

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
SONOMA AND THE COUNTY OF MARIN, THE COUNTY OF MENDOCINO AND
THE COUNTY OF NAPA
AS PART OF THEIR PARTICIPATION
IN THE NORTH BAY NORTH COAST BROADBAND CONSORTIUM**

This Memorandum of Understanding (“MOU”) 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”) and is dated for convenience as of January 1, 2017.

RECITALS

Whereas, providers of broadband access and services claim they provide standard or above broadband capacity and services to the citizens and entities in the region of Marin, Mendocino, Napa and Sonoma (“North Coast Region”); 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, it is in the public interest that the Parties coordinate their efforts to improve broadband access in the North Coast Region; and

Whereas, Parties have successfully completed work on a two-year, \$250,000 grant from the California Public Utilities Commission’s (“CPUC”) Rural and Urban Regional Broadband Consortia Grant Account, as the North Bay/North Coast Broadband Consortium (“NBNCBC”), that involved gathering data regarding the following: (1) immediate and future broadband needs and demands of residents and entities that are located in the North Coast Region; (2) reliability and accuracy of the regional broadband data compiled by CPUC and National Telecommunications and Information Administration (“NTIA”); and (3) assist broadband providers by giving providers access to this data so the providers can ensure standard or broadband access is made available throughout the North Coast Region; and,

Whereas, the CPUC staff has recommended Resolution T-17544 to the CPUC Commissioners for adoption approving a new \$250,000 two-year grant of funds (up to \$125,000 per year) to enable Marin, Mendocino, Napa and Sonoma counties to continue work together as NBNCBC to implement the CPUC approved **NBNCBC Action Plan and Budget** for each year; and,

Whereas, Government Code section 6500 et seq. authorizes Parties to enter this MOU to coordinate efforts to improve broadband access to the North Coast Region; and

OPERATIVE PROVISIONS

Now, Therefore, Be It Understood as follows:

1. The Parties authorize the County of Sonoma to accept grant funds from the CPUC Advanced Services Fund Rural and Urban Regional Broadband Grant Program (“Grant”) of up to \$250,000 (up to \$125,000 per year) from the CPUC and to distribute the funds to each of the Parties as set forth in the budget of the **NBNCBC Action Plan and Budget**, which has been approved by the CPUC.

2. The Parties authorize the continuation of the North Bay North Coast Broadband Consortium Oversight Committee (“Oversight Committee”) comprised of one supervisor from each county and the NBNCBC Project Manager. Each county Board of Supervisors has designated one of its supervisors to serve on the Oversight Committee. 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 Committee, a replacement shall be appointed to fill the position of the previous Committee Member within 90 days of the date that such position becomes vacant.

The roles of the NBNCBC Oversight Committee include:

A. Monitor the progress of the **NBNCBC Action Plan and Budget**

Specifically, the **Action Plan** will focus on the following:

- Work with communities and providers to facilitate the development and implementation of “last mile” projects for priority areas identified by previous grant work programs.
- Sonoma and Mendocino County teams will work with all the stakeholders, facilitating the development, adoption and launching of a countywide strategic broadband plan.
- The **NBNCBC** team will work with all the stakeholders, facilitating the development, adoption and launching of a Route 101 Corridor Middle-Mile Infrastructure linking the countywide backbones together to enhance the growth and economic development in this part of California.
- County boards of supervisors will consider approving policy for the development of broadband infrastructure throughout the county.

B. Act as the common interface to the NBNCBC counties and their Boards of Supervisors

- As part of this role, analyze and consider formalization of this consortium into a JPA structure to 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.

C. Provide unified representation of the interests of the four counties with the major incumbent and potential broadband/Internet providers

- To ensure the broadband goals and needs of this region are met NBNCBC will represent the interests of the counties, subject to the authority limitations stated in the next paragraph.

The NBNCBC Oversight Committee does not have authority to set public policy. Public policy broadband issues and plans that affect a NBNCBC county are to be made by the appropriate county governing bodies within that county. When public policy broadband issues and broadband plans cross over NBNCBC counties the four county Boards of Supervisors will work towards consensus. A majority of the Committee Members shall constitute a quorum of the Committee, except that less than a quorum may adjourn from time to time in accordance with law.

3. The Oversight Committee meets quarterly and receives 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 6250 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. The Oversight Committee is authorized to adopt bylaws to otherwise govern its procedures. The Oversight Committee shall not have authority to make and enter contracts. The Oversight Committee shall not have authority to employ agents and employees. The Oversight Committee shall not have authority to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works or improvements. The Oversight Committee shall not have authority to acquire property by eminent domain. The Oversight Committee shall not have authority to lease property. The Oversight Committee shall not have authority to sue or be sued in its own name. The Oversight Committee shall not have authority to incur debts, liabilities and obligations.

5. Reimbursement of Expenses. Committee Members shall serve without compensation, but may be paid actual expenses incurred in the performance of their duties. Payment of expenses shall fully comply with the terms of the grant as set forth in the CPUC California Advanced Services Fund Rural and Urban Regional Broadband Grant Program: Administrative Manual ("Administrative Manual").

6. The Sonoma County Economic Development Board shall serve as the fiscal agent ("Fiscal Agent") for the Parties for purposes of the Grant. The Fiscal Agent shall perform limited financial services associated with the administration of the Grant as set forth in Administrative Manual. The Fiscal Agent shall establish a bank account solely for Grant funds as recommended by the Administrative Manual. The Fiscal Agent and the County of Sonoma shall not be responsible for paying any reimbursement requests that have not been approved by the CPUC. The Fiscal Agent and the County of Sonoma shall not be responsible for reviewing

accuracy of each Party's invoices or compliance with the grant terms. Each Party shall be responsible for its own compliance with the terms of the Grant and shall sign a declaration of accuracy and completeness with each payment request. A copy of the declaration is attached hereto as Exhibit A.

7. Effective Date and Term. This MOU shall become effective January 1, 2017. The MOU shall terminate June 30, 2019 or until this MOU is terminated in accordance with Section 8, subject to the rights of the Parties to withdraw in accordance with Section 9.

8. 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 the rant. If the Parties are unable to reach an agreement on such disposition, the funds shall be apportioned pursuant to each Party's proportionate share which shall be determined by the Fiscal Agent in accordance with the terms of the Grant.

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

10. 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 expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. 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.

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

12. 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.

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

Valeria Rose, Administrative Aide
Sonoma County Economic Development Board
141 Stony Circle, Suite 110
Santa Rosa, CA 95404

Each Party shall submit invoices to the Fiscal Agent quarterly on the following dates: March 31, June 30, September 30 and December 31 of the applicable years. 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. A copy of the declaration is attached hereto as Exhibit A.

14. Federal, State and Local Payroll Taxes. Neither federal, state nor 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. 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, if applicable. At the request of Fiscal Agent or the Oversight Committee, each Party shall furnish certificates to the effect that it has complied with said laws, rules and regulations.

15. 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.

16. 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.

County of Sonoma

By: _____
Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

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

County of Marin

By: _____
Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

County of Mendocino

By: _____
Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

County of Napa

By: _____
Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

Exhibit A to MOU

**North Bay North Coast Broadband Consortium (NBNCBC) Quarterly Report and
Payment Request Transmittal Letter and Declaration**

To: County of Sonoma Economic Development Board

From NBNCBC Member County:

Name: _____

Title: _____

County: _____

Attached are the Quarterly Report and/or Payment Request for:

Work Plan Yr/Qtr # _____

I declare under penalty of perjury under the laws of the State of California that, to the best of my knowledge, all of the statements and representations made in this Quarterly Report are true and correct and any and all payment requests hereby submitted fully comply with the terms of the CASF Grant Administrative Manual (*California Advanced Services Fund Rural and Urban Regional Broadband Consortium Grant Program Administrative Manual, Version 3, January 2014* - <http://www.cpuc.ca.gov/NR/rdonlyres/FFD83784-5136-47A8-A001-6D85C2C9DB45/0/AdminManualConsortia2014a.pdf>)

Signature _____

Print Name _____

Date _____