

ROWAN COUNTY

NORTH CAROLINA

Tower Replacement Agreement

THIS TOWER REPLACEMENT AGREEMENT (“Agreement”) is made and entered into effective as of March __, 2023 (the “Effective Date”), between **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company (“Duke Energy”) and **ROWAN COUNTY**, a political subdivision of the State of North Carolina (the “County”). Duke Energy and the County shall each individually be referred to herein as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, pursuant to a Co-Location License Agreement between the Parties dated June 18, 2012, as amended (the “Co-Location Agreement”), the Parties currently maintain communications equipment on an existing Duke Energy owned tower located on land leased by Duke Energy in, North Carolina; and

WHEREAS, the Parties agree to jointly participate in a project to construct a new telecommunications tower (the “New Tower”) he “Project”); and

WHEREAS, subject to the terms of this Agreement, the County will contribute funding for the Project, as stated herein.

NOW THEREFORE, in consideration of the promises and mutual covenants herein made, the Parties hereto agree as follows:

Terms of Agreement:

1. The foregoing recitals are, by this reference, hereby incorporated into this Agreement as a substantive and integral part hereof.
2. Duke Energy will be responsible for management of all aspects of the engineering and construction for the Project, including but not limited to obtaining any required federal, state and local permits. The New Tower will be constructed in accordance with plans that have been reviewed and approved by all Parties, but at a minimum shall be three hundred (300) feet tall and allow placement of County antennas and/or microwaves at or near the top or as specified by engineered designs for the County’s public safety radio system. Duke Energy will be responsible for the cost of relocating all equipment onto the New Tower and removing the existing equipment from the owned tower.
3. The County’s contribution for the Project shall be the fair market value of the Ground Lease and hereby agrees to only charge a nominal rate for such (the “Project Contribution”). All work related to the County’s ground equipment will be done by and paid for by the County.

4. This Agreement shall terminate when the New Tower construction is complete, the County has paid the Project Contribution, and the parties have entered into a Ground Lease which they negotiated in good faith. All contributions should be made within 30 days of the tower being fully operational.

5. The Ground Lease shall provide for the following general terms:

a. Duke Energy will own the New Tower and shall be responsible for all ongoing operation and maintenance of the New Tower. The County shall be responsible for all ongoing operation and maintenance of their facilities. The Co-location Agreement shall continue in effect as to the New Tower and allow the County to co-locate its emergency services antenna thereon.

b. The Ground Lease shall have a nominal Lease Rate based on the shared contribution of the County in Section 3 above.

c. Because the County's use will be for public safety and emergency transmission, the parties shall coordinate to ensure that any frequencies used shall not interfere with the other Party's use, and to the extent possible, the County shall have priority on its frequencies.

d. The County shall provide its own metered utilities and ground equipment shelter and use a third-party vendor to set up and/or install the same during the construction period. The County shall maintain its ground equipment shelter during the term of the Ground Lease.

e. Duke Energy will, within engineering tolerances, allow the County to locate additional equipment on the New Tower related to public broadband and/or additional public safety needs. Any changes following the initial loading shall be done at the sole cost (including modifications to the tower needed to accommodate the changes) of the Party desiring or necessitating the change.

f. The parties agree that the New Tower shall be exclusively for the use of the County and Duke Energy other than "good will" attachments agreed to by both the County and Duke Energy.

6. In no event under this Agreement shall any Party be liable to any other Party under any theory of recovery, warranty or otherwise, for any indirect, incidental, consequential, punitive, exemplary or special damages (regardless of fault or cause) stemming from any personal injury, property damage, or economic loss (including any purported loss of business, loss of revenues, or lost profits) or otherwise as a result of this Agreement or any construction or delay in construction of the New Tower.

7. By signing this Agreement, the Parties agree to be bound by the terms set forth herein. The Parties agree that this Agreement is mutually beneficial and by signing below their representatives state they have the right and authority to enter into this Agreement on their behalf.

8. This Agreement shall be governed by the laws of the State of North Carolina except that the North Carolina conflict-of-law provisions shall not be invoked in order to apply the laws of any other state or jurisdiction.

ROWAN COUNTY

A political subdivision of the State of
North Carolina

DUKE ENERGY CAROLINAS, LLC

a North Carolina limited liability company

BY: _____

BY: _____

NAME (printed): _____

NAME: (printed):

TITLE:

DATE:

TITLE: _____

DATE: