**ADDENDUM TO DESIGN-BUILD MASTER AGREEMENT**

THIS ADDENDNUM TO THE DESIGN-BUILD MASTER AGREEMENT (this “**Addendum**”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between MCNC, a North Carolina nonprofit corporation PO Box 12889, Research Triangle Park, North Carolina 27709 (hereinafter referred to as “Owner”) (“**Owner**” or “**MCNC**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Contractor**”). Both hereinafter, individually, a “Party” and, collectively, the “Parties.”

WHEREAS, Owner and Contractor entered into a Design-Build Master Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the “Master Agreement”) for the purpose of the design and construction of designated lateral fiber optic infrastructure and, if applicable, the direct fiber connections to designated community college(s), library(ies), school(s), health and safety facility(ies) and/or other community anchor institution(s) in any designated county(ies) in North Carolina, to expand the optical footprint of the existing North Carolina Research and Education Network (“NCREN”) backbone and connecting MCNC’s fiber optic assets; and

WHEREAS, On June 16, 2023, Owner was awarded a Middle Mile Broadband Infrastructure grant for High-speed Economics for Rural Opportunities by the US Department of Commerce’s National Telecommunications and Information Administration (“**NTIA**”) to deploy broadband in certain areas in North Carolina (the “**HERO Project**”); and

WHEREAS, The Project is comprised of construction and splicing of approximately a total of 209.08 segment miles of middle mile infrastructure in North Carolina between Winston-Salem to Salisbury for approximately 40.45 segment miles, Salisbury to Albemarle for approximately 32.90 segment miles, Sanford to Fayetteville for approximately 33.30 segment miles, and Fayetteville to Kenansville for approximately 35.03 segment miles and Kenansville to Jacksonville for approximately 67.40 segment miles. Through additional investments from MCNC, direct fiber connections to community colleges, libraries, schools, health and safety facilities and other community anchor institutions along the construction corridors in eleven (11) of the most rural, economically disadvantaged counties in North Carolina will also be built.

WHEREAS, Owner and Contractor on the terms and conditions of the Master Agreement and this Addendum agree that the Contractor shall provide the design and construction of designated fiber optic infrastructure and/or shall perform certain other construction Services, at Owner’s discretion, related to the HERO Project; and

WHEREAS, Contractor acknowledges that the funds for the HERO Project are provided under the American Recovery and Reinvestment Act, Public Law No. 111-5, as implemented by 2 C.F.R. Part 176, Subpart B (the “Recovery Act”) and all work on the HERO project is subject to certain guidelines and requirements as set forth in this Addendum.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Addendum and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree:

1. All work performed by Contractor on any Projects under the HERO Project shall be governed by the Master Agreement as supplemented by the terms of this Addendum. In the event of a conflict between the Master Agreement and this Addendum, the terms of this Addendum shall govern.
2. The Contractor shall construct the Project for Owner at the Project Location with supporting improvements, facilities and equipment as described in or reasonably inferable from the Contract Documents. The Contractor shall provide, furnish and install all Materials not specifically shown in the Contract Documents to be furnished by Owner, and all Services as and when required for, or in connection with, the construction, furnishing or equipping of, or for inclusion or incorporation in, the Project in accordance with the Contract Documents. The Contractor agrees that the Work shall be performed in a good and workmanlike manner, free from defects, and in compliance with Laws and Regulations. All Materials shall be new and approved by or acceptable to Owner, except as otherwise expressly provided for in the Contract Documents. Any materials used to construct the Project for Owner shall remain the property of Owner. If under any circumstances, Contractor installs additional Materials not requested, furnished or approved by Owner, the installed Material becomes the property of Owner and Contractor shall have no claim against Owner with respect to any such Materials not requested, furnished or approved by Owner. The Contractor shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the improvements. Owner will negotiate with a specific fiber and conduit manufacturer for the delivery and recycling of fiber and conduit optic cable needed for the construction of the Project. The Contractor will maintain control and possession of all delivered reels and the empty fiber and conduit reels after installation until such reels are picked up by the fiber/conduit manufacturing company for recycling. Contractor shall be responsible for all associated fees for any reels not returned or returned in a non-recyclable condition. Owner is in the process of selecting an outside plant vendor. Materials secured by the outside plant vendor may be stored in warehouse(s) centrally located to the Project. Upon Owner’s written notice to Contractor, Contractor shall obtain the Materials required for the Project from the centrally located warehouse(s). Contractor shall keep such Materials insured during transportation to the Project site and while stored on the Project site. Contractor shall be responsible for the care, custody, and control of all Materials whether supplied by Contractor or Subcontractors and those Materials that Owner supplies to Contractor. Any loss or damage to such Materials shall be at Contractor's sole cost and expense and shall not be reimbursed by Owner. Contractor shall replace all lost or damaged Materials such that the Project and Owner's other contractors are not delayed or inconvenienced. If Contractor fails to timely replace lost or damaged Materials, Owner shall be entitled to replace such lost or damaged Materials and deduct the cost of same from amounts otherwise due to Contractor. If adequate amounts are not due Contractor to make Owner whole, Contractor shall reimburse such amounts to Owner within 48 hours of written request from Owner. All fiber construction and fiber splicing practices shall be in compliance with National Electrical Safety Code “NESC”), American National Standards Institute (“ANSI”), and railroad specifications
3. The Contractor shall provide a critical path schedule, or such other type of schedule as Owner may approve, and periodic updating thereof and other necessary schedules (all of which are collectively referred to as the “Progress Schedule”) in the interest of completing the Project in the most expeditious and economical manner. Within thirty (30) calendar days after execution of this Agreement, the Contractor shall prepare and submit for Owner’s approval the Progress Schedule for the Work. The Progress Schedule shall indicate the dates for the commencement and completion of the various stages of construction, including Milestone Work and corresponding Interim Completion Dates (per Exhibit M), and shall be revised as required by the conditions of the Work, subject to Owner’s approval. The Progress Schedule shall encompass all of the work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. The parties acknowledge and agree that notwithstanding any theoretical delays or theoretical extensions of time for Substantial Completion, as may be shown on the Progress Schedule, any Interim Completion Dates and the Substantial Completion Date shall be governed by this Agreement and shall be extended only in accordance with the procedures set forth herein.
4. “Contract Sum” as follows: The Contract Sum shall be the total agreed compensation payable to Contractor under any issued and outstanding Exhibit A. Owner may cancel any contract for projects under the HERO project if funds are not appropriated or not otherwise made available to support the Project’s commencement or continuation of performance.
5. The actual Contract Sum is unknown at the time of execution of the Addendum. The presumed Contract Sum is computed based upon a Contractor charge of

\_\_\_\_\_\_\_\_segment: \_\_\_\_\_\_ assumed miles \_\_\_\_ ft/mile \* $\_\_\_\_\_\_\_per foot =

Therefore, for purposes of setting the Contract Sum for initial contracting and for determining the amount of Bonds, the Contract Sum will be assumed to be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties acknowledge that the actual Contract Sum may be more or less than the Contract Sum computed for Bond purposes.

If the actual Contract Sum exceeds the Contract Sum computed for Bond purposes by ten percent (10%), the Contractor shall update the Bond amount monthly to reflect the increase in the Contract Sum and that any additional Bond Cost shall not be reimbursed by Owner but shall be presumed to be reflected in the agreed upon per foot charge.

1. Performance Bond. The Contractor shall purchase a performance bond from a surety licensed, authorized and admitted to do business in the State of North Carolina . The performance bond shall be in an amount equal to one hundred percent (100%) of the Contract Sum and each in the form attached hereto as Exhibit K, or in other form satisfactory to Owner.

1. Payments. In full consideration of the full and complete performance of the Work and all other obligations of the Contractor hereunder, Owner shall pay to the Contractor a sum of money equal to the “Contract Sum” which is that sum set forth in the Project Summary, subject to additions and deductions as provided in this Agreement. On or before the twenty-fifth (25th) day of each month during the performance of the Work, or such other day of the month as Owner may direct, the Contractor, after completion of the Design Vendor’s quality control approval process, shall submit to Owner for its approval a request for payment (“Request for Payment”). Each Request for Payment shall indicate the percentage of completion of each portion of the Work as of the beginning of the period covered by the Request for Payment through the 25th of each month and clearly labeled with the segment for which payment is being requested. Requests for Payment must be by segment with no co-mingling of segments within a Request for Payment. The Request for Payment shall be in the form of Exhibit D in the Master Agreement. Submission of reports, certificates, waivers of lien, and other documents required in this Agreement to be submitted is a condition precedent to Owner’s obligation to pay Contractor hereunder. Fifteen (15) days prior to the first Request for Payment, the Contractor shall prepare and submit to Owner for its approval a schedule of values allocating the entire Contract Sum among the various portions of the Work (the “Schedule of Values”). The Schedule of Values approved by Owner shall be used as a basis for reviewing the Contractor’s Request for Payment. (b) Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(i) With respect to unit cost Work, take the number of units properly performed during the month times the unit cost of each item, less retainage of ten percent (10%) and subtract amounts, if any, for which Owner has withheld funds pursuant to its rights under any portion of the Contract Documents.

(ii) With respect to non-unit cost Work, take that portion of the Contract Sum properly allocable to completed non-unit cost Work as determined by multiplying the percentage completion of each portion of the non-unit cost Work by the share of the total Contract Sum allocated to that portion of the non-unit cost Work in the Schedule of Values, less retainage of ten percent (10%) and subtract the aggregate of previous payments made by Owner and subtract amounts, if any, for which Owner has withheld funds pursuant to its rights under any portion of the Contract Documents.

(iii) The Contractor’s Costs shall be segregated and detailed in a manner satisfactory to Owner, with sufficient supporting documentation for Owner to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the Work, and the total Work, as of the end of the period covered by the Request for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment. Inadequately supported charges are subject to disallowance; however, Owner will make payments of the balance of the Request for Payment when such amounts are approved within thirty (30) days of receipt. The Request for Payment may include the cost of Contractor provided Materials not incorporated in the Work, but delivered and suitably stored at the Project location or at some other location if approved by Owner.

(iv) Owner and the Design Vendor shall review each such Request for Payment and may make such exceptions as the Design Vendor or Owner reasonably deem necessary or appropriate under the circumstances then existing. In no event shall Owner be required to make payment for items to which Owner or the Design Vendor reasonably takes exception.

Owner shall make payment to the Contractor in the amount approved, subject to this section. The payment of any Request for Payment by Owner, including the Final Request, does not constitute approval or acceptance by Owner of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of Owner’s rights hereunder or at law or in equity.

The Contractor agrees that ten percent (10%) of the amount due for Work performed under a subcontract under each Request for Payment may be retained by Owner until Final Payment. If the Contractor has furnished Bonds in accordance with Section 13 and the Contractor is performing satisfactorily when fifty percent (50%) of the Work has been completed, Owner may, at its sole discretion, elect to reduce the amount retained. Contractor further agrees that ten percent (10%) of the amount due, by segment, for self-performed Work, under each Request for Payment may be retained by Owner until Final Payment. Owner may, but shall not be obligated to, request consent of the Contractor’s surety to such reduction. Notwithstanding the foregoing, Owner may make payments to the Contractor sufficient to allow the Contractor to make payment to a Subcontractor of the Subcontractor’s retainage in full when satisfactory evidence is provided to Owner that: (1) all of Subcontractor’s Work is complete; (2) all necessary waivers of lien have been provided; and (3) all of Subcontractor’s laborers, suppliers and subcontractors have been paid. However, the Contractor shall remain liable for Subcontractor’s Work and for any unpaid laborers, material suppliers or subcontractors of Subcontractor in the event it is later discovered that said Work is deficient or that any of said laborers, material suppliers or subcontractors did not receive payments due them on the Project.

Thirty (30) days after Final Completion of the Work and acceptance thereof by Owner or as soon thereafter as possible, the Contractor shall submit a final request for payment (“Final Request”) which shall set forth all amounts due and remaining unpaid to the Contractor and upon approval thereof by Owner, Owner shall pay to the Contractor the amount due under such Final Request (“Final Payment”) within thirty (30) days of receipt.

The Final Payment shall be made only after the Contractor’s delivery to Owner of complete releases of all liens or lien rights signed by all Subcontractors on the form of Final Waiver of Liens in the Master Agreement identified as Exhibit E (the “Final Waiver of Liens”). The Contractor may, if any Subcontractor refuses to furnish a Final Waiver of Liens, furnish a bond satisfactory to Owner to defend and indemnify Owner and any other property owner, person or entity Owner may be required to indemnify against any lien or claim. In addition, and as a condition precedent to Owner’s obligations to make Final Payment, the Contractor shall execute and deliver to Owner a Certificate of Final Completion on the form the Exhibit F in the Master Agreement.

Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment to the Contractor if any one or more of the following conditions exists

(i) The Contractor is in default of any of its obligations under any of the Contract Documents or is in default of any other obligation owed by Contractor to Owner under this Agreement or any other agreement or transaction between the Contractor and Owner in connection with the Project;

(ii) Any part of such payment is attributable to Work, which is defective or not performed in accordance with the Drawings, Specifications, and Addenda;

(iii) The Contractor has failed to make payments promptly to any Subcontractor or for material or labor used in the Work for which Owner has made payment to the Contractor; or

(iv) If Owner, in its good faith judgment, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due the Contractor hereunder unless and until the Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by Owner to be sufficient to so complete the Work.

The Contractor shall use the sums advanced to it pursuant to this section solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the Contractor in performance of the Work. Included with the submission of each Request for Payment, beginning with the second Request for Payment, the Contractor shall furnish to Owner a Contractor’s Partial Waiver of Liens on the form Exhibit L attached hereto and a certified statement accounting for the disbursement of funds received from Owner. Such statement shall itemize all disbursements to Subcontractors and vendors. The Contractor shall also provide a Subcontractor’s Partial Waiver of Liens from each Subcontractor or vendor on the form attached hereto as Exhibit L for an amount at least equal to the aggregate amount paid to each such party through the date of the preceding Request for Payment. As a condition to the receipt of Final Payment, all such parties shall submit a full and final waiver and release of mechanic’s lien rights for all sums due under their respective subcontract, purchase order or other agreement. However, no provision hereof shall be construed to require Owner to see to the proper disposition or application of the monies so advanced to the Contractor.

The Contractor shall promptly pay all bills for labor and material performed and furnished by its Subcontractors in connection with the construction, furnishing and equipping of the Work and the performance of the Work. The Contractor shall not make any payment to any Subcontractor until such Subcontractor submits a Subcontractor’s Partial Waiver of Liens on the form attached hereto as Exhibit L for an amount equal to the aggregate amount paid to such party prior to, and including, the current payment.

Concurrently with the Final Request for Payment, the Contractor shall furnish to Owner, if requested by Owner, final surveys showing the exact locations of all lines installed by Contractor. Such surveys shall be prepared by a licensed surveyor who shall certify that the Work is installed and erected entirely upon the Project location and within the authorized boundaries and does not overhang or encroach upon any unauthorized easement or right-of-way.

1. **Compliance with Laws**

(a) Laws. Contractor must, in performance of work under the Master Agreement, fully 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). Any subletting or subcontracting by Contractor subjects such subcontractors to the same provisions.

(b) Civil Rights and Nondiscrimination Law Compliance. The Contractor agrees that it will not knowingly violate any applicable Laws and Regulations prohibiting discrimination concerning the solicitation for and employment in connection with the performance of its Work under this Agreement. Contractor shall expressly cite its nondiscriminatory employment practices. As applicable, Contractor will include these nondiscriminatory employment practice requirements in subcontracts and/or purchase orders. Further, pursuant to applicable Laws and Regulations, Contractor agrees that it shall comply with the Whistleblower Protection requirements. If Small Business, Minority and/or Local Businesses are utilized for the Work, Contractor agrees to provide the names of such entities used, description of Work performed, and total dollars paid for the Work provided by such entities. Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq and any other applicable non-discrimination law(s), including, Parts II and III of Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319), Executive Order 13166 and Executive Order 13798.

(c) Buy American Requirement**.** To the extent applicable, the Contractor shall comply with the requirements of Recovery Act §1605, as implemented by 2 CFR Part 176 Subpart B unless The U.S. Department of Commerce (DoC) waives the application of this provision.

(d) Prevailing Wage Rates and Labor Standards**.**

(i) To the extent applicable, the Contractor shall pay all laborers and mechanics employed by Contractor on the Project not less than the prevailing wage determined under the “Davis-Bacon Act” (40 USC 276(a)) for similar work in the civil subdivision for which the laborers and mechanics perform the work.

(ii) In addition, to the extent applicable, the Contractor shall pay all laborers and mechanics overtime compensation in accordance with the provisions of the “Contract Work Hours and Safety Standards Act” (40 USC 327-333).

(iii) The Contractor shall comply with all regulations issued pursuant to the above-referenced Acts and with all applicable federal and state laws and regulations.

(iv) Contracts for amounts over $100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. § 5.5) providing, among other things, that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

(v) In addition, the DOL Davis-Bacon poster (WH–1321) must be prominently posted at the site of the work. Refer to: [www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf](http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf)

(e) Conflict of Interest.Contractors must identify any conflict of interest that may arise from work performed for Owner.  Owner reserves the right to require the Contractor to take any action or supply information necessary to remove the conflict; or to terminate the Master Agreement or any other contract arising from this solicitation, if any such relationship would constitute or have potential to create a real or perceived conflict of interest that cannot be resolved to Owner's satisfaction.

(f) Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms.

(i) Pursuant to 2 CFR § 200.321, Contractors 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.

(ii) Contractors are to identify the extent to which Small Businesses (SBs), 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 Carolina) Businesses (LBs) would be utilized in the performance of this proposed contract.

(iii) For small businesses, as defined by the North American Industry Classification System (NAICS) code applicable to this RFP, 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 respondents’ Qualifications, Expertise and Experience Factors.

(g) 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 Contractor 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 - 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.

1. **Insurance Requirements**.

Contractor shall purchase and maintain insurance limits as stated in the Master Agreement except that the following types of coverage and limits of liability have been increased as follows:

* Commercial Umbrella

a) Umbrella limits must be at least $5,000,000

b) Umbrella coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL

* Professional Liability Insurance

a) Professional Liability (E&O) with limits of at least $1,000,00 each incident.

b) Professional Liability coverage must include coverage for claims arising out of failure to deliver, financial losses, negligence or construction errors or oversight for services performed under this Agreement.

* Environmental/Pollution Liability Insurance

a) Environmental/Pollution Liability with limits of at least $1,000,000 per occurrence and $2,000,000 aggregate

b) Environmental/Pollution must cover claims arising out of the use or application of chemicals/herbicides as well as the negligent release of hazardous materials.

Contractor shall furnish MCNC with an updated Certificates of Insurance evidencing that such insurance is provided and is in full force and effect before starting Work and at any other time requested by MCNC.

Waiver of Subrogation

Contractor waives all rights against Owner, Design Vendor and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employer’s liability insurance maintained per requirements stated above. Subcontractor’s Workers Compensation policy has WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT with Contractor, Owner and Design Vendor.

Contractor shall furnish the Owner with a Certificates of Insurance evidencing that such insurance is provided and is in full force and effective before starting the Work and at any other time requested by the Owner. Attached to each Certificate of Insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor’s Commercial General Liability Policy. All of said certificates shall set forth on the face thereof contractual coverage as required herein. No amendment or cancellation of any of said policy shall be effective until after 30 days’ notice, in writing, to the Owner. The failure of the Contractor to supply certificates evidencing full compliance with the requirements of the provision shall not abrogate its duty to provide and maintain the required insurance, including the naming of the Owner as an Additional Insured.

**10. 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.

**11. 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, Contractor must include a Form CD-512, “Certification Regarding Lobbying–Lower Tier Covered Transactions,” completed without modification. Prior to the provision of any Materials or services or the performance of any Work, Contractor shall, for each Subcontractor, submit to Owner an executed Certificate Regarding Debarment, Suspension, and Other Responsibility Matters (“Debarment Certificate”) as set forth in Exhibit O.

**12. E-Verify system.** Pursuant to G.S. 143-48.5 and G.S. 143-133.3, Contractor 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)

**13. 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, Contractor 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 Contractor to make this Certification.

**14. Performance Reporting.** As a recipient of Recovery Act funds, Owner is required to submit reports on a biannual basis for the periods ending March 31 and September 30 of each year. The report shall include certain information, including job estimates. Contractor agrees to supply Owner with required information for both Contractor and all Subcontractors, including, but not limited to, total hours worked, titles of each job position, and a breakout of newly created job positions and retained job positions, on or prior to deadlines set by Owner. Additionally, Contractor shall supply Owner with Occupational Safety and Health Administration logs/reports for the Project. Owner currently anticipates that required information will need to be submitted to Owner by Contractor for each quarterly reporting period, on or before the following submission dates:

| Biannual Reporting Deadlines | Contractor Submission Dates |
| --- | --- |
| Mar.31 | Apr. 5 |
| Sept. 30 | Oct. 5 |

If a specified Contractor Submission date falls on a weekend, Contractor shall submit the required information to Owner prior to the weekend.

In addition to the reporting requirement above, Owner will require that Contractor provide daily crew location reports and weekly wage/labor reports.

**15. Signage.** All construction signage, including, but not limited to, that appearing on construction vehicles and equipment located at the Project Location, shall be supplied by Owner. The Contractor will display signage and maintain it in good condition, throughout the construction period of this MMG grant. One or more signs for each job site will be provided. Signs must be satisfactory to MCNC and the NTIA and must identify the Project and indicate that the Project is federally funded. At each Project Location, Contractor must provide pictures of all signage to Owner documenting the date, time and Project Location. The Contractor recognizes that all signage may be disallowed, in Owner’s sole discretion, and that pre-existing signage or advertising on construction equipment, field offices, trailers, construction fences, etc. may be required to be replaced, masked or deleted, all at no cost or expense to Owner.

IN WITNESS WHEREOF, each of the parties has caused this Amendment to be signed for the purposes herein expressed by its duly authorized representative as of the date first written above.

**MCNC**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

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

**EXHIBIT K**

**PERFORMANCE BOND – FORM**

PROJECT TITLE:

STATE OF NORTH CAROLINA COUNTY OF

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_, and fully authorized to transact business in the State of North Carolina, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called “Principal,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_, and fully authorized to transact business in the State of North Carolina, as “Surety”, are held and firmly bound unto MCNC, hereinafter called “Owner”, in the penal sum of $\_\_\_\_\_\_\_\_\_ in lawful money of the United States, to be paid in \_\_\_\_\_\_\_ County, North Carolina, for the payment of which sum and the performance of such contract well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased or decreased by the amount of any modification, which increases or decreases the Contract Sum.

The obligation to pay same is conditioned as follows:

WHEREAS, the Principal entered into a written Construction Agreement (“Agreement”) with Owner dated the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein (including, but not limited to, all provisions in the Agreement with respect to obligations to correct *defective* Work, obligations in connection with defaults under the Agreement, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages and all defined terms), for the Work described in the Agreement.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Agreement in accordance with the Contract Documents during the original term thereof and any extension thereof which may be granted by the Owner, notice of which extension being hereby waived by the Surety, and during the life of any guaranty or warranty required under said Agreement, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Agreement that may hereafter be made, notice of which modifications to the Surety being hereby waived by the Surety, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, if Owner declares Principal in default under the Agreement and Owner formally terminates the Principal’s right to complete the Agreement by written notice to the Principal and the Surety, the Surety shall promptly and at the Surety’s sole expense either (a) arrange for the Principal, with the consent of Owner, to perform and complete the Agreement in accordance with the Contract Documents, including without limitation all modifications or subcontracts that may hereafter be made, notice of which modification or subcontracts to the Surety being hereby waived; or (b) undertake to perform the Agreement through its agents or through independent contractors. In any event, Surety’s obligations hereunder to perform and complete the Agreement shall remain in full force and effect. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond ten (10) days after delivery of written notice from Owner to the Surety demanding the Surety perform, and Owner shall be entitled to enforce any remedy available to Owner at Surety’s cost and expense, including, without limitation, reasonable legal fees.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Wake County, State of North Carolina.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Work performed or to be performed, thereunder or the Drawings, Specifications, etc., accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work or to the Drawings, Specifications, etc., and (ii) notice of any subcontracts, purchase orders, or other obligations related to the Agreement.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in \_\_\_\_\_\_\_ County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. All notices hereunder shall be deemed given and received (i) when deposited in a post office or other depository under the care or custody of the United States Postal Services, properly stamped and addressed as a registered or certified item, return receipt requested, or (ii) when delivered by express mail or parcel service or delivery service to the party’s address.

IN WITNESS WHEREOF, this instrument is executed, with MCNC to maintain the original version, this the \_\_\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST: PRINCIPAL:

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

Secretary President

ATTEST: SURETY:

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

Secretary Attorney-in-Fact

The Resident Agent of the Surety in County, North Carolina, for delivery of notice and service of process is:

Name:

Street Address:

APPROVAL OF OWNER:

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

*(NOTE: Date of Performance Bond must be date of Agreement. If Resident Agent is not a corporation, give a person’s name.)*

**EXHIBIT L**

**PARTIAL WAIVER OF LIENS – FORM**

THE STATE OF NORTH CAROLINA

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

The undersigned is the Contractor or a Subcontractor who has furnished labor and/or material (“Work”) in the construction of improvements upon real property owned by MCNC (“Owner”) for the Segment \_\_\_\_\_ fiber route currently being constructed in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, North Carolina (the “Property”). The Property shall also include any other real property on which the Work is performed, which is affected by the Work, or which Contractor enters upon to perform the Work, regardless of whether or not that real property is owned by Owner. For instance, the Property shall additionally include, without limitation, all property over which Owner has obtained an easement, right-of-way, or similar interest in order to allow the Work to be performed.

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

⁫ Received $ through , , pursuant to Contractor’s invoice number(s)

⁫ 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 Work concerning the Property;

2. 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 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 Work have been paid all amounts they are owed;

4. To the fullest extent allowed by law, 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 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 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 Contractor or Subcontractor.

All of the provisions of this document shall bind the undersigned Contractor or Subcontractor 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 .

| Sworn to and subscribed before me  this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.    Notary Public  My Commission Expires:  [NOTARIAL SEAL/ STAMP] | By:  Title: |
| --- | --- |

**EXHIBIT M**

**PROJECT SCHEDULE AND LIQUIDAT**E**D DAMAGES – FORM**

PROJECT TITLE: CONTRACT NO.:

CONTRACT DATE:

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 the Work by the Substantial Completion Date set out in the Agreement. 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 Substantial Completion Date.

With respect to Interim Completion Dates, the following Liquidate Damages shall apply for each calendar day that the Contractor fails to complete the applicable Milestone Work by the respective Interim Completion Date.

| Milestone Work | Interim Completion Dates | Liquidated Damages |
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**EXHIBIT O**

**CERTIFICATE REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

PROJECT TITLE: The High-speed Economics for Rural Opportunities

CONTRACT DATE:

STATE OF NORTH CAROLINA

COUNTY OF

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_, and fully authorized to transact business in the State of North Carolina, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called “Contractor,” certifies that to the best of its knowledge, information and belief that it and its principals:

Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from transactions by any federal or state department or agency;

Have not within the three-years prior to this contract been convicted of or had a civil judgment rendered against it or its principals for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local (with commission of any of the offenses enumerated in the preceding paragraph of this certificate;

Have not within the three-years prior to this contract had one or more public transactions (federal, state, or local) terminated for cause or default;

That no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

Where the Contractor is unable to certify to any of the statements in this certificate, such Contractor shall attach an explanation.

EXECUTED this day of , 20 .

| By:  Title: | Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.    Notary Public  My Commission Expires:  [*NOTARIAL SEAL/STAMP*] |
| --- | --- |