

**Agreement
Between
County of Monterey, acting through its Information Technology Department
AND
The Corporation For Education Network Initiatives In California**

THIS AGREEMENT is between the Corporation for Education Network Initiatives in California, hereinafter called "CENIC" and The County of Monterey, hereinafter called "COUNTY".

WITNESS THAT

WHEREAS, the mission of CENIC is to bring high speed network access to research and educational institutions; and

WHEREAS, The California State University of Monterey Bay (CSUMB) and the Naval Postgraduate School (NPS) have contracted with CENIC to obtain access to CENIC's research and education high speed network (CalREN); and

WHEREAS, the Count of Monterey is seeking to facilitate the provision of high-speed networking within the County of Monterey, in particular to academic institutions; and

WHEREAS, the County agrees to provide CENIC with facility space in the County's Information Technology Department (ITD) facilities to house CalREN equipment necessary to supply high speed network services; and

WHEREAS, it is expected that other research and educational institutions within Monterey County desire to have access to CalREN network services once they are available in the region;

NOW THEREFORE, the parties mutually agree as follows:

I. STATEMENT OF WORK

- The County gives permission, revocable and terminable as hereinafter provided, to CENIC to occupy a space determined and provided by the County that satisfies the requirements stipulated in EXHIBIT A within its ITD facilities at 1590 Moffett Street, Salinas, CA for the purpose of locating CENIC telecommunications equipment and operating a CalREN telecommunications distribution and signal regenerating site. Such operations shall be conducted so as

not to interfere with County's mission and operations of its facilities for other purposes.

- CENIC shall be permitted to use the provided space for the operation of its communication equipment and related purposes. CENIC shall not be permitted to use the space or premises for any other purpose except by prior written permission of the County. Any installation modifications of the County facility, support cabling, power, environmental controls, and/or other utilities for CENIC purposes must be authorized by and paid for by CENIC and approved in advance by the County in writing.
- CENIC shall provide one (1) 19" wide, 7' open, and simple post equipment rack for collocation of CENIC equipment. The County will provide electrical power services consisting of two 20A 115VAC to a CENIC-provided power distribution unit at top of frame. Operational requirements are defined in **EXHIBIT A**.
- The County shall support, at CENIC's request, an additional rack, as described above, under the same terms as the rack identified above.
- CENIC shall be responsible for obtaining and paying the cost of telecommunications services to connect its equipment located in the County's facility to CENIC's CalREN or other networks.
- CENIC shall be solely responsible for obtaining and paying the cost of all permits, licenses or other approvals by any regulatory body having jurisdiction over the equipment and its operation as authorized herein.
- The County shall provide System Programmer Analyst or Network Systems Engineer remote hands services to CENIC on an hourly basis when pre-arranged three business days in advance with ITD representatives. Rates for such services are set forth in **EXHIBIT B** which is attached hereto and incorporated herein.
- The County shall maintain and operate its ITD facility at its own expense. The costs of any maintenance of CENIC's equipment and facility improvements made upon CENIC's request shall be the sole responsibility of CENIC. If County performs maintenance upon CENIC's equipment and facility improvements at CENIC's request, within 30 days of receipt of an invoice CENIC shall reimburse the County for the actual costs of maintenance of CENIC equipment or facility improvements.
- In the event of damage, destruction, or loss of any or all of CENIC's equipment, CENIC shall repair or replace the same at CENIC's sole cost and expense and shall hold harmless the County of Monterey, its officers, employees, and agents for damage, destruction, or loss of such equipment from all causes whatsoever, except for the sole acts or failures to act by the County.
- Within 30 days of termination of the Agreement, CENIC shall remove all of its installed equipment and improvements, surrender all rights and privileges under this Agreement, and restore the facility to its pre-installation condition to the satisfaction of the County and at CENIC's expense.

II. PROJECT PERSONNEL AND OTHER INFORMATION

COUNTY

Program Matters:	Alex Zheng, Infrastructure Division Manager County of Monterey 1590 Moffett Street Salinas, CA 93905 (831) 759-6991
Contractual Matters:	Sandra Shaffer, Management Analyst III County of Monterey 1590 Moffett Street Salinas, CA 93905

CENIC

Fiscal & Contractual Matters:	Louis Fox, President & CEO 16700 Valley View Avenue, Suite 400 La Mirada, CA 90638
Program Matters:	Robert Kwon, Director Engineering 16700 Valley View Avenue, Suite 400 La Mirada, CA 90638

III. TERM, RENEWAL AND TERMINATION

CENIC telecommunications equipment has been operational since 2006. This Agreement shall be in effect from July 1, 2019 through June 30, 2024. CENIC may extend the term of the Agreement for three additional five (5) year periods, provided notice is given in writing to the County at least 90 days before the end of the term, or any renewal term. The County or CENIC may terminate this Agreement without cause by giving 180 days' written notice to the other party of the termination. The County or CENIC may terminate this Agreement with cause by notifying the other party in writing of the material cause(s) for termination, providing a 30-day period to cure the material cause(s) or provide written assurances satisfactory to the other party within such 30-day period that the material cause(s) will be promptly corrected, and, if such material cause(s) are not corrected or satisfactory written assurances are not provided within such 30-day period, this Agreement shall terminate immediately thereafter upon written notice to the other party.

IV. FEES and CHARGES

CENIC shall reimburse the County, within 30 days of presentation of an invoice, for the actual costs of construction and/or installation of the equipment racks and/or

cabling (telecommunications or power) necessary to make the equipment serviceable at a total cost not to exceed \$ 25,000.

CENIC shall compensate the County each month, within 30 days of presentation of an invoice, a sum set forth in **EXHIBIT B** for each square foot of raised floor space occupied as reimbursement for the floor space allocated to the equipment, physical security for the equipment, and environmental utilities (i.e. electrical power and HVAC). Such calculation of space shall include any space consumed by any CENIC imposed access requirement and/or enclosed within perimeter security fencing and shall be rounded to the nearest full square foot.

CENIC shall compensate the County within 30 days of the receipt of an invoice for purchased hourly services. Such invoices shall be submitted by the County no more than monthly and no sooner than the ten (10) calendar days after the end of the month during which the services were provided. The normal billable hourly for services provided by the County are set forth in **EXHIBIT B**.

The rates established in **EXHIBIT B** shall be effective for the first year of the Agreement and subsequently reviewed annually by the County and adjusted to reflect relevant changes in the rate's cost basis. The County may increase the rates established in **EXHIBIT B** annually by providing notice to CENIC 30 days in advance of the commencement for the year in which the new rates are to be effective.

V. ACCESS

The County shall provide CENIC access to the premises on an as needed basis for emergency response to equipment outages on a 7-day, 24-hour basis, including non-CENIC personnel providing services on CENIC's behalf. Routine maintenance and inspections by CENIC must be coordinated in advance with a 72-hour oral notice to the ITD facility operations manager. In no case shall CENIC personnel be permitted access to premises or equipment without being accompanied by County personnel. Should CENIC access be required during a period when the facility outside of normal business hours (Monday-Friday 08:00 to 17:00 except on holidays) access will be coordinated with the ITD on-call Network Engineer by calling 831-796-1400 and speaking to ITD answering service and requesting the assistance. This support will be billed for a fee in amounts as set forth in EXHIBIT B, and shall be paid to the County by CENIC after receipt of an invoice to reimburse the County for the ITD staff time during unattended shifts.

All CENIC personnel, including subcontractors, provided access to ITD facilities or information about such facilities are required to maintain the confidentiality of such information and not disclose or cause to be disclosed, any such information that has been provided on a need-to-know basis.

VI. AMENDMENTS

Any amendments or modifications to this Agreement shall be by mutual consent of the parties in writing.

VII. INDEMNIFICATION

CENIC undertakes and agrees to indemnify and hold harmless the County of Monterey, the Department of Information Technology, the Board of Supervisors of the County of Monterey, and all of its officers and employees, and, at the option of the County, defend the County, and any and all of its Boards, officers, agents, representatives, employees, assigns and successors in the interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including CENIC's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of CENIC, or CENIC's officers, agents, employees, or subcontractors of any tier, except for the active negligence or willful misconduct of the County, its Board, officers, agents, representatives or employees, "CENIC's performance" includes CENIC's action or inaction and the action or inaction of CENIC's officers, employees, agents and subcontractors.

VIII. INSURANCE

1. Without limiting CENIC's duty to indemnify, CENIC shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:
 - a) Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 - b) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 - c) Workers' Compensation Insurance, if CENIC employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

- d) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, CENIC shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

2. OTHER INSURANCE REQUIREMENTS

- a) All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CENIC completes its performance of services under this AGREEMENT.
- b) Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CENIC and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- c) Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CENIC'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CENIC'S insurance.
- d) Prior to the execution of this AGREEMENT by County, CENIC shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CENIC has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file.

Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

- e) CENIC shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CENIC and CENIC shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CENIC to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

IX. COOPERATION

County and CENIC shall cooperate in the event of any legal action or claim made by a third party that may result from activities relating to the performance of this Agreement.

X. FORCE MAJURE

Neither CENIC nor County shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences beyond its reasonable control, including, without limitation: fire, lightning, explosion, power surge or failure, water, acts of God, war, revolution, civil commotion or acts of civil or military authorities or public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts; inability to secure materials and supplies, transportation facilities, fuel or energy shortages, or acts or omissions of others.

XI. ASSIGNMENT

The obligation of the parties pursuant to this Agreement shall not be assigned without the prior written consent of the parties, such consent not to be unreasonably withheld.

XII. SEVERABILITY

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired, or invalidated in any way.

XIII. COMPLIANCE

The parties shall comply with all applicable federal, state, and local laws, regulation and codes in the performance of this Agreement. Each party further agrees to

indemnify the other party for any loss or damage that may be sustained by reason of such party's failure to comply with any applicable federal, state or local laws, regulations or codes.

XIV. USE OF NAME

The Parties agree that they will not use the name, logo, or seal, of the other Party or its employees in any advertisement, press release or publicity with reference to this Agreement or any product or service resulting from this Agreement, without prior written approval of the other Party.

XV. NON-WAIVER

Waiver or non-enforcement by either party of a term or condition shall not constitute a waiver or a non-enforcement of any other term or condition or of any subsequent breach of the same or similar term or condition.

XVI. NO THIRD-PARTY RIGHTS

Nothing in this Agreement is intended to make any person or entity that is not signatory to the agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

XVII. ENTIRE AGREEMENT

This Agreement and any exhibits attached hereto constitute the entire agreement between the parties to it and supersede any prior understanding or agreement with respect to the services contemplated, and may be amended only by written amendment executed by both parties to this Agreement.

XVIII. APPLICABLE LAW

This Agreement shall be governed by and interpreted under the laws of the State of California. The venue for such actions shall be the County of Monterey, California.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the day and year written below.

MONTEREY COUNTY

THE CORPORATION FOR EDUCATION
NETWORK INITIATIVES IN CALIFORNIA

Contracts/Purchasing Officer

By: 

Signature of Chair, President, or
Vice-President

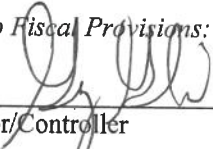
Dated: _____

Louis Fox President + CEO

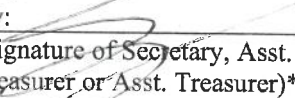
Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 4/29/19



Deputy Auditor/Controller

By: 

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated: 5-17-19

Bill Park, CFO

Printed Name and Title

Approved as to Liability Provisions:

Dated: 4/25/19

Risk Management

Dated: _____

Approved as to Form:



Deputy County Counsel

Dated: May 17, 2019

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A

Operational Requirements

Site: INFORMATION TECHNOLOGY DEPARTMENT 1590 Moffett Street, Salinas, CA

PHYSICAL & ELECTRICAL – GENERAL REQUIREMENTS

REQUIREMENT
Commercial power shall be backed up with an emergency generator with automatic transfer and with fuel capacity for at least 40 hours of continuous operation.
CENIC will provide a 7' single post 19" rack equipped for up to two 20A 115 VAC, and two 30A 115 VAC power feeds connected to a CENIC provided power distribution system. ITD will have capacity to provide a second rack should CENIC request it during the contract term.
In order to provide ADA compliant access to CENIC equipment ITD will layout space so that each equipment rack will have at least 36" clearance in front and back.
ITD will seismically secure each rack with earthquake bracing conforming to Zone 4 seismic standards at CENIC's request and expense.

OPERATIONAL SUPPORT REQUIREMENTS

REQUIREMENT
ITD agrees to provide to the CALREN Network Operations Center the names and contact information for both normal business day and out-of-hours service and support request, with such information effective on a 24x7x365 basis.
With appropriate County escorts, CENIC representatives shall have 24x7x365 access to the rack
ITD shall provide emergency remote hands support within 4 hours on a 24x7x365 basis
ITD shall provide routine remote hands support with three business days advance notice
ITD shall be responsible for monitoring of, and response to, hub site power and facilities alarm conditions.

EXHIBIT B

RATE SCHEDULE FOR FEES AND CHARGES BY THE COUNTY OF
MONTEREY

Raised Floor Space Rate = \$25.00 per square foot for each month of occupation. Partial months of occupation shall be billed at the full month rate.

Standard Hourly Labor Rate= \$130.00 per hour

Overtime Hourly Labor Rate= \$195.00 per hour with a two-hour minimum

Escorted Access During Unstaffed Shifts= \$195.00 per hour with a two-hour minimum

Parts, Material. or Contractual Services acquired on behalf of CENIC will be invoiced at the actual County cost.

[Note: fees and charges are **valid through June 30, 2020** and are subject to periodic adjustment by the County upon giving CENIC 30 days' advance written notice of the adjustment as per the terms and conditions of the Agreement]