

Installation of City Fiber Optics
and Associated
Construction/Maintenance Work

Contract No.4320-FY23-24



Communications Department
P.O. Box 308
Concord, NC, 28026

REQUEST FOR PROPOSALS

INSTALLATION OF CITY FIBER OPTICS AND ASSOCIATED CONSTRUCTION
MAINTENANCE
CITY OF CONCORD
RFP# 2597
Contract No. 4320-FY23-24

The City of Concord is accepting proposals for the installation of fiber optic cables in our outside plant network until **Thursday, September 28, 2023, at 2:00 PM.** All proposals received after this date and time will not be considered. All proposals must be mailed to [the Brown Operation Center in a sealed envelope, Attention David Fowler, 635 Alfred Brown Jr Court SW, Concord, North Carolina 28026-0308](#). Bids will be opened and read aloud at 2:00 PM in Conference Room C. Any questions regarding this proposal and/or specifications shall be directed to David Fowler, Fiber Network Manager, P.O. Box 308, Concord, North Carolina 28026; Phone: 704-920-5596; or E-mail: fowlerd@concordnc.gov.

The resulting construction contract will be to provide all labor and materials to install, remove and maintain fiber optic lines in the City of Concord. This will also include emergency work for restoration of services from vehicle wreck, storm damage or other emergency situations.

Performance and payment bonds in the amount of the contract price will be required.

Each Proposal must be accompanied by a deposit equal to 5% of the net price bid. This deposit may consist of cash, or a Cashier's Check issued by, or a Certified Check drawn on a Bank or Trust Company authorized to do business in North Carolina, or on a Bank insured by the Federal Deposit Insurance Corporation, or a U.S. Money Order, payable to the City of Concord or 5% Bid Bond in the form required by G.S. 143-129 as amended, issued by an Insurance Company authorized to do business in North Carolina, said deposit to be retained in the event of failure of the successful bidder to execute a formal contract within ten (10) days after award or to give satisfactory surety required.

The local government of the City of Concord does not discriminate administering any of its programs and activities. The City of Concord invites and encourages participation in this procurement process by minority-owned businesses, women-owned businesses and businesses owned by persons disabled.

All qualified proposals will be evaluated and acceptance made of the proposal judged by the City of Concord to constitute the best value offered for the purpose intended. Evaluation will include, but not necessarily be limited to, the bidder's qualifications, experience, past performance, financial standing and bid price.

The City of Concord reserves the right to accept or reject any or all proposals presented, and the right to waive any informalities or irregularities. Proposers should have no contact with elected officials or appointed officials. Any such contact will subject bidders to immediate disqualification. This document should include all the information needed by the proposer for a submittal.

STANDARD FORM CONSTRUCTION CONTRACT (Example)

This contract (together with all exhibits and valid amendments, the “Agreement” or the “Contract”) is made and entered into as of the _____ day of _____, 2023, by the City of CONCORD (“City”) and _____. (“Contractor”), () a corporation, () a professional corporation, () a professional association, () a limited partnership, () limited liability company, () a sole proprietorship, or () a general partnership; organized and existing under the laws of the State of North Carolina.

Sec. 1. Background and Purpose. This contract consists of the selected Contractor(s) providing installation, removal and maintenance of fiber optic lines in and adjacent to the City of Concord as directed by the Fiber Network Manager. This work provides for the installation, removal, upgrade, or repair of fiber optic lines on an as-needed basis and includes but is not limited to: installing/removing strand, lashing fiber, installing/removing downguys, installing/removing anchors, installing aerial storage loops, pulling fiber in conduit and installing locate wires in conduit. The work shall include the full cost of all special subcontracting, permits, licenses, certifications, materials, labor, equipment, tools, miscellaneous hardware, consumables, adhesives and sealants, incidentals, transport, storage, traffic control, safety operations, testing, operational start-up, cleanup, removal of old assemblies, disposals, returns of all unused materials, warranty maintenance needed for completion of the services, and all else required to complete the services pursuant to this Agreement.

Sec. 2. Services and Scope to be Performed. The Contractor shall provide the services at the charges set forth either in this paragraph or in Exhibit “A”. Additional exhibits may be used to further define this Agreement when the Contractor and City so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties.

The City will issue notification to the Contractor of work to be performed for each individual project to be performed by the Contractor. The effective start date of each project will be included in notification to the Contractor. The work for each project will begin within **fifteen (15)** days and be substantially complete on or before **thirty (30)** days from the start date. The work must be complete and ready for final inspection on or before **forty-five (45)** days from the start date.

The City will notify the Contractor by phone when emergency work is required. If no answer, a voicemail will be left and the Contractor has thirty (30) minutes to return the City’s call. After verbal notification of emergency work by the City to the Contractor, emergency work must begin within **two (2) hours**. Additionally, after verbal notification the City shall confirm such request in writing to Contractor. All emergency work must be completed within **thirty (30) calendar days** from the date of initial notification.

In this Contract, “work” “emergency work” or “services” means the services that the Contractor is required to perform pursuant to this Contract and all of the Contractor’s duties to the City that arise out of this Contract. Any amendments, corrections, or change orders by either party must be made in writing signed in the same manner as the original. (This form may be used for amendments and change orders.) The City reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order.

Sec. 3. Complete Work without Extra Cost. Unless otherwise provided, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City shall pay the Contractor for the Work as described in this paragraph below OR as described in Exhibit “A” attached. In the event of a conflict, the provisions of this paragraph shall control. Any additional expenses or charges shall only be paid after both the City and the Contractor agree to and execute a written change order. The City shall not be obligated to pay the Contractor any fees, payments, expenses or compensation other than those authorized in this Contract or in a duly approved change order. All payments shall be deemed inclusive of tax and other obligations.

Sec. 4a. Retainage. The City shall withhold no retainage on Contracts having a “total project cost” of less than \$100,000.00. The City may withhold retainage on contracts having a total project cost between \$100,000 and \$200,000. The City shall withhold retainage on contracts whose total project cost exceeds \$300,000. When withheld, retainage shall equal no more than five percent of each progress payment. When the project is fifty per cent complete, the City shall not retain anything from future project payments provided that (i) the surety concurs in writing, (ii) the Contractor continues to perform satisfactorily, (iii) any non-conforming work identified in writing by the architect, engineer(s) or City has been corrected by the Contractor and accepted by the architect, engineer(s) or City. However, if the City determines that the Contractor’s performance is unsatisfactory, the City may withhold up to five percent retainage from each project payment. The City may withhold additional amounts above five percent for unsatisfactory job progress, defective construction not remedied, disputed work, third party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

Definitions:

“Total Project Cost”: Total value of the Contract and any approved change orders or amendments.

“Project is Fifty Percent Complete”: When the Contractor’s validly issued gross project invoices (excluding the value of the materials stored off-site) equal or exceed fifty percent of the value of the Contract, except that the value of materials stored on-site shall not exceed twenty percent of the Contractor’s gross project invoices for the purpose of determining whether the project is fifty percent complete.

Sec. 5. Term. The Contractor shall commence work as the Notice to Proceed Date specified on EXHIBIT G. All work as set forth in the Scope of Services in Exhibit “A” shall be completed between the Commencement Date and the completion date. The date that is June 30 2024 shall be the “Completion Date.” Any portion of the work that is specified and directed by the City to Contractor(s) to be complete on a date before the “Completion Date” shall made in writing between the City and Contractor(s). Time is of the essence with regard to this Project. If Contractor's obligations are not completed by the Completion Date or other specified and directed date(s) for completion of a portion of the work as scheduled between the City and Contractor(s), the City reserves the right to nullify this Agreement, order the Contractor to immediately cease all work under this Agreement and vacate the premises, and to seek professional services equivalent to those outlined in Exhibit “A.” The Contractor shall be held accountable for all damages incurred by the City as a consequence of the missed Completion Date or other specified and directed date for completion of a portion of the work as scheduled between the City and Contractor(s). The exercise of any of these rights by the City shall not be interpreted to prejudice any other rights the City may have under this Agreement or in law or equity. This Contract shall not be automatically extended unless agreed to in writing by the City or as provided in Exhibit “A”.

Sec. 6. Contractor’s Billings to City. Payments will be made in accordance with the schedule found in this section below OR attached at Exhibit “A”. Contractor shall submit an original pay request (invoice) to the City Purchasing Agent by the first of each month in order to expedite payment. Upon receipt of the request the City Purchasing Agent shall verify the amounts and if correct forward the request to the Accounts Receivable Division of the Finance Dept. Final payment on the Contract shall be made in 45 days, except in the case of retainage. Within 60 days after the submission of the final pay request, the City (with the written consent of the surety) shall release to the Contractor all retainage payments IF the City receives a certificate of substantial completion from the architect, engineer or designer-in-charge of the project OR the City receives beneficial occupancy and use of the project. In either case, the City may retain up to 2.5 times the estimated value of the work to be completed or corrected.

Sec. 7. Insurance. Contractor shall maintain and cause all sub-contractors to maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers’ Compensation	\$500,000 each accident, \$500,000 bodily injury by disease each employee, \$500,000 bodily injury by disease policy limit
General Liability	\$1,000,000 per occurrence regardless of the contract size

Automobile Liability		\$1,000,000 per occurrence regardless of the contract size
Umbrella	<input type="checkbox"/>	\$1,000,000 per occurrence if contract does not exceed 180 days and does not exceed \$500,000; otherwise,
	<input checked="" type="checkbox"/>	\$2,000,000 per occurrence

Contractor shall provide a Certificate of Insurance to the City listing the City as an additional insured. Such Certificate shall be in a form acceptable to the City.

Sec. 8. Documentation Requirements:

A. Contractor shall provide the City with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require written notice by the insurer or Contractor's agent in the event of cancellation, reduction or other modifications of coverage by the insurer. Such notice shall be not less than 30 days for nonrenewal by the insurer, not less than 10 days for cancellation due to nonpayment of the premium and as soon as possible for all other types of modifications. In addition to the notice requirement above, Contractor shall provide the City with written notice of cancellation, reduction, or other modification of coverage of insurance whether instigated by the insurer or by the Contractor immediately upon Contractor's receipt of knowledge of such modifications. Upon failure of the Contractor to provide such notice, Contractor assumes sole responsibility for all losses incurred by the City for which insurance would have provided coverage. The insurance certificate shall be for the insured period in which the initial contract period begins and shall be renewed by the Contractor for each subsequent renewal period of the insurance for so long as the contract remains in effect.

The City shall be named as an **additional insured** on all policies except Workers' Compensation and it is required that coverage be placed with "A" rated insurance companies acceptable to the City. Statement should read, "City of Concord is added as an additional insured as evidenced by an endorsement attached to this certificate." Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event that the Contractor fails to maintain and keep in force the insurance herein required, the City has the right to cancel and terminate the Agreement without notice.

B. Contractor shall provide a completed W-9 form to the City prior to execution by the City of this Agreement.

Sec. 9. Performance of Work by Contractor.

(a) The Contractor warrants that all work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of 1 year from the date of issuance by the City of written final completion of the work.

(b) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to City - owned or controlled real or personal property, when that damage is the result of:

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(d) The City shall notify the Contractor, in writing, within a reasonable time, not to exceed 30 days, after the discovery of any failure, defect, or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time, not to exceed 30 days unless otherwise agreed in writing and signed by the City Manager or his designee, after receipt of notice, the City shall have the right to replace repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice,

(2) Require all warranties to be executed, in writing, for the benefit of the City, if directed to do so by the City; and

(3) Enforce all warranties for the benefit of the City, if directed to do so by the City

(g) In the event the Contractor's warranty has expired, the City may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the City nor for the repair of any damage that results from any defect in City-furnished material or design.

Sec. 10. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Exhibit "A", the City may, in its discretion, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor reasonable notice of its intention. The Contractor shall reimburse the City for all costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 11. Attachments. Additional exhibits may be used to further define this Agreement when the Contractor and City so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties.

The following attachments are made a part of this Contract and incorporated herein by reference:

- (a) Exhibit "A" – Scope of Services / Fee for Scope of Services.
- (b) Exhibit "B" – Contractor must execute the Affidavit attached as Exhibit "B", attesting to compliance with state and federal laws related to E-Verify.
- (c) Exhibit "C" – Tax Form(s).
- (d) Exhibit "D" - Certificate of Insurance.
- (e) Exhibit "E" – Quote Form
- (f) Exhibit "F" – Bond Forms
- (g) Exhibit "G" – Notice to Proceed

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control. Any attachment that materially alters the standard terms contained herein must be reviewed by the City Attorney and approved by the City in writing.

Sec. 12. Notice. (a) All notices and other communications required or permitted by this Contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

David Fowler Fiber Network Manager
City of Concord
P.O. Box 308
Concord, NC 28026
Fax Number: (704) 920-6995

To the Contractor:

VaLerie Kolczynski, Esq.
City Attorney
PO Box 308
Concord, NC 28026
Fax Number: (704) 784-1791

(b) **Change of Address, Date Notice Deemed Given:** A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 13. Indemnification. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the City of Concord, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Contract as a result of the acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the City its agents, officers, or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the City of Concord, its agents, officers, and employees with legal counsel reasonably acceptable to City. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Contract. This section shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract.

Sec. 14. Corporate Status. If the Contractor is dissolved or suspended and the Contractor does not notify the City of such dissolution within three (3) business days from date of dissolution or suspension, and/or the corporate status is not reinstated within thirty (30) days, this Contract, at the sole option of the City and without prejudice to City’s other remedies, shall be declared null and void or the Contractor shall execute a new contract showing the Contractor’s correct legal entity.

Sec. 15. Miscellaneous.

(a) **Choice of Law and Forum.** This Contract shall be deemed made in Cabarrus County, North Carolina. This Contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) **Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) **Performance of Government Functions.** Nothing contained in this Contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) **Severability.** If any provision of this Contract shall be unenforceable, the remainder of this Contract shall be enforceable to the extent permitted by law.

(e) **Assignment, Successors and Assigns.** Without the City’s written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this Contract. Unless the City otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the City’s defenses and shall be liable for all of the Contractor’s duties that arise out of this Contract and all of the City’s claims that arise out of this Contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law. Without limitation, Contractor shall comply with the requirements of Article 2, Chapter 64 (Verification of Work Authorization) of the North Carolina General Statutes relating to E-Verify. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Pursuant to the requirements of the Iran Divestment Act, N.C.G.S. § 143C-6A-1, et. seq., Contractor certifies that as of the Effective Date of this Agreement, Contractor is not on the Final Divestment List as created by the State Treasurer in compliance with N.C.G.S. § 143-6A-4 and located at www.nctreasurer.com/Iran. Furthermore, Contractor agrees that it will not enter into any subcontracts for the performance of this Agreement with any entity on the Final Divestment List.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or disability. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or disability. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or disability.

(i) No Third Party Right Created. This Contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation. In this Contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

(k) Modifications, Entire Agreement. A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

(l) Corporate Seal. If a corporate seal is included by any party to this Contract, it is only for authentication purposes. This Contract is not signed under seal.

(m) No Employment Relationship. For all matters relating to this Agreement, Contractor shall be deemed an Independent Contractor. Nothing in this Agreement shall be construed in such a manner as to create an employee-employer relationship between City and Contractor.

(The following section applies to construction contracts only if the total amount of contracts awarded for the project is \$300,000 or more.)

Sec. 16. Bonding. Both performance and payment bonds for the full amount of this Contract are required to be attached. Instead of bonds, you may submit a deposit of money, certified check or government securities for the full amount of the Contract. The performance bond shall have a value equal to 100% of this Contract. This bond shall be conditioned upon faithful performance of the Contract in accordance with the plans, specifications and conditions of the Contract. The performance bond shall be solely for the protection of the City. The payment bond shall be in an amount equal to 100% of the Contract, and conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor or construction manager at risk is liable.

When the total amount of contracts awarded for any project exceeds three hundred thousand dollars (\$300,000), performance and payment bonds are required from any contractor or construction manager at risk with a contract amount of or exceeding fifty thousand dollars (\$50,000).

Sec. 17. Dispute Resolution. It is understood and agreed that NCGS 143-128(f1-g) requires that disputes arising under an agreement for the erection, construction, alteration or repair of a building be subject to a dispute resolution process specified by the City. The amount in controversy shall be at least \$15,000.00 before this dispute resolution procedure may be used. In compliance with this statutory provision, the City specifies this Section as the dispute resolution process to be used on this Project. It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the Parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the City is under no obligation under any circumstance to secure or enforce the participation of any other Party in the mediation of any dispute subject to this Section and NCGS 143-128(f1-g).

This Section 17 does not apply to:

(a) The purchase and erection of prefabricated or relocatable buildings or portions of such buildings, except that portion of the work that must be performed at the construction site; or

(b) The erection, construction alteration or repair of a building when the cost of such building is \$300,000 or less.

17.1 Any dispute arising between or among the Parties listed in Section 17.3 that arises from an agreement to construct the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules ("Rules"), except as otherwise expressly set forth in this Section. To the extent any provision of the Rules is inconsistent with the provisions of this Section, the provisions of this Section shall control. The mediation provided in this Section shall be used pursuant to this Agreement and NCGS 143-128(f1-g) and is in lieu of any dispute resolution process adopted by the North Carolina State Building Commission, which process shall not apply to this Project.

17.2 For purposes of this Section the following definitions shall apply:

- a. *Agreement to construct the Project* means an agreement to construct the Project that is subject to the requirements of NCGS 143-128 and does not include any agreement related to the Project that is not subject to said statute.
- b. *Construct or construction* refers to and includes the erection, construction, alteration or repair of the Project.
- c. *Party or Parties* refers to the parties listed in Section 16.4.
- d. *Project* means the building to be erected, constructed, altered or repaired pursuant to this Agreement.

17.3 The City and any Party contracting with the City or with any first-tier or lower-tier subcontractor for the construction of the Project agree to participate in good faith in any mediation of a dispute subject to this Section and NCGS 143-128(f1-g), including without limitation the following Parties (if any): architect(s), engineer(s), surveyor(s), construction manager, construction manager at risk, prime contractor(s), surety(ies), subcontractor(s), and supplier(s).

17.4 In order to facilitate compliance with NCGS 143-128(f1-g), the Contractor and all other Parties shall include this Section 17 in every agreement to which it (any of them) is a Party for the construction of the Project without variation or exception. Failure to do so will constitute a breach of this Agreement, and the Contractor or other Party failing to include this Section in any agreement required by this Section shall indemnify and hold harmless the remaining Parties from and against any and all claims, including without

limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Section and can enforce the provisions hereof.

17.5 The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.

17.6 A dispute seeking the extension of any time limit set forth in an agreement to construct the Project shall be subject to mediation pursuant to this Section and NCGS 143-128(f1-g), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.

17.7 For purposes of this Section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes.

17.8 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.

17.9 Prior to requesting mediation, a Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.

17.10 If a Party breaches any provision of Section 17.9, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.

17.11 All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the City is named as a party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the City is named as a Party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties.

17.12 The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Cabarrus County as the mediator shall determine.

17.13 The provisions of this Section are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Section.

17.14 The Parties understand and agree that mediation in accordance with this Section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Section.

Sec. 18. Breach. In the event of a violation of any material term of this Agreement, the non-violating party may terminate the Agreement upon written notice. Such notice shall state the violation with specificity and shall give ten (10) days to cure the violation. The cure period shall be measured as ten (10) days from the date of receipt of notice by the violating party, or, if the date is not known, then thirteen (13) days from the date the notice is placed in the United States Post. If the violation remains uncorrected at the end of the cure period, the Agreement shall be terminated without any further action by the non-violating party. Any remaining disputes shall be subject to the dispute resolution procedure set forth above, if applicable.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City of Concord and the Contractor have caused this Contract to be executed by their respective duly authorized agents or officers.

CITY OF CONCORD:

Contractors Name:

By: _____
Lloyd Wm. Payne, Jr., City Manager

By: _____
Signature of President/Vice President/Manager/Partner

Date: _____

Printed Name: _____

Title: _____

ATTEST BY:

Date: _____

City Clerk

ATTEST:

BY: _____
Signature of Vice President, Secretary, or other officer

APPROVED AS TO FORM:

Printed Name: _____

Title _____

Attorney for the City of Concord

SEAL

APPROVAL BY CITY FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Director of Finance, Jessica Jones

EXHIBIT "A"

This document is an Exhibit to the Agreement for Professional Services between the CITY OF CONCORD and _____, dated as shown in the Notice to Proceed Date specified on EXHIBIT F

Scope of Services:

The contractor shall provide installation, removal and maintenance of fiber optic lines work in and adjacent to the City of Concord as directed by the Fiber Network Manager. This work provides for the installation, removal, upgrade, or repair of fiber optic lines on an as-needed basis and includes but is not limited to: installing/removing strand, lashing fiber, installing/removing downguys, installing/removing anchors, installing aerial storage loops, pulling fiber in conduit. Installing locate wires in conduit The work shall include the full cost of all special subcontracting, permits, licenses, certifications, materials, labor, equipment, tools, miscellaneous hardware, consumables, adhesives and sealants, incidentals, transport, storage, traffic control, safety operations, testing, operational start-up, cleanup, removal of old assemblies, disposals, returns of all unused materials, warranty maintenance needed for completion of the work, and all else required to the satisfaction of the Fiber Network Manager in this contract

Fee for Scope of Services:

The fee for services shall not exceed \$400,000 and shall be based on a unit cost format, whereby the quantities of items satisfactorily installed, verified, and accepted by the Fiber Network Manager or his designated representative(s) shall be the actual quantities that are used in determining the basis of payment. Payment at the unit prices for the various items listed on the Quote Form EXHIBIT "E" will be full compensation for all the items covered by the work. In no case will the total amount paid to the Contractor exceed the not to exceed amount indicated above. Invoices shall be directed to: City of Concord Attention: David Fowler, Post Office Box 308, Concord, NC 28026-0308. Should changes or extra services be needed, which will cause a cost overrun; _____, will consult with the City for adjustments prior to conducting the work.

The budget for the scope of services is based on the following estimates:

EXHIBIT "B"

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF CABARRUS

I, _____ (the individual signing below), being duly authorized by and on behalf of
_____ (the legal name of the entity entering the contract, "Employer")

after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-26.

2. Employer understands that Employers Must Use E-Verify. Each employer (as such term is defined in NCGS § 64-25), after hiring an employee (as such term is defined in NCGS § 64-25) to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a). Employer attests that Employer is in compliance with the requirements of the federal and state laws relevant to E-verify.

3. Employer is a person, business entity, or other organization that transacts business in the State of North Carolina. Employer employs 25 or more employees in this State. (mark Yes or No)

a. YES _____, or b. NO _____.

4. Employer attests that all subcontractors employed by it as part of this contract comply with the requirements of E-Verify, and Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer as part of any contract with the City of Concord.

5. Employer shall have a continuing duty to inform the City of Concord of any changes to this sworn information.

This ____ day of _____, 20__.

Signature of Affiant

Print or Type Name: _____

EXHIBIT "C"

State of North Carolina County of Cabarrus

Signed and sworn to (or affirmed) before me, this the ____

day of _____, 20__.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

TAX FORM(S)

EXHIBIT “D”

CERTIFICATE OF INSURANCE

Exhibit “E” Quote Form

City of Concord
P.O. Box 308
Concord, NC 28026

The undersigned, as bidder, hereby declares the proposal is made without connection with any other person, company, or parties making a similar bid or proposal, and that it is in all respects fair and in good faith without collusion or fraud. The bidder has carefully examined the annexed form of the specifications and instructions to the bidder and hereby declares that they will furnish the material called for in a manner prescribed in the specifications and instructions to bidders for the pricing included.

COMPANY NAME _____

AUTHORIZED SIGNATURE _____

PRINTED NAME AND TITLE _____

FEDERAL ID # _____

TELEPHONE # _____

Note:

This signature page must be signed for your bid to be valid.

Exhibit "E" Quote Form

The below quote is for installing fiber optics for the City of Concord 's fiber optic network.

Contract No. 4320-FY23-24

Quantity amounts are for quoting purpose only. They do not necessarily reflect the volume of work to be performed under this contract. The lowest responsible bidder will be determined by a pre-selected sampling of the units represented.

Line #	Item Description	Quantity	Unit	Unit Quote Price	Amount Quoted
1	Furnish and Install an 8 foot anchor rod and expanding Bell with all necessary hardware	10	EA		
2	Overlashing of City supplied fiber and include all necessary hardware.	1000	LF		
3	Install 5/16 strand and lash fiber to the strand. Furnish all necessary hardware to attach to pole and lashing hardware. City Supplies 5/16 strand and Fiber.	1000	LF		
4	Installing aerial fiber storage loops.	10	EA		
5	Install 5/16 Downguy and guard. Include all necessary hardware including yellow guy guard. City supplies 5/16 strand.	10	EA		
6	Pulling of 5/16 overhead guy with 5/16 down guy and include all necessary hardware including yellow guy guard for down guy. City supplies 5/16 strand.	250	LF		
7	Remove old fiber and strand from poles and dispose of.	1000	LF		
8	Drill Metal Pole to allow for mounting of strand and fiber.	10	EA		
9	Grounding 5/16 strand to pole ground. Include all necessary hardware to properly bond the strand to pole ground.	10	EA		
10	Make ready (raising or lowering other utilities on a pole) and reattaching to the pole. Include all necessary hardware.	10	Each Pole		
11	Tree trimming to be able to get strand and fiber on pole.	1000	LF		
12	Reattach existing city fiber to new poles (Pole Transfers). Include all necessary hardware.	10	Each pole		

13	Cleat fiber down pole and attach "U guard" Include all necessary hardware. City Supplied U Guard	10	Each pole		
14	Pull fiber in underground conduit	1000	LF		
15	Install pull string in underground conduit. City Supplied pull string.	1000	LF		
16	Install tracer wire in underground conduit. City Supplied tracer wire.	1000	LF		
17	Traffic Control	10	Per day		
18	Rehang splice cases with Deltec strapping. Contractor to provide Deltec Strapping.	10	EA		
19	Install 24x36x24 inch Hand hole. Hand hole provided by City	10	Ea		
20	Mobilization for Emergency Work (Per Occurrence)	5	LS		
21	Unpaved Trenching with 3 inch PVC Conduit. City provided Conduit	100	LF		
22	Install Oversized 30x60x24 inch Hand hole. Hand hole provided by City	10	EA		

***** SIGNATURE OF QUOTER*****

If an Individual

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(signature of individual)

doing business as: _____

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

If a Partnership

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(firm name)

(signature of general partner)

doing business as: _____

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

***** SIGNATURE OF QUOTER*****

If a Corporation

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(corporation name)

By: _____
(Signature of authorized official)

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

(Seal)

If a Joint Venture (OTHER PARTY MUST SIGN BELOW)

If an Individual

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(signature of individual)

doing business as: _____

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

If a Partnership

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(Firm name)

(Signature of general partner)

doing business as: _____

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

***** SIGNATURE OF QUOTER*****

If a Corporation

Contractor's License Number: _____

License Expiration Date: _____

By: _____
(corporation name)

By: _____
(Signature of authorized official)

Business address: _____

City: _____

State: _____ ZIP: _____

Phone No.: _____ Date: ____, 20__

ATTEST: _____ Title: _____

(Seal)

Exhibit “F”

Performance and Payment Bonds

PERFORMANCE BOND

Date of Execution of this Bond _____

Name and Address of
Principal (Contractor) _____

Name and Address
of Surety _____

Name and Address of
Contracting Body City of Concord
35 Cabarrus Ave., West, P.O. Box 308
Concord, North Carolina 28025

Amount of Bond _____

Contract That certain contract by and between the Principal and the Contracting
Body above named dated _____

For: Installation of City Fiber Optics and Associated

Construction/Maintenance Work Advertisement Contract No. 4320-FY23-24

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above-named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached;

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, 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 the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise, to remain in full force and virtue.

THIS PERFORMANCE BOND is made and given pursuant to the requirements and provisions of Section 129 of Chapter 143 of the General Statutes of North Carolina and pursuant to Article 3 of Chapter 44-A of the General Statutes of North Carolina, and each and every provision set forth and contained in Section 129 of Chapter 143 and in Article 3 of Chapter 44-A of the General Statutes of North Carolina is incorporated herein, made a part hereof, and deemed to be conclusively written into this Bond.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals as of the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned and representative, pursuant to authority of its governing body.

PERFORMANCE BOND: (Continued)

WITNESS:

Principal (Name of individual and trade name,
partnership, corporation, or joint venture)

(Proprietorship or Partnership)

BY _____ (SEAL)

TITLE _____

(Owner, Partner, Office held in
corporation, joint venture)

ATTEST: (Corporation)

(Corporate Seal of Principal)

BY _____

TITLE _____

(Corporation Secretary or
Assistant Secretary Only)

Surety (Name of Surety Company)

WITNESS:

BY _____

TITLE _____ Attorney in Fact

(Corporate Seal of Surety)

COUNTERSIGNED:

(Address of Attorney in Fact)

N.C. Licensed Resident Agent

EXHIBIT "G"

NOTICE TO PROCEED -
COMMENCEMENT DATE

(DATE OF AVAILABILITY)

TO:

FROM: City of Concord
P.O. Box 308
Concord, North Carolina 28026-0308

PROJECT: Installation of City Fiber Optics and
Associated Construction and Maintenance Work Contract No.
4320- FY23-24

PROJECT DESCRIPTION: The work consists of the selected Contractor(s) providing installation, removal and maintenance of fiber optic lines work in and adjacent to the City of Concord as directed by the Fiber Network Manager. This work provides for the installation, removal, upgrade, or repair of fiber optic lines on an as-needed basis and includes but is not limited to: installing/removing strand, lashing fiber, installing/removing downguys, installing/removing anchors, installing aerial storage loops, pulling fiber in conduit and installing locate wires in conduit. The work shall include the full cost of all special subcontracting, permits, licenses, certifications, materials, labor, equipment, tools, miscellaneous hardware, consumables, adhesives and sealants, incidentals, transport, storage, traffic control, safety operations, testing, operational start-up, cleanup, removal of old assemblies, disposals, returns of all unused materials, warranty maintenance needed for completion of the work, and all else required to the satisfaction of the Fiber Network Manager in this contract.

All work and materials shall be in accordance with the provisions of this contract, the latest requirements of the National Electrical Code (NEC), National Electrical Safety Code (NESC), OSHA, Underwriter's Laboratory (UL), all applicable Federal, State, and local laws, ordinances and regulations.

You are hereby formally notified to commence work on the _ _ day of __, 2023 under the assigned City of Concord Purchase Order No. _____ in accordance with the contract documents for the work.

Dated this the ____ day of __, 2023
City of Concord, North Carolina

By _____

Title: Fiber Network Manager