**BASE AGREEMENT FOR ENGINEERING DESIGN SERVICES**

**and**

**ENVIRONMENTAL ASSESSMENT**

**for**

**MCNC’s High-speed Economies for Rural Opportunity (HERO)**  **PROJECT**

**to be rendered pursuant to**

**WORK ORDERS**

**by and between**

**MCNC**

**3021 E. Cornwallis Road**

**Durham, NC 27709**

**and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_**

**EXHIBITS**

AA Work Order

BB Vendor’s Change Order

CC Insurance Requirements

DD Time and Cost Billing Requirements

EE Other Terms and Conditions

EE-1 Mechanic’s Lien Subordination Agreement

EE-2 Waiver and Subordination of Mechanic’s Lien Claims

EE-3 Notice of Cancellation of Lien

EE-4 Final Release of Mechanic’s Lien Claims

FF Certificate for Payment

GG Certificate of Final Completion

HH Contract Assignment: Assignment of Rights under Subcontract

**TABLE OF CONTENTS**

**Page**

[ARTICLE 1 PROJECT 1](#_Toc140659998)

[ARTICLE 2 DEFINITIONS 1](#_Toc140659999)

[ARTICLE 3 VENDOR’S GENERAL RESPONSIBILITIES 3](#_Toc140660000)

[ARTICLE 4 SCOPE OF VENDOR’S BASIC SERVICES 5](#_Toc140660001)

[ARTICLE 5 SCOPE OF ADDITIONAL SERVICES 5](#_Toc140660002)

[ARTICLE 6 OWNER’S RESPONSIBILITIES 6](#_Toc140660003)

[ARTICLE 7 OWNERSHIP OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS 6](#_Toc140660004)

[ARTICLE 8 INSURANCE 7](#_Toc140660005)

[ARTICLE 9 INDEMNITY 7](#_Toc140660006)

[ARTICLE 10 TERMINATION 7](#_Toc140660007)

[ARTICLE 11 LIENS 8](#_Toc140660008)

[ARTICLE 12 PAYMENTS TO VENDOR 8](#_Toc140660009)

[ARTICLE 13 REIMBURSABLE EXPENSES 10](#_Toc140660010)

[ARTICLE 14 RESERVED 10](#_Toc140660011)

[ARTICLE 15 INDEPENDENT CONTRACTOR 10](#_Toc140660012)

[ARTICLE 16 HAZARDOUS SUBSTANCES 11](#_Toc140660013)

[ARTICLE 17 CONFIDENTIALITY 11](#_Toc140660014)

[ARTICLE 18 SIGNAGE 11](#_Toc140660015)

[ARTICLE 19 REPRESENTATIVES 11](#_Toc140660016)

[ARTICLE 20 ASSIGNMENT 11](#_Toc140660017)

[ARTICLE 21 NONDISCRIMINATION 12](#_Toc140660018)

[ARTICLE 22 WAIVER 12](#_Toc140660019)

[ARTICLE 23 CONSTRUCTION OF TERMS 12](#_Toc140660020)

[ARTICLE 24 CAPTIONS, ENTIRE AGREEMENT, SEVERABILITY, AND AMENDMENTS 12](#_Toc140660021)

[ARTICLE 25 DISPUTE RESOLUTION 12](#_Toc140660022)

[ARTICLE 26 NOTICES 13](#_Toc140660023)

[ARTICLE 27 THIRD PARTY RIGHTS 13](#_Toc140660024)

[ARTICLE 28 COUNTERPARTS 13](#_Toc140660025)

[ARTICLE 29 WRITTEN APPROVAL 13](#_Toc140660026)

[ARTICLE 30 OTHER TERMS AND CONDITIONS 13](#_Toc140660027)

**BASE AGREEMENT FOR ENGINEERING DESIGN SERVICES**

**and**

**ENVIRONMENTAL ASSESSMENT**

**to be rendered pursuant to**

**WORK ORDERS**

THIS AGREEMENT (this “Agreement”) is effective as of the \_\_\_ day of \_\_\_\_\_ 20\_\_ and is made by and between MCNC (“Owner”), a North Carolina non-profit corporation, and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Vendor”), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_corporation.

NOW, THEREFORE, Vendor and Owner, for the mutual covenants and other consideration described herein, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

# ARTICLE 1 PROJECT

The Project is for the planning, design and construction of fiber optic facilities. The Project is comprised of Services, which are the subject of this Agreement, and Work related to construction of the fiber optic facilities. Services will be authorized by Work Orders. The topic of each Work Order will focus on a Task or Tasks. The currently identified Tasks are:

1. Development of Environmental Assessment;
2. Development of the right-of-way, permit applications and engineering of the proposed route; and
3. Development of bid specifications for outside plant (“OSP”) fiber network.

In general, the Services are related to OSP engineering and environmental assessment for routes funded for construction in North Carolina under the Department of Commerce, National Telecommunications and Information Administration (“NTIA”) Notice of Funding Opportunity No. NTIA-MMG-2-2022 Middle Mile Grant Program (“Middle Mile Grant Program”)

The Fees payable by Owner to Vendor for Vendor’s performance of each Task are set forth on Schedule 1 attached hereto.

# ARTICLE 2 DEFINITIONS

For the purposes of this Agreement, the following terms have the meanings set out below:

2.1 **Agreement**: The “Agreement” is this Base Agreement for Engineering Design Services and Environmental Assessment, including all Exhibits attached hereto and any Work Orders authorized from time to time. This Agreement supersedes prior negotiations, representations or agreements, either written or oral among the parties to this Agreement concerning the Project. Notwithstanding the foregoing, Vendor and Owner may have other engineering, design or similar agreements for work unrelated to the Project. Those agreements are to remain wholly independent from this Agreement and the Project.

2.2 **Contract Documents**: The “Contract Documents” consist of any Contract, Drawings, Specifications, addenda, modifications and all other documents made a part thereof for the performance of any of the Work designed or specified, by Vendor, pursuant to this Agreement.

2.3 **Contractor**: The “Contractor” means any person or firm employed by Owner through a Construction Contract to perform any of the Work designed or specified, by Vendor, pursuant to this Agreement.

2.4 **Day**: A “Day,” unless expressly stated to the contrary, is a calendar day.

2.5 **Drawings**: The “Drawings” are the graphic and pictorial documents showing the scope, extent and character of the Work to be performed, which were prepared or approved by Vendor and are referred to in the Contract Documents.

2.6 **Fees**: The “Fees” mean the authorized amount of compensation payable by Owner to Vendor with respect to the applicable Task, as indicated on Schedule 1 and in the applicable Work Order (or any other compensation as may be otherwise mutually agreed to by the parties and set forth in a Work Order).

2.7 **Laws and Regulations**: “Laws and Regulations” are the laws, statutes, ordinances, codes, executive orders, rules, regulations and any other legal requirements of any nature applicable to the Services and/or Work.

2.8 **Owner**: The term “Owner” means MCNC, a North Carolina non-profit corporation and a tax exempt 501(c)(3) organization under the United States Internal Revenue Code.

2.9 **Owner’s Representative**: “Owner’s Representative” shall mean the person designated as such in each Work Order or such other person or persons designated as Owner’s Representative by Owner in writing from time to time. Owner’s Representative may be changed from time to time upon receipt of written notice by Vendor advising Vendor that a different person has been designated Owner’s Representative.

2.10 **Project**: The “Project” means the Services plus the Work required to meet the program to engineer and construct the middle mile infrastructure known as the MCNC’s High-speed Economies for Rural Opportunity PROJECT (“HERO Project”) and the direct fiber connections to community colleges, libraries, schools, health and safety facilities and other community anchor institutions in substantially unserved and underserved areas in central and southeastern in North Carolina.

2.11 **Services**: Vendor’s “Services” consist of the services performed by Vendor and Vendor’s Subconsultants, and are as enumerated in this Agreement, and in Work Orders.

2.12 **Specifications**: The “Specifications” are those portions of the Contract Documents, prepared by Vendor and/or Vendor’s Subconsultants, made up of written technical descriptions of materials, equipment, systems, requirements, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

2.13 **Subconsultant**: “Subconsultant” means any person or entity, other than Vendor’s own employees, employed or retained by or under contract with Vendor to perform any of Vendor’s Services under this Agreement. References to Subconsultant include references to subconsultants and suppliers of every tier.

2.14 **Task**: The term “Task” means the effort to be performed by Vendor and/or Vendor’s Subconsultants in accordance with this Agreement and any Work Order. It is contemplated that each Work Order will correspond to a separate “Task” or group of “Tasks” under this Agreement. References to the “Task” in this Agreement shall mean any and all of the Tasks whether then existing or thereafter occurring.

2.15 **Vendor**: “Vendor” is the engineer, consultant and/or firm named in this Agreement as Vendor. The term Vendor includes the employees of Vendor and any Subconsultants.

2.16 **Vendor’s Representative**: “Vendor’s Representative” shall mean the person designated as such in each Work Order for Services rendered in connection with such Work Order. Vendor’s Representative may be changed from time to time upon receipt of written notice by Owner advising Owner that a different person has been designated as Vendor’s Representative.

2.17 **Vendor’s Services**: The “Vendor’s Services” are all services, whether Basic Services or Additional Services, performed by or required of Vendor pursuant to this Agreement and/or a Work Order and include Services performed by Vendor’s Subconsultants.

2.18 **Work**: “Work” means the performance required of the Contractor under the terms of a Construction Contract between Owner and Contractor for implementation of Vendor’s engineering design consistent with the environmental assessment pursuant to this Agreement, the notice of funds available, award documents and other applicable State and federal compliance requirements.

2.19 **Work Order**: “Work Order” shall mean each agreement between Vendor and Owner properly executed in the form set forth in Exhibit AA authorizing the performance of Vendor’s Services and establishing certain performance standards, requirements, financial terms, deadlines and other applicable terms and conditions.

2.20 The following terms are defined, or are defined in context, elsewhere in this Agreement as follows:

Term Article/Section/Exhibit

Additional Services Section 5.2

Base Agreement Section 3.1 and Exhibit AA

Basic Services Section 4.1

CAD Article 7

Change Order Request Section 4.2

Claims Section 9.1

Curing Party Section 10.1

Dispute Section 25.2

Environmental Laws Article 16

Hazardous Substances Article 16

Reserved Article 14

Owner Indemnified Parties Section 9.1

Owner Responsible Parties Section 9.2

Recovery Act Section 3.4

Reimbursable Expenses Section 13.1

Schedule for Performance Exhibit AA

Task Summary Exhibit AA

Vendor’s Change Order Section 4.2

Vendor’s Estimate Section 4.4

Vendor Indemnified Parties Section 9.2

Vendor Responsible Parties Section 9.1

# ARTICLE 3 VENDOR’S GENERAL RESPONSIBILITIES

3.1 Vendor and Owner acknowledge that this Agreement is the “Base Agreement” entered into with respect to anticipated multiple Tasks, which are to be authorized through Work Orders. Each Work Order will address additional requirements, including, without limitation, schedules, scope of services, compensation, liquidated damages, and other terms and conditions. In that regard, to the extent that there are discrepancies in the standard of performance required of Vendor under this Base Agreement and under the specific Work Order for such Task, the more stringent standard will be enforced. With respect to other inconsistencies between this Base Agreement and a related Work Order, the substantive provisions of the Work Order related to the Task will control over the provisions of this Agreement. Upon execution of a Work Order, the provisions of this Agreement shall be deemed to be a part of such Work Order as fully as if set out therein. Except as set forth above regarding priority of conflicting provisions, the Work Order and this Agreement shall be construed as one agreement.

3.2 Vendor agrees that all documents prepared or furnished by Vendor, including, without limitation, the Drawings and Specifications, and all of Vendor’s Services shall comply, in all material respects, with Laws and Regulations.

3.3 Vendor’s Services under this Agreement shall be performed in conformance with the standards of care and quality adopted by and/or applicable to other nationally recognized engineering and consulting organizations involved in similar applications. Any design, Drawing, Specification or Service prepared or furnished by Vendor that is defective or contains errors, conflicts or omissions will be promptly corrected by Vendor at no cost to Owner. Vendor will promptly reimburse Owner for all actual damages, if any, resulting from the use of such defective design, Drawing, Specification or Service. Owner’s acceptance, use of or payment for all or any part of Vendor’s Services shall in no way alter Vendor’s obligations or Owner’s rights hereunder; provided, however, that if a design, Drawing, Specification or Service is prepared or furnished in strict conformity with Owner’s specifications or request therefor, Vendor shall have no liability under this Section 3.3 to correct, repair or replace such design, Drawing, Specification or Service, or to indemnify Owner for any resulting damages, unless Vendor knew or should have known that such design, Drawing, Specification or Service (even if prepared or furnished in strict conformity with Owner’s specifications or request) was defective or contained errors, conflicts or omissions and Vendor did not notify Owner of same in writing.

3.4 Vendor agrees to comply with all applicable Federal, state, and local Laws and Regulations, to the extent applicable, including but not limited to: the requirements of the Department of Commerce, National Telecommunications Information Administration Notice of Funding Opportunity (NOFO) No. NTIA-MMG-2-2022, Middle Mile Grant Program, dated May 13, 2022; the Infrastructure Investment and Jobs Act, 2021, Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA) including the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52 (BABA) (Note: NTIA waived aspects of the domestic content procurement preference requirements: https://www.commerce.gov/oam/build-america-buy-america.); and such other Terms and Conditions specified in Exhibit EE. Any subletting or subcontracting by Vendor subjects such subcontractors to the same provisions.

3.5 Vendor agrees that, to the extent applicable, Vendor shall pay all laborers and mechanics employed by Vendor on the Project not less than the prevailing wage determined under the “Davis Bacon Act” (40 U.S.C. 276a-a5) for similar work in the civil subdivision for which the laborers and mechanics perform the Work. In addition, to the extent applicable, Vendor shall pay all laborers and mechanics overtime compensation in accordance with the provisions of the “Contract Work Hours and Safety Standards Act” (40 U.S.C. 327-33). Vendor also agrees to comply with all regulations issued pursuant to the above referenced Acts.

3.6 Vendor agrees to provide Owner with a design, Drawings, Specifications, and Services that will be adequate and fit to accomplish the intended purpose(s) of the Task, as defined in the applicable Work Order or as further defined or modified in writing by Owner during the course of the Task. Owner’s review and/or approval of the design, Drawings, Specifications, and Services shall in no way diminish or release Vendor’s obligations hereunder; provided, however, that if a design, Drawing, Specification or Service is prepared or furnished in strict conformity with Owner’s specifications or request therefor, Vendor shall be deemed to have satisfied its obligations under this Section 3.6 with respect to such design, Drawing, Specification or Service, unless Vendor knew or should have known that such design, Drawing, Specification or Service (even if prepared or furnished in strict conformity with Owner’s specifications or request) was defective or contained errors, conflicts or omissions and Vendor did not notify Owner of same in writing.

3.7 Vendor shall be fully responsible for coordinating all Vendor’s Services required under this Agreement regardless of whether performed by its own employees or by Subconsultants so as to ensure that the Services required are performed in an efficient, timely and economical manner. Vendor shall supervise and review the Services provided by any Subconsultant so as to protect and defend Owner from errors and omissions in the Subconsultant’s Services. Vendor will inform Owner of the extent and limitation of Vendor’s expertise in conducting such review, and Owner shall be entitled to obtain further review from other parties if so desired. The Subconsultant shall have primary responsibility for the Subconsultant’s Services, but the Vendor shall be fully liable to Owner for any defects or deficiencies in such Services. In the event that an error or omission is discovered in the Subconsultant’s Services, Vendor will act to obtain prompt correction of the error or omission by the Subconsultant, and to obtain prompt reimbursement from the Subconsultant for all damages, if any, resulting from the use of the Services of the Subconsultant. Except for any Subconsultant contracts entered into by Vendor prior to the execution of this Agreement, Vendor shall require each Subconsultant, to the extent of the Services to be performed by the Subconsultant, to be bound to and to assume toward Vendor all the obligations and responsibilities which Vendor, by this Agreement, assumes toward Owner. Vendor also agrees to cooperate and coordinate with Owner’s Representative, any construction manager or other consultants retained by Owner in connection with any reasonable requests of such persons; provided, however, that Vendor shall not be required to expend a material amount of time on such activities, nor shall Vendor be required to incur any material costs with regard to same.

3.8 Vendor’s Services shall be performed in accordance with the Schedule for Performance set out in each Work Order. If no particular deadlines are set in a Work Order for the performance of any of Vendor’s Services, then such Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Task. Time is of the essence with respect to the performance of Vendor’s Services within the time limits established herein. Vendor shall not exceed time limits established by this Agreement. Any adjustments to the Schedule for Performance must be approved in writing by Owner and must be requested in writing by Vendor within twenty (20) Days after the occurrence upon which Vendor’s request for adjustment is based, or else any claim for an adjustment is waived. In the event that Vendor is delayed in performing under this Agreement by actions of the Owner or by any other event beyond Vendor’s control, Vendor’s sole and exclusive remedy shall be an extension of the Schedule of Performance in accordance with this Agreement, along with recovery of any Reimbursable Expenses directly attributable to the delay. Otherwise, in no event shall Vendor be entitled to damages or additional compensation of any kind as a result of delay. Vendor shall attend scheduled coordination meetings to be held with Owner, Owner’s consultants, and Owner’s Representative with respect to (1) Task design requirements, (2) compliance with Laws and Regulations (3) the probable construction cost of the Work, (4) the Schedule of Performance, (5) value engineering and (6) coordination. As a result of such meetings, Vendor shall, where appropriate, implement such changes that are required to achieve Owner’s goals, subject to the appropriate submission of a Change Order Request and execution of a Vendor’s Change Order.

3.9 Vendor shall not specify in the Drawings and Specifications a particular design, process or product that infringes upon any patent or copyright. Vendor shall defend suits or claims for infringement of patent rights and copyrights and shall, to the fullest extent permitted by law, indemnify and hold Owner and its employees, officers, directors, partners, members and agents harmless from any loss, cost or expense, including without limitation attorneys’ fees incurred, on account thereof, if Vendor violates the requirements of this Section 3.9; provided, however, that Vendor shall have no liability under this Section 3.9 to the extent that any such violation was the sole result of Owner’s specific directions regarding designs, processes and/or products to be incorporated into the Drawings and Specifications.

3.10 Within five business (5) Days after execution of any Work Order, Vendor shall notify Owner of the names of the persons or entities proposed by Vendor to furnish Services as a Subconsultant. Vendor shall contract solely in Vendor’s own name and on Vendor’s own behalf, and not in the name of or on behalf of Owner, with the selected Subconsultant. If requested by Owner, Vendor shall sign and cause each Subconsultant to sign an Assignment of Rights under Design Subcontract in the form attached hereto as Exhibit HH. Nothing contained herein shall, however, create any obligation on Owner to assume any Subconsultant agreement or make any payment to any Subconsultant unless Owner chooses to request a Subconsultant to perform pursuant to this Section, and nothing contained herein shall create any contractual relationship between Owner and any Subconsultant. Vendor shall not contract with any Subconsultant if Owner notifies Vendor that the engagement of such Subconsultant would violate any Laws and Regulations. No Subconsultant shall be retained if the Subconsultant is connected with the sale or promotion of equipment or material, which is or may be used on the Work or if Owner has actual knowledge of any other material conflict of interest. However, in unusual circumstances Owner may permit a waiver of such conflict of interest, in writing, provided that Subconsultant has fully disclosed the conflict of interest. All Subconsultants must (a) be properly licensed in the State of North Carolina to the extent required under Laws and Regulations, (b) be experienced in the Services required under the Task, (c) be competent to perform the Services required under its Agreement with Vendor and (d) be familiar with all Laws and Regulations that may, in any way, affect the performance of the Services.

3.11 Vendor acknowledges that it is providing Services that assist the Owner in carrying out its program to engineer and construct the middle mile infrastructure known as the HERO Project and the direct fiber connections to community colleges, libraries, schools, health and safety facilities and other community anchor institutions in 11 of the most rural, economically disadvantaged counties in North Carolina. Vendor further acknowledges that all substantive decisions and actions that impact the ability for Owner to carry out its program or the overall success of the program rest solely with Owner. Vendor acknowledges that Owner has been awarded a grant by the U.S. Department of Commerce’s NTIA’s Middle Mile Grant funding and agrees that if it is determined that a “sub-recipient” relationship exists between Owner and Vendor then the parties will engage in good faith negotiations to enter into a mutually acceptable sub-recipient agreement.

# ARTICLE 4 SCOPE OF VENDOR’S BASIC SERVICES

4.1 Vendor’s “Basic Services” consist of those Services described in this Agreement and identified in any Work Order as a part of Basic Services, together with any other services that are customarily performed by engineers and consultants under similar circumstances and include, without limitation, civil, architectural, structural, mechanical, electrical and any other engineering services necessary to produce the Drawings and Specifications for the applicable Task.

4.2 From time to time, Owner may authorize changes in the scope of any Work Order, issue additional instructions, require Additional Services, or direct the omission of Services previously ordered. Owner may request changes in the scope of a Work Order through initiating a written request (the “Change Order Request”), setting forth in detail the nature of the requested change in scope. Only those changes in the scope of a Work Order that are approved via a Vendor’s Change Order in the form of Exhibit BB (“Vendor’s Change Order”) and executed by an authorized representative of a party shall be binding on such party.

4.3 From time to time, Vendor may request Owner to adjust the scope of any Work Order. Any such request must be accompanied by a Change Order Request, setting forth in detail the nature of the requested change in scope. Only those changes in the scope of a Work Order that are approved via a Vendor’s Change Order and executed by an authorized representative of a party shall be binding on such party.

4.4 In the event either Owner or Vendor make a Change Order Request, within five (5) business Days of such request, Vendor shall furnish to Owner a statement setting forth in detail, with a suitable breakdown, Vendor’s estimate, of the changes in the Fees attributable to the changes set forth in such Change Order Request (“Vendor’s Estimate”) and proposed adjustments, if any, to the Schedule for Performance resulting from such Change Order Request. If Owner approves such Vendor’s Estimate with detailed backup, then a Vendor’s Change Order shall be processed and delivered to Owner and Vendor for execution. Agreement on any Change Order Request shall constitute a final settlement on all items covered therein, including, without limitation, any adjustment in the Fees and the Schedule for Performance.

4.5 In the event Owner and Vendor cannot agree on any adjustment in the Fees or the Schedule for Performance, Vendor shall nevertheless proceed to perform the services required by Owner’s Change Order Request, upon written notice from Owner to proceed with the services required by said Change Order Request. Vendor shall keep separate records of all costs and time required to perform the services required by the Change Order Request, and an equitable adjustment will be made upon agreement between Vendor and Owner. Pending agreement upon such an adjustment, separate billings shall be submitted for services required by the Change Order Request and Owner shall pay Vendor all amounts not in dispute and adjust the Schedule for Performance allowing Vendor to perform within all time limits not in dispute. (E.g., If Owner believes that Owner’s Change Order Request would result in the payment to Vendor of $1,000 and Vendor believes that the Change Order Request should result in the payment to Vendor of $1,100, Owner shall pay the amount not in dispute ($1,000) to Vendor. Similarly, if Owner believes that Owner’s Change Order Request would result in a change in the Schedule for Performance of five (5) additional Days and Vendor believes that the Change Order Request should result in a change in the Schedule for Performance of six (6) additional Days, Vendor shall proceed under a Schedule for Performance allowing for five (5) additional Days.)

4.6 Vendor shall be responsible for the physical preparation and, upon receipt of appropriate powers-of-attorney or similar authorizations from Owner, filing of the documents required for approval of governmental and/or governing authorities having jurisdiction over the Project to assist Owner in obtaining final approval and permits for the performance of the Work. Such documents shall be submitted to Owner for Owner’s review and approval prior to filing with said governmental authorities.

4.7 The scope of this Agreement includes all Services described in any Work Order entered into pursuant to this Agreement. Use of the term “Agreement” is intended to include the provisions of any Work Order executed pursuant to this Agreement.

4.8 Unrelated Services. From time-to-time, Owner may request that Vendor provide Engineering or other services for laterals or other work supporting the Project, but is not included within the direct scope of the Project and is not eligible for funding under the Middle Mile Grant (“Unrelated Services”). In such instances, the details of such Unrelated Services shall be set forth in a separate Work Order. That Work Order will include an express reference that the work is not subject to funding under the Middle Mile Grant, and it shall be paid and accounted for separately. Otherwise, all other terms of this Agreement shall apply to such Unrelated Services.

# ARTICLE 5 SCOPE OF ADDITIONAL SERVICES

5.1 The “Additional Services” described in this Article 5 are not included in Basic Services (as defined in Article 4) unless so identified in any Work Order. Additional Services shall be paid by Owner as provided in this Agreement and are in addition to the compensation for Basic Services. All the terms of this Agreement shall apply to any Additional Services provided by Vendor, including, but not limited to, the terms of Article 3. Vendor shall only provide the Additional Services described in this Article 5 if authorized in advance and in writing by Owner. Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay for, and Vendor shall not be entitled to receive compensation for, any Additional Services, if such services are due in whole or in part to Vendor’s failure to perform in accordance with the terms of this Agreement.

5.2 Additional Services are defined in Sections 5.2.1 through 5.2.9 as follows:

5.2.1 Making major revisions in Drawings or Specifications when such revisions result in a change in the fiber route in excess of one percent of the total fiber miles and are:

5.2.1.1 inconsistent with approvals or instructions previously given by Owner;

5.2.1.2 required by the enactment or revision of Laws and Regulations subsequent to the preparation of such documents unless Vendor knew or should have known that such revisions were pending and failed to bring such to Owner’s attention; or

5.2.1.3 required by regulatory agencies.

5.2.2 Providing services required because of significant changes in Owner’s schedule.

5.2.3 Providing services made necessary by the default of the Contractor or by major defects or deficiencies in the Work of the Contractor provided Vendor has properly performed its obligations to Owner to inspect the Work to guard against such defect or deficiencies.

5.2.4 Providing services to assist in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work unless such claims relate, in whole or in part, to acts or omissions of Vendor.

5.2.5 Providing services in connection with an alternate dispute resolution proceeding or lawsuit except where Vendor is a party.

5.2.6 Providing services relative to future facilities, systems and equipment except to the extent such facilities, systems and equipment are identified in Owner’s Request for Proposal, Task and/or Work Order.

5.2.7 Providing services to verify the accuracy of drawings or other information furnished by Owner.

5.2.8 Providing such other responsibilities and duties as may be identified as “Additional Services” under a Work Order.

5.2.9 Providing for non-public right-of-way issues.

# ARTICLE 6 OWNER’S RESPONSIBILITIES

6.1 Owner shall consult with Vendor regarding Owner’s requirements for the Task and/or Work Order, including Owner’s objectives, procedures, schedule, constraints and criteria.

6.2 Owner shall designate one or more persons to act as Owner’s Representative for each Task on Owner’s behalf with respect to this Agreement.

6.3 Owner shall render decisions pertaining to documents submitted by Vendor as promptly as is reasonable under the circumstances.

6.4 Owner shall furnish for its own benefit, and not for the benefit of Vendor, such legal, accounting and insurance counseling services as Owner may require to ascertain how or for what purposes the Contractor has used the monies paid by or on behalf of Owner.

# ARTICLE 7 OWNERSHIP OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Owner acknowledges that Vendor’s documents are instruments of professional service. Nevertheless, the Contract Documents prepared under this Agreement, including, but not limited to, all Drawings, Specifications and any computer-aided design (“CAD”) files relating thereto, shall, upon payment of undisputed monies due to Vendor, be the sole and exclusive property of Owner. Vendor agrees that this provision shall apply to any and all copyrights that arise under the law and agrees, upon request of Owner and at Owner’s sole expense, to join in the execution of any additional documentation that may be deemed necessary by Owner to vest in it all of the rights and privileges of a copyright holder. Vendor is prohibited from using any of said documents or CAD files on any other project without the express prior written consent of Owner, which consent Owner shall not unreasonably withhold. Notwithstanding the foregoing, Vendor may use, without charge or other obligation, standard engineering details on other projects. Owner agrees to hold Vendor harmless from any liability arising out of the use by Owner of the documents and CAD files on any future project in the event Vendor is not retained or compensated for providing professional services on such future project. Upon the termination, expiration or satisfactory completion of this Agreement, all work product described in this Article 7 shall be delivered to Owner.

# ARTICLE 8 INSURANCE

Vendor shall provide insurance of the type and on the terms and conditions as specified in Exhibit CC attached hereto. The cost of this insurance shall be included in the Fees. The failure of Vendor to procure and maintain such insurance coverage shall be considered a material breach of this Agreement.

# ARTICLE 9 INDEMNITY

9.1Vendor agrees, to the fullest extent permitted by law, to indemnify, defend with acceptable counsel, reimburse, and hold harmless Owner, Owner’s Representative, and Owner's officers, directors, members, managers, agents and employees (collectively, the “Owner Indemnified Parties”) from and against any and all claims, demands, actions, causes of action, damages, judgments, costs, and expenses, including, without limitation, attorneys' fees (collectively, “Claims”), which arise from the acts or omissions of Vendor regarding the Project, any Subconsultant or supplier of Vendor (regardless of tier), any agent or employee of Vendor, any agent or employee of any Subconsultant or supplier of Vendor, or anyone else for whose acts and omissions Vendor is responsible (collectively, the “Vendor Responsible Parties”), but only to the extent caused by the gross negligence or intentional misconduct of Vendor or one of the other Vendor Responsible Parties. In no event shall Vendor be required to indemnify, defend, reimburse, or hold harmless Owner or the other Owner Indemnified Parties with respect to Claims, which arise from the negligence or other legal fault of the Owner or the Owner Indemnified Parties.

9.2 Owner agrees, to the fullest extent permitted by law, to indemnify, defend with acceptable counsel, reimburse, and hold harmless Vendor, Vendor’s Representative, and Vendor’s officers, directors, members, managers, agents and employees (collectively, the “Vendor Indemnified Parties”) from and against any and all Claims which arise from the acts or omissions of Owner or Contractor regarding the Project, any subcontractor or supplier of Owner (regardless of tier), any agent or employee of Owner, any agent or employee of any subcontractor or supplier of Owner, or anyone else for whose acts and omissions Owner is responsible (collectively, the “Owner Responsible Parties”), but only to the extent caused by the gross negligence or intentional misconduct of Owner or one of the other Owner Responsible Parties. In no event shall Owner be required to indemnify, defend, reimburse, or hold harmless Vendor or the other Vendor Indemnified Parties with respect to Claims, which arise from the negligence or other legal fault of the Vendor or the Vendor Indemnified Parties.

# ARTICLE 10 TERMINATION

10.1 This Agreement may be terminated, in whole or in part, by either party upon not less than seven (7) Days written notice should the other party breach any or be in default of any of its obligations under this Agreement. Notwithstanding the provisions of the preceding sentence, no breach of or default under this Agreement (except for a payment default) shall be deemed to have occurred until the party against whom such breach is alleged (the “Curing Party”) shall have received written notice of same from the party alleging such breach and the cure of such breach shall not have been effected within sixty (60) Days after the receipt of such notice; provided, however, that if such breach cannot be cured by reasonable efforts within sixty (60) Days, then no breach or default shall be deemed to exist so long as the Curing Party continues to use all reasonable efforts to cure the alleged breach as promptly as practicable thereafter. Without limiting the generality of and subject to the foregoing:

10.1.1 Owner shall have the right to terminate this Agreement if Vendor fails to meet the deadlines imposed under this Agreement and/or Work Order;

10.1.2 Owner shall have the right to terminate this Agreement if Vendor fails to maintain the insurance required under this Agreement and/or Work Order;

10.1.3 Owner shall have the right to terminate this Agreement if Vendor disregards the written instructions of Owner when such instructions are based on the terms of this Agreement;

10.1.4 Owner shall have the right to terminate this Agreement if Vendor allows anyone claiming by, through or under Vendor to file a lien without removing and discharging same as required under this Agreement and/or Work Order;

10.1.5 Either party may terminate this Agreement if the other party files for or is placed in any type of bankruptcy or receivership proceedings and fails within ten (10) Days of the first party’s request to deliver adequate assurance of future performance in accordance with this Agreement;

10.1.6 Either party may terminate this Agreement if the other party terminates its existence, merges with or is acquired by another entity without the first party’s prior written approval;

10.1.7 Either party may terminate this Agreement if all or a substantial part of the assets of the other party (for purposes hereof a “substantial” part of the assets of the other party shall mean if the seizure of the assets in question would tend to have an adverse effect upon the other party’s performance of its obligations hereunder) is seized by a creditor of the other party and the same is not released from seizure or bonded out within thirty (30) Days from the date of notice thereof;

10.1.8 Either party may terminate this Agreement if any of the other party’s representations or certifications in (a) this Agreement, (b) any report, (c) any estoppel certificate or (d) any other document or agreement executed pursuant to the terms and conditions of this Agreement is false or misleading; or

10.1.9 Either party may terminate this Agreement If it reasonably believes, as supported by the opinion of counsel, that its continued performance hereunder would constitute a material violation of any law or regulation applicable to such party.

In the event this Agreement is terminated pursuant to this Section 10.1, subject to the limitations set forth in this Agreement, Vendor shall be compensated for all Services properly performed prior to the effective date of termination together with Reimbursable Expenses incurred through the effective date of termination. As a condition to receiving the payments called for in this Section 10.1, Vendor shall turn over to Owner all documentation relating to the Work Order as required in Article 7, including, but not limited to, any designs, Drawings, Specifications, CAD tapes and discs.

10.2 If Owner suspends a Task and/or Work Order for more than ninety (90) consecutive Days, Vendor shall be compensated for Services performed prior to notice of such suspension. When the Task and/or Work Order is resumed, the Fees shall be equitably adjusted to provide for additional or reduced expenses, if any, necessarily incurred, avoided, or mitigated as a result of the interruption and resumption of Vendor’s Services.

10.3 Owner may terminate this Agreement, in whole or in part, upon thirty (30) Days’ prior written notice to Vendor in the event that the Task and/or Work Order is abandoned or if the funds are not appropriated or otherwise not available to support the Task and/or Work; provided, however, that in the case of de-obligation of Project funds by NTIA, Vendor shall have a reasonable period of time, but in no event more than thirty (30) Days, to wind-down its Services hereunder. All contracts entered into by Vendor pursuant to this Agreement shall contain provisions allowing the contracts, in Owner’s discretion, to be (a) similarly terminated by Vendor in the event Owner elects to terminate all or any part of this Agreement pursuant to this Section 10.3 or (b) assigned by Vendor to Owner. In the event of termination pursuant to this Section 10.3, subject to the limitations set out in this Agreement, Vendor shall be compensated for all Services properly performed prior to the effective date of termination together with Reimbursable Expenses incurred through the effective date of termination.

10.4 Notwithstanding any termination of this Agreement, (a) all obligations of the parties with respect to Vendor’s Services performed prior to such termination and (b) each and any indemnification made by the parties hereunder shall remain in full force and effect and shall survive such termination.

# ARTICLE 11 LIENS

Vendor shall promptly pay amounts due and owing to its Subconsultants, and shall not permit any type of lien to be filed or otherwise imposed by any Subconsultant on any part of the Work, Service, or the Project or the real or personal property of Owner in connection with any Services performed pursuant to this Agreement or any agreement with any Subconsultant. If any such lien is filed, Vendor agrees to cause such lien to be released and discharged within fifteen (15) Days, or to provide Owner with a bond, which shall be in form and substance satisfactory to Owner. In the event Vendor fails to comply with the requirements of this Article 11, Owner shall have the right, but not the obligation, to pay all sums necessary to obtain such release and to deduct all amounts that are paid from any monies otherwise due Vendor hereunder or to require Vendor to reimburse Owner. Solely to the extent required by NTIA under its agreements with Owner, Vendor hereby expressly subordinates any lien that Vendor may now or at any time hereafter have or obtain (whether arising out of or related to Vendor’s performance under this Agreement or otherwise) to any lien or security interest of NTIA (or any other department or agency of the United States government) on the Work, Services, Project or the property of Owner. Furthermore, each agreement with each Subconsultant entered into after the date hereof must contain a provision to the same effect as the foregoing sentence, whereby each such Subconsultant shall, to the extent required by the NTIA’s agreements with Owner, subordinate any and all of its lien rights, whenever acquired, on the Work, Services, Project or the property of Owner to those of NTIA (or any other department or agency of the United States government). Vendor hereby agrees to, upon Owner’s request from time to time, sign and deliver to Owner waivers of lien in form and substance acceptable to Owner covering all Services for which Vendor has received payment from Owner.

# ARTICLE 12 PAYMENTS TO VENDOR

12.1 Vendor shall invoice Owner under this Agreement on or before the 25th Day of each month, or as established by Owner’s Representative, for Services rendered during the current month. Vendor shall invoice each segment and or portions of the HERO Project separately. Said invoices shall include a summary listing of all charges (in duplicate) and supporting documents (single copy) as required and shall reflect the total amount due. In the event that Owner questions the employee times for a particular task, Owner shall have the right to request further documentation from Vendor. In such event, Vendor shall provide suitable documentation to support the charges, including providing copies of relevant employee time sheets, if requested. Charges, which are not so supported, will not be paid. Billings for Additional Services and any Reimbursable Expenses, related to such Additional Services shall be separately stated from the billings relating to Basic Services. Billings shall be submitted in such format as Owner may prescribe from time to time. As set forth on Schedule 1 and subject to any express variation thereof in an applicable Work Order, billings for Basic Services and Reimbursable Expenses shall be billed on either (i) a percentage-completed basis, with respect to Tasks that are priced on a Total Unit Price basis, or (ii) an actual-footage-completed basis, with respect to Tasks that are priced on a Unit Price basis. Each billing shall be accompanied by a progress report in sufficient detail to allow Owner to confirm that then current billings correspond with the percentage and/or footage completed as of such billing date. Vendor shall itemize sales and use taxes in a manner acceptable to Owner so as to allow Owner to secure a refund of such sales and use taxes from the State of North Carolina. Each such invoice shall also be accompanied by a duly executed copy of a Certificate for Payment in the form attached as Exhibit FF.

12.2 Within thirty (30) Days after receipt of Vendor’s properly supported invoice for Services, Owner will make payment of the approved amount of such invoice; provided, however, Owner may not approve any payment (or any portion thereof) requested by Vendor if:

12.2.1 The billing provided by Vendor and/or any documents to be delivered therewith are not complete in all respects;

12.2.2 The Services covered by such billing are not consistent with Vendor’s responsibilities or obligations under this Agreement;

12.2.3 Any person or entity has filed a lien against the Work, Service, Project or the property of Owner by reason of Vendor’s failure to comply with its responsibilities or obligations under this Agreement;

12.2.4 Any statement or representation of Vendor in any billing or other documents submitted by Vendor under or with respect to this Agreement is materially untrue or incorrect when made;

12.2.5 Owner has previously paid Vendor more than the portion earned by Vendor as of the date of the current billing; or

12.2.6 Vendor is in default of any of its material obligations under this Agreement.

If Vendor disagrees with Owner regarding the disapproval of any payment, Vendor shall nevertheless continue to perform the Services, but Vendor’s continued performance of the Services (whether under this Section 12.2 or any similar provision of this Agreement) shall not be deemed to waive any rights Vendor may have to any disputed payment.

12.3 Owner shall in no event be obligated to make payments to Vendor for any Work Order in excess of the Fees for Basic Services, plus the Fees for any Additional Services authorized by such Work Order, as the same may be amended from time to time in accordance with the terms of this Agreement.

12.4 Except for services rendered pursuant to either Section 4.5 of this Agreement, or as may be set forth to the contrary in a Work Order, all of Vendor’s Basic Services will be compensated in accordance with the unit Fee rates set forth on Schedule 1 (or at rates as may be otherwise mutually agreed to in a Work Order) and all of Vendor’s Additional Services will be compensated in accordance with the hourly Fee rates set forth on Schedule 1.

12.5 Time spent by principals performing general administrative duties shall not be charged to the Services, Work or Project.

12.6 Unless otherwise agreed to in Exhibit DD or in a Work Order or Vendor’s Change Order for a specific Task, clerical, secretarial or general administrative activities are not directly compensable under this Agreement and are not to be invoiced.

12.7 If the Basic Services covered by this Agreement have not been completed as a result of an act or omission of Owner within one year after their scheduled completion date specified in the Task schedule, through no fault of Vendor, Vendor’s Fees for Basic and Additional Services shall be subject to equitable adjustment.

12.8 Vendor acknowledges that Owner is a 510(c)(3) entity and exempt from most income, sales, consumer, use and similar taxes. Vendor shall pay (in accordance with applicable governmental regulations) all sales, consumer, use and other similar taxes properly due from Owner for the Services provided by Vendor. Vendor’s invoices for Services submitted to Owner shall include payments by Vendor of taxes properly due from Owner. The Fee includes the cost of all taxes and fees.

12.9 Owner may withhold and retain the following amounts from payments requested by Vendor:

12.9.1 Any expenses reasonably incurred by Owner as a result of Vendor’s breach of or default under this Agreement.

12.9.2 Any amounts due Owner under an indemnification provided by Vendor.

12.9.3 Any other amounts which Owner may deduct or withhold pursuant to any other provisions of this Agreement.

12.10 The acceptance by Vendor of the final payment due hereunder shall constitute a full and complete release of Owner from any and all claims, demands and courses of action, of whatever nature, which Vendor has, or may have, against Owner.

12.11 Owner’s payment in full of all amounts due to Vendor hereunder shall not be deemed to be acceptance by Owner of any Contract Documents, Drawings, Specifications or any portion thereof prepared by Vendor, which are defective or otherwise fail to comply with terms and conditions of this Agreement.

# ARTICLE 13 REIMBURSABLE EXPENSES

13.1 Reimbursable expenses (the “Reimbursable Expenses”) are in addition to compensation for Basic and Additional Services and include only those actual expenses (without mark-up of any kind, except for travel expenses incurred in connection with (a) Services falling outside the scope of the Basic Services or (b) travel required under a Change Order that was not originally within the scope of the original Work Order, each of which shall be subject to a 5% mark-up) reasonably incurred by Vendor in the interest of the Work Order and the Agreement and limited to those identified in the following clauses:

13.1.1 Expenses in connection with out-of-town travel authorized by Owner in writing. Authorized travel charges are to be billed as a separate line item listing employee name, purpose of trip, dates traveled and the daily cost of individual items for which reimbursement is sought. Copies of the airline ticket, hotel bill, car rental agreement and like documentation for other items must be provided to Owner with the reimbursement billing.

13.1.2 Expense of reproductions (except as otherwise provided in this Agreement), postage and handling of Drawings, Specifications and other documents.

13.1.3 Long-distance communications.

13.1.4 Fees paid for securing approval of authorities having jurisdiction over the Task.

13.1.5 Expense of Subconsultants under contractual agreements, approved by Owner in advance. There shall be no mark-up by Vendor of invoices of Subconsultants.

All Reimbursable Expenses shall be at rates that do not exceed the domestic per diem rates authorized by the U.S. General Service Administration.

13.2 Nonreimbursable expenses, which are not compensable under this Agreement, are identified as follows:

13.2.1 Black and white photocopying costs in excess of $0.10 per copy or any photocopying costs for administrative and billing services.

13.2.2 Clerical, secretarial or general administrative time.

13.2.3 Computer time for any administrative services.

13.2.4 Interest expenses.

13.2.5 Any type of mark-up over the actual cost of any item otherwise reimbursable.

13.2.6 Entertainment and personal expenses of any kind.

13.2.7 Local meal, housing and automobile expenses for local personnel. (Owner’s prior written approval is required for any expenses incurred for relocating personnel, where such expenses are to be billed as Reimbursable Expenses.)

13.2.8 Costs incurred by Vendor as a result of, or to cure, any breach or violation of this Agreement.

13.2.9 Any part of Vendor’s capital expenses.

13.2.10 Any taxes from which Owner is exempt.

13.2.11 Costs of Subconsultants not approved in writing by Owner.

13.2.12 Expense of CAD equipment time when used in connection with design Services on a Task or Work Order.

13.2.13 Unless approved in writing by Owner, the cost of any item not included in the items described in Section 13.1.

Notwithstanding anything in this Agreement to the contrary, Vendor shall not incur any Reimbursable Expense that have not been previously discussed between the parties and without the prior written consent of Owner, which consent may be given or withheld in Owner’s sole discretion.

# ARTICLE 14 RESERVED

# ARTICLE 15 INDEPENDENT CONTRACTOR

In performing its obligations hereunder, Vendor shall be deemed an independent contractor and not an agent or employee of Owner. Vendor shall be solely responsible for and have control over its design means, methods, techniques, sequences and procedures, safety precautions and programs, and for coordinating all Services required under this Agreement.

# ARTICLE 16 HAZARDOUS SUBSTANCES

Vendor agrees that it shall not specify or incorporate into its designs or in the Drawings or Specifications any Hazardous Substance (as defined herein), except in accordance with applicable Environmental Laws or at the specific request or directive of Owner. For purposes of this Agreement, the term “Hazardous Substances” shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which is defined in or included under or regulated by any local, State, or federal law, rule, ordinance, by-laws, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, (all such laws, rules and regulations being referred to collectively as “Environmental Laws”). It is Vendor’s responsibility to comply with this Article 16 based on the Environmental Laws in effect at the time its Services are rendered and to comply with any amendments to those Environmental Laws for all Services rendered after the effective date of any such amendments.

# ARTICLE 17 CONFIDENTIALITY

17.1 Vendor shall treat all information relating to the Project, including all information supplied to Vendor by Owner, as confidential and proprietary information of Owner and shall not permit its release to unauthorized third parties or make any public announcement or publicity releases or use same in any promotional or professional materials without Owner’s written authorization. Vendor shall also require any consultants it engages in connection with this Agreement to comply with this requirement.

17.2 Vendor warrants that Vendor is not employed or retained by any company or persons that could in any way result in a material conflict of interest between Vendor’s duties to such company or persons and the duties owed to Owner. Should circumstances change such that Vendor breaches or thinks there is a possibility of a breach of the warranty contained in this Section 17.3, then Vendor shall immediately notify Owner and suspend further activities under this Agreement until Owner provides Vendor with written notice to resume Work. Owner is entitled to treat such an event as a material breach of this Agreement.

17.3 If Owner believes that the conduct of any employee or Subconsultant of Vendor is detrimental to the Project, Owner shall specify the basis for such belief in a written notification to Vendor. Owner and Vendor shall thereafter discuss the matter in good faith in an effort to reach a mutually agreeable resolution. If such resolution cannot be reached within seven (7) Days after Vendor’s receipt of such notice, such employee or Subconsultant shall be removed by Vendor from association with the Project.

17.4 The covenants and warranties contained in this Article 17 shall survive the termination, expiration or satisfactory completion of this Agreement.

# ARTICLE 18 SIGNAGE

To the extent required by Laws and Regulations and upon Owner’s request, Vendor will display and maintain in good condition throughout the period of work one or more signs satisfactory to Owner and the NTIA that identify the Project and indicate that the Project is federally funded. Owner shall provide Vendor, at Owner’s expense, with any such signs.

# ARTICLE 19 REPRESENTATIVES

19.1 Until and unless changed by Owner in writing, Owner’s Representative for technical and other issues shall be: Tommy Jacobson .

19.2 The name of the individual who shall serve as Vendor’s Representative shall be indicated in the Work Order for each Task. Unless a corporate officer of Vendor advises Owner, in advance and in writing, of any limitations on the authority of Vendor’s Representative, Vendor’s Representative shall have full authority to execute any and all instruments requiring Vendor’s signature and to act on behalf of Vendor with respect to all matters arising out of or related to this Agreement.

# ARTICLE 20 ASSIGNMENT

Vendor shall not assign this Agreement or sublet it as a whole without the prior written consent of Owner, which consent may be given or withheld in Owner’s sole discretion; nor shall Vendor assign any monies due or to become due to it under this Agreement, without prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Owner may assign this Agreement in its sole discretion; provided that the financial wherewithal of any such assignee must be equal to or greater than that of Owner (and Owner shall provide evidence of such financial wherewithal to Vendor prior to making such assignment). Vendor recognizes that from and after the effective date of such an assignment, Owner will no longer have any obligations or liabilities under this Agreement provided that assignee has assumed all of Owner’s obligations or liabilities and assignee has agreed to perform in the place and stead of Owner in all respects under the terms of this Agreement. Owner shall also have the right to assign and grant a security interest in all of Owner’s right, title and interest in, to and under this Agreement to any entity that provides funds for the development, design and/or construction of the Project to Owner. Vendor hereby (a) consents to any such assignment and (b) acknowledges and agrees that Vendor shall sign and deliver any agreement or instrument requested by Owner which evidences proof of (i) the consent to any assignment as set forth in subparagraph (a) above and (ii) the subordination of any lien of Vendor to the lien of any mortgage, deed of trust or security agreement encumbering the Project. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.

# ARTICLE 21 NONDISCRIMINATION

Vendor agrees that it will not violate any applicable Laws and Regulations prohibiting employment discrimination in the performance of its Services under this Agreement.

# ARTICLE 22 WAIVER

No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Neither Owner’s payment for, nor approval or acceptance of, any of Vendor’s Services shall release Vendor from any of its obligations under this Agreement.

# ARTICLE 23 CONSTRUCTION OF TERMS

Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. In addition, unless the context clearly indicates to the contrary, the term “person” shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision.

# ARTICLE 24 CAPTIONS, ENTIRE AGREEMENT, SEVERABILITY, AND AMENDMENTS

The captions used for the Articles in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement or any Article hereof. This Agreement constitutes the entire agreement between Vendor and Owner with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement can be modified or amended only by a document duly executed by both Owner and Vendor. In the event any provision of this Agreement shall be determined to be illegal, invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of this Agreement shall be enforced to the fullest extent permitted by law.

# ARTICLE 25 DISPUTE RESOLUTION

25.1 This Agreement shall be governed by the applicable laws of the State of North Carolina and the United States of America, notwithstanding any conflicts of law rules to the contrary. This Agreement has been entered into in Wake County, North Carolina, and it shall be performable for all purposes in Wake County, North Carolina. Any action or proceeding against Vendor or Owner under or in connection with this Agreement or any of the Contract Documents may be brought in any State or federal court in Wake County, North Carolina, but such action or proceeding may only be brought to the extent that it does not violate the arbitration clause contained herein, such as an action or proceeding to confirm, modify, or vacate an arbitration award.

25.2 Any demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement, payment of money, extension of time or other relief with respect to the terms of the Agreement or any other disputes and matters between the Vendor and Owner arising out of or relating to the Agreement (“Dispute”) must be initiated by written notice. Vendor and Owner shall endeavor to resolve their Disputes by mediation which, unless Vendor and Owner mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”) currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of such arbitration, which shall be stayed pending mediation for a period of thirty (30) Days from the date of filing, unless stayed for a longer period by agreement of Vendor and Owner or court order. Vendor and Owner shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Wake County, North Carolina, unless another location is mutually agreed upon in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

25.3 Unless the parties subsequently agree to different procedures with respect to a particular claim, dispute or controversy, any claim, dispute, or controversy which arises under or relates to this Agreement, the Services, Specifications, the Work, or any Work Order shall be resolved by binding arbitration administered by the AAA and conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties agree to arbitrate a dispute under different rules and procedures. The hearing in any such proceeding shall take place in Wake County, North Carolina. Any arbitration proceeding hereunder may, at Owner’s sole option, be combined by consolidation, joinder, or otherwise, with any other arbitration proceeding to which Owner or Vendor is a party and which involves a common question of law or fact with the arbitration proceeding between Owner and Vendor. The prevailing party in any arbitration proceeding hereunder shall be entitled to recover from the other party all costs and expenses incurred by the prevailing party in relation to the arbitration proceeding, including reasonable attorneys’ fees, arbitration filing fees, arbitrator compensation, expert witness fees, court reporter expenses, and document reproduction charges. The prevailing party shall be determined by the Arbitrator(s) based on the surrounding facts and circumstances, and not simply based on whether one party received a monetary award in its favor. Vendor shall include a similar arbitration agreement in contracts with its Subconsultants.

25.4 Pending resolution of any dispute arising under this Agreement, other than the termination hereof, Vendor shall proceed diligently with the performance of this Agreement, and Owner shall continue to make any payments that are not in dispute in accordance with this Agreement.

# ARTICLE 26 NOTICES

Any notice required or given pursuant to or in relation to the Contract Documents shall be in writing and delivered in person to the individual to whom it is addressed, or sent certified or registered mail, postage prepaid, return receipt requested, or by similar method of electronic transmission (provided appropriate confirmation of transmission documentation is retained and that a copy of the written document is also sent via U.S. mail) as follows:

If to Owner:

Attn: Tommy Jacobson

Vice President / COO

MCNC

3021 E. Cornwallis Road

Durham, North Carolina 27709

P.O. Box 12889

Research Triangle Park, North Carolina 27709-2889

Telephone: (919) 248-1178 \_\_\_\_\_\_\_\_

e-mail: tjacobson@mcnc.org

With a copy to:

Attn: MCNC’s General Counsel

E-mail: [Legal@MCNC.org](mailto:Legal@MCNC.org)

If to Vendor:

Attn:

Telephone:

Fax:

E-mail:

With a copy to:

Attn:

Telephone:

Fax:

E-mail:

or, to such other address(ee)(es) as any party entitled to receive notice hereunder shall designate to the other party, in writing, in the manner provided herein for notices. Any notice to be given herein shall be deemed given three (3) Days after the date of deposit thereof in the U.S. Mail, by certified mail, return receipt requested, postage prepaid, addressed to the applicable individual(s) at the address(es) provided.

# ARTICLE 27 THIRD PARTY RIGHTS

Except as expressly stated to the contrary, nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either Owner or Vendor.

# ARTICLE 28 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument.

# ARTICLE 29 WRITTEN APPROVAL

When this Agreement requires a matter to be subject to the consent or approval of Owner such approval or consent of Owner must be in writing and may be granted or withheld in Owner’s sole and absolute discretion (unless expressly provided otherwise herein).

# ARTICLE 30 OTHER TERMS AND CONDITIONS

30.1 Other terms and conditions are as described in Exhibit EE. The Parties agree to abide by the Other Terms and Conditions as set out in Exhibit EE. These Other Terms and Conditions include, but are not limited to, requirements of those providing funds. Therefore, at Owner’s request, Vendor shall timely execute and deliver, and, if requested, cause its employees and Subconsultants to timely execute and deliver, the documents set out as Exhibit EE-1: Mechanic’s Lien Subordination Agreement (but only to the extent such subordination is required under Article 11); Exhibit EE-2: Waiver and Subrogation of Mechanic’s Lien Claims, Exhibit EE-3: Notice of Cancellation of Lien, and Exhibit EE-4: Final Release of Mechanic’s Lien Claims. Upon final completion of Vendor’s performance of Services under a Work Order, at Owner’s written request, Vendor shall deliver a duly executed Certificate of Final Completion in the form attached as Exhibit GG.

30.2 Vendor, at any time and from time to time, shall, within ten (10) Days of Owner’s written request, execute, acknowledge and deliver to Owner and/or its designee without charge an estoppel certificate pursuant to which Vendor shall certify: (a) that this Agreement is unmodified and in full force and effect or, if there shall have been a modification(s) that the same is in full force and effect as modified and stating the modification(s), (b) that the representations and warranties of Vendor hereunder remain, as of the date of the estoppel certificate, true and correct in all respects, (c) the dates to which Vendor’s fees have been paid and the amount of the fees which has been paid, (d) whether or not any party hereto is in default of its obligations hereunder and, if so, specifying each such default, (e) whether there exists any condition or circumstance which, with the passage of time or the giving of notice or both, would constitute a default hereunder and (f) such other reasonable information as Owner and/or its designee may request, it being intended that any such estoppel certificate delivered pursuant to this Section may be relied upon by any prospective assignee of Owner’s interest in the Task, or any prospective mortgagee of Owner’s interest in the Task.

30.3 Vendor hereby represents and warrants to Owner that on and as of the date hereof:

30.3.1 Vendor is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina and has all requisite power and authority to enter into and perform its obligations under this Agreement;

30.3.2 No governmental action is required to be taken, given or obtained by or from any governmental authority and no filing, recording, publication or registration in any public office or any other place is necessary to authorize the execution, delivery and performance by Vendor of this Agreement or for the legality, validity, binding effect or enforceability hereof;

30.3.3 The execution and delivery of this Agreement by Vendor and the performance of its obligations hereunder will not contravene any applicable law, or any judgment or order applicable to or binding on Vendor, or contravene or result in any breach of, or constitute any default under, its certificate of incorporation or bylaws or any indenture, mortgage, contract, agreement or instrument to which Vendor is a party or by which any of its properties or assets may be bound;

30.3.4 The execution, delivery and performance of this Agreement by Vendor has been duly authorized by all necessary action; and this Agreement has been duly executed and delivered by Vendor and constitutes the legal, valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, liquidation or similar Laws and Regulations affecting creditors’ rights generally and by general principles of equity;

30.3.5 There is no action, suit or proceeding pending or, to the best knowledge of Vendor, threatened against Vendor (i) that questions the validity or enforceability of this Agreement or the ability (financial or otherwise) of Vendor to perform its obligations hereunder or (ii) which can reasonably be expected to have a material adverse effect upon Vendor’s performance of this Agreement;

30.3.6 Vendor is (i) experienced in the design and development of services of the scope, nature, magnitude and quality of the anticipated Tasks and Work Orders, (ii) competent to perform the Services required under this Agreement and (ii) familiar with all federal, State, county, city and other Laws and Regulations, which may materially affect the performance of the Services, the Work and the Project;

30.3.7 Vendor is fully qualified and properly staffed to provide the Services; and

30.3.8 Vendor holds, and shall continue to maintain and hold during the term of this Agreement, all licenses, permits and approvals required by applicable Laws and Regulations and/or necessary to perform the Services.

**IN WITNESS WHEREOF,** this Agreement is hereby executed as of the date first set forth above.

Owner: **MCNC**

By : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:

Title:

Vendor:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 1**

**FEE SCHEDULE**

**Summary of Fees**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Tasks 1-\_\_\_\_\_ | Task \_\_\_ | Total |
|  |  |  |  |
|  |  |  |  |
| Total |  |  |  |

**Fee Breakdowns by Task**

1. Development of Environmental Assessment

a. Fee for \_\_\_\_\_\_\_\_\_\_ Route $

b. Fee for \_\_\_\_\_\_\_\_\_\_\_ Route $

2. Right-of-Way and Permit Application and Engineering of Proposed Routes

a. Fee rates for \_\_\_\_\_\_\_\_\_\_\_\_\_ Route

i. Engineering + PM $\_\_\_\_\_\_/ft

ii. CAD $\_\_\_\_\_\_\_/FT

b. Fee rates for \_\_\_\_\_\_\_\_\_\_\_\_ Route

i. Engineering + PM $\_\_\_\_\_\_\_\_\_\_\_\_\_\_/ft

ii. CAD $\_\_\_\_\_\_\_\_/ft

3. Developing Bid Specifications for Outside Plant (OPS) Fiber Network

a. Fee for \_\_\_\_\_\_\_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_\_\_\_

b. Fee for \_\_\_\_\_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Review and Evaluate Construction Bid Responses

a. Fee for \_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

b. Fee for \_\_\_\_\_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Prepare Construction Contracts which serve as formal agreements for the Contractor.

a. Fee for \_\_\_\_ Route $\_\_\_\_\_\_\_\_\_

b. Fee for \_\_\_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_

6. Inspection services for OSP construction

a. Fee rate for \_\_\_\_\_\_\_ Route $\_\_\_\_\_/ft

b. Fee rate \_\_\_\_\_\_\_\_\_ Route $\_\_\_\_\_\_\_\_\_\_\_\_/ft

\*Assumes fiber route mileage calculated at \_\_\_\_\_\_\_\_\_\_\_ miles and \_\_\_\_\_\_\_\_\_\_\_\_\_\_miles. If the actual mileage of a route varies more than one percent (1%) [i.e., either increases in mileage by more than one percent (1%) or decreases in mileage by more than one percent (1%)] then Tasks \_\_\_\_ and \_\_\_\_\_ shall be calculated based upon the actual mileage at the above rates per foot. Tasks \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_ are fixed price tasks and their fees would not change based upon actual mileage variances.

Subject to the provisions of Section 13.1, all travel will be expensed as follows:

Air Travel: Invoice + 5%

Rental Car: Invoice + 5%

Hotel: Invoice + 5%

Incidentals: Cost + 5%

All Total Unit Price (i.e., Fee per Task) work will be billed as percentage complete as of the monthly closing date.

All Unit Price (i.e., Fee rate per foot) work will be billed at actual footage completed (at the indicated Fee rate) as of the monthly closing date.

**Professional Services Rate Schedule**

All Fees for Additional Services will be billed at the following hourly rates:

|  |  |
| --- | --- |
| Senior Manager |  |
| Senior Telecom Analyst |  |
| RF Engineer |  |
| Project Manager |  |
| Financial Analyst |  |
| Senior Telecom Engineer |  |
| RCDD Engineer |  |
| Outside Plant Engineer |  |
| Quality Control Inspector |  |
| Construction Permit Coordinator |  |
| Field Engineer |  |
| CADD Technician |  |
| Legal Counsel |  |
| Paralegal |  |
| General Clerk |  |
| Marketing and Training |  |
| Financial Analyst |  |
| Data Entry |  |

**EXHIBIT AA**

**WORK ORDER**

**Work Order No.** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Sample]

**AGREEMENT** made as of the day of , 20\_\_\_.

**BY AND BETWEEN OWNER:**

**AND VENDOR:**

**WORK ORDER TASK DESCRIPTION:**

TASK TITLE: CONTRACT DATED:

WORK ORDER NO.:

**1.1** **Task Summary:** The following summary (the “Task Summary”) identifies the Task, which is the subject of this Work Order, including certain financial terms and deadlines. Terms used in this Task Summary are more fully defined or described in the Base Agreement for Engineering Design Services and Environmental Assessment between Owner and Vendor dated (the “Base Agreement”). The Base Agreement is incorporated herein and made a part hereof for all purposes.

The Task is: (name, location and summary description of Services covered by this Work Order)

Owner: Telephone No.:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner’s Representative: Telephone No.:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vendor: Telephone No.:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vendor’s Representative: Telephone No.:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Check the applicable box or boxes and provide the necessary information:

⁫ Fees for Basic Services:

⁫ Reimbursable Expenses:

⁫ Fees for Additional Services:

**1.2** **Schedule for Performance:** Vendor’s Services shall be performed in accordance with the following schedule:

**1.3** **Scope of Services:** Vendor’s Services for this Work Order include the Services described below:

**1.4** **Compensation for Services:** Vendor’s Services under this Work Order shall be compensated as follows:

**1.5 Liquidated Damages:** For the purpose of this Agreement, the Liquidated Damages shall be five hundred dollars ($500.00) per calendar day for each of the first fifteen calendar days that Contractor fails to complete each lateral, segment, or other portion of the Work by the applicable Final Completion Date set out above. The Liquidated Damages shall be one thousand dollars ($1,000.00) per calendar day for each day after the fifteenth calendar day that Contractor fails to complete the Work by the Final Completion Date.

**1.6 Other Terms and Conditions: [Include acceptance criteria.]**

Effective on the date first set forth above.

Owner: **MCNC**

By : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:

Title:

Vendor:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:

Title:

**EXHIBIT BB**

**VENDOR’S CHANGE ORDER**

[Sample]

TO: CHANGE ORDER NO.:

DATE:

TASK TITLE: CONTRACT DATED:

WORK ORDER NO.:

This will authorize the following changes:

This Change Order constitutes full, final, and complete compensation to Vendor for all costs, expenses, overhead, profit, and any damages of every kind that Vendor may incur in connection with the above-described changes in Vendor’s Services, including any changes in the sequence, acceleration, disruption, or delay of any of Vendor’s Services, all applicable taxes and other sales and use taxes, if any, and any other effect on any of Vendor’s Services under this Agreement. By the execution of this Change Order, Vendor accepts the changes in compensation including changes to the Fees and the adjustments to the Schedule for Performance, if any, and expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the original Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any Services authorized hereunder.

By signing below, the parties indicate their acceptance of this Change Order.

|  |  |  |
| --- | --- | --- |
|  | Fees for  Basic Services | Reimbursable Expenses for  Basic Services |
| The original total Fees (or Fee rates) were | $ | $ |
| Net change by previously authorized Change Orders | $ | $ |
| The total Fees (or Fee rates) prior to this Change Order were | $ | $ |
| The Fees (or Fee rates) will be (increased) (decreased) (unchanged) by this Change Order | $ | $ |
| The new total Fees (or Fee rates) Including this Change Order will be | $ | $ |

The Schedule for Performance will be (extended)(shortened)(unchanged) by \_\_\_\_ Days.

**ACCEPTED BY:**

|  |  |
| --- | --- |
| Owner: **MCNC**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_ | Vendor:  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_ |

**EXHIBIT CC**

**INSURANCE REQUIREMENTS**

1. Vendor shall purchase and maintain at all times such insurance as will protect Vendor from the claims set forth below which may arise out of or result from Vendor’s operations under this Base Agreement whether such operations be by Vendor or by Subconsultants or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1.1 Claims under worker’s compensation that are applicable to the Services to be performed.

1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employees and under any applicable employer’s liability law with customary limits.

1.3 Claims for damages because of bodily injury, or death of any person other than employees.

1.4 Claims for damages because of bodily injury or death of any person or property damage arising out of Ownership, maintenance or use of any motor vehicle, owned, non-owned and hired.

1.5 Claims for damages, resulting directly or indirectly from negligent acts, errors or omissions arising out of the performance of Vendor’s Services.

2. Vendor’s Workers’ Compensation insurance required by Paragraph 1 shall be written for not less than Statutory Limits of the Workers’ Compensation Laws of the applicable State(s). Vendor’s Employer Liability coverage as required by Paragraph 1 shall be written for not less than the limits of liability as follows: $500,000 per accident for Bodily Injury by accident, $500,000 per accident for Bodily Injury by disease, and $500,000 policy limit Bodily Injury by disease.

3. Vendor’s Automobile Liability Insurance as required by Paragraph 1 shall be written for not less than limits of liability as follows:

Comprehensive Automobile Liability - $1,000,000 combined single limit for bodily injury and property damages.

4. Vendor’s Commercial General Liability coverage as required by Paragraph 1 shall be written for not less than limits of liability as follows: $1,000,000 each occurrence and $5,000,000 Annual Aggregate.

5. Vendor shall maintain commercial umbrella coverage with limits not less than $2,000,000

6. Vendor’s Professional Liability Insurance Coverage as required by Paragraph 1 including contractual liability coverage shall be written for not less than a $2,000,000 limit of liability per claim and $4,000,000 aggregate, with all coverage retroactive to the earlier of the date of this Base Agreement or the commencement of Vendor’s Services in relation to the Task. The Professional Liability Insurance Coverage required by Paragraph 1 may be arranged under a separate Professional Liability Insurance Policy, under a Task Insurance Policy, or by a combination of separate policies and a Task Insurance Policy provided, however, there is no duplicative coverage.

7. Commercial General Liability Insurance, Employer’s Liability Insurance and Automobile Liability Insurance may be arranged under separate policies for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

8. Vendor shall provide to Owner certificates of insurance evidencing that Vendor has insurance coverage and limits meeting the requirements of this Agreement. The certificates of insurance shall provide that the insurers issuing said policies shall give Owner not less than thirty (30) Days prior written notice in the event of cancellation or reduction in limits thereunder.

9. Following execution of the Base Agreement, Vendor shall request of its insurance carriers that each insurance policy to be maintained under Paragraphs 3, 4, 5 and 7 shall be endorsed to name as Additional Insureds (i) Owner, its assigns, its affiliates, directors, officers, agents, consultants, servants and employees, and (ii) all other interests as may be reasonably required by Owner and its affiliates. The coverage afforded the Additional Insured under these policies shall be primary insurance. If the Additional Insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis and apply to the Additional Insureds only. The amount of Vendor’s insurance shall not be reduced by the existence of such other insurance.

10. Following execution of the Base Agreement, Vendor shall require all policies of insurance for automobile liability, general liability and worker’s compensation that are in any way related to the Services to be provided by Vendor and that are secured and maintained by Vendor to include clauses providing that each underwriter shall waive all of its rights to recovery, under subrogation or otherwise, against Owner. In addition, Vendor waives all rights of recovery against Owner it may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the Services to be provided by Vendor and that are secured and maintained by Vendor.

11. On or before the execution of this Agreement, Vendor shall furnish Owner an appropriate certificate, including any endorsements directly relating to this Task, identifying Vendor’s Professional Liability Insurance Coverage, together with all other required coverage, and stipulating amounts of coverage and deductible. Such certificate(s) shall indicate that coverage will not be canceled, not renewed or reduced until at least thirty (30) Day’s prior written notice has been given to Owner. If Owner on review of the policy stipulations, including monetary limits, requires Vendor to modify the current terms or limits so as to expand coverage or increase limits, the premium increase, if any, caused by the change shall be deemed a Reimbursable Expense, but only as it relates to premiums attributable to this Agreement. Vendor agrees to maintain all required coverage, including, without limitation, the Professional Liability Insurance herein required, for at least two years following completion and acceptance of the Task.

12. All insurance described herein shall be written with companies reasonably satisfactory to Owner.

13. Nothing contained herein shall relieve Vendor from its obligations to exercise due care in the performance of its duties under this Agreement.

14. Vendor shall purchase and maintain such Railroad Protective Insurance as may be required by any railroad affected by the performance of any of Vendor’s Services. Vendor’s Railroad Protective Insurance shall be written for not less than the limits required by the affected railroad.

**EXHIBIT DD**

**CERTAIN BILLING REQUIREMENTS**

1. In the event Owner and Vendor cannot agree on any adjustment in the Task Fees and/or an adjustment to the Schedule for Performance pursuant to Section 4.5 of the Agreement, Vendor shall maintain accurate and separate records relating to all costs and time required to perform the Services required by the Change Order Request (the “Vendor’s Costs”) until such time as an audit can be performed by Owner to determine Vendor’s Costs resulting from the ordered change and if any extension to the Schedule for Performance is justified.

2. All records must be supported by invoices, receipts, time records, or other documents that clearly identify and explain the charges, whether incurred by Vendor or a Subcontractor. Inadequately supported charges are subject to disallowance.

3. Vendor shall invoice the identified segments or portions of the HERO Project separately.

***[Note to draft: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to provide a sample invoice under separate cover.]***

**EXHIBIT EE**

**OTHER TERMS AND CONDITIONS**

**Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms**

Pursuant to 2 CFR § 200.321, Vendor must take all necessary affirmative steps (as described in 2 CFR § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Vendor is to identify the extent to which Small Businesses (SBs)b, Veteran-Owned Small Businesses (VOSBs), Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), HUBZone Small Businesses, Small Disadvantaged Businesses (SDBs) Woman-Owned Small Businesses (WOSBs), Historically Black Colleges/Universities or Minority Institutions (HBCU/MIs), Minority-Owned Businesses (MOBs), or Local (North Caroline) Businesses (LBs) would be utilized in the performance of this proposed contract. For small businesses, as defined by the North American Industry Classification System (NAICS) code applicable to this RFP, NAICS code 541330 - Engineering Services, and HBCU/MI, MOB or LB the offeror’s own participation as a SB, VOSB, SDVOSB, HUBZONE SB, SDB, WOSB, HBCU/MI, MOB or LB is to be identified, and will be considered in evaluating Firm Qualifications, Expertise and Experience Factor.

**Protection of Whistleblowers**

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information). The Vendor shall comply with the Whistleblower Protection requirements of the American Recovery and Reinvestment Act (Recovery Act), Section 553 of the Division A, Title XV, Public Law 111-5 (for more information, see Office of Inspector General - U.S. Department of Labor - ARRA Whistleblowers Form (dol.gov) which provides protection for employees of any other non-federal employers including employees of state and local governments, contractors, subcontractors, recipients and any other non-federal employers receiving Recovery Act fund recipients, making specific disclosures relating to possible fraud, waste, or abuse of Recovery Act funds. Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward.

**Performance Bond or Professional Liability Insurance**

The Vendor shall purchase a performance bond from a surety licensed to do business in the State of North Carolina or provide MCNC with proof of professional liability insurance. The performance bond or the professional liability insurance policy shall be in the same amount as the award value of the resulting contract under this RFP and shall entitle MCNC to call upon the surety to complete the contract in one of two ways: (1) the surety and MCNC can choose a new Vendor to complete the contract and the surety pays the costs; or (2) MCNC alone chooses to terminate the contract by selecting another Vendor and the surety pays the costs.

**No Gifts and Gratuities Policy**

MCNC's Code of Ethics policy has a strictly enforced requirement that MCNC and its staff are prohibited from accepting any favors or gratuities from contractors, potential contractors, sub-agreement parties, or from anyone that could potentially be involved in any aspect of MCNC's business.

**Certification Regarding Debarment/Lobbying**

This Agreement is subject to subpart C of 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Vendor must include a Form CD-512, “Certification Regarding Lobbying–Lower Tier Covered Transactions,” completed without modification.

**E-Verify system**

Pursuant to G.S. 143-48.5 and G.S. 143-133.3, Vendor and its subcontractors, will comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: [www.uscis.gov](http://www.uscis.gov)

**Certification: Iran Divestment Act**

In addition, in accordance with The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq*., by executing this Agreement, Vender certifies that it (1) is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran; (2) shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and (3) that the person signing the Agreement is authorized by the Vendor to make this Certification.

**EXHIBIT EE-1**

**MECHANIC’S LIEN**

**SUBORDINATION AGREEMENT**

STATE OF NORTH CAROLINA

**LIEN SUBORDINATION AGREEMENT**

THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THIS LIEN SUBORDINATION AGREEMENT (the “Agreement”) is executed as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”).

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”) owns that certain parcel of land described as follows:

(the “Property”), which Property is to be encumbered by the Deed of Trust to be recorded in the \_\_\_\_\_\_\_\_ County Registry (the “Deed of Trust”), from Owner to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Trustee for the benefit of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter referred to as “Lender”), securing a loan in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to be made by Lender to Owner.

***OR***

the “Property”), which Property is encumbered by the Deed of Trust recorded in Book \_\_\_\_\_ at page \_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_ County Registry (the “Deed of Trust”), from Owner to \_\_\_\_\_\_\_\_ as Trustee for the benefit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Lender”), securing a loan in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ made by Lender to Owner.

WHEREAS, Contractor has furnished and will continue to furnish materials and/or labor to the Property under a contract with Owner.

WHEREAS, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Title Company”) has been requested to issue a title insurance policy insuring the interest of the Lender in the Property under the Deed of Trust, and the aforesaid policy must be without exception to possible unfiled mechanics’ and materialmen’s liens.

WHEREAS, Contractor acknowledges that Lender and Title Company will and are relying upon the statements herein made in paying out the proceeds of the loans to be secured by the Deed of Trust and issuing of title insurance.

WHEREAS, Contractor desires to subordinate any lien, claim or any other interest whatsoever which it might have in the Property and in any funds to be advanced secured by the Deed of Trust in order for disbursement of the aforesaid loans to be made and title insurance to issue insuring the aforesaid Deed of Trust as a valid first lien on the Property.

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the making of one or more loans on the Property and the insuring of the title to the Property, Contractor certifies that (i)  Contractor has signed this Agreement in the correct legal capacity and has the authority to sign this Agreement; (ii) there are no outstanding actual or potential liens (filed or unfiled) for labor, services or materials for improvements on the Property by anyone claiming by, through, or under Contractor; and (iii)  Contractor has not received any notice of claim of lien upon funds or claim of lien on real property from any other person or entity.

In addition, Contractor certifies that, to the best of such Contractor’s knowledge and belief, (i) all parties known by Contractor to have dealt or contracted with Owner for improvements made within the 120 days immediately preceding the date of recordation of the Deed of Trust or who Contractor knows may be providing punch list or warranty work post-closing pursuant to labor, services or materials previously furnished are identified herein (though Contractor makes no representation regarding their waiver, subordination or payment unless claiming by through or under such Contractor) and (ii) such Contractor has no knowledge of any other type of claim outstanding by anyone claiming by, through, or under such Contractor which would entitle the holder thereof to claim a lien on or interest in the Property including retention of title agreements or security interests for any materials, appliances, fixtures or furnishings placed upon or installed on the Property.

Contractor hereby subordinates to the lien of the Deed of Trust Contractor’s right and that of anyone claiming by, through, or under such Contractor to file a lien for labor, services or materials on the Property. Contractor agrees that the Deed of Trust shall constitute a superior and paramount lien for all amounts which have been or may hereafter be advanced under the Deed of Trust including amounts advanced pursuant to any amendment, modification, extension or renewal thereof, and all of the liens, claims, and other rights and interests of the undersigned which it may have or hereafter acquire in and to the Property or the funds to be advanced secured by the Deed of Trust and those of anyone claiming by, through, or under Contractor are hereby subordinated to the lien of the Deed of Trust. Contractor further warrants that Contractor has not assigned and will not assign Contractor’s claim for payment or right to perfect a potential lien on the Property and that Contractor has the right to execute this subordination.

Contractor hereby agrees to indemnify and hold the said Lender and Title Company harmless from any and all loss, cost, damage and expense including without limitation reasonable attorneys’ fees which said Lender or Title Company may suffer or incur or become liable for under its policy directly or indirectly out of such improvements on the aforesaid Property or on account of any such mechanics’ or materialmen’s liens or claims, or in connection with enforcement of their rights under this Agreement.

This the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sworn to and subscribed before me

this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**WAIVER AND SUBORDINATION**

**OF MECHANIC’S LIEN CLAIMS**

THE STATE OF NORTH CAROLINA §

§

THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ §

The undersigned is a Vendor or Subconsultant who has furnished labor and/or material (“Services/Work”) in the design and/or construction of improvements upon real property owned by MCNC (“Owner”) located in the \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_ County, North Carolina, and described in Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”).

For Services/Work in connection with the Property, the undersigned:

⁫ Received $ through , ,

⁫ is not owed any amounts, and no amounts have been retained.

Therefore, the undersigned:

1. Has been paid in full for all sums owed for Services/Work concerning the Property;

2. Acknowledges complete satisfaction of, and forever waives and releases, all claims of every kind against Owner or the Property, including but not limited to all liens and claims of liens, which the undersigned may have as a result of or in connection with the Services/Work;

3. Has represented and warranted and does hereby represent and warrant that all persons or entities who have furnished labor and/or material to the undersigned in connection with the Services/Work have been paid all amounts they are owed;

4. Agree unconditionally to indemnify Owner and hold Owner harmless against all liability, loss, cost or expense (including but not limited to reasonable attorneys fees) now or hereafter incurred, paid or suffered by or asserted against Owner or Property because of any claim or action by the undersigned, or by any person or entity claiming by, through or under the undersigned, with respect to the claims, liens and rights herein waived and released or arising out of any material breach of any representation herein made.

In consideration of its funding of debt proceeds used to pay for Services/Work furnished by the undersigned, the undersigned hereby agrees and acknowledges for the benefit of Owner’s lender(s), that all mechanic’s liens or rights to the same now or hereafter owned or held by the undersigned are and shall be subordinate and inferior to any lien held by Owner’s lender(s) on the Property.

The person signing this document represents that he or she is duly authorized to do so on behalf of the undersigned original Vendor or Subconsultant.

All of the provisions of this document shall bind the undersigned Vendor or Subconsultant and the undersigned’s heirs, legal representatives, successors and assigns and shall inure to the benefit of Owner and Owner’s legal representatives, successors, assigns and sureties.

EXECUTED this day of , 20 .

By:

Title:

Sworn to and subscribed before me

this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**EXHIBIT EE-2**

**NOTICE OF CANCELLATION OF LIEN**

THE STATE OF NORTH CAROLINA §

§ **NOTICE OF CANCELLATION OF LIEN**

THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ §

NOW COMES \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the lien claimant herein, by and through counsel, and pursuant to N.C. Gen. Stat. § 44A-12, § 44A-16, and § 44A-20, and cancels, releases, and discharges the Claim of Lien and the Notice of Claim of Lien filed on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with the Clerk of Superior Court for \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, file number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (copy attached hereto as Exhibit A). This is an unqualified cancellation, release, and discharge of the referenced Claim of Lien and Notice of Claim of Lien.

This the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

LIEN CLAIMANT: **[Insert name of lien claimant]**

By:

**[Insert name and address of agent / attorney for lien claimant]**

Sworn to and subscribed before me

this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**EXHIBIT EE-3**

**FINAL RELEASE OF MECHANIC’S LIEN CLAIMS**

THE STATE OF NORTH CAROLINA §

§

THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ §

The undersigned is a Vendor or Subconsultant who has furnished labor, material, services and/or equipment (the “Services/Work”) in the construction of improvements upon real property owned by MCNC (“Owner”) located in the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_ County, North Carolina and described in Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”).

The total of all charges, including any retainage, for and in connection with all such Services/Work furnished by the undersigned has been paid in full to the undersigned. The undersigned acknowledges complete satisfaction of, and forever waives and releases, all claims of every kind against Owner or the Property or any funds or other property of Owner, including but not limited to all liens and claims of liens, which the undersigned may have as a result of or in connection with the performance or furnishing of such Services/Work.

The undersigned has further represented and warranted and does hereby represent and warrant that (a) it has not assigned and will not assign any claims against Owner or any right to a lien against the Property, (b) all persons and entities who have furnished labor, material, services, or equipment to the undersigned in connection with the Services/Work have been paid all amounts to which they have or may become entitled, and (c) the undersigned’s contract for the Services/Work is fully completed in accordance with the final plans and specifications thereof.

The undersigned hereby agrees unconditionally to indemnify Owner and hold Owner harmless against all liability, loss, cost or expense (including but not limited to reasonable attorneys fees) now or hereafter incurred, paid or suffered by or asserted against Owner or the Property or any funds or other property of Owner because of any claim or action by the undersigned, or by any person or entity claiming by, through, or under the undersigned, with respect to the claims, liens or rights herein waived and released or arising out of any material breach of any representation herein made.

The person signing this document represents that he or she is duly authorized to do so on behalf of the undersigned Vendor or Subconsultant.

All of the provisions of this document shall bind the undersigned Vendor or Subconsultant and the undersigned’s heirs legal representatives, successors and assigns and shall insure to the benefit of Owner and Owner’s heirs, legal representatives, successors, assigns and sureties.

EXECUTED this day of , 20 .

By:

Title:

Date:

Sworn to and subscribed before me

this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**EXHIBIT FF**

**CERTIFICATE FOR PAYMENT**

Vendor represents, warrants, and certifies that the Services covered by the Invoice for Services have been completed in accordance with the Agreement, that Vendor has paid to all Subconsultants all amounts due such parties from amounts paid by Owner pursuant to previous applications for payment, and that the payment requested by this application represents the amount due to Vendor. Vendor further represents, warrants, and certifies that (i) there are no mechanic’s liens or materialmen’s liens outstanding at the date of the applicable invoice for Services, (ii) all due and payable bills with respect to the Services have been paid to date or are included in the amount requested in the applicable Invoice for Services, (iii) except for such bills not paid but so included in the amount requested in the applicable Invoice for Services, there is no known basis for the filing of any mechanic’s or materialmen’s liens on the Services, (iv) effective waivers of liens have been obtained from all Subconsultants for an amount at least equal to the aggregate amount paid to each such party through the date of Vendor’s immediately preceding Invoice for Services, and (v) there are no taxes or other sales or use taxes due with respect to payments requested by this application except such amounts as are included in this application.

Vendor:

By:

Title:

Date:

**EXHIBIT GG**

**CERTIFICATE OF FINAL COMPLETION**

TASK TITLE: CONTRACT DATED:

COST CENTER NO.: WORK ORDER NO.:

I am the of Vendor and I certify on behalf of Vendor, that Vendor has paid all employees and Subconsultants in full for all labor, services, materials, and equipment supplied by them in connection with the above-described Task and Work Order through and including the date of this certificate, except for such persons, if any, listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten days after the date hereof.

Vendor agrees that if any claim or lien is filed against (i) Owner, its assigns, its affiliates, directors, officers, agents, consultants, servants and employees, (ii) Owner’s lender(s), if any, or (iii) all other interests related to the Task and Work Order, (the persons identified in clauses (i) through (iii) are collectively referred to as the “Parties”) or any property owned by or any funds of any of the Parties described herein, Vendor will immediately pay and satisfy such claim or lien or furnish a sufficient bond for the release of such claim or lien. Vendor further agrees to release, indemnify, defend, and hold harmless the Parties from any loss, cost, damage, liability, or expense, including, but not limited to, attorneys’ fees, which they may incur by reason of any such claim or lien.

I certify that Vendor has complied with all Laws and Regulations applicable to Vendor in connection with this Task and Work Order.

Vendor:

By:

Title:

Date:

THE STATE OF NORTH CAROLINA §

§

THE COUNTY OF §

This instrument was acknowledged before me this day of , 20 .

Notary Public

My Commission Expires: Printed/Typed Name:

**EXHIBIT HH**

**ASSIGNMENT OF RIGHTS UNDER SUBCONTRACT**

For and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ whose mailing address is \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_ (the “Vendor”), does hereby TRANSFER, ASSIGN and CONVEY unto MCNC (“Owner”), a North Carolina non-profit, whose mailing address is \_\_\_\_\_\_\_\_\_\_, all of the rights, interests, benefits and privileges of Vendor under (a) that certain Subcontract (the “Subcontract”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between Vendor and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Subconsultant”), a copy of said Subcontract is attached hereto as Attachment “A”, providing for a portion of the labor and/or materials that Vendor is obligated to provide Owner under (a) that certain Base Agreement for Engineering Design Services and Environmental Assessment to be rendered pursuant to Work Orders between Owner and Vendor dated (the “Base Agreement) and (b) any and all payment and performance bonds issued in conjunction with the Subcontract. However, Owner does not hereby assume any of Vendor’s liabilities, duties or obligations under the Subcontract.

The foregoing Assignment constitutes a part of the security given to Owner by Vendor to secure Vendor’s performance of the Base Agreement. Notwithstanding anything in this instrument to the contrary, Owner shall not exercise any rights under this instrument unless an event of default or other termination shall have occurred under the provisions of the Base Agreement. Owner shall have the right, but not the duty, in the event of a default and/or termination pursuant to the terms of the Base Agreement, to exercise all of its rights, interests, benefits and privileges under the Subcontract.

Subconsultant hereby agrees with Owner as follows:

1. That Subconsultant hereby consents to the foregoing assignment and agrees to notify Owner in writing at the same time Subconsultant notifies Vendor of the occurrence of any failure of Payment under the provisions of the Subcontract or of the occurrence of any other default by Vendor under the provisions of the Subcontract.

2. That if Owner notifies the Subconsultant in writing that an event of default by Vendor, or other termination, has occurred under the Base Agreement, the Subconsultant shall, at Owner’s request, waive Vendor’s default and continue performance on Owner’s behalf under the Subcontract in accordance with the terms thereof, provided that the Subconsultant shall be paid in accordance with the Subcontract for the following as and when they are due under the Subcontract:

2.1 all Services, labor and materials rendered on Vendor’s behalf prior to Owner’s request;

2.2 all Services, labor and materials rendered on Owner’s behalf following Owner’s request; and

2.3 the amount of retainage, if any, withheld by Owner from payments to Vendor made by Owner prior to Owner’s request.

3. That in the event any of Subcontract proceeds are disbursed by Owner directly to the Subconsultant, the Subconsultant will receive any such advances and will hold the same as a trust and for the purpose of paying the costs of the labor performed and equipment and supplies used in connection with the Task, and the Subconsultant will apply the same only to payment of such costs and for no other purpose.

4. That upon Owner’s request, the Subconsultant shall furnish to Owner a current list of all persons or firms with whom the Subconsultant has entered into subcontracts or other agreements relating to the performance of Services/Work or furnishing of materials in connection with the Project which have a value of $1,000.00 or more, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by the Subconsultant. Vendor hereby consents to the furnishing to Owner of such list and statement.

5. Subconsultant consents to Owner assigning Owner’s rights hereunder to anyone whom Owner may choose to complete Vendor’s obligations, including without limitation, Vendor’s survey.

6. That Owner has no obligation to exercise its rights under this Assignment and furthermore has no obligation to pay Subconsultant unless Owner exercises its rights as set forth in Paragraph 2 above.

7. That this Assignment does not create third party beneficiary rights under the Base Agreement in favor of anyone, including Subconsultant.

IN WITNESS WHEREOF, this instrument shall be effective as of the date of the Subcontract.

VENDOR SUBCONSULTANT:

a a

By: By:

Name: Name:

Title: Title:

THE STATE OF §

§

THE COUNTY OF §

This instrument was acknowledged before me this day of , 20 .

Notary Public

My Commission Expires: Printed/Typed Name:

THE STATE OF §

§

THE COUNTY OF §

This instrument was acknowledged before me this day of , 20 .

Notary Public

My Commission Expires: Printed/Typed Name: