

ORIGINAL

**AGREEMENT BETWEEN EL DORADO COUNTY LIBRARY AND
CALIFA
FOR THE PROVISION, INSTALLATION AND MAINTENANCE OF
ADVANCED NETWORK (DATA) SERVICES**

AGREEMENT # 345-S1611

This Agreement, hereinafter referred to as "Agreement", is entered into as of February 23, 2016 by and between Califa Group, a California public benefit corporation, hereinafter referred to as "Califa" and the El Dorado County Library hereinafter referred to as "Library". Califa 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.

El Dorado County Library
Jeanne Amos
Library Director
345 Fair Lane
Placerville, CA 95667

Califa
Susan Hildreth
Executive Director
2471 Flores Street
San Mateo, CA 94403

WITNESS THAT

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

WHEREAS, Library desires to contract with Califa to obtain one or more data circuits to connect Library to the CENIC high speed broadband fiber network, California Research and Education Network (CalREN), and, if specified in Appendix #1, attached, to connect libraries to other sites as identified in said Appendix for the purpose of connecting to CalREN.

NOW THEREFORE, Library and Califa enter into this Agreement:

1. Relationship between the Parties

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

2. Services to be Provided

The primary communications infrastructure provided by CENIC is the California Research and Education Network ("CalREN"). Among the services that CENIC will provide to Libraries are use of CalREN and contracting for and provision of data circuits supplied by network service providers.

Califa, on behalf of Library, will contract with CENIC for such data circuits. Specific circuits and their costs are included in the Appendix attached. Califa will assure that

CENIC notifies the Library of installation requirements and necessary maintenance instructions. Neither CENIC nor Califa shall be responsible for operating or maintaining software, equipment or cabling that connects equipment not provided by CENIC for the services unless specifically agreed to in writing by CENIC.

3. Term and Termination of this Agreement

- (a) **TERM OF THIS AGREEMENT.** This Agreement shall be in effect from March 1, 2016 through June 30, 2017. This agreement will automatically renew unless one party notifies the other at least 60 days in advance of June 30, 2017 and each June 30 of each renewal period.
- (b) **TERMINATION.** Termination prior to the end date stated above shall result in Library having to pay any circuit telecommunications carrier termination charges resulting from early termination of the Service. Such fees are normally calculated and will not exceed the cost of monthly circuits, including any taxes and surcharges, UNDISCOUNTED, times the number of months between the cancellation date and June 30. For cancellation in mid-month, the termination fee for that month will be calculated as monthly circuit cost plus taxes and surcharges, UNDISCOUNTED, times the ratio of the number of days of service remaining in the month after cancellation divided by the days in that month.
- (c) Library may terminate this agreement if non-recurring, one-time costs for all circuits included in Appendix #1 are increased by the telecommunications carrier from the amount shown in Appendix #1. See footnote for non-recurring charges in Appendix #1 for more information.

4. Payment

Payment for services shall be due within thirty (30) days of receipt of a Califa invoice reflecting provision of the services for which the invoice is sent; or as otherwise agreed to by Library and Califa. Except for non-recurring costs, if any, costs in Appendix #1 shall only begin upon installation of circuit(s). Library will put forth reasonable efforts to make payments within thirty (30) days after receipt of invoice.

5. Miscellaneous

- (a) **CONDITIONS OF USE.** Library agrees to conform to the CENIC Appropriate Use Policy located at <http://www.cenic.org/p=2081/> and to any specific conditions of use imposed by subcontractors providing communications services to CENIC as may be in force at the time such services are made available per an Addendum to this Agreement. If such conditions of use are modified and Library believes it can no longer conform to their requirements, Library shall have one hundred eighty (180) days to terminate the affected service without penalty. If Library does not elect to terminate the service, Library must conform to the revised conditions of use or be subject to termination of the service by 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 but only for the service defined in that Addendum.
- (c) **FORCE MAJEURE.** Neither party will be responsible for performance of its obligations hereunder where delayed or hindered by war, riots, embargoes, strikes involving third parties, acts of Local Access Providers or of its vendors, or

suppliers, acts of unrelated third parties, accidents, cable cuts, act(s) of God or any other event beyond its reasonable control.

- (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 shall be binding unless in writing and signed by authorized representatives of both parties.

7. General Provisions

7.1 Nondiscrimination:

- (a) During the performance of this Contract, Califa and its subcontractors shall not deny the Contract'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. Califa shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

7.2 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 Library provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

8. Insurance:

Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.

- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and

volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
 - L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
 - M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
 - N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
 - O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.
9. **Indemnification.** Library shall indemnify Califa, its trustees, officers, agents and employees harmless from and against any and all liability, loss, expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to 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.
- Califa shall indemnify Library, its trustees, officers, agents and employees harmless from and against any and all liability, loss, expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to 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 Califa, its officers, agents, or employees.
10. **Dispute Resolution.** All disputes between the parties hereto with respect to their rights and duties hereunder, excepting only indemnity claims, shall be resolved through binding arbitration pursuant to Code of Civil Procedure Section 1280, with the non-prevailing party responsible for the arbitrators' fee but in all other respects with each side bearing its own costs and attorney's fees. Any dispute resolution action arising out of this Agreement shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.
11. **Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and

other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, except for the provisions of paragraph 3b, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation, including termination costs as contained in paragraph 3b, above.

12. The County Officer or employee with responsibility for administering this Agreement is Jeanne Amos, Library Director, or successor.

Requesting Contract Administrator Concurrence

By: Jeanne Amos Dated: 2/11/2016
Jeanne Amos
Library Director

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

For Library
[Signature]
Signature

For Califa
[Signature]
Signature

Ron Mikulaco
Name

Susan Hildreth
Name

Chair, Board of Supervisors
Title

Executive Director
Title

2/23/16
Date

2/18/16
Date

ATTEST: James S. Mitrison
Clerk of the Board of Supervisors

By: Marcie MacFarland
Marcie MacFarland, Deputy Clerk

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 Califa and the Library for connecting CENIC’s fiber optic backbone to Library and for Library connections that are not direct connections to CENIC’s fiber optic backbone, e.g. direct connections between libraries. Library understands that CENIC will bill Califa, and Califa will bill Library, for actual costs of circuits charged by network service providers, including taxes and surcharges and without markup. Prior to approval of CENIC’s Library consortium E-rate application by the FCC’s E-rate contractor, 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 Califa and from Califa to the Library. Such credits will be issued to the County in the form of a lump sum reimbursement check and 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 application is approved. The actual start date of the service, and therefore of circuit costs, will be dependent 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 Library upon receipt of invoice from carrier.

The circuit being provided by the network service provider is a switched “cloud” circuit, with two billed elements, or links.

1 Gbps AT&T ASE Circuit

Summary Totals for El Dorado County Public Libraries	Pre Discount Costs (not including Taxes & Surcharges)	
	Non-Recurring Costs	Monthly
	\$ 64,940.00	\$ 5,932.50

El Dorado County Library					
AT&T & Comcast (5 year term)					
		1G to CalREN			
Summary Totals		Pre Discount Costs (not including Taxes & Surcharges)		Estimated Net Costs, after discounts applied (not including Taxes & Surcharges)	
		NRC*	Monthly	NRC*	Monthly
		\$ -	\$ 5,932.50	\$ -	\$ 593.25
Note: Design is for a 1Gbps circuit from El Dorado County Library to a CalREN Hub site.					
1G Circuit to CalREN					
Connection to HUB		Disc %	Pre Discount Costs		Estimated Net Costs, after discounts applied
E-rate Discount for El Dorado County***:		0.8			
CTF Discount**:		0.5			
Connection to CalREN Hub at El Dorado County			NRC*	Monthly	NRC* Monthly
Link 1: Placerville (Main) Library 1G to CalREN Hub (Comcast)			\$ -	\$ 940.00	\$ - \$ 94.00
Link 2: Cameron Park Library 1G to CalREN Hub (Comcast)			\$ -	\$ 940.00	\$ - \$ 94.00
Link 3: El Dorado Hills Library 1G to CalREN Hub (Comcast)			\$ -	\$ 940.00	\$ - \$ 94.00
Link 4: Georgetown Library 1G to CalREN Hub (Comcast)			\$ -	\$ 940.00	\$ - \$ 94.00
Link 5: Pollock Pines Library 1G to CalREN Hub (Comcast)			\$ -	\$ 940.00	\$ - \$ 94.00
Link 6: South Lake Tahoe Library 1G to CalREN Hub (AT&T)			\$ -	\$ 1,232.50	\$ - \$ 123.25
Equipment to Connect to CalREN Hub at El Dorado County Library			Qty	Cost	Total
			5	\$ 12,988.00	\$ 64,940.00
Taxes & Surcharges on links			<i>Varies</i>		
Library Equipment		El Dorado County is responsible to provide a router with a 1 Gbps interface and at least one LAN interface. This router should support BGP and NAT. An upgraded Firewall appliance may also be needed to support 1 Gbps data streams.			

<p>Note 1: These numbers do not include early termination fees that might be required from current provider(s), nor equipment the library may need to purchase to support these circuits, nor Taxes & Surcharges on the circuits.</p>					
<p>Note 2: The pricing/service for the 5 highlighted branches provided by Comcast are bundled quote and all sites must be ordered at this service level. Individual pricing may be obtained, but would change the pricing of both NRC & Monthly for all 5 branches.</p>					
<p>Note 3: E-rate and CTF discounts are dependent upon the continued funding of these programs. CENIC/Califa cannot guarantee the E-rate and CTF discounts, and these discounts are subject to change.</p>					
<p>Definitions</p>					
<p>*NRC - Non-Recurring Charges. These costs could be subject to change should a telecommunications provider determine during circuit engineering prior to circuit installation that additional costs are required. Should this occur, the library may cancel the circuit with NRC, or if all circuits are to be charged additional costs as compared to those in this agreement library may cancel this entire agreement or ask whether another circuit(s) with lower NRC but potentially higher on going monthly costs is (are) available.</p>					
<p>**CTF discount - percent discount of amount after E rate discount is applied.</p>					
<p>***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.</p>					