

Memorandum of Understanding

Between the Imperial County Office of Education and Silver Valley USD regarding the Implementation of the Broadband Infrastructure Improvement Grant Program

This Memorandum of Understanding establishes an Agreement (“Agreement”) between the **Imperial County Office of Education** (“ICOE”), and **Silver Valley USD** (“Agency”) to procure solutions, which meet the connectivity needs experienced by **Silver Valley USD** at school site(s) identified in Appendix B. By virtue of Assembly Bill AB 93, the K-12 High Speed Network program (K12HSN) and its operator, ICOE, are required to utilize state funding to resolve poor connections to the Internet that result in an inability on the part of Agency to offer online computer adaptive testing to students. The Agency is identified as a potential grant awardee and may receive benefits of the Broadband Infrastructure Improvement Grant 2.0 (BIIG 2.0) as outlined in this Agreement.

1. Background.

Assembly Bill AB 93 (signed into law by the Governor on June 24, 2015 – See Appendix A) re-appropriates one-time funding to support network connectivity infrastructure grants by the K12HSN in consultation with the Department of Education, the Department of Finance, and the State Board of Education.

The one-time funding in the 2015-16 Budget Act is to enhance Internet connectivity for school sites to allow them to successfully administer the California Assessment of Student Performance and Progress (CAASPP).

In order for the Agency to obtain service from BIIG, the Agency must take responsibility for the monthly recurring costs to manage and maintain the improved connections as outlined in Section 5.

This agreement is conditioned on the approval of such project(s) by the Department of Finance in consultation with the Joint Legislative Budget Committee. Final approval of all projects will occur by May 31, 2019.

2. Effective Date and Term.

- a. The Effective Date of the Agreement shall be the date the last party to this Agreement signs the Agreement.
- b. The Term of the Agreement shall be from the Effective Date of this agreement, through the completion of all obligations within this agreement or no later than June 30, 2021.

3. Definitions and Key Descriptors.

- a. “Parties” refers to the Corporation for Education Networking Initiatives in California (CENIC), the Imperial County Office of Education (ICOE) serving as the lead and fiscal agent for the K12 High Speed Network (K12HSN), and Silver Valley USD (Agency).

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- b. “Party” refers to either ICOE, or the Agency.
- c. “CENIC” refers to the Corporation for Education Networking Initiatives in California, the network operator for the California Research and Education Network (CalREN), a robust regional network that serves all educational segments in California and interconnects them with other regional and international networks worldwide.
- d. “K12HSN” refers to the California K-12 High Speed Network program sponsored by the California Department of Education with the mission to enable educators, students and staff across the state to have access to a reliable high-speed network with the capacity to deliver online resources to support teaching and learning and promote academic achievement. ICOE is the Lead Education Agency for this grant.
- e. Broadband Infrastructure Improvement Grant 2.0 (BIIG 2.0): The Broadband Infrastructure Improvement Grants are one-time monies that will fund projects critical for the implementation of the computer-based assessments in sites that demonstrate the greatest need or hardship as compared to other applicant districts, school sites, direct-funded charter schools.
- f. BIIG 2.0 Grantees are districts with school sites that are deemed to be in the greatest need of connectivity solutions among California’s schools, and for which AB 93 funds will be utilized to install connectivity solutions and other required equipment with the goal of successfully implementing computer adaptive testing defined in more detail in 3g.
- g. California Assessment of Student Performance and Progress (CAASPP): Signed into law on October 2, 2013, AB 484 (Bonilla) establishes California's new student assessment system, now known as the California Assessment of Student Performance and Progress (CAASPP). The CAASPP assessment system replaces the Standardized Testing and Reporting (STAR) Program. The primary purpose of the CAASPP assessment system is to assist teachers, administrators, and pupils and their parents by promoting high-quality teaching and learning through the use of a variety of assessment approaches and item types.
- h. “E-rate” refers to a federal program that provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet services. The Federal Communications Commission’s Schools and Libraries Universal Service program supports connectivity, the conduit or pipeline for communications using telecommunications services and/or the Internet. Discounts for support depend on the level of poverty and the urban/rural status of the population served and range from 20% to 90% of the costs of eligible services. Eligible schools, school districts and libraries may apply individually or as part of a consortium.
- i. Joint Legislative Budget Committee (JLBC): The Joint Legislative Budget Committee is a standing committee that shall ascertain facts and make recommendations to the Legislature and to the houses thereof concerning the State Budget, the revenues and expenditures of the State, the organization and functions of the State, its departments, subdivisions and agencies, and such other matters as may be provided for in the Joint Rules of the Senate and Assembly.

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- j. “Letter of Agency” or LOA is a legal document whereby one school district gives authority for another agency to act on its behalf, in this agreement specifically to procure telecommunication services. As it pertains to the Statewide CENIC E-rate Consortium, a school district or county office of education signs a Letter of Agency to join the Consortium. By doing so, CENIC, who contracts on behalf of K-12 for circuits that create the statewide network, is able to seek E-rate discounts for them.
 - k. Service Provider: Refers to the entity (e.g., private telecommunications company, cable operator, or other organization) that will deliver the enhanced connectivity to the eligible school site.
 - l. “Supersedure Agreement” is an agreement whereby Agency, CENIC, and the selected telecommunications provider agree to permit the substitution of Agency into the role of responsible party and payor, upon completion of contract obligations subsequent to CENIC ending its role as responsible party and payor.
4. **ICOE Responsibilities.** Imperial County Office of Education as the Lead Education Agency (LEA) and operator of the K-12 High Speed Network will have the following responsibilities:
- a. Apprise Agency of the monthly recurring costs (Section 5.1) that must be assumed effective upon supersedure of contract obligations, to permit Agency to make an informed decision before choosing to become a BIIG 2.0 grantee.
 - b. Work cooperatively with CENIC and, upon approval of California Department of Education, approve and enter into agreements with telecommunications providers to secure connectivity solution(s) for Agency.
 - c. Reimburse CENIC for one-time installation and special construction costs as well as monthly service costs for BIIG 2.0 grantees from the date that the broadband solution is in operation until the contract has been superseded.
 - d. Work with CENIC and consultants to provide the Agency with assistance on the transition of contractual obligations including support in filing pertinent forms and contracts, training Agency staff and answering questions through the supersedure process.
 - e. Work with CENIC to fulfill the following obligations:
 - i. Negotiate contracts with service providers to secure connectivity solutions to benefit Agency.
 - ii. Upon Agency’s agreement to the terms contained herein, enter into agreements to procure said connectivity solutions for the Agency.
 - iii. Assist with network design and equipment installation for the grant awardees.
 - iv. Oversee the installation of connectivity solutions, and coordinate major activities such as site readiness, evaluate equipment needs and purchases and participate in project management activities.
 - v. Keep Agency apprised of progress and timelines.
 - vi. Pay installation costs, including special construction, as well as monthly service costs from the date that the viable solution is passing traffic until the date of supersedure. ICOE expects that this can be anywhere between 6 and 18 months of monthly recurring charges. Total projected cost, \$620,280.60.

- vii. Apply for E-rate discounts on contracted services for E-rate funding year 2018, which concludes June 30, 2019.

5. AGENCY Responsibilities. In order to receive services through this Agreement, Agency agrees to:

- a. Provide access to facilities as needed to design and implement connectivity solutions. This includes, but not limited to; conduit, electrical panels, equipment racks, roof access for mounting of antennas, weather heads, plywood backboards, etc.
- b. Conduct a review of on-going costs to ensure that once Agency assumes payment of them, Agency will have sufficient funding to continue the service for the duration of the contract with the telecommunications provider.
- c. Provide point of contact information for the individual who will coordinate access to the site for inspection, installation of equipment and circuits, etc.
- d. Provide available technical assistance and support for the installation (remote hands) of equipment necessary to establish the improved connection.
- e. Track and report inventory of all grant funded equipment received by Agency.
- f. Secure any board approval required to receive services under the BIIG grant program.
- g. Enter into a joint Supersedure Agreement with the service provider causing Agency to assume the role of responsible party / payor upon the completion of contract obligations.
- h. Report to ICOE at least two times per year for twenty-four (24) months on the impacts to assessment, instruction, student engagement, professional development, collaboration among staff and students, and business efficiencies that are impacted by the increased bandwidth available to the school site. A template will be provided when the information is required.
- i. For the period of service starting at the completion of contract obligations, Agency will meet requirements and deadlines associated with application processes in order to secure funding from federal and state subsidy programs such as E-rate and CTF to assist with payment of monthly recurring cost to maintain the connection provided by the grant.
- j. Upon completion of connectivity improvements, Agency will assume ownership of equipment provided by the grant. Agency will be responsible for operating and maintaining such equipment during the expected useful life (usually 5 years).
- k. Provide an additional Letter of Agency in order for CENIC to be able to apply for E-rate discounts on behalf of the school site to be connected.

1. Payment of Costs:

- i. The Agency will be responsible for any ongoing operational costs to manage and maintain the connection provided by the grant. This includes, but is not limited to, the Monthly Recurring Charges (MRC), associated taxes and surcharges, equipment replacement, and maintenance agreements or service/support contracts in order to connect to the nearest K12HSN network aggregation site. K12HSN may provide further support to help Agency have a better understanding of these potential costs.

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- ii. Costs are detailed per site in Appendix B. Please review costs for each site and acknowledge acceptance by initialing in the box provided for each row. One or more of your sites may be pending approval from the Joint Legislative Budget Committee. These sites are marked as “Pending Legislative Approval” and by initialing for those sites you are accepting the ongoing costs if the Legislature permits the site to move forward in the current cycle.
 - iii. It is expected that the Agency will become the customer of record for the connectivity services, and, therefore, will be directly invoiced by the service provider upon completion of grant obligations.
 - iv. If the Agency accepts service under the grant, authorizes K12HSN to proceed with installation and purchase of equipment and later determines it does not wish to proceed to completion, Agency will repay to K12HSN the funds expended on behalf of Agency. To the extent that equipment purchased may be repurposed, said equipment will not be included in the amount to be repaid.
- 6. **Project Timelines.** All Parties understand that the timeline for the desired completion of project activities is aggressive and timelines may vary significantly from school site to school site. Timelines and best effort estimates are subject to change by ICOE and/or the service providers contracted to deliver services; ICOE will engage with CENIC and third party providers to secure the quickest installation possible. Nevertheless, Agency acknowledges that the reason(s) they are still in need of improved connectivity will likely translate to the project taking a significant amount of time before it is complete.
- 7. **Termination.**
 - a. In the event that any Party fails to perform on a material term of this Agreement, the other Parties have the right to terminate the Agreement upon thirty (30) days written notice with all other rights and remedies available to it at law and equity.
 - b. In the event of termination, Parties agree to coordinate closely on any network changes in order to minimize service disruption to connected entities.
 - c. Note Part 5.1.iv. above, that expended amounts (for services and equipment) will be repaid from Agency to K12HSN in the event that Agency makes a decision not to complete after agreement to accept service and steps have been undertaken to deliver service.
 - d. ICOE may terminate the agreement if the project(s) are not approved by the Department of Finance in consultation with the JLBC by the May 31, 2019 deadline.
- 8. **Indemnification.**
 - a. The Agency agrees to indemnify, defend, and hold harmless ICOE, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on ICOE arising out of the Agency’s performance on this Agreement, except for liability resulting from the negligent or willful misconduct of ICOE, its officers, agents and

- employees. If obligated to indemnify, defend, or hold harmless Agency under this Agreement, the Agency shall reimburse ICOE for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. The Agency shall seek ICOE approval of any settlement that could adversely affect the ICOE, its officers, agents or employees.
- b. ICOE agrees to indemnify, defend, and hold harmless the Agency, their officers, agents and employees against any claim, liability, loss, injury or damage imposed on the Agency arising out of ICOE's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of the Agency, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless ICOE under this Agreement, ICOE shall reimburse the Agency for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. ICOE shall seek the Agency's approval of any settlement that could adversely affect the Agency, its officers, agents or employees.
9. **Arbitration.** ICOE and Agency agree that should any controversy or claim arise out of or relating to this Agreement they will first seek to resolve the matter informally for a reasonable period of time not to exceed forty-five (45) days. If the dispute remains, it shall be subject to mediation with a mediator agreed to by ICOE and Agency and paid for by ICOE and Agency, absent an agreement otherwise. If after mediation there is no resolution of the dispute, ICOE and Agency agree to resolve the dispute by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, and judgment on an arbitrator's award may be entered in any court having jurisdiction thereof.
- a. ICOE and Agency shall select one arbitrator pursuant to the AAA's Commercial Arbitration Rules.
- b. The arbitrator shall present a written, well-reasoned decision that includes the arbitrator's findings of fact and conclusions of law. The decision of the arbitrator shall be binding and conclusive on ICOE and Agency.
- c. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. The arbitrator shall have no authority to award equitable relief. Any arbitration award initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to either Party other than the direction to pay a monetary amount. As determined by the arbitrator, the arbitrator shall award the prevailing Party, if any, all of its costs and fees. The term "costs and fees" includes all reasonable pre-award arbitration expenses, including arbitrator fees, administrative fees, witness fees, attorney's fees and costs, court costs, travel expenses, and out-of-pocket expenses such as photocopy and telephone expenses. The decision of the arbitrator is not reviewable, except to determine whether the arbitrator complied with sections (b) and (c) of this paragraph.

10. **Governing Law and Venue.** The laws of the State of California shall govern this Agreement. Proper venue for any dispute regarding this Agreement shall lie in Imperial County, California.
11. **Entire Agreement.** This Agreement constitutes the final, complete and exclusive statement of the terms of agreement between the Parties pertaining to the subject matter of the Agreement. It supersedes all prior and contemporaneous understandings or agreements by the Parties. Neither Party has been induced to enter the Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in the Agreement.
12. **Interpretation.** This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though all Parties prepared it.
13. **Assignment.** Unless authorized in writing by all Parties, no Party shall assign or transfer any rights or obligations covered by this Agreement. Any unauthorized assignment or transfer shall constitute grounds for termination by the other Parties.
14. **Compliance with Laws.** The Parties shall, at their own cost and expense, comply with all local, state, and federal ordinances, regulations, and statutes now in force and which may hereafter be enacted that affect this Agreement.
15. **No Waiver of Default.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that instance or any other instance. Any waiver must be in writing and shall only apply to that instance.
16. **Successors and Assigns.** All representations, covenants, and warranties set forth by, on behalf of, or for the benefit of any Party herein shall be binding upon and inure to the benefit of such Party and its successors and assigns.
17. **Amendment.** This Agreement may only be altered, amended, or modified by written instrument executed by both ICOE and Agency. ICOE and Agency agree to waive any right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or altered by oral agreement, course of conduct, waiver, or estoppel.
18. **Severability.** If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable, then such provision or provisions shall be severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect and shall not be affected, impaired, or invalidated in any way.
19. **Execution of Counterparts.** If this Agreement is executed in counterparts, each counterpart shall be deemed an original, and all such counterparts or as many of them as ICOE and Agency preserve undestroyed shall together constitute one and the same Agreement.

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20. **Authority.** ICOE and Agency warrant and represent that they have the authority to enter into this Agreement in the names, titles, and capacities stated herein and on behalf of the entities, persons, or firms named herein and that all legal requirements to enter into this Agreement have been fulfilled.
21. **Nondiscrimination.** During the performance of this Agreement, the Parties shall not discriminate against any employee, applicant, student or other person connected to this Agreement in a manner prohibited by the laws of the United States or the State of California (including, but not limited to, on the basis of religion, race, color, national origin, handicap, ancestry, sex, sexual orientation, marital status or age).
22. **Notice.** Any notice given under this Agreement shall be in writing to the Parties' representatives and shall be deemed delivered three (3) days after the deposit in the United States mail, certified or registered, postage prepaid, and addressed to the parties. Parties shall promptly update each other when representatives and contact information change.

The Parties' representatives shall be:

ICOE:

Luis Wong
Chief Executive Officer

1398 Sperber Road
El Centro, CA 92243

Phone: (760) 312-6512
Email: luis.wong@k12hsn.org

Silver Valley USD:

Jesse Najera
Superintendent

PO Box 847.
Yermo, CA 92398

Phone: (760) 254-2916
Email: jnajera@svusdk12.net

Communications regarding the administration of this Agreement shall be made to the Parties' representatives. Communications regarding technical matters underlying the Agreement can be made to either the Parties' representatives or the following persons:

ICOE:

Teri Sanders
Chief Operating Officer

1398 Sperber Road
El Centro, CA 92243

Phone: (760) 312-6512
Email: tsanders@icoe.org

Silver Valley Unified School District:

Robert Saffel
Director of Technology and MOF

PO Box 847
Yermo, CA 92398

Phone: 760-254-1350
Email: rsaffel@svusdk12.net

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date hereof.

For the Imperial County Office of Education

For Silver Valley USD

By: _____

By: _____

Luis Wong
Chief Executive Officer
K-12 High Speed Network

Date: _____

Date: _____

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Appendix A - AB 93 Broadband Infrastructure Grants Budget Bill Language

Of the amount authorized for expenditure in Provision 1, \$50,000,000 is to support network connectivity infrastructure grants

- a) Network connectivity infrastructure grants shall be distributed by the K-12 High-Speed Network, in consultation with the Department of Education and State Board of Education, as described in subdivision (b).
- b) The State Department of Education, with concurrence of the Executive Director of the State Board of Education, may direct the K-12 High-Speed Network to distribute network connectivity infrastructure grants to fund the following order of priority. First priority for critical need grants shall go to local educational agencies that are unable to administer computer-based assessments at the school site and will experience the greatest benefit in terms of the number of students able to be assessed at the school site as a result of the grant. Second priority for critical need grants shall go to the local educational agencies that have to shut down essential operations to administer computer-based assessments at the school site, including, but not limited to, business services, email, and access to other critical online activities. The K-12 High-Speed Network may fund projects that will result in per-pupil costs of more than \$1,000 per test-taking pupil only upon approval of the Department of Finance, and no sooner than 30 days after notification in writing is provided to the Joint Legislative Budget Committee. If funds remain after grants have been distributed to all identified school sites for priorities one and two for which the K-12 High-Speed Network is able to identify solutions, the K-12 High-Speed Network may provide grants to under-connected schools that do not have adequate broadband infrastructure to increase connectivity rates in a cost effective manner pursuant to a plan approved by the Department of Finance no sooner than 30 days after notification in writing is provided to the Joint Legislative Budget Committee. As a condition of receiving grant funding, all local educational agencies shall commit to supporting the ongoing costs associated with improved Internet infrastructure.
- c) Upon distribution of all available network connectivity infrastructure grant funding pursuant to this provision, the K-12 High-Speed Network shall submit a report by October 15, 2016, to the Joint Legislative Budget Committee, the State Department of Education, the State Board of Education, and the Department of Finance that includes: (1) the methodology used to determine and prioritize grant funding and a summary of the grant awards, including grant recipients and associated infrastructure projects, and details about any funding approved for the K-12 High-Speed Network to meet the requirement of this item pursuant to subdivision (d) in this provision, and (2) an assessment of remaining network connectivity infrastructure needs, including costs and potential partnerships with other state and private entities.

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- d) If necessary, and upon approval of the Department of Finance, the K–12 High-Speed Network may use a portion of network connectivity infrastructure grant funding to meet the reporting requirements of this item.

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Appendix B - Table listing all awarded sites for Silver Valley Unified

Site Name and Address	Z Location Name and Address	Connection Speed	Connection Type	Service Provider	Estimated Monthly Recurring Cost Pre-Discount	Estimated Monthly Node Site Fees Pre-Discount	Estimated Total Monthly Cost after Discounts* Including Taxes	Acceptance of Grant Services for Site (Please Initial)
Calico Community Day/Alternative Education Center 33525 Ponnay Daggett CA 92398-0847	Silver Valley Unified DO 35320 Daggett-Yermo Road Yermo, CA 92398-0847	100MB	Fiber	Frontier	\$1,300	\$0.00	\$286.00	
Fort Irwin Middle 1700 Pork Chop Hill Fort Irwin, CA 92310	Silver Valley Unified DO 35320 Daggett-Yermo Road Yermo, CA 92398-0847	1G	Fiber	Frontier	\$1,650	\$0.00	\$363.00	
Newberry Springs School 33713 Newbrry Road Newberry Springs, CA 92365	Silver Valley Unified DO 35320 Daggett-Yermo Road Yermo, CA 92398-0847	250Mb	Fiber	Frontier	\$1,300	\$0.00	\$286.00	
Tiefort View Intermediate School 8700 Anzio Fort Irwin, CA 92310	Silver Valley Unified DO 35320 Daggett-Yermo Road Yermo, CA 92398-0847	1G	Fiber	GeoLink s	\$495	\$0.00	\$108.90	
Yermo School 38280 Gleason Street Yermo, CA 92398	Silver Valley Unified DO 35320 Daggett-Yermo Road Yermo, CA 92398-0847	1G	Fiber	Frontier	\$1,650	\$0.00	\$363.00	

*E-rate and CTF discount rates based on January 2018 Free and Reduced Lunch