

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF GREENSBORO, NORTH CAROLINA

AND

MCNC, A Non-Profit Corporation

**PO Box 12889
3021 E. Cornwallis Road
RTP, NC 27709
ATTN: Sheila Sauls-White
919-248-1479
ssaulswhite@mcnc.org**

FOR

TELECOMMUNICATION SERVICE

June 29, 2017

**First Council Reading August 15th, 2017
Second Council Reading September 5th, 2017**

RETURN TO:

**John Gribble, Franchise Manager
City of Greensboro, Information Technology Department
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Greensboro, NC 27402-3136
336-373-2464
Email: john.gribble@greensboro-nc.gov**

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FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2017, by and between the City of Greensboro, North Carolina, hereinafter referred to as "City" and MCNC, a North Carolina non-profit corporation, with its principal place of business at 3021 E. Cornwallis Road RTP, NC 27709, hereinafter referred to as "Franchisee".

WHEREAS the City is authorized to grant one or more nonexclusive, revocable, franchises to construct, operate, and maintain a telecommunications system within the City to provide long distance network service;

WHEREAS Franchisee will construct and operate a telecommunications system as set forth herein;

WHEREAS the City, after due evaluation, has determined that it is in the best interest of the City and its residents to grant a franchise to Franchisee for a ten (10) year term.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

I. Grant of franchise.

- (a) Franchisee is hereby granted for itself and its successors and assignees, subject to the terms and conditions of this Franchise, the right, privilege, and authority to construct, operate, maintain, and reconstruct a telecommunications system within the streets, alleys, and public rights-of-way of the City for the purpose of providing telecommunications service. Franchisee shall provide a modern telecommunications system in accordance with this Franchise.
- (b) This Franchise is subject to the Chapter 28.1 of the Greensboro Code of Ordinances, (hereafter referred to as the "Telecommunications Ordinance"), as amended and in effect from time to time. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or manner of construction.
- (c) For the purpose of operating and maintaining a telecommunications system in the City, Franchisee may erect, in, over, under, or upon, across, and along the public streets, alleys, and rights-of-way within the City such wires, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, poles, amplifiers,

antennas, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the telecommunications system in the City and in accordance with this Franchise and the Telecommunications Ordinance.

- (d) Franchisee is authorized to provide only telecommunications services under the terms of this Franchise Agreement with the City. This includes telecommunications services within the local service area, which either originate or terminate in the City of Greensboro or both.

II. Effective date of Franchise, effect upon existing Franchise.

The effective date of this Franchise shall be the date of second passage of this Franchise by the Greensboro City Council.

III. Term.

- (a) *Term.* The term of the franchise shall be for a period of ten (10) years from the effective date, unless sooner terminated as provided in the Telecommunications Ordinance, at which time it shall expire and be of no further force and effect. The term of said franchise shall be extended for five (5) years from the end of the ten (10) year term in the event Franchisee has substantially complied with the material terms and conditions of this franchise and the ordinance over the term prior to action by Council in this matter. At the end of any such extension of the term, the franchise shall be extended for an additional five (5) years only in the event Franchisee has substantially complied with the material terms and conditions of this franchise and the ordinance over the term prior to action by Council in this matter.
- (b) *Option notice.* Within ninety (90) days after the first day of the seventh year of the franchise term, Franchisee shall provide notice by certified letter to the City that it seeks the five (5) year extension. If such extension is granted, within ninety (90) days after the first day of the fourth year of such extension, Franchisee shall provide notice by certified letter to the City that it seeks the five (5) year extension. Such notices shall include Franchisee's statement that it has substantially complied with the material terms and conditions of the franchise and ordinance and any information Franchisee may provide in support of its request.
- (c) *Compliance notice.* Within ninety (90) days of receipt from Franchisee, the City shall review the notice and supporting information provided by Franchisee and shall notify Franchisee in writing of its intention to either grant the extension or to contend Franchisee has substantially failed to comply with the material

terms and conditions of this franchise or ordinance. If the City fails to notify Franchisee within the 90-day period, the five (5) year extension shall be deemed to be granted and no further action by the City or Franchisee shall be required.

(d) *Public hearing.* If the City contends that Franchisee has failed to comply with said franchise or ordinance, it shall present written documentation to Franchisee. If Franchisee does not come into compliance with said franchise or ordinance within sixty (60) days or commence to cure said non-compliance as soon as reasonably practicable (if such non-compliance cannot be cured within sixty (60) days), the City shall present written documentation and evidence to the City Council, (including, but not limited to, the information supplied by Franchisee), no later than one hundred and twenty (120) days after notification to Franchisee that the City contends that Franchisee has not substantially complied with the material terms and conditions of this franchise as specified in (c) above. Upon receipt of the documentation and evidence, the City Council shall schedule a public hearing. At such public hearing, Franchisee shall have the right to present its documentation and evidence in support of its position.

(e) *Decision.* If after reviewing all documentation and evidence, the City Council decides Franchisee has substantially complied with the material terms and conditions of this franchise and ordinance, the five (5) year extension shall be awarded by the first day of the eighth year of this franchise. If the City Council decides Franchisee has not substantially complied with the material terms and conditions of this franchise and the ordinance, it shall adopt a resolution stating the same. If such a resolution is adopted, Franchisee has the right to contest in a court of appropriate jurisdiction, the City Council's action.

IV. Franchise nonexclusive.

Franchise nonexclusive. Consistent with the requirements of the Telecommunications Ordinance, this Franchise shall not be construed as any limitation upon the right of the City to grant to other persons, rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public rights-of-way. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional franchises for a telecommunications system as it deems appropriate.

V. Incorporation of the Telecommunications Ordinance by reference and resolution of conflicts.

All terms, conditions and provisions of Chapter 28.1 of the Greensboro Code of Ordinances shall be deemed to be embodied in this Franchise, and the express terms of said Chapter 28.1 shall prevail over conflicting or inconsistent provisions of this Franchise, unless this Franchise specifically and expressly modifies the terms of the Chapter 28.1. This Franchise Agreement shall prevail over any conflicting or inconsistent provisions of the Appendices attached hereto.

VI. Definitions.

All definitions set forth by City Telecommunications Ordinance pertain to this Franchise and shall be relevant to the purposes and meaning of this Franchise.

VII. Service area.

- (a) *Service area.* The service area of the Franchisee shall be as specified in **Appendix A**, attached hereto and incorporated by reference. The service area may be extended upon the approval of the City. Such approval to extend the service area shall not be unreasonably withheld.

VIII. System and capacity.

- (a) *System.* Franchisee's system will generally consist of fiber optic cabling and associated equipment, attached to existing utility poles or run through underground conduit. Franchisee's system may also include equipment (including antenna, radio equipment, battery backup and other necessary appurtenances), with the approval of the City through its permitting process, on new poles or structures placed by Franchisee. The system shall be constructed in accordance with industry-standard specifications, including the National Electric Safety Code. The system shall be constructed in accordance with the specifications in **Appendix B**, attached hereto and incorporated by reference.
- (b) *Construction oversight.* Franchisee shall provide necessary supervision to construct the system in a workman like manner as specified in **Appendix C**, attached hereto and incorporated by reference. Franchisee shall provide contact numbers for supervisors of construction to the City.

- (c) *Compliance with applicable law.* In constructing, operating and maintaining the system, Franchisee shall at all times comply with ordinance and all applicable laws and regulations.
- (d) *Drops.* Franchisee shall construct all customer drops to meet the standards of the National Electric Code.
- (e) *Equipment quality.* Equipment used for the telecommunications system shall be of good and durable quality and be serviced and repaired on a regular basis and shall at all times be of equal or better quality than the equipment and/or specifications listed in **Appendix D**, attached hereto and incorporated by reference.
- (f) *Technical standards.* The telecommunications system permitted to be operated hereunder shall be installed and operated in conformance with the ordinance, this franchise, and Federal and State rules and regulations.
- (g) *Employee identification.* Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, Franchisee shall use its best efforts to clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of Franchisee.
- (h) *Underground Drops.* The cost for replacing aerial drops with underground placement will be determined by the location of the utility drops. If the customer is served underground for power, there will be no charge for the replacement. If the customer has imminent plans to change the placement of the power drop, the cable drop will be replaced at no charge upon completion. There will be a time and material charge assessed only if underground replacement is requested though power is served aerially.

IX. Construction.

- (a) *Construction manual.* Franchisee shall construct the telecommunications system in accordance with industry-standard practices.
- (b) *Underground construction.* Franchisee shall participate in and use The North Carolina 811 One-Call Center. In City designated urban areas where open trench construction methods are utilized, warning tapes shall be installed in newly constructed areas directly above pipe and conduit at a depth of 6 inches below finished grade unless otherwise indicated. Where directional boring installations are utilized, a tracer wire or other acceptable industry means must be applied to permit location of the newly

installed facility. Types and locations of all underground markers must be in accordance with current City policies and construction standards. All new manholes and handholes, and existing handholes and manholes that involve new work must have all lines in the holes labeled with the company's identification as well as all manhole and handhole tops. Temporary underground drops shall be buried within one month of installation.

- (c) *Erection, Maintenance and Repairs.* All lines overhead and underground, and poles used by the said company shall be erected in accordance with current City policies and construction standards. All highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, and other public places that may be disturbed or damaged in the construction or maintenance of said lines, poles, and appurtenances shall be repaired or replaced, within 48 hours, unless a written variance is granted. All repairs shall be by the said company at their own expense, in accordance with applicable City construction standards and policies. All poles, overhead and underground installations and appurtenances shall be substantial and located as not to interfere with the public use and maintenance of the said highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, and other public places, or to endanger the property or citizens of the City. All overhead lines must be tagged at each pole tie with a City approved tag for purposes of line identification as observed from the ground below. The tag must be manufactured to withstand the elements of weathering and ultraviolet ray deterioration.
- (d) *Relocation of Lines and Appurtenances.* At the direction of the City, the company will at their own expense, move and relocate any of their lines, or other property or structures as necessary for the construction, widening, relocating, extending, or otherwise improving of streets, public ways, and utilities of the City as located within or outside the City limits, upon which the said property is located. The time line for relocates must be in accordance with reasonable City directives.
- (e) *City Conduit Placement.* Franchisee expressly agrees that it will allow the City to have its own conduit and/or fiber placed in the Franchisee's trench, bore, or overhead. Prior to construction permitting, Franchisee shall coordinate its construction plans with Utility Coordination. Franchisee shall perform the work for the City at Franchisee's cost (labor and material cost), and not for a profit. The City shall pay Franchisee for this cost through a contract with the Information Technology (IT) Department. All City materials shall be placed by Franchisee in a separate conduit, which shall be owned by the City.

X. Franchise renewal.

This Franchise may be renewed by the City in accordance with Federal law and the Telecommunications Ordinance.

XI. Police powers.

In accepting this Franchise, Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power, as provided by ordinance.

XII. Franchise fee and performance bond.

- (a) Franchise fee payments. The city reserves the right to charge an annual franchise fee for the use of the rights-of-way for a telecommunications system. The current rate of the annual franchise fee is zero dollars and zero cents (\$0.00) per linear foot of public right-of-way per year for the system during the period of its operation under the Franchise, such fee being subject to amendment by an ordinance of general applicability. In the event an ordinance shall increase the fee from zero dollars and zero cents (\$0.00), the increased fee shall be calculated on an annual pro-rated basis and shall be paid to the City within thirty (30) days of the effective date of the ordinance. Each payment shall be accompanied by a brief report showing the basis for recomputing and such other relevant facts as may be required by the City and such report shall be certified as true by a financial officer of the Franchisee.

- (b) *Bonds.* Franchisee shall furnish a performance bond to City of \$50,000 starting on the effective date of this Franchise and for the life of the Franchise, to guarantee the faithful performance of all the Franchisee's obligations under the Franchise and the Telecommunications Ordinance.

XIII. Regulation.

- (a) *Authority.* The City shall exercise appropriate regulatory authority under the provisions of the Telecommunications Ordinance and this Franchise. Regulation may be exercised through any duly designated City office or duly established Board or Commission or other body of the City.

- (b) *Waiver.* Franchisee, by accepting the rights hereby granted, agrees that it will perform and keep all acts and obligations imposed, represented or promised by the provisions of this Franchise and the Telecommunications Ordinance.

XIV. Remedies.

- (a) *Schedule of liquidated damages.* Because Franchisee's failure to comply with material provisions of this Franchise and Telecommunications Ordinance will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and Franchisee hereby agree that the liquidated damages and penalties stated below represent both parties' best estimate of the damages resulting from the specified injury.
- (b) *Violations.* For the violation of any of the following, the City shall notify Franchisee in writing of the violation. The City shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist or to cure an alleged violation or, if the violation cannot be corrected in 90 days, to submit a plan satisfactory to the City to correct the violation. If an alleged violation is proven to exist, and no cure or action on a plan acceptable to the City has been received by the City within ninety (90) days, such liquidated damages shall be chargeable to the performance bond as set forth in the Telecommunications Ordinance if not tendered by Franchisee within thirty (30) days. Franchisee may petition the City Council for relief with just cause. The imposition of liquidated damages shall not preclude the City from exercising the other enforcement provisions of Telecommunications Ordinance, including revocation, or other statutory or judicially imposed penalties. For violation of material provisions of this Franchise or the Telecommunications Ordinance, liquidated damages may be imposed of up to \$500/day for each day the violation continues.

(c) *Force majeure*. In the event that Franchisee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of unusually severe weather, Acts of God, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of Franchisee or delayed in performing work or doing acts required under the terms of this agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any act shall be extended for a period equivalent to the period of such delay.

XV. Cooperation.

The parties recognize that it is within their mutual best interests for the telecommunications system to be operated as efficiently as possible in accordance with the requirements set forth in this Franchise. To achieve this, parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the appropriate person or agents.

XVI. Waiver.

The failure of the City at any time to require performance by Franchisee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

XVII. Cumulative provision.

The rights and remedies reserved to the City by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

XVIII. Captions.

Captions to sections throughout this Franchise are solely to facilitate the reading and reference to the sections and provisions of the Franchise. Such captions shall not affect the meaning or interpretation of the Franchise.

XIX. No joint venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public, in any manner which would indicate any such relationship with the other.

XXI. Entire agreement.

This Agreement and all attachments hereto, and Telecommunications Ordinance and all attachments thereto, as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only by a written document executed by the parties.

XXII. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement, except as provided for in the Telecommunications Ordinance.

E-Verify - The Vendor certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Vendor also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

Iran Divestment Act Certification - As of the date of this Agreement, the Vendor certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58 and that the Vendor will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Agreement on behalf of the Vendor certify that they are authorized by the Vendor to make this certification.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF GREENSBORO, NORTH CAROLINA

City Clerk

Mayor

Information Technology

Assistant City Manager

(This instrument has been preaudited in the manner
Required by the Local Government Budget
and Fiscal Control Act.)

Approved as to form and legality.

Finance Officer

Associate City Attorney

MCNC, a North Carolina non-profit corporation.

Witness

[Signature]

ASST Secretary

[Signature]

President/Vice President

Seal



APPENDIX A

SERVICE AREA

MCNC seeks approval to serve 3 Community Anchor Institutions in the City of Greensboro:

- Greensboro Central Public Library - 219 N. Church Street, Greensboro, NC
- Guilford County Schools - 712 N Eugene Street, Greensboro, NC
- Triad Math and Science Academy - 700 Creek Ridge Rd, Greensboro, NC

Collectively, these encompass approximately 2.2 miles in the City of Greensboro, NC.

APPENDIX B

SYSTEM SPECIFICATIONS

MCNC's system will consist of fiber optic cabling and associated equipment, run through underground conduit.

The system shall be constructed in accordance with industry-standard specifications, including the National Electric Safety Code.

APPENDIX C

CONSTRUCTION OVERSIGHT

Mr. Paul Shaw, MCNC Outside Plant Engineer, will oversee the work on this project. Mr. Shaw can be contacted at 704-363-0021 or by email at pshaw@mcnc.org. The JBL Communications construction contractor Project Manager is Russell Brown. He can be reached at 704-498-6180.

Additionally, MCNC's Network Operations Center (NOC) can be reached 24 hours a day, 7 days a week, at 919-248-1111.

APPENDIX D

EQUIPMENT QUALITY

MCNC's network shall consist of fiber optic cabling meeting or exceeding the following technical parameters:

Placement - a 48-count fiber into the 1.25" duct.

Fiber Type: The fiber optic cable will be armored, single mode, loose tube (48 fiber/buffer tube) cable.

Polymer Concrete box/ cover handholes will be a minimum of 24" x 36" x 36"

All handholes and lids shall comply with the NESC for loading.

Contractor will terminate fiber into a specified demarcation point inside of the CAI's building.

Complies with or exceeds ITU-T Recommendation G.652.D.