

Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager



Town of Nags Head
Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 14-02352

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/
CORRESPONDING PURCHASE ORDER**


(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 7th day of April, 2014, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and MCNC, a North Carolina nonprofit corporation located at 3021 E. Cornwallis Road, PO Box 12889, Research Triangle Park, NC 27709, (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. **SERVICES TO BE PROVIDED AND AGREED CHARGES**

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

Please see attached Addendum entitled Dark Fiber Lease Agreement, which is incorporated herein by reference.

It is mutually agreed by and between the TOWN and CONTRACTOR that construction under this contract will commence no later than 30 days after all required permits are obtained. CONTRACTOR will apply for all required permits within 30 days of execution of this contract, and construction will be materially completed within 90 days from the date that all permits have been issued, each with time being of the essence. If CONTRACTOR fails to apply for permits within 30 days of execution of this contract or if CONTRACTOR fails to materially complete construction within 90 days from the date that all permits have been issued, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the sum of \$150.00 shall be due from CONTRACTOR, then CONTRACTOR as liquidated damages for every day's delay in applying for permits within said 30 days or material completion of construction in excess of the completion date prescribed, as applicable; and the CONTRACTOR hereby agrees that said sum shall be deducted from monies due the CONTRACTOR under the contract or, if no money is due the CONTRACTOR hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid. Notwithstanding the

foregoing, in no event shall CONTRACTOR have any liability or be assessed liquidated damages if CONTRACTOR does not perform any of its obligations under this contract due to any cause beyond the reasonable control of the CONTRACTOR, including but not limited to Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction or other directive (e.g., prohibition of construction during tourism season), blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity; in the event of CONTRACTOR's failure to perform due to a cause beyond the reasonable control of the CONTRACTOR, the CONTRACTOR'S performance shall be temporarily excused and CONTRACTOR shall not owe liquidated or other damages under this contract therefor and CONTRACTOR will resume performance as soon as it is reasonably possible to do so.

2. DESCRIPTION OF PROJECT

See attached addendum entitled Dark Fiber Lease Agreement.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES shall be for five (5) years beginning on March 31, 2014 and continuing until the obligations of the CONTRACT are fulfilled and accepted by the TOWN pursuant to its terms or until the CONTRACT is terminated pursuant to its terms. Either party may nonetheless cancel this CONTRACT, during its initial term or any renewed term, and without fee or penalty except as provide in Section 10.2 of the attached Addendum, on sixty (60) days written notice to the other party by certified mail or personal delivery or as otherwise provided in the addendum attached to this Contract. If the Town terminates the contract pursuant to the foregoing sentence and if CONTRACTOR has begun the initial installation and/or provisioning of the SERVICE, the Town is obligated to pay CONTRACTOR the Fiber Construction Fee and the Installation Fee as referenced in Section 4 and in the attached Addendum on Exhibit A upon the termination date. The TOWN will not be entitled to a refund of any of the prior consideration paid before the SERVICES were terminated. This CONTRACT is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: any provision in Section 1 regarding liquidated damages; the provisions of Sections 3 and 4 regarding accrued amounts payable to CONTRACTOR; the provisions of Section 6 regarding indemnity; the provisions of Section 10 and the provisions of Article 8 and 10 of the Addendum attached hereto.

4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified in the addendum for SERVICES satisfactorily performed in accordance with this contract. The Fiber Construction Fee and the Installation Fee outlined in the addendum shall be invoiced by CONTRACTOR after completion of installation and provisioning except as provided in Section 3. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN monthly for SERVICE fees. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice. SERVICE fees shall be billed in advance, and all invoices shall be due and payable thirty (30) days after the date of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration but not limitation, CONTRACTOR'S Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required to be paid by CONTRACTOR.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The provisions of this Section 6 and any other indemnity or hold harmless provision provided or incorporated as part of this Contract shall obligate the TOWN to provide indemnification or hold harmless only to the extent permitted by law. The provisions of this Section 6 shall be limited by provisions in this CONTRACT otherwise limiting a party's liability.

Except as otherwise provided by applicable law, each party shall indemnify and save harmless the other party, its agents and employees from and against all third party actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against said other party or which said other party must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of the indemnifying party's obligations under the terms of this CONTRACT.

If the TOWN has no duty or a limitation on any of its duties as to indemnity or hold harmless provisions due to applicable law, then, notwithstanding any provision to the contrary, said abatement or limitation also shall apply as to CONTRACTOR'S duties as to indemnity or hold harmless provisions so that the effect of the indemnity and hold harmless provisions applicable under this CONTRACT are reciprocally applied.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of CONTRACTOR'S sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it. The TOWN shall be fully responsible to the CONTRACTOR for the acts and omissions of TOWN'S sub-contractors and of persons either directly or indirectly employed by it, as the TOWN is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or ensure that its employees who provide the SERVICES carry reasonable medical/accident insurance for any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or proof of reasonable medical/accident insurance of its employees who provide the SERVICES upon request.

Each party upon request by the other shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina, verifying the existence of any insurance coverage as required by this contract or, if not otherwise described, at industry standards. The Certificate will provide for thirty (30) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with CONTRACTOR's and its agent's performance of the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all CONTRACTOR's and its agent's employees from CONTRACTOR's and its agent's performance of the work and bodily injury to other persons who may be affected by CONTRACTOR's and its agent's negligent performance of the work.

8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further contracts.

9. E-VERIFICATION OF EMPLOYEES

The CONTRACTOR represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this CONTRACT, that either:

(1) The CONTRACTOR or subcontractor employs less than 25 employees; or

(2) The CONTRACTOR or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

10. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

11. OTHER PROVISIONS

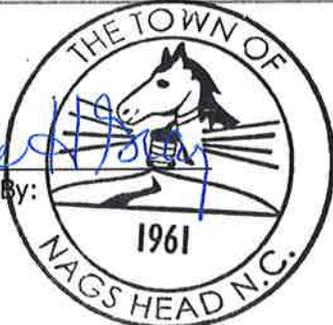
This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

12. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. Notwithstanding any provision in any attached addendum or exhibit to the contrary, in the event of any conflict between this contract (as considered without any attached addendum or exhibit) and any attached documents (including any addendum or exhibit), the contract language will prevail except limitations of liability (which limitations of liability shall not be deemed to include indemnification provisions) in any attached addendum or exhibit will prevail.

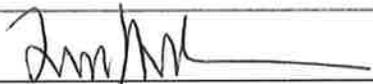
13. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.


Witnessed or Attested By: 

TOWN OF NAGS HEAD

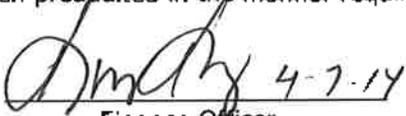
By: 
Title: Town Manager
Date: April 7, 2014


Witnessed or Attested By:
Terri McGaughey, Secretary
Corporate Seal:

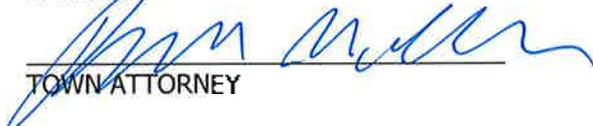
CONTRACTOR: MCNC

By: 
Printed Name: Patricia L. Moody
Title: CFO/Treasurer
Date: April 7, 2014

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."


Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.


TOWN ATTORNEY

ADDENDUM

DARK FIBER LEASE AGREEMENT

This Dark Fiber Lease Agreement ("Agreement") is made and entered into this 7th day of April, 2014 (the "Effective Date"), between MCNC, a North Carolina nonprofit corporation with its principal office located at 3021 E. Cornwallis Road, P.O. Box 12889, Research Triangle Park, NC 27709-2889 ("MCNC"), and Town of Nags Head, with its principal offices located at 5401 S. Croatan Avenue, Nags Head, North Carolina ("Customer"), with MCNC and Customer being sometimes referred to in this Agreement as "Party" and collectively as the "Parties"; and this Agreement is incorporated as an addendum to a certain contract by and between MCNC and Customer which incorporates this Agreement by reference (the "Contract").

RECITALS

WHEREAS, MCNC owns and/or controls a fiber optic communication system including strands of fiber optic cable, hardware, equipment, and access locations and rights related thereto (the "MCNC System"); and

WHEREAS, Customer desires to obtain from MCNC, and MCNC desires to provide to Customer, a short term lease in designated dark fiber optic strands within the MCNC System;

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the Parties incorporate by reference the foregoing recitals and further agree:

ARTICLE I LEASE

As of the Acceptance Date (as defined below) and under the terms and conditions of this Agreement, MCNC leases to Customer, and Customer leases from MCNC, the Dark Fiber, namely, the designated number (said number being shown on Exhibit A) of dark (i.e., without electronics or optronics, and not "lit" or activated) fiber optic strands between the Demarcation Points identified in Exhibit A (said Demarcation Points being the connection points between the Dark Fiber and Customer-owned fiber optic cable or peripheral equipment). Subject to the terms and conditions of this Agreement, Customer shall have the right to use and the right to attach Customer's equipment, which equipment must be pre-approved by MCNC, to the ends of, the Dark Fiber. In no event shall any term or condition of this Agreement be construed to include any obligation of MCNC to provide any equipment space, licenses, rights of way, or other consents for any attachments to or other uses of the Dark Fiber, in that equipment space and such usage rights are outside the scope of rights granted to Customer in the Dark Fiber and this Agreement.

ARTICLE 2 INSTALLATION, CUSTOMER RESPONSIBILITIES, ACCEPTANCE, MAINTENANCE, SPLICING, AND USE

2.1 Installation. MCNC or MCNC's contractors, subcontractors, or other designees shall provide, at MCNC's own cost and expense, all labor, materials, and equipment required to install and test the Dark Fiber between the Demarcation Points.

2.2 Customer Responsibilities. Customer shall, at its own cost and expense, be solely responsible for all equipment, materials, and facilities on Customer's side of the Demarcation Point(s) (i.e., the side outside the MCNC System) in connection with Customer's use of the Dark Fiber. By way of example, the foregoing may include the purchase or other acquisition, installation, maintenance, repair, and replacement of all terminals, patch cords, , electronics, optronics, other optical and electrical equipment, other equipment, materials, and facilities such as short runs of fiber optic fibers used or required by Customer to interconnect with and "light" the Dark Fiber and with other fiber telecommunications cable located on Customer's side of the Demarcation Point(s) at the Customer's

Location(s) (as defined in Exhibit A). Customer, at its own cost and expense, is solely responsible for and shall provide all labor, materials, and equipment for any construction that may be required at the Customer's Location(s), including the installation of new conduit or core drilling and all cabling and infrastructure, required between each Demarcation Point and the Customer's end user's site in each Customer's Location. Customer shall be solely responsible for granting and maintaining at its own cost and expense rights for MCNC and for any contractors, subcontractors, and other designees designated by MCNC to (a) install, test, maintain, repair, control, and otherwise access conduit, fiber, and related equipment that is to be installed and maintained, if applicable, on Customer's leased or owned land and building space on which the Lateral Spur(s) (as defined in Exhibit A) is/are designated to be interconnected, including, where applicable, necessary space for MCNC's fiber termination panel(s) and necessary cable pathways in said building(s); and (b) occupy and access each Demarcation Point site identified in Exhibit A designated to be located, if applicable, on Customer's said leased or owned land and building space, including obtaining, if not previously in place, and maintaining a valid building access agreement (or agreements) from each Customer's Location's owner or lessor for itself and MCNC and any contractors, subcontractors, and other designees designated by MCNC. Customer work on the Customer's side of each Demarcation Point includes securing its own rights and related costs to access, occupy, and conduct typical telecommunication operations (which may include construction and other permits and underlying rights, access agreements and fees, lateral and riser fees, cross-connects, and coordination at any third party-owned or leased Customer's Location). All of Customer's duties described in this Section 2.2 are referred to collectively as "Customer Requirements." Any delay in Customer providing Customer Requirements may delay MCNC from completing work at any Customer's Location. In the event that Customer has not provided the Customer Requirements in time to allow MCNC to complete work at any Customer's Location (including Dark Fiber acceptance testing) on or before any applicable estimated completion date, and MCNC has notified Customer of such failure via use of Exhibit B and Customer has failed to cure such failure in time to allow MCNC to complete work and testing at any Customer's Location on or before any applicable estimated completion date, then MCNC may continue with the acceptance procedures described below to the extent possible and invoice for the services under this Agreement as if all Customer's Locations were completed by said estimated completion date. Upon receipt of said invoice, Customer shall remit payment for the services performed in accordance with the terms of the Agreement.

2.3 Fiber Acceptance Procedures. MCNC shall be responsible for the testing of the Dark Fiber, which testing will be performed with industry accepted equipment, and shall provide Customer with a report of such test results. Upon completion and receipt of the test results, Customer shall have five (5) working days to give MCNC written notice of acceptance thereof or reject the test results and specify parts not in accordance with industry standards. Failure of Customer to review and either accept or reject the test results within said five (5) working days shall operate as constructive acceptance of the test results for purposes of acceptance in this Agreement. If within said five (5) working days Customer gives MCNC written notice of rejection of any of the Dark Fiber due to nonconformity with industry standards, MCNC shall have forty-five (45) days after receiving said notice to remedy all defects or failures to conform the Dark Fiber to industry standards; and if MCNC fails to remedy all such defects or failures within forty-five (45) days after receiving notice from Customer of rejection, then at Customer's option and upon written notice from Customer, Customer either shall accept the Dark Fiber or MCNC shall return to Customer any previous payments and this Agreement shall terminate, with no further obligations or penalties to Customer or MCNC related thereto. The acceptance or deemed acceptance of the Dark Fiber pursuant to this Section 2.3 shall be the "Acceptance Date."

2.4 Specifications; Maintenance and Repair. Attached as Exhibit C are specifications, as may be modified or amended by MCNC from time to time pursuant to Exhibit C (the "Fiber Specifications"), indicating the minimal specifications required by MCNC as to the Dark Fibers. MCNC or its contractor, subcontractor, or other designee shall provide maintenance and repair of the Dark Fiber. The parties shall comply with the provisions of Exhibit D as to maintenance and repair of the Dark Fibers and Connecting Points. To the extent any maintenance or repair of the Dark Fiber or any of the MCNC System relates to (a) work necessitated by Customer's negligence or willful misconduct, or (b) Customer's elective maintenance or repair requests, Customer shall pay and reimburse MCNC for one hundred percent (100%) of all maintenance and repair costs, fees, and expenses incurred by MCNC in connection therewith, notwithstanding any provision or implication to the contrary. MCNC's maintenance and repair duties shall not include any of Customer's Responsibilities.

2.5 Configuration and Access to the Dark Fiber; Splicing. MCNC shall have full and complete control for determining any routing configurations of, access to, and splicing on the MCNC System (including the Dark Fiber); the location and configurations of all lateral spurs, manholes, handholes, and other access points; and all uses of the MCNC System by MCNC, Customer, and third parties. This Agreement precludes each and every right or permit of Customer to own, control, maintain, repair, modify, and relocate the MCNC System (including the Dark Fiber); to physically access to the MCNC System (including the Dark Fiber and MCNC's manholes, handholes, and other access points); to encumber the MCNC System in any manner; and, except as expressly stated in this Agreement, to use the MCNC System. Notwithstanding any provision or implication to the contrary, any and all work with respect to the MCNC System, including the Dark Fibers, shall be performed solely by MCNC or its contractors, subcontractors, or other designees. Customer shall have the right only to request MCNC to connect Customer's communications equipment as authorized by MCNC with the ends of the Dark Fiber and, in MCNC's sole discretion, at any such other access point along the Dark Fibers that has been approved in writing by MCNC in MCNC's sole discretion (each such endpoint and access point being referred to as a "Connecting Point" and Customer's use thereof being non-exclusive with any other users of the Connecting Points and any splicing or other connection thereto to be subject to MCNC's discretionary approval and to be performed by MCNC or its contractors, subcontractors, or other designees). Customer shall have no other access rights to the MCNC System unless otherwise agreed in writing by MCNC. If Customer desires any splice to the Dark Fibers at and/or on Customer's side of the Demarcation Points or any other Connecting Points to which MCNC has agreed, Customer shall request such splicing work from MCNC not less than ten (10) days in advance of the date the connection is requested and pay splicing fees based on the work performed and at the splicing rates stated in Exhibit A (each a "Splicing Fee").

2.6 Customer Use of Dark Fiber. Subject to the limitations stated in this Agreement, Customer shall use the Dark Fiber solely for lawful purposes and in a way which does not physically interfere with or adversely affects the use of the MCNC System, including the other fibers in the MCNC System, or the fibers or cable of any other person or entity using the MCNC System. In no event shall Customer directly or indirectly transfer, sell, assign, swap, exchange, lease, sublease, license, sublicense, resell, or grant indefeasible or other rights of use in or to all or any part of the Dark Fiber or Customer's interest therein, or enter into any other arrangement with any third party for such third party's use of all or any part of the Dark Fiber, without the prior written consent of MCNC. Any action in violation of this Section 2.6 shall constitute a material breach of this Agreement and shall, in addition to any other remedies available to it, entitle MCNC to terminate this Agreement without any liability to Customer or the repayment of the Lease Payments or any other fees or charges paid by Customer.

ARTICLE 3 TERM

The provisions of this Article 3 are subject to and in no way limit the termination provisions provided in the Contract. The initial term of this Agreement shall begin on the Acceptance Date and shall remain in effect for the term specified in Exhibit A (the "Initial Term"), unless the Contract is terminated as provided in Section 3 of the Contract, which termination shall also terminate this Agreement. Thereafter, the Initial Term will automatically renew for a one-year increment (the "Extension Term"), unless one Party provides the other Party with at least sixty (60) days written notice prior to the end of the Initial Term of that Party's desire to terminate this Agreement or unless the Contract is terminated as provided in Section 3 of the Contract, which termination shall also terminate this Agreement. MCNC shall notify Customer at least ninety (90) days before the renewal date of any changes in Lease Payments and/or fees for an upcoming Extension Term; and the new fees as to the ensuing Extension Term shall be deemed accepted by Customer unless Customer elects to terminate this Agreement at the end of the Initial Term as provided in this Article 3. The Initial Term and any Extension Term shall be referred to collectively as the "Term." Any hold-over by Customer after expiration of the Term shall not renew the Term; instead, Customer shall discontinue its use of the Dark Fiber promptly upon termination of the Term.

ARTICLE 4 FEES AND PAYMENTS

4.1 Lease Payment. Customer shall pay to MCNC a monthly lease payment in the amount specified in Exhibit A or in a notice to Customer pursuant to Article 3, plus applicable sales and use tax (collectively, the

"Lease Payments"). Lease Payments shall begin on the Acceptance Date, or as otherwise provided in Section 2.2, and continue throughout the Term. Lease Payments shall be billed monthly, in advance, and all invoices shall be due and payable thirty (30) days after the date of the invoice.

4.2 Installation Fee. For the installation services described in Section 2.1, Customer shall pay to MCNC a one-time installation fee as specified in Exhibit A plus any applicable sales and use tax (collectively, the "Installation Fee"). The Installation Fee shall be due and payable in full on the Acceptance Date.

4.3 Splicing Fee. If Customer requires splicing of the Dark Fiber at the Demarcation Points, any other applicable Connecting Points, and/or on Customer's side of the Demarcation Points, Customer shall pay to MCNC splicing fees based on the work performed and at the rates stated on Exhibit A plus any applicable sales and use tax (collectively, the "Splicing Fees"). Any Splicing Fees incurred shall be due and payable in full thirty (30) days after the date of the invoice therefor.

4.4 Maintenance Payment. Customer's portion of all maintenance and repair costs, fees, and expenses as to the MCNC System, plus any applicable sales and use tax, shall be due and payable to MCNC in full thirty (30) days after the date of the invoice therefor.

4.5 Taxes and Governmental Charges. In addition to Lease Payments, the Installation Fee, any Splicing Fees, and any maintenance and repair costs and fees and expenses, governmental fees, and governmental expenses, all foreign, federal, state and local taxes, and all duties and governmental fees, whether or not stated in this Agreement, shall be the obligation of Customer. Customer shall pay to MCNC amounts equal to Customer's proportionate share of any taxes, duties, franchise fees, ad valorem taxes, property taxes, and impositions resulting from this Agreement or any activities under this Agreement, or imposed, assessed, or levied upon the MCNC System or upon the Dark Fibers, exclusive of taxes based upon MCNC's net income.

4.6 Late Payment. MCNC may impose on Customer a late payment charge of the lower of 1.0% per month or the highest rate legally permissible thereon on any past due amount payable to MCNC by Customer under this Agreement, said charge to be payable on demand and to be in addition to other remedies available to MCNC under this Agreement or by law.

ARTICLE 5 LEASE STATUS

The Parties intend that this Agreement shall operate as a "lease" as defined by North Carolina law. This Agreement shall not be construed to result in the transfer of title to any part of the Dark Fiber to Customer or in the creation of a "security interest" within the meaning of North Carolina law. Customer shall keep the MCNC System including the Dark Fiber free from all liens, including mechanics liens, and encumbrances by reason of the use of the Dark Fiber by Customer.

ARTICLE 6 FIBER RELOCATION AND SUBSTITUTION

6.1 Relocation. If MCNC is required by a utility, or a third party with legal authority to so require (including a third party with the power of or exercising condemnation), to relocate the Dark Fiber, MCNC shall use reasonable efforts to relocate the Dark Fiber and to effect the relocation so that it shall neither adversely affect the use, operations, or performance of the Dark Fiber by Customer except for interruptions during the implementation of the relocation, nor the site of the Demarcation Points.

6.2 Substitute Dark Fiber. Upon written notice from MCNC to Customer, MCNC, at its sole discretion and sole cost, from time to time may substitute for the Dark Fiber an equal number of alternative fibers along the route or an alternative route, provided that, in any such event excluding a substitution arising out of a relocation under Section 6.1, such substitution shall not adversely affect the use, operation, or performance of the Customer's network, except for interruptions during the implementation of the substitution; and shall not change the site of any Demarcation Points unless mutually consented by MCNC and Customer.

**ARTICLE 7
FORCE MAJEURE**

If either Party is prevented from performing any of its obligations under this Agreement (except a payment obligation) due to circumstances beyond its control including labor disputes, power outages or shortages, fire, explosion, flood, drought, acts of God, war or other hostilities, civil commotion, domestic or foreign governmental acts, orders, or regulations, or inability to obtain facilities or supplies, or if Customer or MCNC is notified by a state or federal regulatory body that any aspect of this Agreement does not comply with any applicable law, regulation, rule, or policy, then the obligation of MCNC to provide the services and/or the Dark Fiber and the obligation of the Customer to accept the services and/or the Dark Fiber under this Agreement shall be suspended during the period of such disability and Customer shall be under no obligation to pay for services and/or Dark Fiber for such suspended period.

**ARTICLE 8
DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

MCNC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF SERVICES AND MCNC SYSTEM EQUIPMENT, MERCHANTABILITY, AND/OR FOR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE ENFORCEMENT OF ANY MANUFACTURER'S WARRANTIES AND GUARANTEES OR MERCHANTABILITY, NOR ARE ANY SUCH WARRANTIES TO BE IMPLIED WITH RESPECT TO THE PRODUCT OR SERVICES FURNISHED TO CUSTOMER, AND ALL EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. ORAL STATEMENTS MADE BY MCNC'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS, AND DESIGNEES DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED ON BY CUSTOMER, AND ARE NOT PART OF THIS AGREEMENT. IN NO EVENT SHALL MCNC BE LIABLE FOR (a) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF USE, LOST PROFIT, LOSS OF BUSINESS OR GOODWILL, OR OTHER FINANCIAL INJURY ARISING OUT OF OR IN CONNECTION WITH THE MAINTENANCE, REPAIR, USE, RELOCATION, SUBSTITUTION, PERFORMANCE, OR FAILURE OF THE DARK FIBER OR OTHER EQUIPMENT, OR FOR ANY OTHER REASON, INCLUDING ANY BREACH BY MCNC UNDER THIS AGREEMENT, EVEN TO THE EXTENT THAT MCNC HAD NOTICE OF THE POTENTIAL FOR ANY SUCH DAMAGES; (b) ANY LOSS OR DAMAGE RELATING TO A CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF, OR IN CONNECTION WITH, ANY INTERRUPTION OR FAILURE OF USE OF, OR ANY SERVICE AS TO OR ON THE DARK FIBER, CONNECTING POINTS, OR OTHER EQUIPMENT; AND (c) EXPENSES, DAMAGES, COSTS, OR OTHER LOSSES INCURRED BY CUSTOMER AS A RESULT OF DELIVERY DELAYS. SUBJECT TO ANY OTHER LIMITATIONS IN THIS AGREEMENT AND NOTWITHSTANDING ANY PROVISION OR IMPLICATION TO THE CONTRARY, MCNC'S AGGREGATE LIABILITY TO CUSTOMER FOR DAMAGES FROM ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR BY STATUTE, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT OF THE TOTAL PAYMENTS RECEIVED FROM CUSTOMER BY MCNC UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM GIVING RISE TO SUCH LIABILITY FIRST AROSE.

**ARTICLE 9
DEFAULT AND REMEDIES**

9.1 Event of Default. In addition to any other defaults provided in this Agreement, any of the following shall constitute an event of default: (a) Customer fails to pay any Lease Payment or any other amount owed to MCNC within thirty (30) days after MCNC gives Customer notice that such payment has not been made; (b) Customer fails to perform or observe any other material representation, covenant, condition, or agreement with MCNC and fails to cure such breach within thirty (30) days after written notice, except that any said failure which causes interference to any of the MCNC System and any use thereof shall have a cure right of four (4) hours; (c) any representation or warranty made by Customer under this Agreement or in any other instrument provided to MCNC by Customer proves to be incorrect in any material respect when made; (d) a proceeding under any bankruptcy,

reorganization, arrangement of debts, insolvency, or receivership law or assignment of benefit of creditors is made by or against Customer; (e) Customer becomes insolvent or fails generally to pay its debts as they become due; (f) Customer voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated; or (g) MCNC fails to observe or perform any of its material obligations with Customer and fails to cure such breach within thirty (30) days after written notice.

9.2 **Remedies.** In the event of a default by Customer, MCNC shall have the right to exercise any or all of these remedies to the extent applicable: (a) terminate this Agreement; (b) enforcement of the remedies of a secured party under North Carolina law; (c) court action to enforce performance of this Agreement and any remedy provided in this Agreement; and (d) disconnect and/or remove the fiber optic cable and equipment or require Customer to do so; and any choice of said remedies shall not be deemed a waiver of any other remedies or preclude the exercise of other remedies thereafter. In the event of a default, breach, or non-performance of this Agreement by MCNC, Customer's sole and exclusive remedies, subject to the provisions of this Agreement, shall be, to terminate this Agreement or, at MCNC's election, MCNC's re-performance and/or repair or replacement of any defective Dark Fiber.

ARTICLE 10 TERM EXPIRATION AND TERMINATION

10.1 **Term Expiration.** Upon the expiration of the Term, the lease with respect to the Dark Fiber immediately shall terminate, all rights of Customer to use the Dark Fiber and Connecting Points shall cease, all rights to the use of the Dark Fiber and the Connecting Points shall revert to MCNC, and MCNC shall owe Customer no further duties, obligations, or consideration.

10.2 **Voluntary Termination.** If, at any time during the Term, Customer desires not to retain the lease of the Dark Fiber and to terminate this Agreement for any reason, Customer shall have the right to terminate this Agreement by providing at least sixty (60) days prior written termination notice to MCNC ("Early Termination"). In the case of such Early Termination, upon the termination date all of the following apply: (a) there shall be no cancellation fee except a cancellation fee of fifty percent (50%) of the amount of monthly charges remaining on the term of the Agreement if the termination occurs during the first four years of the term of the Agreement; (b) MCNC may disconnect the Dark Fiber when such Early Termination becomes effective; (c) this Agreement shall terminate and Customer shall not be entitled to a refund of any of the prior consideration paid; (d) all rights of Customer to use the Dark Fiber and Connecting Points shall cease; (e) all rights to the use of the Dark Fiber and Connecting Points shall revert to MCNC; (f) MCNC shall owe Customer no further duties, obligations, or consideration, except as otherwise provided in this Agreement as surviving termination; and (g) Customer shall owe MCNC no further duties, obligations, or consideration except payment of accrued unpaid amounts and other duties which survive termination.

10.3 **Rights upon Expiration or Termination.** After expiration or termination of the Term, MCNC shall have the right and easement to keep that portion of the MCNC System on Customer's property in place and, at MCNC's sole option, MCNC shall have the right and easement to remove, maintain, repair, or mark said portion of the MCNC System; and Customer shall not require any removal of said portion of the MCNC System from said property. All payment obligations stated in this Agreement and the provisions of Article 8 and Article 10 shall survive expiration and termination of this Agreement. Notwithstanding the foregoing, upon the Termination of this Agreement, Customer may notify MCNC that a removal of all or part of the MCNC System from Customer's property is reasonably necessary and, in such event, Customer shall have ownership of same so that Customer at Customer's sole expense may remove this same if and to the extent that MCNC at its option chooses not to remove same within thirty (30) days after MCNC's receipt of such notice.

ARTICLE 11 INSURANCE

Customer at its cost and expense shall maintain industry standard insurance, provided such insurance minimally shall include a general liability insurance policy with coverage amounts of at least One Million Dollars (\$1,000,000.00). However, MCNC acknowledges that Customer's insurer excludes coverage for cyber liability and

internet service providers, so Customer's insurer cannot list MCNC as an insured or provide insurance coverage for the Dark Fiber or Connecting Points. MCNC acknowledges that Customer's insurer will endeavor to, but is not obligated to, notify MCNC in writing at least thirty (30) days prior to cancellation or refusal to renew or material changes to any said policy of insurance maintained by it pursuant to this Agreement. Customer shall provide MCNC a certificate of said insurance.

ARTICLE 12 MISCELLANEOUS

12.1 Choice of Law. This Agreement shall be governed and interpreted under the laws of the State of North Carolina. The Parties agree that any court action between the Parties related to this Agreement shall be brought under the jurisdiction and venue of the courts of Nash County or Martin County, State of North Carolina.

12.2 Relationship of the Parties. Nothing contained in this Agreement shall be construed to create any partnership or agency relationship between the Parties for any purpose, action, or transaction, including those related to the performance of this Agreement.

12.3 Intellectual Property. Nothing in Agreement shall be construed as granting any right or license under any copyrights, inventions, or patents now or hereafter owned or controlled by MCNC or Customer or granting any right, title, or interest in the other Party's trademarks, trade names, or service marks. Neither Party shall use the lawful trademarks, trade names, or service marks of the other without prior written permission of said other Party.

12.4 Entire Agreement; Amendment. This Agreement and the Contract represent the entire agreement between the Parties relating to the subject matter thereof. No prior or contemporaneous discussions, representations, understandings, or statements, oral or written, relating to this Agreement or its subject matter shall have any force or effect except as expressly stated in the Contract, this Agreement, Exhibit A Dark Fiber Order, or Exhibit B Escalation Lists of the Parties.

12.5 Assignment. MCNC may, without Customer's consent, assign or otherwise transfer this Agreement or its rights or obligations under this Agreement to any third party, in whole or in part. Customer may not assign, sublease, or license this Agreement or any interest, payment, or rights under this Agreement without the prior written consent of MCNC.

12.6 Severability. If any provision or provisions of this Agreement are deemed in a court of law to be illegal or otherwise unenforceable, such provision or provisions shall be modified, wherever possible, to provide binding force and effect, and the Parties agree to such modification and agree to be bound thereby. If modification is not possible, the elimination of such provision or provisions shall not serve to invalidate the Agreement and all remaining provisions of this Agreement shall remain valid and enforceable, unless such provision or provisions are a material basis of this Agreement, in which event the Agreement shall terminate.

12.7 Waiver. The failure of either Party to enforce at any time, or for a period of time, any of the provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such Party thereafter to enforce such provision.

12.8 Notices. All notices or demands of any kind that any Party is required or desires to give or to make upon others in connection with this Agreement shall be in writing and may be provided by personal delivery, registered or certified mail, return receipt requested, overnight delivery, facsimile, email (provided that if notice or demand is sent by facsimile or email that a copy is sent as well by first class mail, provided that the date of delivery of the notice shall be deemed the date the notice is sent by facsimile or email) or by depositing the notice or demand in the United States mail, postage prepaid, and addressed to the other Party as follows or to such other address, individual(s), or contact information as may be designated by notice given as to the other Party:

If to MCNC:
MCNC
3021 E. Cornwallis Road, PO Box 12889
Research Triangle Park, NC 27709-2889
Attn: Patricia Moody
Phone: (919) 248-1820
Fax: (919)-248-1101
Email: pmoody@mcnc.org

If to Customer:
Town of Nags Head
5401 S. Croatan Avenue
Nags Head, NC
Attn: Allen Massey
Phone: 252-449-2003
Fax: 252-441-4680
Email: allen.massey@nagsheadnc.gov
Copy to:
Attn: Finance Officer
Phone: 252-441-5508
Fax: 252-441-4680
Email: kim.kenny@nagsheadnc.gov

Notwithstanding the foregoing, initial notices as to service and Dark Fiber failures or deficiencies shall be made by a report, orally or in writing, via a contact made to the applicable Party according to its Escalation List attached as Exhibit B, which lists are provided in the order to contact, or to such other applicable Escalation List individual(s) or contact information as may be designated by notice.

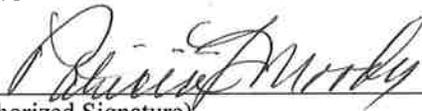
12.9 Construction. No ambiguities in this Agreement, including any Exhibits, shall be resolved against either Party by reason of the Party's drafting of this Agreement or any Exhibit. In this Agreement, headings are included for convenience of reference only and neither limit nor expand the terms of this Agreement; references to an "Article" or "Section" or shall mean an Article or Section of this Agreement, and to an "Exhibit" shall mean an Exhibit to this Agreement; and use of the words "include" and "including" shall not be construed as limited but instead shall be construed as "include without limitation" and "including but not limited to."

12.10 Execution. This Agreement may be executed in one or more counterparts by original executions or facsimile or electronic executions, such executions may be transmitted by facsimile or electronic mail and any such executions shall have the full force and effect of a signed original. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination, shall be construed together and shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of each Party as of the day and year first above written.

MCNC

Town of Nags Head

By: 
(Authorized Signature)

By: 
(Authorized Signature)

Patricia Moody
(Printed Name)

Cliff Osburn
(Printed Name)

Chief Financial Officer
(Title)

Town Manager
(Title)

April 7, 2014
(Date)

April 7, 2014
(Date)

Exhibit A
Dark Fiber Order

Terms	Amounts
Number of Dark Fiber	2 dark fiber strands
Lease Payment	\$ 270.00 monthly
Installation/Provisions Fee	\$ 21,250.00 Fiber Construction Fee \$ 1,500 Installation Fee
Term	60 months
Route Miles	5 mile(s) (approximate)
Splicing Fees (if Customer desires MCNC to perform splicing at and/or on Customer's side of Demarcation Point(s))	N/A

"Customer's Location(s)" Lateral Spur(s)	Demarcation Point(s)
2200 Lark Ave, Nags Head	Public Works Fleet Office
5401 S. Croatan, Nags Head	Town Hall Server Room

Invoices shall be mailed to:

Town of Nags Head
Accounts Payable
PO BOX 99
Nags Head, NC 27959
Allen.massey@nagsheadnc.gov

Exhibit B
MCNC Escalation List

Steps	Role	CONTACT INFO	
Technical Contacts			
First	NCREN Network Operations Center	Phone:	877-466-2736
		E-mail:	trouble@ncrcn.net
Second	Fiber Network Engineer	Name:	Grey Daughtry
		Office Phone:	919-248-4179
		Cell Phone:	919-819-4739
		E-mail:	gdaughtry@mcnc.org
Third	Director, Facilities Engineering	Name:	Peter Valentine
		Office Phone:	919-248-1464
		Cell Phone:	919-624-1369
		E-mail:	pvalentine@mcnc.org
Fourth	Sr. Director of Constituent Support & Systems Operations	Name:	Todd Broucksou
		Office Phone:	919-248-1117
		Cell Phone:	919-259-5390
		E-mail:	tbroucks@mcnc.org
Management Contacts			
Fifth	Chief Operating Officer	Name:	Tommy Jacobson
		Office Phone:	919-248-1178
		Cell Phone:	919-475-8717
		E-mail:	tjacobson@mcnc.org
Final	President and CEO, MCNC	Name:	Joe Freddoso
		Office Phone:	919-248-8400
		Cell Phone:	919-247-5121
		E-mail:	joe@mcnc.org

Customer Escalation List

Steps	Role	CONTACT INFO	
Technical Contacts			
First	Nags Head IT	Phone:	252-441-5508
		E-mail:	itadmins@nagsheadnc.gov
Second	IT Technician	Name:	Mark Bernard
		Office Phone:	252-449-2019
		Cell Phone:	
		E-mail:	mark.bernard@nagsheadnc.gov
Third	IT Coordinator	Name:	Allen Massey
		Office Phone:	252-449-2003
		Cell Phone:	252-216-6297
		E-mail:	allen.massey@nagsheadnc.gov
Management Contacts			
Fourth	Finance Officer	Name:	Kim Kenny
		Office Phone:	252-449-2020
		Cell Phone:	252-305-0547
		E-mail:	kim.kenny@nagsheadnc.gov
Final	Town Manager	Name:	Cliff Ogburn
		Office Phone:	252-449-2010
		Cell Phone:	252-216-8146
		E-mail:	cliff.ogburn@nagsheadnc.gov

Exhibit C

FIBER SPECIFICATIONS

1.0 Route Detail Information

MCNC will provide to Customer a description of the type of fiber (i.e., underground or aerial). If Customer desires additional information concerning the Dark Fibers or route(s), the parties shall negotiate in good faith to determine the feasibility of providing the additional detail requested. Updates to information will be provided by MCNC to Customer within ninety (90) days of completion of any network change affecting any Dark Fiber or Connecting Point.

2.0 Deviations from Specifications

MCNC may deviate from these Specifications when field conditions dictate and as provided in this Agreement. MCNC's technological, operational, or other business requirements may require modifications or amendments to these Specifications from time to time; and, to the extent Dark Fibers are affected, Customer shall cooperate with MCNC to effect and implement those modifications and amendments. Notwithstanding any provision or implication to the contrary, this Agreement shall not require Customer to consent to a reduction or increase of the number of Dark Fibers, a reduction of the amount of transmission capacity available on the Dark Fibers, the material relocation of the beginning or ending point of any route, the loss of the availability of any Connecting Point, or the inability to use the Dark Fibers for any time other than at those times set out in this Exhibit C for non-emergency testing, maintenance, repair, and rerouting.

3.0 Customer Fiber Splicing and Testing Procedures

(a) All splices of the Dark Fibers will be performed with an industry-accepted fusion splicing machine.

(b) Subsequent to the fiber optic splices being made as provided in this Agreement, all Dark Fibers shall be tested to ensure the Dark Fibers meet the standards provided in this Agreement.

(c) Testing will be documented on diskettes in Laser Precision format and on trace analysis sheets reflecting bidirectional losses by fiber and installed span loss by fiber. One (1) copy of trace diskettes and three (3) copies of trace analysis sheets will be submitted promptly by MCNC to Customer upon completion of the testing. All testing will be performed at 1550 nm.

(d) During initial unidirectional OTDR testing, a general indicator of the quality of each splice will be an objective loss of 0.15 Db or less. If, after three attempts, a party is unable to produce a loss value of less than 0.15 Db, then 0.25 Db will become the objective. If, after two additional attempts, a value of less than 0.25 is unachievable, then the splice will be marked as "Out-of-Spec" ("OOS") on a field data sheet. The parties recognize that unidirectional OTDR test data is not an acceptance/rejection criterion. Attempts to improve the loss for existing splices that are marked OOS will not be made unless agreed by both parties.

(e) The installed span loss (span shall be FDP to FDP) shall be a bi-directional average of 0.50 Db/km or less, as calculated using an industry-accepted optical loss test set at 1550 nm. The installed span loss includes the inherent attenuation of the glass, the backbone splice losses, the pigtail splice losses, the inherent loss in the pigtails, and the connector losses.

(f) Optical Return Loss will be recorded on the testing documentation, for information only.

(g) Customer fiber assignments will be consecutive in count. The maximum number of fibers within a single buffer tube (or ribbon or fiber bundle) shall be 12.

(h) Optical Fiber Specifications - Single Mode Fiber

Operation Temperature	-60 c to 85 c
Optical Properties	1300-1550 nm
Standard Attenuation	< .10 Db/km @ 1310 nm < .35 Db/km @ 1550 nm
Attenuation Uniformity	0.1 Db/km
Splice Loss	< .1 Db per splice bi-directional average < .2 Db for DS fiber

Or:

LightScope ZWP™
 Type 8W Optical Fiber:
 Dispersion-Unshifted, Matched-Clad

Single Mode Fiber (ITU-T G.652.D):

Physical Characteristics	
Cladding Diameter	125.0 ± 0.7 µm
Core/Clad Offset	≤ 0.5 µm
Coating Diameter (Uncolored)	235 - 245 µm
Coating Diameter (Colored)	254 ± 7 µm
Coating/Cladding Concentricity Error, max	12 µm
Clad Non-Circularity	≤ 1%

Mechanical Characteristics	
Proof Test	100 kpsi (.69 Gpa)
Coating Strip Force	0.3 - 2.0 lbf (1.3 - 8.9 N)
Fiber Curl	≥ 4 m
Dynamic Fatigue Parameter (nd)	≥ 20
Macrobending, max. (100 turns)	0.05 dB (1310/1550nm @ 50mm) 0.05 dB (1625nm @ 60 mm)
Macrobending, max. (1 turn @ 32 mm mandrel)	0.05 dB @ 1550 nm

Optical Characteristics, Wavelength Specific			
	1310-nm	1385-nm	1550-nm
Max. Attenuation, Loose Tube Cable	0.34 dB/km	0.31 dB/km	0.22 dB/km
Max Attenuation, Tight Buffer Cable	0.50 dB/km	0.50 dB/km	0.50 dB/km
Mode Field Diameter	9.2 ± 0.3 µm	9.6 ± 0.6 µm	10.4 ± 0.5 µm
Group Refractive Index	1.467	1.468	1.468
Dispersion, max.	3.2 ps/(nm-km) from 1285 to 1330 nm		18 ps/(nm-km)

Optical Characteristics, General	
Point Defects, max.	0.10 dB
Cutoff Wavelength	≤ 1260
Zero Dispersion Wavelength	1302 - 1322 nm
Zero Dispersion Slope, max.	0.090 ps/(km-nm-nm)
Polarization Mode Dispersion Link Design Value	≤ 0.06 ps/sqrt(km)

Environmental Characteristics	
Temperature Dependence -60 C to +85 C	≤ 0.05 dB
Temperature Humidity Cycling -10 C to +85 C up to 95% RH	≤ 0.05 dB
Water Immersion, 23 \pm 2 C	≤ 0.05 dB
Heat Aging, 85 \pm 2 C	≤ 0.05 dB

Specifications subject to change by Commscope

Exhibit D

Additional Maintenance and Repair Provisions

1. Initial Investigation of Issues.

a. MCNC, after being notified by Customer of a maintenance or repair problem with the Dark Fibers or Connecting Points, shall take reasonable action to determine if the suspected problem is within the Dark Fibers or Connecting Points. If, after taking such reasonable action, MCNC believes that such problem does not arise out of the Dark Fibers or Connecting Points, MCNC shall so notify Customer as soon as reasonably possible. Customer shall use reasonable efforts, subject to Customer's limited access to the cable and Connecting Points as stated in this Agreement to attempt to identify maintenance and repair problems in the Dark Fibers and the Connecting Points.

b. MCNC shall respond to notice of any failure of the Dark Fibers or Connecting Points to be in accordance with the Fiber Specifications (an "Outage"), whether or not causing any interruption of Customer's use, as quickly as reasonably possible. MCNC will use reasonable efforts to have a maintenance employee, contractor, subcontractor, or other designee at the site with an Outage or Dark Fiber discontinuity within two (2) hours after MCNC becomes aware thereof; and MCNC will use best efforts to have such designee on said site within four (4) hours after MCNC receives such notice. MCNC shall use reasonable efforts to remedy any problems related to the subject Dark Fibers or Connecting Points for which MCNC is responsible under this Agreement as quickly as practicable, except that restoration of Dark Fibers that are not immediately required for service may be scheduled for the next available PWSP.

c. When correcting or repairing an Outage or Dark Fiber discontinuity, MCNC shall use reasonable efforts to repair discontinuity having an impact on communications traffic within four (4) hours after MCNC's maintenance designee arrives at the problem site. To accomplish such objective, the repairs may be temporary in nature. MCNC, promptly upon arriving on the site, shall determine the course of action to be taken to restore the Dark Fibers and shall begin restoration efforts. MCNC shall splice Dark Fibers tube-by-tube or ribbon-by-ribbon or fiber-bundle by fiber-bundle, rotating between tubes or ribbons operated by the separate interest holders, including Customer, provided that fibers used for emergency responders shall have first priority and lit fibers in all buffer tubes, ribbons, and fiber bundles shall have second priority over any dark fibers to allow transmission systems to come back on line; and provided further that MCNC will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Within thirty-six (36) hours after completion of an emergency unscheduled maintenance by MCNC, MCNC shall commence its planning for permanent repair if applicable, and shall notify Customer of such plans and shall implement and complete such permanent repair as soon as practicable.

2. Cooperation and Communication. Each party will work in a reasonably cooperative manner with the other party to attempt to identify maintenance and repair problems in the Dark Fibers and Connecting Points. Each party shall maintain sufficient capability to teleconference with the other party during an Outage or Dark Fiber discontinuity and to provide regular communication during the repair process. Without limiting the generality of the foregoing and in the event that any maintenance requires a traffic roll or reconfiguration involving Dark Fibers, or any electronic equipment or other facilities of a party, then, on reasonable request, the other party shall make its personnel available as reasonably necessary to accomplish the maintenance, which personnel shall coordinate and cooperate with personnel of the other party in performing such maintenance as required. If at any time MCNC determines that an Outage as to any Dark Fibers will extend beyond eight (8) hours, a manager or officer of each party will work together to determine a plan to restore Dark Fibers as soon as possible. Customer has the right to be present during the performance of maintenance so long as this requirement does not interfere with MCNC's or any MCNC employee's, contractor's, subcontractor's, or other designee's ability to perform its duties.



TOWN OF NAGS HEAD
PO BOX 99
5401 SOUTH CROATAN HIGHWAY
NAGS HEAD, NC 27959
Phone: (252)441-5508

Purchase Order/Voucher

THIS NUMBER MUST APPEAR ON ALL INVOICES,
 PACKING LISTS, CORRESPONDENCE, ETC.

NO. 14-02352

SHIP TO

TOWN OF NAGS HEAD / IT DEPT
 5401 S CROATAN HWY (PO BOX 99)
 NAGS HEAD, NC 27959

ORDER DATE: 03/31/14
 DELIVERY DATE:
 STATE CONTRACT:
 VENDOR ACCT NUM:
 VENDOR PHONE #: (919) 248-1820
 VENDOR FAX #: (919) 248-1101
 REQUISITION #: R1400788

VENDOR Vendor #: MCXC0005

MCXC
 3021 E CORNWALLIS ROAD
 PO BOX 12889
 RESEARCH TRIANGLE PA, NC 27709-2889

MAIL INVOICE TO: ATTN: ACCOUNTS PAYABLE
 P.O BOX 99
 NAGS HEAD, NC 27959

QUANTITY	DESCRIPTION	ACCOUNT NO	UNIT PRICE	TOTAL
1.00	DARK FIBER CONSTRUCTION COST AS SPECIFIED PER CONTRACT 2200 LARK AVE 5401 S. CROATAN HWY	10-441-1-5773-00 CAPITAL OUTLAY OTHER	22,250.0000	22,250.00
1.00	DARK FIBER INSTALLATION FEE AS SPECIFIED BY CONTRACT	10-441-1-5773-00 CAPITAL OUTLAY OTHER	1,500.0000	1,500.00
2.00	ESTIMATED LEASE FOR FY 13-14 PER CONTRACT ESTIMATED 2 MONTHS PAYMENTS MAY AND JUNE	10-441-1-5321-00 BUILDING/EQUIPMENT RENTAL	300.0000	600.00
			TOTAL	24,350.00

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER
 REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL
 CONTROL ACT.

FINANCE OFFICER

PURCHASING AGENT

Please contact the Town of Nags Head if the prices indicated are not correct. The Town of Nags Head will not be responsible for incorrect pricing after the Purchase Order is received by the vendor for purchasing.