

NORTH CAROLINA

GASTON COUNTY

ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN GREATER GASTON  
DEVELOPMENT CORPORATION  
AND THE COUNTY OF GASTON

THIS AGREEMENT is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2016 ("Contract Date") by and between GREATER GASTON DEVELOPMENT CORPORATION (the "GGDC"), a North Carolina nonprofit corporation, and the County of Gaston (the "County"), a political subdivision of the State of North Carolina.

WITNESSETH

WHEREAS, County wishes to encourage the development of a hybrid business incubator program to drive economic development in the County;

WHEREAS, the County has agreed to make certain grants to the GGDC and its successor organization under the conditions set forth below for purposes of commencing the hybrid business incubator;

WHEREAS, the County is enabled by North Carolina General Statute 158-7.1 to make appropriations for the purpose of aiding and encouraging business development which, in the discretion of the Board of Commissioners, will increase the population, taxable property, and business prospects of the County; and

WHEREAS, the County finds that the establishment of a "hybrid business incubator" which features gigabit-speed Internet service will serve as a catalyst in the development of small businesses, startups, and entrepreneurs which will in turn increase the tax base for the County and become an engine for job growth;

IT IS AGREED AS FOLLOWS:

1. Schedule of Payments. The County shall make payments in accordance with the "Scope of Work" attached hereto and incorporated herein by reference.

2. Delay of Payment. If the County has a good faith reason to believe that any statement or certification made by the GGDC pursuant to this Agreement is not materially accurate, a corresponding payment otherwise appearing to be due per the Scope of Work shall be delayed for a reasonable time not to exceed 30 days for a determination of the facts after the County has provided written notice to the GGDC specifically stating the grounds for their good faith belief of material inaccuracies.

3. Affirmative Covenants. Until such time as the last of the Grant Payments have been made:

- a. GGDC shall promptly pay and discharge all taxes, assessments, utility charges or other governmental charges which may be lawfully levied against the Property and all improvements located thereon, and also all lawful claims for labor or material and supplies which, if unpaid, may become a lien or a charge against the Property. For the purposes of this Agreement, "Property" shall be defined to include any real property owned or leased by the GGDC for the Hybrid Business Incubator Project (hereinafter "Project" set out in the Scope of Work.
- b. GGDC shall conform to, comply with, and obtain all required permits, consents, and licenses required by all restrictions, buildings laws, health codes, environmental regulations, safety rules, and zoning and subdivision laws and regulations relating to construction and operation of the Property and with all other applicable statutes, laws, ordinances, rules, and regulations of the United States, of the state and municipality in which the Property is located and of any other governmental division, board, or officer having or claiming jurisdiction over the Property.
- c. GGDC shall execute and deliver any and all instruments or documents, and perform such other acts as County may reasonably request to secure to County all rights and remedies conferred upon County by the terms of this Agreement.
- d. GGDC shall obtain all necessary permits, licenses, consents and other approvals for the operation of the Project.
- e. For the duration of this agreement, GGDC shall operate or contract for the operation of the Project in accordance with the "Scope of Work", attached hereto and incorporated herein by reference. To the extent there is a conflict between this agreement and the Scope of Work, the Scope of Work will prevail.
- f. GGDC shall, during the entire period of this Agreement, maintain, or contract for the maintenance, of the Property in good condition and repair.
- g. GGDC shall employ, either directly or by entering into a management contract with a qualified non-profit entity, sufficient qualified personnel to manage and staff the Project.
- h. GGDC shall provide the County with copies of all purchase orders and receipts for equipment purchased utilizing funds provided by the County pursuant to this Agreement by GGDC or any assignee of this Agreement.
- i. GGDC shall deliver to Gaston County, if requested by the County, all equipment subject to Subsection 3.h., above, for which it shall possess title upon dissolution of the Project, whether it is operated by GGDC or a successor corporation to which the obligations of this Agreement have been assigned.

4. Addresses. The payments by the County pursuant to this Agreement shall be mailed to:

Greater Gaston Development Corporation  
620 North Main Street  
Belmont, NC 28012

or to such other address as the GGDC may specify by written notice to the County. When a notice is required or permitted by this Agreement, it shall be effected by written notice to the County by delivery to:

County Manager  
Gaston County  
PO Box 1578  
Gastonia NC 28053

Either party may change the address by giving notice of the change to the other party. Notice is deemed received (i) when it is handed to an employee of the other party located at the address stated in this section, or (ii) in case of mailing, on the third business day after it is deposited in a post-paid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

5. Nondiscrimination. No person shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by any payment made pursuant to this Agreement. No otherwise qualified handicapped individual in the United States shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving financial assistance pursuant to this Agreement.

6. Assignment. Without the County's written consent, which cannot be unreasonably withheld, the GGDC shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. Unless the County otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the County's defenses and shall be liable for all of the GGDC duties that arise out of this contract and all of the County's claims that arise out of this contract. The above notwithstanding, it is the contemplation of the parties hereto that the GGDC will assign all or substantially all of its rights, duties, obligations, funds and assets subject to this agreement to a successor organization, and further that specific activities or programs described in the Scope of Work may be performed by third parties subject to agreement with the GGDC.

7. Modifications by Written Agreement; No Other Current Agreements; Waivers; Performance of Government Functions; References to Sections. This Agreement may be modified only by a written agreement executed by both parties hereto. Further, a modification is not enforceable against the County unless it is signed by the County Manager. 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 Agreement. No action or failure to act by the County shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, 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. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This Agreement is intended for the benefit of the County and the other party executing this Agreement and not any other person. Unless the context requires otherwise, references in this Agreement to Sections are references to Sections contained in this Agreement. Section titles, including references to Sections with their titles (as in “Section X(a)(i)(*title of X(a)(i)*)”), is for convenience only, and the titles are not intended to affect the meaning of this Agreement.

8. *Default and Termination.* If the GGDC fails to fulfill any of its obligations under this Agreement, and fails to correct such failure within 30 days of receiving written notice of such failure from the County, or if the GGDC makes any materially false statement in any statement or certification referred to in this Agreement, subject to the provisions of Section 2, above, the County may hold the GGDC in default and terminate this Agreement and make no further payments to GGDC.

9. *Forum and Choice of Law.* This Agreement shall be deemed made in Gaston County, North Carolina. This Agreement 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 Agreement shall be the North Carolina General Court of Justice, in Gaston 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.

10. *Indemnification.*

(a) To the maximum extent allowed by law, the GGDC shall defend, indemnify, and save harmless County Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the GGDC or its Contractors or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection 10(a), the GGDC shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to County.

(b) To the maximum extent allowed by law, the County shall defend, indemnify, and save harmless GGDC Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the County or its Contractors or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection 10(a), the County shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to GGDC.

(c) Definitions. As used in subsections 10(a) and (b) above and 10(d) below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "County Indemnitees" means County and its officers, officials, independent contractors, agents, and employees, excluding the GGDC. "GGDC Indemnitees" means the GGDC and its officers, officials, independent contractors, agents, and employees, excluding the County.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise).

11. Non-Appropriation. In the event funds are not appropriated during the term of this Agreement for the subject matter herein described, and there are no other available funds by or with which payment can be made to the GGDC, this agreement is terminated. The Agreement will be deemed terminated on the last day of the fiscal period for which appropriations were received without penalty or expense, except to the portion of payments for which funds have been appropriated and budgeted.

IN WITNESS WHEREOF, the County and the GGDC have caused this Agreement to be executed under seal by their respective duly authorized officers.

COUNTY OF GASTON

By: \_\_\_\_\_  
Earl Mathers, County Manager

ATTEST: \_\_\_\_\_  
Donna S. Buff  
Clerk to the Board

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

\_\_\_\_\_  
Finance Officer

Approved As To Form:

\_\_\_\_\_  
County Attorney

GREATER GASTON DEVELOPMENT CORPORATION  
a North Carolina nonprofit corporation

By: \_\_\_\_\_  
Executive Director

ACKNOWLEDGMENT BY GREATER GASTON DEVELOPMENT CORPORATION

STATE OF NORTH CAROLINA

COUNTY OF GASTON

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Mark C. Cramer, either being personally known to me or whose identity was proven by satisfactory evidenced, personally came before me this day and acknowledged that he is the Executive Director of GREATER GASTON DEVELOPMENT CORPORATION, a North Carolina nonprofit corporation, and that by authority duly given and as the act of such corporation, he signed the foregoing instrument in the name and on behalf of said corporation.

WITNESS my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_