The Fiscal Agent and the County of Sonoma shall not be responsible for determining accuracy of each Party's invoices or compliance with grant terms or any other funding conditions. Each Party shall be responsible for its own compliance with grant and funding terms and conditions and, if applicable, compliance with state laws such as prevailing wages, competitive bid requirements, and local competitive contract selection procedures.

The County of Sonoma shall be entitled to expend grant funding and other NBNCBC funds for all direct expenses on behalf of the NBNCBC, including for external audit costs, and to retain reasonable amounts for administration costs as Fiscal Agent, as permitted by applicable grant funding and program allowance.

9. The Parties authorize the County of Sonoma, consistent with the Action Plan, to apply on behalf of and accept grant funds from all sources, including from the CPUC, CETF, and other governmental entities, and to distribute the funds to each of the Parties, as set forth in the grant's work plan and budget.

Notwithstanding, the County of Sonoma does not warrant or guarantee any grant or receipt of any funding.

Each Party shall be solely responsible for its own grant compliance, and for understanding and implementing all grant requirements for its use of funds. The County of Sonoma, as Fiscal Agent and pass-through entity for funds, shall not be responsible or liable to any Party with regard to that Party's receipt and use of funds, including having no duty to inform, train, advise, implement, or monitor.

10. All reports, documents, payment requests, and declarations shall be mailed to the Fiscal Agent at the following address:

Sonoma County Economic Development Board
c/o Rebekah Heinze, Fiscal Analyst
141 Stony Circle, Suite 110
Santa Rosa, CA 95401

11. Each Party shall submit invoices to the Fiscal Agent bi-annually on the following dates: August 15 and February 15 of each year, or more often if required in accordance with any grant reporting terms. The Party shall include a signed declaration with each invoice ensuring the accuracy of the payment request and the compliance with the terms of the grant and compliance with all federal, state, and local laws, including prevailing wage and competitive bid requirements, if applicable. A copy of the declaration is attached hereto as Exhibit A.

12. Neither federal, state, local income tax, nor payroll tax of any kind shall be withheld or paid by Fiscal Agent on behalf of the Parties or employees of the Parties. Parties' employees or representatives shall not be treated as employees of the Fiscal Agent with respect to the services performed hereunder for federal, state, or local tax purposes.

13. Each Party shall fully comply with all federal, state, and local laws, rules, executive orders, and regulations that may be applicable to this MOU, including compliance with prevailing wage laws set forth in California Labor Code section 1720, and with all grant terms and conditions to the extent of use of any grants or funds obtained by NBNCBC, including as to the CASF Grant and CETF grant. If applicable, each Party shall furnish certificates to the effect that it has complied with said laws, rules, regulations, and/or grant terms and conditions.

14. Effective Date and Term. This MOU shall commence January 1, 2024, and terminate December 31, 2027, unless terminated as otherwise permitted herein, and subject to the rights of the Parties to withdraw as set forth below.

15. Mutual Termination. This MOU may be terminated only by the mutual agreement of all of the Parties. Upon termination of this MOU, Parties shall mutually agree upon the disposition of the grant funds in compliance with the terms of any grants. If the Parties are unable to reach an agreement on such disposition, the funds shall be apportioned pursuant to each Parties proportionate share which shall be determined by the Fiscal Agent in accordance with applicable grant terms. The grant restrictions and state and local laws shall continue to apply to the use of the funds.

16. Withdrawal. Individual Parties may withdraw from this MOU without affecting the continuing participation by the remaining Parties.

17. Amendment of this MOU. This MOU may be amended only by the written agreement of all participating Parties.

18. Indemnification. Each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expenses, including attorneys' fees and witness costs, to the extent arising from, in connection with, or caused by any act, omission, or negligence of such indemnifying Party or that of its agents, employees, contractors, subcontractors, or invitees, and regardless of whether or not there is concurrent or contributory negligence on the indemnitee's part. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts, this indemnity provision survives the MOU.

19. Severability. If one or more clauses, sentences, paragraphs, or provisions of this MOU shall be held to be unlawful, invalid, or unenforceable, it is hereby agreed by the Parties that the remainder of the MOU shall not be affected. Thereby, such clauses, sentences, paragraphs, or provisions shall be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.

20. Complete MOU. This MOU constitutes the full and complete agreement of the Parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the Parties with respect to the subject matter of this MOU are merged into this MOU.

21. Execution in Counterparts. This MOU may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all signing Parties had signed the same instrument.

In Witness Whereof, Parties have executed this MOU as set forth below.

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

By _____
BELIA RAMOS, Chair
Board of Supervisors

"COUNTY"

| | | |
|--|--|--|
| <p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Ryan FitzGerald (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>November 29, 2023</u></p> <p>PL No.: 104322</p> | <p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p> | <p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p> |
|--|--|--|

Exhibit A

North Bay North Coast Broadband Consortium (NBNCBC) Declaration of Accuracy and Completeness and Payment Request

To: County of Sonoma Economic Development Board

From: NBNCBC Member County:

Name:

Title:

County:

Attached is our Report and/or Payment Request for:

I declare under penalty of perjury under the laws of the State of California that, any and all payment requests hereby submitted are accurate and complete; fully comply with all federal, state and local laws, including prevailing wage and competitive bid requirements, if applicable; and, are eligible for reimbursement and fully comply with the applicable grant terms and conditions, including corresponding Work Plan, that this request is being submitted for.

Signature: _____

Print Name: _____

Date: _____