

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2020 (the "Effective Date"), by and between the County of Rutherford, a political subdivision of the State of North Carolina, whose mailing address is 289 N. Main Street, Rutherfordton, North Carolina 28139 (the "County") and e-Polk, Inc. d/b/a PANGAEA Internet, a North Carolina nonprofit corporation, having its principle place of business at 75 South Trade Street, Suite C, PO Box 340, Tryon, North Carolina 28782 ("PANGAEA").

RECITALS

WHEREAS, PANGAEA owns and operates a fiber optic cable network in Rutherford County, North Carolina (the "PANGAEA Network");

WHEREAS, PANGAEA and the County desire for PANGAEA to construct two (2) diverse fiber routes extending the PANGAEA Network (the "Fiber Route Extensions") from Withrow Road to the Rutherford County 911 Data Center at 153 Sparks Drive, Forest City, NC 28043 (the "RC911");

WHEREAS, each Fiber Route Extension will consist of one hundred forty-four (144) strands of optical fiber; and

WHEREAS, the parties desire to enter into this definitive agreement to, among other things, establish the terms for construction of the Fiber Route Extensions, provide the County with an indefeasible right of use (an "IRU") in twenty-four (24) strands of each Fiber Route Extension (collectively, the "IRU Fibers"), and give PANGAEA the right to use certain space within the RC911 building for installation of a full equipment rack and cabinet.

NOW, THEREFORE in consideration of the mutual promises, covenants, representations, warranties, and agreements contained in this Agreement and the mutual benefits to be derived therefrom, and in reliance upon the foregoing recitals of fact, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Construction of the Fiber Route Extensions.

(a) Construction; Construction Costs. PANGAEA will construct: (i) one Fiber Route Extension running from Withrow Road to Daniel Road to Sparks Drive to the RC911, as depicted in Exhibit A hereto; and (ii) one Fiber Route Extension running from Withrow Road to the back of the RC911 building, as depicted in Exhibit B hereto. The parties estimate that the total out-of-pocket costs of construction for the two (2) Fiber Route Extensions (the "Construction Costs") are approximately \$15,000.00.

(b) County Costs; Onsite Guidance. The County will pay \$8,000.00 of the total Construction Costs (the "County Portion of Construction Costs"), which amount shall be paid by the County to PANGAEA within thirty (30) days of the date of PANGAEA's invoice for the County Portion of Construction Costs following completion of the Fiber Extensions. The County will also provide (at no charge to PANGAEA) onsite project guidance to PANGAEA with respect to the construction and installation of the Fiber Route Extensions as reasonably requested by PANGAEA.

(c) PANGAEA Responsibilities. PANGAEA shall be responsible for payment of the balance of the Construction Costs following application of the County Portion of Construction Costs. PANGAEA shall also provide onsite and remote project management with respect to the construction of the Fiber Route Extensions, including: (i) project design and budgeting; (ii) ordering of materials; (iii) installation and trenching of all required additional conduit and insertion of a locating wire in all such underground conduit; (iv) installation of all of the fiber cable for the Fiber Route Extensions; (v) over-lashing on PANGAEA's existing aerial fiber as needed; (vi) on-site and remote project management; and (vii) the splicing and termination of eight (8) of the IRU Fibers (six of which shall terminate at the County Department of Social Services building and two of which shall terminate at PANGAEA's Forest City data center. In addition,

PANGAEA will pay for all utility pole attachments necessary for the Fiber Route Extensions for the duration of the Term of this Agreement.

2. County IRU. Upon completion of the two Fiber Route Extensions and the County's payment in full of the County Portion of Construction Costs, the County shall receive an IRU in the IRU Fibers (consisting of twenty-four (24) strands of each Fiber Route Extension) for the Term of this Agreement. Notwithstanding the foregoing, under no circumstances whatsoever may the County use the IRU Fibers in a manner that physically or electronically interferes in any way with, or otherwise adversely affects the use of, the other fibers (or any equipment or element thereof) contained within the Fiber Route Extensions.

3. Ownership of Fiber. Notwithstanding the IRU, the Fiber Route Extensions (including, but not limited to, the IRU Fibers), and all cable, fiber and equipment making up such networks and lines, shall be and remain the sole and exclusive property of PANGAEA. No use of the IRU Fibers, the Fiber Route Extensions or the PANGAEA Network under the terms of this Agreement will create or vest in the County any ownership right in the IRU Fibers, the Fiber Route Extensions or the PANGAEA Network (including, without limitation, any cables or equipment related thereto), and the County's rights herein will be and remain a right of use except as provided herein.

4. Maintenance of Fiber; Provision of Internet Services. PANGAEA shall maintain and repair the Fiber Route Extensions as reasonably required during the Term of this Agreement in accordance with the standards described in the PANGAEA Service Level Agreement (the "PANGAEA SLA") then in effect, and PANGAEA shall be responsible for all such costs. (The PANGAEA SLA in effect as of the date of this Agreement is attached hereto and incorporated herein as Exhibit C.)

5. PANGAEA Space.

(a) PANGAEA Space in the RC911. The County shall provide, at no cost to PANGAEA, space within the RC911 building sufficient for use by PANGAEA to install a full equipment rack or cabinet to house and maintain PANGAEA's equipment (the "PANGAEA Space"). The County will provide (i) all electrical service (including UPS and generator) for the PANGAEA Space at no cost to PANGAEA, (ii) conduit or ladder rack from the County rack space to the PANGAEA Space, and (iii) 24/7 access for PANGAEA to the PANGAEA Space.

(b) Additional Agreements regarding the PANGAEA Space. The County and PANGAEA hereby agree that the PANGAEA Space shall be the exclusive area and space of PANGAEA. The County and PANGAEA hereby agree that the PANGAEA Space will be permitted to be used by a third party (other than PANGAEA) only if, and so long as, all of the following conditions (the "Third Party Conditions") are met: (i) PANGAEA and the County provide their prior written consent to the third party's use of the PANGAEA Space; (ii) the third party's equipment is only interconnected to PANGAEA's equipment; and (iii) PANGAEA is the third party's sole and exclusive service provider within the PANGAEA Space and/or the third party is a vendor/provider of services to PANGAEA within the PANGAEA Space. In the event that a third party is permitted to use any PANGAEA Space, but thereafter fails to meet one or more of the Third Party Conditions, the County agrees to reasonably assist PANGAEA in removing the third party's equipment from the PANGAEA Space.

6. Term; Termination.

(a) Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in full force and effect for a period of twenty (20) years (the "Initial Term") and shall be renewed thereafter for additional one (1) year terms (each a "Renewal Term"), provided that: (i) either party shall have the right to terminate this Agreement at the end of the Initial Term, by providing written notice of termination to the other party at least sixty (60) days prior to the expiration of such Initial Term; (ii) either party shall have the right to terminate this Agreement at the end of a subsequent Renewal Term, by providing written notice of termination to the other party at least thirty (30) days prior to the expiration of such subsequent Renewal Term; (iii) this Agreement shall terminate at such time that PANGAEA entirely

ceases doing business; and (iv) either party shall have the right to terminate this Agreement for cause as provided for in Section 6(b) below.

(b) Termination for Cause. In addition to any other right or remedy available to the parties hereto, this Agreement may be terminated for cause (“Terminated for Cause”): (i) by PANGAEA if the County fails to pay the County Portion of Construction Costs within five (5) days after receiving notice from PANGAEA that such amount is delinquent, (ii) by County if PANGAEA fails to pay all the balance of the Construction Costs within five (5) days after receiving notice from the County that such amount is delinquent, or (iii) by either party if the other party breaches any material obligation under this Agreement and fails to cure such breach within 30 days after the non-breaching party provides the breaching party written notice of such breach or, if such breach is not capable of cure within such 30 day period, the breaching party fails to commence to cure such breach or diligently pursue completion of such cure during and after such 30 day period.

7. Indemnification; Limitation of Liability.

(a) Indemnification by the County. Except as otherwise provided in this Section 7, the County will indemnify and hold harmless and hereby releases PANGAEA, its affiliates, agents and contractors and each of their respective officers, directors, trustees, employees, advisers, agents and other personnel from and against any Claim (as defined herein) arising out of or in connection with: (i) the use of, or any provision of services involving the use of the Fiber Route Extensions and/or the PANGAEA Network (including, without limitation, the fibers and any equipment or element thereof) by the County, the County’s agents and/or the County End Users (as defined below); (ii) the negligence, gross negligence, willful misconduct of the County, the County’s agents and/or the County End Users; or (iii) the breach, default, or failure to perform or adhere to the terms and conditions of this Agreement by the County, the County’s agents and/or the County End Users.

A “Claim” is any liability, loss, damage, claim or cause of action of any kind or nature (including, without limitation, damage to property and injury to or death of persons), whether actual or alleged, or payment to any person in compromise or settlement, whether or not liability has been shown or can be known, and any expenses connected therewith, including, without limitation, reasonable litigation expenses and reasonable attorney fees, and expenses incurred in enforcing this indemnity provision together with interest.

(b) Indemnification by PANGAEA. PANGAEA will indemnify and hold harmless and hereby releases the County, its agents and contractors and each of their respective officers, directors, trustees, employees, advisers, agents and other personnel from and against any Claim (as defined herein) arising out of or in connection with: (i) the use of, or any provision of services involving the use of the Fiber Route Extensions and/or the PANGAEA Space by PANGAEA, PANGAEA’s agents or PANGAEA’s customers not affiliated with the County; (ii) the negligence, gross negligence, willful misconduct of PANGAEA and/or PANGAEA’s agents; or (iii) the breach, default, or failure to perform or adhere to the terms and conditions of this Agreement by PANGAEA and/or PANGAEA’s agents.

(c) Claims by County End Users. Notwithstanding anything to the contrary herein, the County hereby releases and agrees to indemnify PANGAEA and its affiliates, agents and contractors and each of their respective officers, directors, trustees, employees, advisers, agents and other personnel from and against all Claims by any person or entity using (whether lawfully or not), or entitled to use the Fiber Route Extensions (a “County End User”), arising out of any loss or damage to the Fiber Route Extensions and/or the PANGAEA Network (including, without limitation, the fibers, cable and any equipment or element thereof), or any inability of such County End User to use or receive any other services related to the Fiber Route Extensions and the PANGAEA Network.

(d) Indirect or Consequential Damages. Neither party will be liable to the other for any special, incidental, indirect, punitive or consequential damages or loss of use, lost revenues or lost profits, whether

occasioned by any construction, reconstruction, relocation, repair or maintenance or otherwise, foreseeable or unforeseeable, arising out of this Agreement or the performance or non-performance thereof, even if such party or any of its affiliates has been informed of the possibility of such damages. The terms of this Section 7(d) shall not apply to the indemnities for third party claims pursuant to Sections 7(a), 7(b) and 7(c).

(e) Interruption of Service. Notwithstanding anything to the contrary herein, PANGAEA will not be liable to the County for the content of any data carried or transmitted over the IRU Fibers from any interruption of the County's service in relation to the IRU Fibers (including but not limited to any downtime of the County's operations) or for interference with the County's equipment, incurred by the County as the result of any interruption of service or breach or partial breach of this Agreement.

(f) **PANGAEA MAKES NO WARRANTY, AND HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE FIBER ROUTE EXTENSIONS, OR ANY SERVICES PROVIDED HEREUNDER.**

8. No Liens. The County will not create or suffer, and will promptly discharge at its expense, any lien, claim, right, encumbrance, security interest, or charge on any part of the Fiber Route Extensions or the PANGAEA Network (including, without limitation, any fiber, equipment or element thereof) created by the County or claimed to have been furnished at the County's direction by any person other than PANGAEA and its affiliates ("Liens"). The County shall indemnify, defend, and hold PANGAEA harmless from and against any and all Claims arising out of or in any way related to any Liens or otherwise arising out of the use granted to the County hereunder.

9. Force Majeure. As used herein, the term "Force Majeure" shall mean severe unusual weather, an act of God, fire, lockout, strike (or other labor dispute), riot, act of terrorism, government action or inaction, failure of performance by a common carrier, failure of performance by a public utility, vandalism, or failure of performance by an entity providing prerequisite services related to the provision of services under this Agreement. If PANGAEA is rendered wholly or partly unable to perform any of its obligations under this Agreement because of an event of Force Majeure, then PANGAEA will not be liable for any damages, costs, expenses or other consequences incurred by the County caused by such event and will be relieved of its obligations hereunder to the extent affected by the event of Force Majeure during the continuation of such event. PANGAEA shall have no liability to any party to the extent of any failure to perform its obligations hereunder for any equipment failure(s) not due to the action or inaction of PANGAEA.

10. Miscellaneous.

(a) Relationship of the Parties. Nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between PANGAEA and the County for any purposes, including but not limited to, federal income tax purposes.

(b) Severability. All rights and restrictions herein apply only to the extent they do not violate applicable law and are limited to the extent necessary to be enforceable. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Assignment and Subletting. The County may not assign its rights or obligations under this Agreement or sublet any part of the IRU Fibers without the prior written consent of PANGAEA. PANGAEA may not assign its rights or obligations under this Agreement without the prior written consent of the County. This Agreement shall be binding upon the parties and their respective successors and assigns.

(e) Cumulative Remedies. All rights and remedies in this Agreement are cumulative, and the exercise of any right or remedy should not be construed as an election of remedies and preclude the right to exercise any other right or remedy.

(f) Notice. Any notice required or permitted to be given with regard to this Agreement shall be in writing and shall be deemed given five (5) days after delivery to Federal Express, or other express delivery service, charges prepaid, addressed to the Executive Director in the case of any notice to PANGAEA, and to the County Manager in the case of the County, at their respective addresses first written above, or to such other representative at such other address as either party may designate by written notice as provided herein. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

(g) Construction. Headings at the beginning of any Section, subsection, or subpart are solely for the convenience of the parties and are not a part of, and shall not be used to interpret, this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties. References to Sections include all subparts and subsections of the referenced Section. All Exhibits referred to in this Agreement are attached and incorporated by this reference.

(h) Fees and Costs. Each party shall bear its respective fees, costs and expenses, including, without limitation, attorneys' fees, costs and disbursements incurred in connection with this Agreement.

(i) Third Parties. Nothing contained herein, express or implied, is intended to confer upon any person, other than the parties hereto and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

(j) Survival. The provisions of Sections 3, 6, 7, 8, 9, and 10 hereof, and any other provisions of this Agreement to be performed after such expiration or termination, shall survive the expiration or termination of this Agreement regardless of cause.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and taken together shall constitute one and the same instrument.

(l) Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

COUNTY OF RUTHERFORD

By: _____
Chairman, Board of Commissioners

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

Finance Officer

Date

e-Polk, Inc. d/b/a PANGAEA Internet

By: _____

Name: Ron Walters

Title: Executive Director

Date

Exhibit A – Fiber Route Extension



Exhibit B – Fiber Route Extension

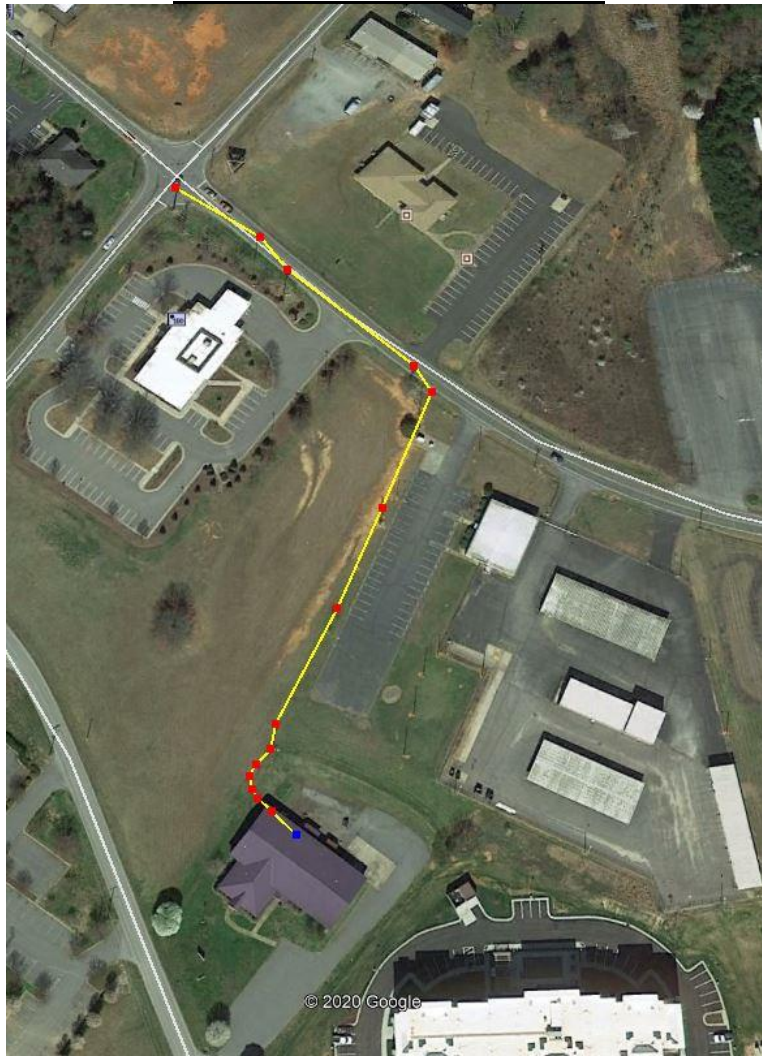


Exhibit C

PANGAEA Internet Service Level Agreement May 6, 2020

1. Service Levels

Installation: PANGAEA will exercise commercially reasonable efforts to install any PANGAEA service on or before the Customer Commit Date. This installation service level does not apply to Customer Orders that contain incorrect information supplied by Customer or Customer Orders that are altered at Customer's request after submission and acceptance by PANGAEA. In the event PANGAEA does not meet this Installation Service Level for a particular PANGAEA service for reasons other than an Excused Outage, Customer will be entitled to a service credit for each day of delay equal to the charges for one (1) day of the allocated monthly recurring cost for the affected service, up to a monthly maximum credit of ten (10) days.

Network Availability: PANGAEA's goal is to maintain 100% network availability and PANGAEA commits to maintain an average monthly availability of greater than 99.9%. Network downtime will exist when Customer is unable to transmit or receive data over the PANGAEA network. Network downtime is measured from the time the PANGAEA Operations Director becomes aware of the downtime to the time Customer can again transmit and receive data. When the per occurrence downtime is greater than two hours, Customer is entitled to a service credit for that occurrence. That credit will equal 1/30 of the Customer's total monthly invoice amount for each hour of network outage in excess of two hours.

Mean Time to Repair: PANGAEA's goal is to deliver a Mean Time to Repair of four hours from the first report of trouble. Mean Time to Repair is measured based on the total time it takes to restore service interruptions. Customer will be entitled to a service credit equal to 10% of the total monthly recurring cost paid by Customer during the calendar month in which the Mean Time to Repair goal is not met. Only one service credit will be issued per month and the calculation will average all service outages for the month.

Support/Maintenance/Repair:

Scheduled Maintenance

When possible, PANGAEA or designee will provide five (5) business days' notice of any scheduled network maintenance activities. PANGAEA or designee will perform maintenance activities between 5 PM and 7 AM unless otherwise required.

Emergency Maintenance

Personnel will begin repair work for emergency unscheduled maintenance within two hours of becoming aware of an event.

Support/Monitoring

PANGAEA or partner designee will monitor the PANGAEA network 24/7/365.

Customer may request PANGAEA support for Customer equipment changes or modifications. All support requests for Customer equipment must be submitted in writing to the Operations Director five (5) business days in advance and PANGAEA will work with Customer to schedule the requested support, subject to the availability of PANGAEA support personnel.

Demarcation

The demarcation point of the PANGAEA network is the PANGAEA media converter or SFP installed by PANGAEA at the customer premise.

2. Customer Responsibilities

The Customer is responsible for installation, maintenance, and repair of all cabling and equipment beyond the PANGAEA demarcation point as well as any outage caused by Customer cabling or equipment, including the Customer owned router. The Customer will provide surge protected power and sufficient computer room space for the PANGAEA media converter and all Customer provided equipment needed to interconnect with the PANGAEA network. PANGAEA or designee and Customer will work together to identify any network issues that do not have a clearly defined responsible party. Although rare, service interruptions do occur. Therefore, PANGAEA recommends that the Customer maintains a backup service.

3. Excused Outages

PANGAEA will not be responsible for outages caused by Customer neglect, equipment or cabling not owned or controlled by PANGAEA, catastrophic damages, or instances of Force Majeure.

4. Credit Exceptions

In the event Customer is entitled to multiple credits arising from the same event, the credits will not be cumulative and Customer will receive the maximum single credit available for that event.

5. Limits of Liability

PANGAEA's total maximum liability per event is equivalent to one month's recurring cost for the PANGAEA service.

6. Escalation List

1st Level

Network Operations Center: 877-859-8219

2nd Level

Dana Conner (Network Technician)

Cell: 828-429-9713

dana@e-polk.org

3rd Level

Ken Griffin (Operations Director)

Cell: 828-777-8713

ken@e-polk.org

4th Level

Ron Walters (Executive Director)

Cell: 828-817-0863

ronw@e-polk.org