

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 16, 2011

SUBJECT: Memorandum of Agreement with the Town of Laurel Park

ATTACHMENTS: MOA with the Town of Laurel Park

SUMMARY OF REQUEST:

Henderson County Emergency Services is currently coordinating a communications upgrade for the state-wide Voice Interoperability Plan for Emergency Responders (VIPER). This upgrade will provide new towers and buildings at three communications sites in Henderson County along with access to the VIPER system, and is paid for by a Homeland Security Grant in cooperation with the NC Highway Patrol. In order to finalize the new building and tower site on the Jump-Off Mountain a Memorandum of Agreement must be executed with The Town of Laurel Park which owns the property. No funding is necessary for this agreement.

BOARD ACTION REQUESTED:

Request the Board authorize the Manager to sign the final Memorandum of Agreement with the Town of Laurel Park.

Suggested Motion:

Move the Board authorize the Manager to sign a Memorandum of Agreement with the Town of Laurel Park for the communications site on Jump Off Mountain.

STATE OF NORTH CAROLINA

DRAFT

COUNTY OF HENDERSON

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made this the ____ day of _____, 2011, by and between HENDERSON COUNTY and the TOWN OF LAUREL PARK (hereafter referred to as the TOWN):

THAT WHEREAS. The execution of this MEMORANDUM OF AGREEMENT (hereafter referred to as MOA) has been authorized and approved by each organizations duly authorized representative;

NOW THEREFORE, in consideration of the mutual promises, obligations and benefits hereunder exchanged, TOWN and HENDERSON COUNTY mutually agree and covenant as follows:

1. HENDERSON COUNTY is permitted to construct and maintain a Communications tower and associated equipment to support governmental communications and the North Carolina Voice Interoperability Plan for Emergency Responders (VIPER), hereafter cumulatively referred to in this document as a TOWER SITE, on lands owned by the TOWN on Birchwood Drive, Parcel #9900636, on which the Town's water storage tank is located. The TOWER SITE shall be used exclusively for this stated purpose, and shall be located as shown on site drawings included in the Conditional Use Permit granted by the Town in 2010.
2. HENDERSON COUNTY will bear all expenses for the planning, design, construction and operation of the TOWER SITE. TOWN will verify that the location is acceptable after final location is marked on site by HENDERSON COUNTY. HENDERSON COUNTY will obtain all necessary permits.
3. TOWN will have access to and around the TOWER SITE as needed.
4. TOWN hereby acknowledges and agrees that the TOWER SITE equipment and associated facilities constructed pursuant to this agreement is and shall remain the property of HENDERSON COUNTY and/or the State of North Carolina.
5. TOWN grants to HENDERSON COUNTY a non-exclusive easement for ingress, egress, regress and utilities over property of TOWN upon which the TOWER SITE is erected and adjacent to such site for construction and maintenance of the TOWER SITE, for the installation, construction and maintenance of underground and above ground utilities in connection with its use, and for access to the TOWER SITE from a public road. The term of this Easement shall begin upon the Commencement Date of this agreement and shall continue

until (1) removal by HENDERSON COUNTY of all of its TOWER SITE from the Premises after Termination of the MOA in accordance with paragraph 11 or (2) removal by HENDERSON COUNTY of all of its TOWER SITE from the Premises after Expiration of the MOA in accordance with paragraph 10.

6. In addition to the Easement granted in Paragraph 5, HENDERSON COUNTY and its engineers, officers, employees, agents and contractors shall have full access to the TOWER SITE during the MOA Term, consistent with TOWN's standard property security. HENDERSON COUNTY shall instruct all of its employees and any other persons who will be entering the premises on HENDERSON COUNTY's behalf that they must exercise special care while on the premises to avoid personal injury and damage to TOWN's property, and that they must take no action while on the premises which is not necessary to accomplish the purpose for which access is sought. HENDERSON COUNTY shall be responsible to ensure that no underground utilities are disturbed in the construction and operation of the facilities, and shall post emergency contact information at the TOWER SITE.
7. TOWN assumes no responsibility for the license, operation and/or maintenance of the TOWER SITE. HENDERSON COUNTY has the right to and responsibility to repair and maintain the TOWER SITE. HENDERSON COUNTY, at its cost shall maintain and repair the TOWER SITE such that HENDERSON COUNTY may utilize the TOWER SITE for the purposes and to the extent herein permitted, including keeping the vegetation on the site properly groomed, with the site being visited typically once every thirty days or more frequently as needed.
8. During the Term of this MOA, HENDERSON COUNTY shall comply with all applicable laws affecting the TOWER SITE. HENDERSON COUNTY shall obtain any necessary governmental licenses or authorizations required for the construction and use of the TOWER SITE on the Premises and shall comply with government regulations applicable to its operations, including those of the FAA and FCC.
9. To the extent allowed by law, HENDERSON COUNTY shall and does hereby assume and agree to indemnify and save harmless TOWN, its successors and assigns, from and against all loss, costs, expense, claims, suits and judgments, whatsoever, in conjunction with injury to or death of any person or persons, or loss of or damage to property caused by or in any way connected with HENDERSON COUNTY's use of the TOWN property.
10. The term of this MOA shall be for a period of ten (10) years from the date listed above and shall automatically renew each year thereafter for a total period of 99 years.
11. Either party reserves the right to revoke or terminate this consent at any time for any reason by giving three-hundred sixty (360) days' prior written notice to the other party.
12. The Agency points of contact for this agreement shall be:

- TOWN

Town Manager
441 White Pine Drive
Laurel Park, NC 28739

Telephone # 828-693-4840

- HENDERSON COUNTY

Henderson County Emergency Services Director
211 First Avenue East
Hendersonville, NC 28792

Telephone # 828-697-4728

13. All the representatives and obligations of the parties are contained herein, and no modification, waiver or amendment of the MOA or any of its conditions or provisions and shall be binding upon a party unless in written authority signed by that party. The waiver by any party of a breach of any provision of this lease shall not operate or be construed as a waiver of any party of a breach of any provision of this lease shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of this MOA.

_____ Date _____

Steve Wyatt
County Manager
Henderson County

_____ Date _____

James Ball
Town Manager
Town of Laurel Park