

STATE OF NORTH CAROLINA

**INTERLOCAL AGREEMENT
LEASE OF CITY PROPERTIES FOR
RECYCLING CENTERS**

COUNTY OF GASTON

THIS AGREEMENT, made effective this ____ day of _____, 2021, by and between the CITY OF GASTONIA, a municipal corporation organized under the laws of the State of North Carolina, (hereinafter referred to as “City”), and the COUNTY OF GASTON, a body politic organized under the laws of the State of North Carolina, (hereinafter referred to as “County”).

WITNESSETH

WHEREAS, pursuant to N.C.G.S. §§ 153A-164 and 160A-461, units of local government are authorized to enter into interlocal agreements for any undertaking; and

WHEREAS, pursuant to N.C.G.S. § 160A-274, any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property;

WHEREAS, pursuant to § 9.6 of the Charter of the City of Gastonia and as originally authorized by Chapter 910, Session Laws of 1971, the City Council of the City of Gastonia may lease property owned by the City for a period not to exceed fifteen (15) years without following the procedures required for the sale of real property by the provisions of G.S. 160A-272;

WHEREAS, the City is the owner of certain real property as shown on the Farmers Market Site Plan # 3940 attached hereto marked as Exhibit A and made a part hereof; and

WHEREAS, in 2002 the City and County entered into an Interlocal Agreement/Lease of City Property For a Recycling Center at the Farmers Market site and a Recycling Center has been operated by the County at that location continuously since 2002; and

WHEREAS, the City is the owner of certain real property as shown on the Duke Street City File #811-93 attached hereto marked as Exhibit B and made a part hereof; and

WHEREAS, County desires to lease from City and City desires to lease to County a portion of the premises as shown in Exhibit A for the continued maintenance of the Recycling Center located at the Gastonia Farmers Market; and

WHEREAS, with respect to the aforementioned Memorandum of Intent, the parties now wish to further clarify the purpose and intent and of their agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Leaseholds.** City will lease a portion of the premises as shown on the attached Exhibit A to the County for continued use as a Recycling Center at the Gastonia Farmers Market, with a reasonable right of ingress and egress thereto for the County, its agents, employees, subcontractors, licensees, permittees, and invitees. City will lease a portion of the premises as shown on the attached Exhibit B to the County for use as a Recycling Center at the Duke Street property, with a reasonable right of ingress and egress thereto for the County, its agents, employees, subcontractors, licensees, permittees, and invitees. The specific location of the Duke Street Recycling Center shall be determined by mutual agreement of the parties, provided however, that if the parties are unable to reach an agreement as to the specific location the City shall choose such location.
2. **Term.** The term of this agreement will be five (5) years beginning with the effective date of this Agreement with two (2) five (5) year extensions if mutually agreeable and with negotiation of cost at the end of each five (5) year extension.
3. **Capital Costs.** City will fund the capital cost of preparing the Duke Street site for the additional recycling center.
4. **Payment.** City agrees to pay half of the annual operating costs for providing recycling services at both centers at the Farmers Market and Duke Street not to exceed \$58,500.00 annually.
5. **Permits.** City will provide all necessary zoning and building permits for the Duke Street site, including any related permit fees, inspections, etc.
6. **Utilities.** City will provide initial installation of utility service (water/sewer/electricity) to the Duke Street recycling center at no cost. City will provide ongoing utility services (water/sewer/electricity) to both recycling centers at no cost.
7. **Policies.** County will develop policies regarding specific recyclable materials to be collected and vendors to be used. Copies of said policies shall be provided to the City's Director of Public Works on an annual basis.
8. **County Management of Recycling Centers.** County will manage contracts for collection of recyclable material through existing and future county recycling center contracts. County will fund operation of the recycling center and be the recipient of all revenues gained from the sale of recyclable material.
9. **Purpose.** The purpose and intent of this Agreement is to maintain the Farmers Market site as a County Recycling Center, and, with the construction of the Duke Street Recycling Center, provide County residents an additional centralized location for collection of recyclable materials.
10. **Hazardous Materials.** There shall be no collection or recycling of any hazardous waste or materials at either Recycling Center. City shall hold County harmless from

and indemnify County against any damage, loss, expense, response costs or liability, including consultant fees and attorneys' fees, resulting from the presence of hazardous substances on, under or around either Property or resulting from hazardous substances being generated, stored, disposed of or transported to, on under or around either Property as a result of City's use of the property. County shall hold City harmless from and indemnify City against any damage, loss, expense, response costs or liability, including consultant fees and attorneys' fees resulting from hazardous substances generated, stored, disposed of or transported to, on or under either Property as a result of County's use of either Property. For purposes of this Agreement, "hazardous substances" shall mean (i) any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, (ii) any substance which is flammable, radioactive, corrosive or carcinogenic, (iii) any substance the presence of which on either Property causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the property or property adjacent thereto, or (iv) any substance the presence of which on the property requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous Substance Law" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III) 42 U.S.C. §1101 et seq.; and any applicable state law or regulation.

11. **Inspection.** The City may cause either premises to be inspected at any time.
12. **Insurance.** County at its own expense shall carry General Comprehensive Liability insurance in an amount of not less than \$3,000,000.00 combined single limit for both personal injury and property damage with an insurance company acceptable to the City and authorized to do business in the State of North Carolina, which policies shall name the City of Gastonia as an additional insured. Such policies shall further contain provisions that the City will be given thirty (30) days' written notice of any intent to terminate such insurance by either County or the insuring company. County will furnish certificates of insurance evidencing such coverage prior to the effective date of this Lease.

County shall maintain worker's compensation insurance coverage in accordance with statutory requirements and employer's liability insurance with limits of not less than \$100,000 for each accident.

13. **Waiver of Liability.** County shall maintain its own property insurance against theft or damage to any and all personal property that it stores in or about the leased premises. County assumes all risk and responsibility in connection with the safekeeping of all its equipment and personal property left on the leased premises and furthermore, agrees to hold City harmless for any damages of whatever nature occurring to said property while it is located on the demised premises.

14. **Indemnity.** County hereby releases City from any and all damages to both persons and property that may arise in connection with this lease or the use of either leased premises by County, its agents, employees, licensees or invitees, or any other person using either premises, except for negligent or willful acts or omissions attributable to County, its agents, licensees or invitees; and County shall indemnify and hold City harmless from any such damages to persons or property as may arise from its use and occupancy of either premises, including any damages caused directly or indirectly by invitees or guests of County, during the term of this lease and any renewal thereof. County hereby agrees to indemnify and hold harmless City from and against all claims of whatsoever nature arising from any act, omission, or negligence of the County, or County's licensees, agents, or employees, arising from any accident, injury or damage whatsoever caused to any person or to the premises, where such accident, damage or injury results or is claimed to have resulted from any act or omission on the part of County or County's agents, licensees or employees. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred thereof.
15. **Waiver.** No waiver of any breach of any one or more of the conditions or covenants of this lease by the County or by the City shall be deemed to imply or constitute a waiver of any succeeding or other breach under this lease.
16. **Integration/Amendment.** Both parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed here and that no amendment or modification of the lease shall be valid or binding unless expressed in writing and executed by the parties in the same manner as the execution of this lease.
17. **Notice.** All notices required to be given shall be given by certified or registered mail, to the parties at the following address:
- | | |
|--------------------|--------------------|
| <u>County:</u> | <u>City:</u> |
| County Manager | City Manager |
| Gaston County | City of Gastonia |
| Post Office Box | P.O. Box 1748 |
| Gastonia, NC 28053 | Gastonia, NC 28053 |
- Either of the parties may designate in writing from time to time substitute addresses or persons in connection with those notices.
17. **Termination.** This agreement may be terminated when mutually agreeable by both City and County.
18. **Sale of Either Property.** If City, at any time during the term of this Agreement, decides to sell either Property, or all or any part of City's Surrounding Property, to a purchaser other than County, such sale shall be subject to this Agreement and County's

rights hereunder. Sale, lease or use, by City, of any other areas of City's Surrounding Property shall not interfere with County's facilities.

19. **Assignment**. County shall not sublease or assign its rights under this Lease without the prior written consent of the City.
20. **Governing Law**. This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of North Carolina.
21. **Holding Over**. If County shall, with or without the knowledge or consent of City, continue to remain upon the premises after the expiration of the term of this Lease, then in such case County shall become a tenant at will.
22. **Counterparts**. This agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterpart together shall constitute but one and the same instrument.
23. **Miscellaneous**. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first above written.

CITY OF GASTONIA

By: _____
Walker E. Reid, III, Mayor

ATTEST:

Suzanne J. Gibbs, City Clerk

APPROVED AS TO FORM:

L. Ashley Smith, City Attorney

GASTON COUNTY

BY: _____
Tom Keigher, Chairman

ATTEST:

Donna S. Buff, County Clerk

APPROVED AS TO FORM:

Jonathan Sink, County Attorney

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that Suzanne J. Gibbs 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 _____, 2021.

My Commission Expires: _____

Notary Public

STATE OF NORTH CAROLINA
COUNTY OF GASTON

I, _____, a Notary Public of the aforesaid County and State, do hereby certify that Donna S. Buff personally appeared before me this day and acknowledged that she is the Clerk to the Board of the Gaston County Board of Commissioners and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by her as its Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 2021.

Notary Public

My Commission Expires: _____

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