

**AGREEMENT  
TO ESTABLISH FIBER CONNECTIVITY**

This AGREEMENT TO ESTABLISH FIBER CONNECTIVITY, dated the [REDACTED] day of [REDACTED], 20[REDACTED] (“Agreement”), is between the Town of Cary (“Cary”) and the Town of Apex (“Apex”), each being municipal corporations organized and existing under the laws of the State of North Carolina. Cary and Apex are sometimes referred to jointly as “Parties.”

**WITNESSETH**

**WHEREAS**, The Parties are parties to an Interlocal Agreement for Emergency Dispatch and Communications effective January 15, 2019 pursuant to which Cary provides Apex with emergency dispatch and communication services; and

**WHEREAS**, to better support the provision of these services and to better link the Parties for potential, future endeavors, the Parties seek to establish a direct fiber connection between one another with the intent of increasing data transfer speed and resiliency; and

**WHEREAS**, to accomplish this, Cary intends to install a 96-count fiber bundle from the current fiber bundle at the intersection of Carpenter Fire Station Road and NC Highway 55 to the Apex corporate limits on NC Highway 55; and

**WHEREAS**, Apex, in turn, intends to install a 144-count fiber bundle from Apex’s IT Data Center located at 73 Hunter Street, Apex, NC 27502 to the Cary corporate limits on NC Highway 55 to connect to Cary’s 96-count fiber bundle at that location; and

**WHEREAS**, the Parties intend to reserve strands within each bundle for the use of the other and to provide space in their respective facilities for ancillary equipment necessary to establish a direct fiber connection between the Parties; and

**WHEREAS**, the Parties agree that Cary shall bear the costs of installing and maintaining the portions of the fiber connection lying within Cary’s corporate limits and that Apex shall bear the costs of installing and maintaining the portions of the fiber connection lying within Apex’s corporate limits; and

**NOW THEREFORE**, for and in consideration of the recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows;

1. **Incorporation of Recitals and Purpose:** The Recitals are true and are incorporated into this Agreement. The purpose of this Agreement is to provide the terms and conditions under which Parties will install and maintain a fiber connection between their respective internal information technology networks.
2. **Duration and Term:**

- a. This Agreement shall have an initial term of five (5) years beginning on the date this Agreement is executed by the parties and, if not earlier terminated in accordance with its terms, shall thereafter automatically renew for successive one (1) year renewal terms.

3. **No Joint Agency:** No joint agency is established by this Agreement.

4. **Definitions:**

- a. **Apex Segment:** The portion of Components that lie within Apex's corporate limits.
- b. **Cary Segment:** The portion of Components that lie within Cary's corporate limits.
- c. **Components:** All physical components of the fiberoptic connection between the Parties, including, without limitation, poles, wires, pipes, underground conduits, ducts, equipment cabinets, manholes, hand holes, vaults, splice enclosures, fibers, cables, buffer tubes, devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.
- d. **Connection Point:** The geographic location where the corporate limits of Cary and Apex meet on NC Highway 55 where the Parties will join their respective Components to create the direct fiberoptic connection between the Parties.
- e. **Direct Connection:** The minimum twelve (12) fiber strands within the Apex and Cary Segments that are reserved for use by the Parties to establish a direct fiber connection between the Parties.
- f. **Excess Capacity:** Fiber strands within Components that are in excess of Cary's and/or Apex's current Internal Network and operational needs.
- g. **Internal Network:** the respective information technology networks within each of the Parties whose functions are not directly related to the Components.

5. **Roles and Responsibilities of each Party:**

A. **Cary's Roles and Responsibilities:**

1. Cary shall take the actions necessary and bear the costs to install the Cary Segment of Components needed to run a 96-count fiber bundle from its current fiber bundle located at Carpenter Fire Station Road and NC Highway 55 to the Connection Point;
2. Cary shall reserve a minimum of twelve (12) fiberoptic strands from within the 96-count cable from the Connection Point to NC 55 Hwy at Jenks Road

to establish the Direct Connection between the Parties and to be used in partnership with Apex in serving custom circuits as requested;

3. Cary shall provide cubicle rack units (or similar space) at both its James Jackson Facility and its Town Hall Facility to Apex for the installation of Apex networking equipment. Said Rack Unit shall include access to AC or DC power;
4. Cary shall, upon agreement with Apex, cross-connect appropriate strands from within the 12-count shared cable into its data center equipment at its expense.
5. Cary shall be solely responsible for the operation, maintenance, and repair of the Cary Segment; and
6. Cary shall be solely responsible for the operation and maintenance of its Internal Network, systems, and equipment;
7. Cary shall maintain a 24/7 network operations center for the purpose of receiving reports of service disruption and for the coordination and repair of the Direct Connection and Components.
8. Cary shall provide after-hours support for Cary owned fiber segment.
9. Cary shall provide one 12-count cable to serve as interconnect segment between Cary's hand hole and Apex's hand hole.
10. Cary shall splice the 12-count interconnect cable to Cary's 12-count buffer-tube within their 96-count cable for the purpose of this interconnect.

**B. Apex Roles and Responsibilities:**

1. Apex shall take the actions necessary and bear the costs to install the Apex Segment of Components needed to run a 144-count fiber cable from its IT Data Center located at Apex Town Hall to the Connection Point;
2. Apex shall reserve a minimum of twelve (12) fiberoptic strands from within the 144-Count cable from the Connection Point to Apex Town Hall to establish the Direct Connection between the parties and to be used in partnership with Cary in serving custom circuits as requested;
3. Apex shall provide a cubicle Rack Unit (or similar space) at its Town Hall to Cary for the installation of Cary networking equipment. Said Rack Unit shall include access to AC or DC power;
4. Apex shall, upon agreement with Cary, cross-connect appropriate strands from within the 12-count shared cable into its data center equipment at its expense.

5. Apex shall be solely responsible for the operation, maintenance, and repair of the Apex Segment.
6. Apex shall be solely responsible for the operation of its Internal Network, systems, and equipment;
7. Apex shall maintain a 24/7 system dispatch center for the purpose of receiving reports of service disruption and for the coordination and repair of the Direct Connection and its Components.
8. Apex shall provide contact information for the dispatch center and apprise Cary of any changes to the preferred method of engaging with this center on a twenty-four (24) hour per day, seven (7) days per week basis.
9. Apex shall provide after-hours support for Apex owned fiber segment.
10. Apex shall splice the 12-count interconnect cable to Apex's 12-count buffer-tube within their 144-count cable for the purpose of this interconnect.

**C. Roles and Responsibilities Shared by the Parties:**

1. The Parties shall take all actions necessary and perform all network maintenance functions with the goal that the Direct Connection meets a twenty-four (24) hour per day, seven (7) days per week functional requirement.
2. Neither Party shall be required to pay any rent or other fee or charge to the other Party in connection with the use of the Components, Direct Connection, or any Excess Capacity;
3. Neither Party shall use the Components, Direct Connection, or any Excess Capacity as collateral for any loan or otherwise pledge any property of the other Party, including this Agreement, as payment or surety for the payment of amount, debt or obligation;
4. Neither Party shall have the right to transfer or assign its rights in the Components, Direct Connection, or Excess Capacity to a third-party for the purpose of selling, promoting, or operating telecommunications connections without the consent of both Parties but with the understanding that such consent shall not be unreasonably withheld;
5. The Parties shall use the Components, Direct Connection, and any Excess Capacity in compliance with this Agreement and all applicable government codes, ordinances, laws, rules and regulations as may now or in the future exist;
6. Each Party shall cooperate with and support the other in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder;

7. The Parties shall keep the Components, Direct Connection, and any Excess Capacity in good repair, operating condition, and working order. In performing any repairs, replacements, alterations, the Parties shall not cause unreasonable interference with use of the Direct Connection or any Excess Capacity. It shall be the respective Segment owner's responsibility to perform basic maintenance inspection work and provide locates;
8. The Parties shall ensure that the specifications and standards of Components used in both the Apex and Cary Segments shall conform in all material respects to specifications and standards of the two similar facilities currently used by the Parties;
9. The Parties shall promptly notify the other of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to the Components.
10. If at any time one of the Parties determine that an alteration, repair, or inspection of Components is needed, the Party shall notify the other in advance and abide by any changes in scheduling that may be required by the Parties. The Parties shall coordinate and schedule resources necessary for maintenance, testing, or repairs as required to maintain reliable and continuous services. Parties may be required to provide a representative to be present, at their cost, during such activities. In the event of an emergency, this section shall not apply and the provisions of section 12 of this Agreement shall control.
11. Any scheduled or routine activities or maintenance shall be performed in accordance with standard industry practices. Intrusive maintenance (maintenance that requires service down time or potentially service down time) will be performed Monday - Thursday, during the hours of 1:00 am and 5:00 am. The scheduling Party will notify the other Party in writing at least ten (10) business days prior to commencing any such scheduled maintenance.
12. The Parties shall perform any necessary emergency repairs as soon as reasonably practicable. Any unscheduled maintenance work performed by a Party shall be reported to the other Party as soon as is practicable. The Parties shall make all reasonable efforts to schedule emergency maintenance during off peak hours as described herein and at such a date and time that will provide Parties reasonable notice.
13. Each party shall designate a representative to assist with maintenance and repairs, beyond the ordinary operation and basic maintenance inspection work on the Components. In the event that a Party requires additional assistance from the other Party, the Party shall contact the other Party's designated representative either verbally or in writing. Such assistance may include, but is not limited to, assistance in making any connection to

any Excess Capacity, assistance in acquiring additional rights of use, or assistance in dealing with any unusual loss of signal, defect or break, or other actions. Upon receipt of a request for such services, the Parties shall endeavor to perform the requested services as soon as possible. If the designated representatives of the Parties are unable to complete the services and third-party assistance becomes necessary, then upon agreement as to the cost, the Parties shall equally share the cost thereof. The Parties shall conduct all such work to minimize the effect on the Direct Connection and any Excess Capacity.

**6. Termination:**

- a. The Parties may terminate this Agreement as to the other by providing ninety (90) days written notice of termination (“Termination Notice”).

**7. Breach and Default:**

- a. Any material breach of the terms or conditions of this Agreement shall constitute a default. In the event of a default, the defaulting Party shall be given notice of such alleged default in the manner prescribed in Section 8 of this Agreement. Upon receipt of notice, the defaulting Party shall have the opportunity to cure the default within thirty (30) days. If the default is not cured within thirty (30) days the non-defaulting Party may terminate this Agreement immediately.

- 8. Notices.** Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail, with a copy sent by e-mail, to the Parties at the addresses shown below:

**Town of Cary**  
Chief Technology Officer  
Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005

Attention: Peter Kennedy

Email address: Peter.Kennedy@townofcary.org

With copies to: Raymond.Cain@townofcary.org

**Town of Apex**  
Director of Information Technology  
Town of Apex  
PO Box 250  
Apex, North Carolina 27502

Attention: Erika Sacco

Email address: Erika.Sacco@apexnc.org

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any Party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other Parties of the change.

9. **Public Records.** The Parties may provide copies of public records, including copyrighted records, in response to public record requests.
10. **Force Majeure.** No Party shall be responsible for any default, delay, or failure to perform if such default, delay, or failure to perform is due to causes beyond the Party's reasonable control, including, but not limited to, actions or inactions of governmental authorities, epidemics, pandemics, wars, actions of malicious actors, embargoes, fires, hurricanes, unusual adverse weather, acts of God, or the default of a common carrier. In the event of a default, delay, or failure to perform due to causes beyond a Party's reasonable control, the Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete its performance in as timely a manner as is reasonably possible.
11. **Entire Agreement/Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to its general subject matter. This Agreement may not be changed except in writing signed by all the Parties.
12. **Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:
  - a. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. This Agreement is a valid and binding obligation of each Party.
  - b. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.
  - c. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval

of any regulatory body or any other entity the approval of which has not been obtained.

- 13. Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.
- 14. No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Parties to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- 15. Governing Law.** The Parties intend that this Agreement be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County, North Carolina.
- 16. Assignment.** The Parties may not sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.
- 17. Liability of Officers and Agents.** No officer, agent, elected official, or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, elected officials, or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent, elected official, or employee from the performance of any official duty provided by law.
- 18. Execution in Counterparts/Electronic Version of Agreement.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.
- 19. No Third-Party Beneficiaries.** This Agreement is not intended to and does not confer any right, power, or benefit on any person other than the Parties and only the Parties may enforce, modify or terminate this Agreement as provided herein. There are no third-party beneficiaries to this Agreement.



**20. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. If one or more paragraphs, sections sentences, clauses, or phrases shall be declared void, invalid or otherwise unenforceable for any reason by the valid, final judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the remaining provisions of this Agreement and the same shall continue to be fully effective and enforceable on the basis that said remaining provisions would have been agreed to by the Parties without the incorporation of such void, invalid or otherwise unenforceable paragraph, section, sentence, clause or phrase.

**21. Further Assurances/Corrective Instruments; Good Faith/Due Diligence.** The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and will all due diligence to provide for and carry out the purpose of this Agreement.

**22. Verification of Work Authorization.** The Parties shall comply with Article 2, Chapter 64, of the North Carolina General Statutes to the extent applicable.

**23. Pre-Audit Requirement.** This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S § 159-28) has been affixed and signed by the Parties' finance officers or deputy finance officers.

**24. Electronic Signature.** Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

**[The Remainder of This Page Intentionally Left Blank; Signatures Follow]**

**IN TESTIMONY WHEREOF**, the Town of Apex and the Town of Cary, pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first written above.

**Town of Cary:**

Russ Overton, Deputy Town Manager

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Town of Apex:**

Drew Havens, Town Manager

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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

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\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Vance Holloman, Town of Apex Finance Director