

**HENDERSON COUNTY  
BOARD OF COMMISSIONERS**

**MEETING DATE:** February 3<sup>rd</sup>, 2020

**SUBJECT:** Updated Lease – Sugarloaf Mountain Site

**PRESENTER:** Jimmy Brissie, Emergency Services Director

**ATTACHMENTS:** (1) Lease agreement

**SUMMARY OF REQUEST:**

Henderson County Emergency Services maintains five (5) mountaintop transmitter sites for the installation of our emergency communications system. Each of these sites is located on property which the County leases for the installation of our towers, buildings and equipment. Several of these sites have been in use since the 1980s. One of these sites is the Sugarloaf Mountain Transmitter site. Our existing lease agreement for this site was executed in 2015 with Mr. Roy Dalton. The original lease was for five years with five (5) five (5) year renewal terms. During December 2019 Mr. Dalton contacted our office and requested a rate adjustment for the first renewal. The revised lease is being presented for the Board's consideration.

**BOARD ACTION REQUESTED:**

Approve the attached lease between Henderson County and Mr. Roy Dalton and authorize the County Manager to sign the lease on behalf of Henderson County.

**Suggested Motion:**

*I move to approve the attached lease between Henderson County and Mr. Roy Dalton and authorize the County Manager to sign the lease on behalf of Henderson County.*

STATE OF NORTH CAROLINA

**LEASE**

COUNTY OF HENDERSON

THIS LEASE, entered into as of the 2nd day of March, 2015, by and between Roy Dalton (hereinafter "Landlord"), and Henderson County, North Carolina, (hereinafter "Tenant");

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described real property located in Henderson County, North Carolina, on the terms and conditions hereafter set forth.

1. LEASED PREMISES; USE OF PREMISES. Landlord hereby leases, demises and leases unto Tenant, and Tenant hereby leases from Landlord, for the purposes set forth herein, the parcel of (the "Premises") measuring approximately one hundred fifty (150) feet by one hundred fifty (150) feet of Henderson County parcel number (REID) 1014361, as shown on the drawing attached hereto as Exhibit "A".

The Premises shall be used for the maintenance of the existing communications tower ("the Tower") and all reasonably related purposes. Tenant shall have the right to reasonably keep clear the Premises, access road, guy anchor locations and any utility easement areas of trees, bushes, rocks, and other conditions affecting the use of the Premises. Landlord has no obligation to clear or keep clear the Premises. Tenant shall have the following rights and obligations with respect to the Premises and the Tower:

A. To construct a fence around Tower and any buildings constructed on the Premises, of a design and size meeting industry standards in the communications tower industry, intended to keep persons who do not have Tenant's permission to enter from entering the Premises;

B. To provide adequate warning signs of a size and design consistent with industry standards, and surrounding the Premises to discourage people attempting to enter the Premises;

C. To construct and maintain adequate anchors and guy wires pursuant to industry standards to hold the Tower in place, given its location at the top of a mountain, and to prevent injury to persons or property;

D. To undertake other practical measures consistent with industry standards to prevent unauthorized persons from entering the Premises, and sustaining injury from the Tower or its guy wires.

2. ACCESS TO PREMISES. Tenant shall have access for purposes of ingress, egress, and regress to the Leased Premises over the existing road and/or a road to be constructed by Lessee serving the Tower site. The Landlord assumes no responsibility for the construction or maintenance of said road, which construction and maintenance shall be the sole responsibility of the Lessee. Tenant shall have the right to maintain and repair said roadway, including such work as may be necessary for slope and drainage, and to install such poles, wires, pipes, cables, conduits and related appurtenances as shall be necessary for the proper conduct a/Tenant's business and for electricity, water, telephone and gas.

3. UTILITIES. Tenant shall be responsible to obtain and pay for service for all utilities required by Tenant for the operation of its Tower.

4. PARKING. Tenant shall have the right to reasonably park vehicles on or about the Premises and the lands immediately adjacent thereto during periods of construction, site inspections, and at times of necessary repair work. Notwithstanding anything to the contrary contained herein, Tenant shall not at any time interfere with the properties or operations of the remaining property of the Landlord or that of any adjoining property owner.

5. GUY WIRES. Tenant intends to build a self-supporting tower on site but shall retain the right to run reasonable and necessary guy wires from the Tower to be constructed on the Premises, over, and across the adjoining lands of Landlord as may be reasonably necessary for the proper support of the Tower, including at such points the rights to install anchors of such size and materials as shall be necessary to secure the guy wires. The guy wires and anchors shall be located in a manner consistent with communications tower industry standards, but the Tenant shall have the right to relocate said guy wires and anchors in the event Tenant desires to increase or decrease the height of the aforementioned tower or relocate the same within the boundaries of the Premises. Tenant may relocate such guy wires and anchors only after receiving the written consent of Landlord. In no event shall the Tower exceed 150 feet in height, unless approved by Landlord.

6. LEASE TERM. This Lease is acknowledged by both parties as operating to extend a previous lease between the parties. This Lease shall have a term of five (5) years, commencing on March 1, 2020. This Lease shall automatically renew for five (5) additional five (5) year terms and may continue thereafter unless either party gives the other at least six (6) months' written notice immediately prior to the end of any five (5) year term of their intent not to allow renewal of the Lease.

7. RENT. The Tenant shall make annual payments to the Landlord, in advance, in the sum of Seven Thousand Nine Hundred Twenty Dollars (\$7,920.00). Tenant shall be solely responsible for all costs in connection with the Tower and operation thereof. For the year beginning March 1, 2020, the Tenant has already paid Seven Thousand Two Hundred Dollars (\$7,200.00), and will pay the remaining Seven Hundred Twenty Dollars (\$720.00) by March 1,

2020, with subsequent annual payments of Seven Thousand Nine Hundred Twenty Dollars (\$7,920.00) being due on January 1 of each subsequent year.

8. PERMITTED ACCESS. Landlord shall be able to access the Tower site at any reasonable time to inspect the site and ensure the terms of this lease are in order.

9. LANDLORD'S OTHER LANDS. Tenant may enter upon the adjacent or nearby lands of landlord from and after the date of execution of the Lease by Landlord solely for the purpose of making surveys and conducting soil, engineering and other tests to the extent reasonably necessary for said surveys or soil, engineering and other tests.

10. ASSIGNMENT; SUBLEASING. Tenant shall not have the right, at any time, to assign this Lease, or sublet the Premises, in whole or in part, without first obtaining Landlord's written consent. Provided, that Tenant shall have the right to allow any emergency service agency serving the area to include their equipment within Tennant's building and tower without additional consent.

11. SUCCESSORS AND ASSIGNS. During the lease term Tenant shall peacefully and quietly enjoy the Premises, and easements granted hereunder, subject to the terms of this Lease. All the terms covenants and conditions of this Lease shall inure to the benefit of and shall be binding upon the parties hereto, their heirs and assigns, and shall be deemed to run with the land.

12. DEFAULT. Tenant shall be deemed to be in default of this Lease if Tenant fails to correct any default after Landlord has given Tenant written notice of any default hereunder and Tenant has failed to cure the same within thirty (30) days after receipt of such notice. Upon default by Tenant, Landlord shall have the right, at Landlord's option, to declare this Lease at an end or to re-enter the Premises and take possession thereof, or to take any other action which may be necessary or desirable for the enforcement of any right or remedy allowed Landlord by this Lease Agreement or bylaw.

13. All correspondence relating to this Lease shall be sent to the following addresses:

Landlord: Mr. Roy Dalton  
2160 Gilliam Mountain Road  
Hendersonville, NC 28792

Tenant: Henderson County Emergency Services  
1 Historic Courthouse Square  
Hendersonville, NC 28793

14. IMPROVEMENTS. All improvements including buildings, fixtures, towers, improvements and equipment erected, located, placed or constructed by Tenant upon the

Premises or the guy anchor locations shall remain personal property of Tenant, shall be removed by Tenant upon the expiration of the Lease and any additional renewals thereof. Tenant shall repair the Premises upon the removal of any such improvements at Tenant's expense, leaving the Premises in the same condition as at the commencement of the Lease.

15. INDEMNIFICATION. Tenant shall be in exclusive control and possession of the Premises. Landlord shall not be liable for any injury or damages to any property or any person on or about the Premises, nor for any injury or damage to any property of Tenant. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, liability, damage or loss to persons, including loss of life, or to property, including reasonable attorneys' fees and other costs of representation, which may arise out of Tenant's use or occupancy of the Premises, or out of any act of Tenant, its employees, agents and invitees. Tenant represents that it is insured with liability insurance in an amount equal to \$1,000,000, and that it will maintain said liability insurance with coverage in the amount of \$1,000,000 per occurrence and \$5,000,000 aggregate.

16. GOVERNING LAW. This Lease shall be governed by the laws of the State of North Carolina.

17. REGULATIONS. Tenant shall comply with all governmental regulations, rules and laws, and shall obtain any necessary licenses to construct the Tower on the Premises as required by the Federal Aviation Authority, or other governmental entity. Tenant covenants that it will use the leased premises in accordance with all relevant governmental authority and shall not violate any law, regulation or other governmental code with respect to the use of the premises.

IN WITNESS WHEREOF, this lease has been executed as of the day and year first written above.

\_\_\_\_\_ [SEAL]  
ROY DALTON

HENDERSON COUNTY

By: \_\_\_\_\_  
STEVE WYATT, County Manager

North Carolina, Henderson County.

I \_\_\_\_\_, do hereby certify that  
\_\_\_\_\_ personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument. Witness my hand and (where an official seal is  
required by law) official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official seal)

\_\_\_\_\_  
Signature, Notary Public

\_\_\_\_\_  
Print Name, Notary Public

My Commission expires:\_\_\_\_\_

North Carolina, Henderson County.

I \_\_\_\_\_, do hereby certify that  
\_\_\_\_\_ personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument. Witness my hand and (where an official seal is  
required by law) official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official seal)

\_\_\_\_\_  
Signature, Notary Public

\_\_\_\_\_  
Print Name, Notary Public

My Commission expires:\_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**MEMORANDUM OF LEASE**

Roy Dalton hereby lease to Henderson County for a term beginning the 2nd day of March 2020 and continuing for a period of five (5) years , including 5 additional 5 year renewals, the following property:

BEING described as a 150ft by 150ft section of Henderson County parcel number (REID) 1014361, recorded in Deed Book 1174 Page 035, which is further described in Exhibit A.

The provisions set forth in a written lease agreement between the parties dated the 2nd day of March, 2015, are hereby incorporated by reference in this memorandum.

\_\_\_\_\_ [SEAL]  
ROY DALTON

HENDERSON COUNTY

By: \_\_\_\_\_  
STEVE WYATT, County Manager

North Carolina, Henderson County.

I \_\_\_\_\_, do hereby certify that  
\_\_\_\_\_ personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument. Witness my hand and (where an official seal is  
required by law) official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official seal)

\_\_\_\_\_  
Signature, Notary Public

\_\_\_\_\_  
Print Name, Notary Public

My Commission expires:\_\_\_\_\_

North Carolina, Henderson County.

I \_\_\_\_\_, do hereby certify that  
\_\_\_\_\_ personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument. Witness my hand and (where an official seal is  
required by law) official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official seal)

\_\_\_\_\_  
Signature, Notary Public

\_\_\_\_\_  
Print Name, Notary Public

My Commission expires:\_\_\_\_\_