

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** 4 September 2012

**SUBJECT:** Lease of space at Clear Creek Elementary School for tower for City of Hendersonville utilities metering

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT(S):** 1. Draft Lease  
2. Board of Education Resolution supporting Lease

**SUMMARY OF REQUEST:**

The City of Hendersonville seeks a lease of space on the Clear Creek Elementary School property for the location of a utilities metering tower. The City of Hendersonville's new water meters collect meter data by radio signal, with the goals of increasing meter-reading accuracy while lowering costs.

Title to the real estate of Clear Creek Elementary School is currently in Henderson County. However the County's title to the land is subject to an encumbrance which financed the construction of the school, and also subject to an option in favor of the Board of Education to require conveyance of the real estate back to the Board of Education upon repayment in full of that debt.

The Board of Education, as shown by the attached resolution, has reviewed the proposed lease, and has given its approval.

County staff will be present and prepared if requested to give further information on this matter.

**BOARD ACTION REQUESTED:**

Approval of the lease.

If the Board is so inclined, the following motion is suggested:

***I move that the Board approve the lease with the City of Hendersonville.***

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**COMMUNICATION SITE LEASE AGREEMENT**

THIS LEASE AGREEMENT made and entered into as of the \_\_\_ day of \_\_\_\_\_ 2012 by and between Henderson County, North Carolina, hereafter referred to as "Lessor," and The City of Hendersonville, hereinafter referred to as "Lessee."

**WITNESSETH:**

That in consideration of the sum of one dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby mutually covenant and agree as follows:

- 1) Leased Premises: Lessor hereby leases unto Lessee, and Lessee hereby leases from Lessor, the following described leased premises, for the purpose of erecting and maintaining a communications tower: a portion of that real property described in that deed recorded in Deed Book 1050 at page 731, Henderson County registry, such portion to be described as follows: .
- 2) Lease Time Period: The initial term of this lease shall be for a period of 50 years and shall be deemed to have commenced on September 1, 2012, and same shall expire or terminate on August 30, 2062.
- 3) Rental: Lessee shall pay to Lessor, as rental for the said parcel of land leased hereunder, the sum of \$1.00 per year. The first year's rental shall be due and payable on 1 September 2012, and successive annual rental payments shall be due and payable automatically on the same date thereafter during the period of this Lease.
- 4) Utilization of leased premises: The Lessor and the Lessee may each, without permission of the other, locate communications antennas on the Tower to be installed by the Lessee. Each party shall take necessary steps to insure that its communications equipment does not interfere with the other party's. Neither party shall cause or suffer any other person or entity to locate communications equipment on the Tower without the prior express written consent of the other party. Further, Lessee shall not locate any third-party's communications equipment on the Tower without the prior express written consent of the Henderson County Public Board of Education unless required to do so under prevailing United States or North Carolina law.
- 5) Removal of equipment: Upon the expiration or termination of this Lease, the Lessee

shall by the date of termination of this Lease remove all Lessee's communications equipment and property related thereto.

6) Destroyed or stolen equipment: Lessor shall not be responsible for any of Lessee's equipment which may be destroyed, stolen, or damaged, by Acts of God or third parties. Lessee shall carry such insurance coverage desired for such equipment.

7) Utilities: Lessee shall be responsible for providing necessary electrical power, emergency electrical power, or any other services that may be required to operate Lessee's facility.

8) Access: Lessee shall have a non-exclusive right to access the leased premises for ingress and egress purposes. In the event that Lessee must install a road to the lead premises, Lessee shall erect and maintain a gate for the road and it is Lessee's sole responsibility to make sure that the gate remains closed and locked at all times. Lessee shall solely be responsible for the construction and maintenance of the road and is responsible for repairing any damages to the road caused by vehicles operated by or used on behalf of the Lessee.

9) Lessee and its authorized personnel shall have reasonable access to the leased premises twenty-four hours a day, seven days a week for the purposes of routine and emergency maintenance of the Lessee's property. To the extent possible, Lessee and its authorized personnel shall avoid accessing the leased premises Monday through Friday between the hours of 7:30am to 8:30am and 2:30pm to 3:30pm (said times being high volume traffic times for school traffic).

10) Except as provided herein or in other duly recorded easements, only the Lessee and its authorized personnel shall have permission to enter the leased premises. For purposes herein, authorized personnel shall mean only authorized employees, engineers, technicians or properly authorized contractors of Lessee or persons under their direct supervision.

11) In the event of an emergency, Lessor or the Lessor's employees or agents may access the leased premises upon providing oral notice to Lessee. Lessee shall provide to Lessor a key to the gate so that Lessor can access the leased premises if necessary.

12) Lessor's indemnity: Lessee and Lessor shall each indemnify and hold harmless the other, its successors and assigns, from losses, damages, injuries, claims, demands and expenses, including legal fees and expenses, arising out of the negligent operation of the equipment of Lessee which is installed on Lessee's structure. The indemnities herein shall continue in full force and effect until Lessee has vacated the premises leased. "Vacating the premises leased" shall occur when Lessee is no longer occupying the premises leased and when Lessee has

removed all of Lessee's equipment therefrom.

13) Invalid provision: Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Agreement.

14) Complete agreement: This Agreement executed by the parties contains the entire understanding of the parties and such understanding may not be modified except in writing signed by the parties hereto.

15) Assignment: The Lessee may assign this Lease to any local governmental unit or agency thereof located within the boundaries of Henderson County, North Carolina.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Agreement to be executed in duplicate originals, each to have the full force and effect of any original document.

Done in the place and as of the date first above written.

HENDERSON COUNTY, N.C. (LESSOR)

By: \_\_\_\_\_(SEAL)

Thomas H. Thompson  
Chairman  
Board of Commissioners

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_ a Notary Public for said county and state, do hereby certify that Thomas H. Thompson, Chairman, Henderson County North Carolina Board of Commissioners and Teresa L. Wilson, Clerk to the Board, personally appeared before me this day and acknowledged the execution and attestation respectively of the foregoing Lease Agreement.

Attest: \_\_\_\_\_

Teresa L. Wilson  
Clerk to the Board

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

My commission expires:

\_\_\_\_\_  
Notary Public

THE CITY OF HENDERSONVILLE (LESSEE)

By: \_\_\_\_\_  
W. Bowman Ferguson, City Manager

Attest: \_\_\_\_\_  
Tammie K. Drake, MMC  
City Clerk

State of North Carolina  
County of Henderson.

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that W. Bowman Ferguson, in his capacity as City Manager of the City of Hendersonville and Tammie K. Drake, in her capacity as Hendersonville City Clerk, appeared before me this day and acknowledged the execution and attestation respectively of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_ 2012.

My commission expires:

\_\_\_\_\_  
Notary Public

**RESOLUTION BY THE HENDERSON COUNTY BOARD OF PUBLIC EDUCATION  
APPROVING THE LEASE BETWEEN THE COUNTY OF HENDERSON AND THE  
CITY OF HENDERSONVILLE REGARDING THE INSTALLATION OF A  
COMMUNICATIONS TOWER BEHIND CLEAR CREEK ELEMENTARY SCHOOL**

**WHEREAS**, the County of Henderson (hereinafter "County"), as a result of a Certificate of Participation finance agreement, currently owns the Clear Creek Elementary School real property, said real property being described in Deed Book 1050 at page 731 (hereinafter "Property"), and shall transfer ownership of the Property back to the Henderson County Board of Public Education (hereinafter "Board") on or before December 1, 2020;

**WHEREAS**, the County desires to lease a portion of the Property to the City of Hendersonville (hereinafter "City") for the purpose of erecting and maintaining a communications tower for a period of fifty (50) years (hereinafter "Lease"); and

**WHEREAS**, before the County formally approves the Lease with the City, the County desires that the Board review and approve the Lease, said Lease being incorporated herein and attached hereto as Exhibit A.

**NOW THEREFORE**, be it resolved by the Board as follows:

1. That the Board is satisfied with the provisions contained in the Lease as proposed in Exhibit A and does not have any additional concerns.
2. That the Board formally adopts this Resolution approving the Lease as proposed in Exhibit A.

I MOVE THE ADOPTION OF THE FOREGOING RESOLUTION.

  
\_\_\_\_\_  
Board of Education Member

SECONDED BY:

  
\_\_\_\_\_  
Board of Education Member

READ, APPROVED AND ADOPTED, THIS THE 13th DAY OF AUGUST 2012.

  
\_\_\_\_\_  
Board of Education Chairperson