

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 2nd, 2022

SUBJECT: Updated Lease – Forge 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. One of these sites is the Forge Mountain Transmitter site. At the direction of the Board, Staff have worked with the property owner to modify the lease to allow co-location of commercial cellular telephone carriers. The attached lease allows this provision of additional service utilizing leased property.

BOARD ACTION REQUESTED:

Approve the attached lease between Henderson County and Darryl Fullam & Carla Fullam and authorize the County Manager so sign the lease on behalf of Henderson County.

Suggested Motion:

I move to approve the attached lease between Henderson County and Darryl Fullam & Carla Fullam and authorize the County Manager so sign the lease on behalf of Henderson County.

MEMORANDUM OF LEASE

DARRYL B. FULLAM and wife, CARLA B. FULLAM, whose address is 1705 John Smith Road, Columbus, North Carolina 28722,

hereby lease to

The COUNTY OF HENDERSON, a body corporate and politic, with the address 1 Historic Courthouse Square, Suite 5, Hendersonville, North Carolina 28792,

for a term beginning _____,
and continuing for a period of ten (10) years, plus one (1) additional ten-year renewal, the following property: See Exhibit A.

The provisions set forth in a written lease agreement between the parties dated _____, are hereby incorporated in this memorandum, this _____.

_____ [SEAL]
DARRYL B. FULLAM

_____ [SEAL]
CARLA B. FULLAM

JOHN MITCHELL, County Manger

STATE OF NORTH CAROLINA

LEASE

COUNTY OF HENDERSON

THIS LEASE, entered into as of the _____ day of _____, by and between the Darryl B. Fullam and wife, Carla B. Fullam (hereinafter collective the "Landlord"), and the County of Henderson, a body corporate and politic of the State of North Carolina, (hereinafter the "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 shown on the plat of survey recorded at Plat Slide 13323, and easement for ingress, egress and regress over the land shown on the plat of survey recorded at Plat Slide 13577 (the parcel and easement hereinafter collectively called the "Premises"). The two plats are incorporated herein by reference.

The Premises shall be used for the construction and maintenance of a communications tower ("the Tower") and all reasonably related purposes, and also for the location of other towers for other law enforcement agencies and for commercial wireless telephone service providers. Tenant shall have the right to reasonably clear and thereafter 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. Tenant shall have the following obligations with respect to the Premises and the Tower:

A. To construct a fence, of the typical size and type usually installed around communications towers around Tower and any buildings constructed on the Premises, reasonably sufficient to keep persons who do not have Tenant's permission to enter from entering the Premises;

B. To provide adequate warning signs-, as required by applicable law, surrounding the Premises to discourage people attempting to enter the Premises;

C. To construct and maintain adequate anchors and guy wires-, if necessary, 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 do all other things reasonably necessary 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 seven day a week, twenty-four hour per day access for purposes of ingress, egress, and regress to the Premises over a road to be maintained by Tenant serving the Tower site over the easement referred to in 1., above. The Landlord assumes no responsibility for the maintenance of said road, which maintenance shall be the sole responsibility of those parties using said road. 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 of Tenant's business and for any utilities.

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. Provided Tenant shall not interfere with the properties or operations of the 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 as shown on the plan annexed hereto as Exhibit A, 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 Tower or relocate the same within the boundaries of the Premises. The Tower height shall be in accord with the regulations of the Town of Mills River.

6. **LEASE TERM.** This Lease shall be for a term of ten (10) years, commencing on the date of the Lease, shall be renewable at the sole discretion of the Tenant for one additional ten (10) year term.

7. **RENT.** The Tenant shall make annual payments to the Landlord. The initial annual rent for the period through the end of the last day of June, 2024, shall be the sum of \$10,000.00. For periods July 1, 2024, and thereafter to the end of the term of this lease (and any renewals), the annual rent payment shall be determined as follows:

PERIOD	BASE ANNUAL RENT
July 1, 2024 through June 30, 2026	Previous annual rent (\$10,000) adjusted by the Index (defined below) for the period beginning 1 June 2022 and ending 31 May 2024
July 1, 2026 through June 30, 2028	Previous annual rent adjusted by the Index for the period beginning 1 June 2024 and ending 31 May 2026
July 1, 2028 through June 30, 2030	Previous annual rent adjusted by the Index for the period beginning 1 June 2026 and ending 31 May 2028
July 1, 2030 through June 30, 2032	Previous Base Rent adjusted by the Index for the period beginning 1 June 2028 and ending 31 May, 2030
July 1, 2032 through June 30, 2034, if the County exercises its option to renew	Previous Base Rent adjusted by the Index for the period beginning 1 June 2030 and ending 31 May, 2032
July 1, 2034 through June 30, 2036	Previous Base Rent adjusted by the Index for the period beginning 1 June 2032 and ending 31 May, 2034
July 1, 2036 through June 30, 2038	Previous Base Rent adjusted by the Index for the period beginning 1 June 2034 and ending 31 May, 2036
July 1, 2038 through June 30, 2040	Previous Base Rent adjusted by the Index for the period beginning 1 June 2036 and ending 31 May, 2038
July 1, 2040 through June 30, 2042	Previous Base Rent adjusted by the Index for the period beginning 1 June 2038 and ending 31 May, 2040

As used herein, the "Index" shall mean the United States Department of Labor Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, U.S. City Average, All items, not seasonally adjusted, 1982-1984=100 reference base.

Tenant shall be responsible for all costs in connection with the Tower and operation thereof. Annual payments shall be due on January 1 of each year. The annual payments stated above shall include use of the Tower by the Tenant, by other law enforcement agencies and by one (1) commercial wireless telephone provider, such provider to be Cellco Partnership d/b/a Verizon Wireless, or their affiliates, successors and assigns. In addition, the Tenant shall have the right without further approval of Landlord to add the use (and equipment necessary therefore) of further commercial wireless service providers to the tower at an additional monthly rental payment of \$700.00 per additional provider added, beginning the date such provider(s) commence operation. Tenant shall provide the Landlord with notice of the date of such commencement of operation.

8. PERMITTED ACCESS. Landlord shall be able to access the Tower site at any reasonable time, but with no less than seventy-two (72) hours prior notice, except in the case of an emergency, to inspect the site and ensure the terms of this lease are in order.

9. ASSIGNMENT; SUBLEASING. Tenant shall have the right, at any time, to assign this Lease, or sublet the Premises, in whole or in part, without first obtaining Landlord's consent. Provided, that Tenant shall have the right to include any emergency service agency or telecommunications provider serving the area without additional consent.

10. 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.

11. 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.

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

Landlord: Darryl B. Fullam and Carla B. Fullam
1705 John Smith Rd.
Columbus, NC 28722
Tenant: Henderson County
1 Historic Courthouse Square
Hendersonville, NC 28793

13. 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 and shall be removed by Tenant upon the expiration of the Lease. 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.

14. 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.

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

16. 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.

17. ACKNOWLEDGEMENTS. When properly completed, a certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for one or more individuals, acting in his, her, or their own right or, whether or not so stated in the notarial certificate, in a representative or fiduciary capacity, including one or more individuals acting on behalf of an unincorporated association, as an officer or director of a corporation, as a partner of a general or limited partnership, as a manager or member of a limited liability company, as the trustee of a trust, as the personal representative of a decedent's estate, as an agent or attorney in fact for another, as the guardian of a minor or an incompetent, or as a public official. The authorization of the form in this section does not preclude the use of other forms. This section applies to notarial certificates made before, on, and after December 1, 2005.

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

DARRYL B. FULLAM (SEAL)

CARLA B. FULLAM (SEAL)

COUNTY OF HENDERSON

By: JOHN MITCHELL, County Manager (SEAL)

North Carolina, _____ County

I _____, a Notary Public of the above County and State, do hereby certify that Darryl B. Fullam and Carla B. Fullam, husband and wife, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the _____ day of _____, 20____.

(Official seal)

Signature, Notary Public

Print Name, Notary Public

My Commission expires:_____

North Carolina, Henderson County

I _____, a Notary Public of the above County and State, do hereby certify that John Mitchell, County Manager of Henderson County, North Carolina, personally appeared before me and acknowledged the due execution of the foregoing instrument on behalf of Henderson County, North Carolina.

Witness my hand and official seal this the _____ day of _____, 20____.

(Official seal)

Signature, Notary Public

Print Name, Notary Public

My Commission expires:_____