

**STATE OF NORTH CAROLINA
COUNTY OF GASTON**

**AGREEMENT FOR FIBER OPTIC CABLE INSTALLATION AND
OWNERSHIP**

THIS AGREEMENT, made and entered into this the ____ day of _____, 2019, by and between the City of Gastonia, a North Carolina Municipal Corporation, hereinafter referred to as the "City" and Gaston County, a political subdivision of the State of North Carolina, hereinafter referred to as the "County".

1. Purchase of Fiber Optic Cable.

- a. City shall procure at a minimum twenty-four (24) strands of fiber optic backbone cable system ("System") to accommodate County's need for connectivity between the Emergency Operations Center at 615 N Highland St, Gastonia, NC and the Gaston County Animal Control facility at 1491 Business Park Ct, Gastonia, NC.
- b. City may opt to increase the number of fiber strands in System, in order to serve its communication needs. City will prorate the cost of the strands and invoice County for only the 24 strands needed for the County project.

2. Installation of Fiber Optic Cable.

- a. City shall install System on City utility poles between the designated sites. The System shall be installed and shall conform to the requirements and guidelines of the National Electric Safety Code ("NESC") and the safety requirements of any state regulatory agency having jurisdiction over the installation.
- b. The System shall be installed at such time as City within its sole discretion deems appropriate; provided however, that City shall complete the installation prior to 6/1/2019, in order to complete the work prior to the opening of the Animal Control facility. If installation delays are encountered, City shall give written notice to the County within **15 days** of those delays and shall make every effort to complete the installation to minimize interference with County's opening of the facility. If County has delays that will affect the opening of the facility, then County shall give written notice to City within **15 days** where the new opening date is stated.
- c. City shall charge \$46,978 for the project based on 80 hours, not to exceed \$59,276, based on 112 hours, for the installation of System. City shall purchase the enclosure equipment required for the two sites. City will invoice the County for all services and equipment provided by City pursuant to this Agreement and

all such invoices shall be due and payable within 30 days of the date of the invoice.

3. **Ownership of System.** The System, including the 24 fibers used by the County, shall be the property of City up to the points of demarcation. Points of Demarcation shall be defined as the first point of termination inside of the facilities. County shall retain the unlimited use of twenty-four (24) fibers. County has no right to utilize the fibers for any other purpose than connecting the Emergency Operations Center and the Animal Control facilities. County has no right to allow any other entity to utilize their 24 fibers without written consent of City. In the event County suspends its use of the 24 fibers to connect the Emergency Communications Center and the Animal Control facilities for a period of 90 days or more, the City shall have the option to use the 24 fibers allocated to the County for the City's own purposes until such time as the County provides the City with at least 90 days' notice of the County's intent to resume County's use of the 24 fibers.
4. **Term and Termination.**
 - a. The term of this agreement shall be for a period of thirty years commencing on the date of execution of this agreement ("Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional 10-year terms ("Renewal Terms") unless terminated as provided hereunder.
 - b. Either party may terminate this agreement at the end of the Initial Term or any Renewal Term upon twelve (12) months written notice to the other party prior to the expiration of the applicable Term.
 - c. Upon termination of this agreement as provided herein, the City will remove the fiber that terminates at the demarcation points on the facilities. County shall have no further right to use the System for any purpose.
6. **Invalid Terms.** Should any one or more of the provisions contained in this Agreement be held invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in the Agreement shall not in any way be affected or impaired thereby, and this Agreement shall otherwise remain in full force and effect. If any such provision is held to be invalid or unenforceable, then upon the request of either party, the parties shall attempt in good faith to negotiate and agree upon a replacement provision.
7. **Governing Law and Jurisdiction.** North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceeding relating to this Agreement shall be brought in a state court sitting in Gaston County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said court and hereby irrevocably waive any and all objections that they may have with respect to venue in any state court sitting in Gaston County, North Carolina.

8. **Binding Nature and Assignment.** This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party. Any assignment attempted without the written consent of the other party shall be void.
9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this contract to produce or account for more than one such counterpart.
10. **Notices.** Any notices required or permitted in this Agreement, including address changes, shall be made in writing and shall be made either by mailing registered or certified mail, return receipt requested, and postage prepaid, to the other party at the address shown herein for that party or at such different address for that party, notice of which has been properly given hereunder, or by personally delivering such notice to an officer or other party. The notice, if mailed as provided herein, shall be deemed given on the day of receipt or refusal to accept receipt, and if personally delivered on the date of delivery. The addresses are as follows:

To the City:
City Manager
City of Gastonia
P.O. Box 1748
Gastonia, NC 28053

To the County:
County Manager
Gaston County
P.O. Box 1578
Gastonia, NC 28053

11. **Headings Not Part Hereof.** All paragraph and subparagraph headings in this Agreement where they appear are for convenience only and shall not affect the construction of any terms.
12. **Entire Agreement.** This Agreement reflects and contains the entire and only agreement between the parties relating to the specific subject matter herein, and as such supersedes all negotiations, commitments, undertakings and agreement, whether oral or otherwise.
13. **Amendment or Termination.** This Agreement may be amended or terminated only by an instrument in writing executed by both parties hereto.

IN WITNESS WHEREOF, the undersigned municipal corporations have caused this Agreement to be executed in their behalf by their duly authorized representatives, having hereunto affixed their signatures and seals, the day and year first above written.

CITY OF GASTONIA

(Seal)

By: _____

Walker E. Reid, III, Mayor

ATTEST:

Sherry H. Dunaway, City Clerk

APPROVED AS TO FORM:

Attorney

GASTON COUNTY

(Seal)

By: _____
Chairman

ATTEST:

Clerk to The Board of Commissioners

APPROVED AS TO FORM:

Attorney

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that Sherry Dunaway personally appeared before me this day and acknowledged that she is the City Clerk of the City of Gastonia and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its City Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 2009.

Notary Public

My Commission Expires: _____