



REQUEST FOR BOARD ACTION

ITEM NO. 17

DATE OF MEETING: July 27, 2015

REQUESTED BY: Kyle M. Breuer, Director, Planning and Community Development

SHORT TITLE: Approval of a Contract to Allow Communication Specialists Company of Wilmington, LLC, to Install Communication Equipment on the Maple Hill Water Tower to Provide for Broadband Services.

BACKGROUND: Over the past year and a half, Pender County staff has been working to solicit interest in improved broadband access. This effort included solicitation of need and representation of that need to various internet service providers (ISP's), staff provided an update of this effort to the Board of Commissioners in March, 2015.

Communication Specialists Company of Wilmington, LLC (COMSPECO), has requested approval to install fixed wireless communication equipment on the Maple Hill water tank structure. This vertical asset will allow COMSPECO to provide a service within the Maple Hill community which has been identified as an underserved area for broadband connectivity. Public Utilities as well as legal counsel have reviewed the contract for clarity and form, there will be no disruption to utilities services by allowing COMSPECO to locate on the water tank structure. With this agreement, COMPSECO will provide a wireless circuit to four (4) community facilities to include: Pender EMS & Fire, Station 8, Maple Hill Volunteer Fire Department, Maple Hill wastewater treatment plant, and the Maple Hill Civic Club.

SPECIFIC ACTION REQUESTED: To consider the approval of a contract to allow Communication Specialists Company of Wilmington, LLC, to install communication equipment on the Maple Hill water tower to deploy a fixed wireless solution to the Maple Hill community.

Exhibit A –MAPLE HILL WATER TOWER - Wireless Services Location

Governing Agreement. This EXHIBIT is governed by the AGREEMENT by and between Communication Specialists Company of Wilmington, LLC. (hereinafter referred to as TENANT), and Pender County, (hereinafter referred to as LANDLORD).

PREMISES. Maple Hill Water Tank located at: 397 Maple Hill School Road, Maple Hill, NC 28454.

PREMISES includes: Water Tower/Tank and (1) ground space for a ground-based weather-proof EQUIPMENT enclosure, (2) municipal water tower space for the installation of wireless Internet radio equipment as specified herein and (3) an existing electrical circuit for use by TENANT.

Compensation for Use of the PREMISES: As compensation for the use of the PREMISES, TENANT agrees to provide to LANDLORD, a complementary primary or redundant Wireless Internet Circuit (the CIRCUIT) for up to three community facilities (the COMP ACCOUNTS) that are within service range of the PREMISES and owned and/or operated and submitted for consideration by LANDLORD. The CIRCUIT will serve as the COMP ACCOUNT facility's backhaul circuit, which the facility can then connect to an existing Internet distribution system to distribute Internet service throughout the facility via existing data cabling or other existing infrastructure. If the COMP ACCOUNT facility does not have an existing distribution infrastructure, TENANT will, at the LANDLORD's request, create an estimate for LANDLORD for the cost of building and supporting a wireless distribution infrastructure at the facility.

Feasibility and quality of all COMP ACCOUNT CIRCUITS is dependent upon the results of a site survey performed by the TENANT at no cost to LANDLORD, to determine whether certain impediments exist. These impediments may exist at, or between, the PREMISES and the COMP ACCOUNTS and may include, but are not limited to: (1) Distance, (2) Whether there is existing radio frequency interference present, (3) Trees and other foliage blocking the wireless signal's path, (4) Materials of construction of buildings or other structures within or between the facilities, and (5) Ability to access a source of electrical power where necessary at the COMP ACCOUNT facility in order to power the COMP ACCOUNT CIRCUIT.

Following completion of installation of the TENANT's equipment at the PREMISES, TENANT will conduct a site survey at the following facilities provided by LANDLORD to determine the feasibility of establishing a wireless Internet backhaul circuit.

1. Maple Hill Civic Club, 545 Maple Hill School Road, Maple Hill, NC 28454
2. Maple Hill WWTP, 306 Maple Hill School Road, Maple Hill, NC 28454
3. Maple Hill Volunteer Fire Department, 115 Old Maple Hill Road, Maple Hill, NC 28454
4. Pender EMS & Fire, 5765 NC HWY 50, Maple Hill, NC 28454

Compensation for Electrical Services: For TENANT's use of LANDLORD'S electrical circuit existing at the PREMISES, LANDLORD will invoice to TENANT, and TENANT will compensate to LANDLORD, a monthly fee of \$40 for use of LANDLORD'S existing electrical circuit.

Engineering Description:

The various components of the following list of equipment, are designed for, but not limited to:

- (1) Receiving the Internet backhaul signal from the TENANT's radio tower in Onslow County.
- (2) Distributing Internet signals to customers in the surrounding community.
- (3) Distributing Internet signal to other vertical assets to serve as backhauls for other communities in Pender County.

Backhaul Backbone and Distribution Equipment:

2- 2' or 3' Parabolic Dishes (solid dishes with wind deflector integrated radio) on North and South side of the tank mounted to a rail (or other suitable structure) in a professional manner using a non-penetrating, non-corrosive clamp-style mounts.

1 – 27.5"H X 5.7"W X 3.7" D - 3.65 or 5.8 GHZ panel antenna/AP mounted on the East side on the railing (or other suitable structure)

1 – 27.5"H X 5.7"W X 3.7" D - 3.65 or 5.8 GHZ panel antenna/AP mounted on the West side on the railing (or other suitable structure)

1 – 27.5"H X 5.7"W X 3.7" D - 3.65 or 5.8 GHZ panel antenna/AP mounted on the North side on railing (or other suitable structure)

1 – 27.5"H X 5.7"W X 3.7" D - 3.65 or 5.8 GHZ panel antenna/AP mounted on the South side on railing (or other suitable structure)

1 – 27.5"H X 5.7"W X 3.7" D - 2.4 GHZ panel antenna/AP mounted on the North side on railing (or other suitable structure)

1 – 27.5"H X 5.7"W X 3.7" D - 2.4 GHZ panel antenna/AP mounted on the South side on railing (or other suitable structure)

8 - Cat5e, exterior grade cables, routed and supported in a professional manner, to the base of the water tank.

1 - 24" X 24" X 10" NEMA box mounted to a concrete base pad.

The 3.65 or 5.8 GHz dishes used will be 38.5 or 41.3 inches in diameter and 14" deep. One will face TENANT's backhaul source in Jacksonville, NC at 50 degrees. The other will face Burgaw at 220 degrees.

The Sector 3.65 or 5.8ghz antennas are 27in x 5in x3 in and there will be 4 sectors antennas placed facing North, South, East and West.

All antennas will be mounted to the railing of the walkway on the water tank using Galvanized clamp style hardware.

All CAT 5 will be outdoor shielded 3/8" and will extend from the NEMA Box on the ground to each radio on the water tank or tower.

The NEMA Box will be 20" x 16" x 8" mounted on the ground near the 110 volt power source provided by the LANDLORD.

LEASE AGREEMENT

THIS LEASE AGREEMENT, (AGREEMENT) entered into as of this ____ day of _____, 2015, by and between Communication Specialists Company of Wilmington, LLC., with primary place of business at 3330 Wrightsville Avenue, Wilmington, NC 28403 (hereinafter referred to as **TENANT**), and Pender County Government, whose address is 805 South Walker Street, Burgaw, NC 28425 (hereinafter referred to as **LANDLORD**). The **TENANT** and **LANDLORD** shall, hereinafter, be referred to collectively as the **PARTIES**.

RECITALS

- A. **LANDLORD** is the owner of specific vertical assets such as: county water tanks, fire training towers, buildings and other structures, (hereinafter known as the "PREMISES") within Pender County.
- B. **TENANT** desires to lease space on certain PREMISES, specified in the Exhibits attached hereto, for the installation and operation of a communications SYSTEM, which is owned and operated by the **TENANT** and includes radio antennas, connecting cables and other equipment (collectively, the "SYSTEM") for use in connection with its communications business.
- C. Accordingly, the **PARTIES** are entering into this **AGREEMENT** on the terms and conditions set forth below.

AGREEMENT In consideration of their mutual covenants, the **PARTIES** agree as follows:

1. **Leased PREMISES**. **LANDLORD** leases to **TENANT** and **TENANT** leases from **LANDLORD** a portion of the **PREMISES** (See attached Exhibit or Exhibits) for the **TENANT**'s **SYSTEM**(s). **LANDLORD** shall provide a 110 volt, AC power source on the **PREMISES** to be shared with **TENANT** during the term of this **AGREEMENT**. **TENANT** shall reimburse **LANDLORD** for use of the power source and, since the power usage and subsequent fees for powering **TENANT**'s equipment at each of the **PREMISES** may vary, the specific amount for reimbursement will be included in the Exhibit(s) for each location and will be subject to approval by the **LANDLORD** on a case-by-case basis.

Upon **LANDLORD**'s prior written consent which shall not unreasonably be withheld, conditioned, nor delayed, **TENANT** shall have the right to: (a) make additions, alterations or improvements to **TENANT**'s equipment; and (b) replace any or all of its equipment installed on, or about the **PREMISES** with new or additional equipment of a substantially similar kind, which is reinstalled in substantially the same place and position, and is of substantially the same size and weight as the replaced equipment.

2. **Term**. This **AGREEMENT** shall end on midnight on the last day of the month in which the fifth (5th) anniversary of the Execution Date occurs (hereinafter referred to as "The Initial Term"). **TENANT** may extend the **AGREEMENT**, on the same terms, for two (2) "additional terms" of three (3) years each, (hereinafter referred to as "Extended Terms") automatically, unless either party gives the other party written notice within ninety (90) days of the end of the Initial Term or any Extended Terms stating the party will not extend further.

3. Compensation Summary.

In exchange for this AGREEMENT, TENANT shall compensate the LANDLORD by providing, for the duration of this AGREEMENT compensation(s) as set forth in each individual Exhibit dated and attached hereto during the term of this AGREEMENT, whereby the location and/or description of a specific vertical asset owned by the LANDLORD is specified, in addition to compensation for the LANDLORD's asset and power source sharing to be paid by the TENANT to the LANDLORD which is to be specified individually in each Exhibit.

4. Use of PREMISES.

a. TENANT shall use the PREMISES for the installation, operation, and maintenance of its SYSTEM for the transmission, reception and operation of high-speed wireless Internet services and uses incidental thereto.

b. TENANT shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations in connection with the use, operation, maintenance, construction and/or installation of the SYSTEM.

c. TENANT agrees that all installations and constructions described in this AGREEMENT shall be completed promptly in a neat, workmanlike manner, consistent with good engineering practices and *in compliance* with all applicable codes and regulations. All costs of the installation shall be paid by the TENANT.

5. Installation of Equipment.

a. TENANT shall have the right, at its sole cost and expense, to install, operate and maintain on the PREMISES, in accordance with good engineering practices and with all applicable FCC rules and regulations, its SYSTEM as specified per PREMISES in attached Exhibits.

b. Any damage done to the PREMISES during installation and/or during operations shall be repaired or replaced immediately at TENANT's expense and to LANDLORD's reasonable satisfaction. TENANT shall pay all costs and expenses in relation to maintaining the integrity of LANDLORD's PREMISES in connection with TENANT's installation and operations of the SYSTEM.

c. The TENANT shall complete the installation of the SYSTEM as approved by the LANDLORD within sixty (60) days after the commencement date.

d. Should TENANT be required to provide additional equipment for the optimization of the SYSTEM during the term of this AGREEMENT, the cost of that equipment will be borne solely by the TENANT.

6. **Equipment Upgrade.** TENANT may upgrade or replace the SYSTEM from time to time with the prior written approval of the LANDLORD, which approval shall not be unreasonably withheld, conditioned, or delayed, provided that the replacement equipment installed is not greater in number or size than the existing facilities. Any change in equipment location on the PREMISES shall be approved in writing by LANDLORD, which approval shall not be unreasonably withheld, conditioned or delayed. If the upgrade involves additional equipment installed, or a change in location on the PREMISES. TENANT shall request LANDLORD's evaluation and approval.

7. **Maintenance.**

a. TENANT shall have sole responsibility for the maintenance and repair of the SYSTEM and shall keep the same in good repair and condition during the Lease term.

c. TENANT shall keep the PREMISES free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or radio interference.

d. In the event the LANDLORD or any other TENANT undertakes painting, construction or other alterations on the PREMISES, LANDLORD shall provide a minimum of 30 days written notice to TENANT so that TENANT may take reasonable measures at TENANT's cost to cover TENANT's equipment, personal property or SYSTEM and to protect such from paint and debris fallout which may occur during the painting, construction or alteration process. LANDLORD understands that PREMISES maintenance may result in the loss of Internet service to the COMP ACCOUNTS and to the Pender County population served.

8. **PREMISES Access.**

a. TENANT shall have access to the PREMISES by means reasonably designated by LANDLORD, subject to notice requirements to LANDLORD below.

b. TENANT shall have access to the TENANT's Base Stations and any ground or pole-mounted equipment on the PREMISES at all times without notice to the LANDLORD. TENANT shall have access to the on the PREMISES water tank equipment upon one (1) hour notice to the office of the Pender County Utilities Director.

c. LANDLORD shall be responsible for maintaining the PREMISES to ensure a safe working environment for TENANT's employees.

9. **Interference.**

TENANT's installation, operation, and maintenance of its SYSTEM shall not damage nor interfere in any way with LANDLORD's operations or related repair and maintenance activities or with such activities of other existing TENANTS. TENANT agrees to cease all such actions which materially interfere with LANDLORD's use of

the PREMISES immediately upon actual notice of such interference, provided however, in such case, TENANT shall have the right to terminate the AGREEMENT without further liability.

LANDLORD, at all times during this AGREEMENT, reserves the right to take any action it deems necessary, upon written notice by LANDLORD, in its sole discretion, to repair, maintain, alter or improve the PREMISES in connection with its operations as may be necessary, including leasing parts of the PREMISES to others provided that such activities and additional TENANTS shall not disturb nor interfere with TENANT's equipment and ability to operate its SYSTEM at all times, including radio interference caused by the additional TENANTS equipment .

10. Default and Remedies. In the event of a default that is not timely cured, LANDLORD may terminate this AGREEMENT upon written notice to the TENANT and/or exercise any other right it may have under this AGREEMENT or by operation of law.

It shall be a default if TENANT defaults in the provision of compensation, and does not cure such default within sixty (60) days after receiving written notice by LANDLORD; or if TENANT defaults in the performance of any other covenant or condition of this AGREEMENT and does not cure such default within thirty (30) days after written notice from LANDLORD specifying the default in detail. In this case, TENANT is entitled to a reasonable, extended period of time to cure any default in the event TENANT has in good faith commenced and continues to take all necessary action to cure the default, but is unable to do so within the thirty (30) days provided.

11. Optional Termination

In addition to the termination rights set forth in other provisions of this AGREEMENT, this AGREEMENT may be terminated or altered upon written notice:

(a) by TENANT, if TENANT is unable to obtain or maintain any FCC license, permit or other governmental approval necessary for the construction and/or operation of the intended SYSTEM or TENANT's business prior to the Commencement Date, with no further liability; or

(b) by TENANT, if, due to uncorrectable radio interference which renders the PREMISES no longer usable or necessary in TENANT's business, and upon presentation of documented proof to the LANDLORD thereof.

(c) by LANDLORD, if it determines, in its sole discretion and for any reason, to discontinue *use of and* to dismantle a structure on the PREMISES, provided, that TENANT at its option shall be permitted to continue its occupancy and use of the PREMISES until not less than ninety (90) days prior to the scheduled demolition or refurbishment date of the Water Tower or other structure, unless the TENANT's continued use of the PREMISES would create a compelling health, safety or welfare issue; or

(d) by LANDLORD, if it determines that any portion of the PREMISES are structurally unsound due to the age of the structure, damage or destruction, or other factors relating to the safe condition of the PREMISES, or

compelling health, safety or welfare reasons, provided that there are no alternative solutions, but to require the removal of the SYSTEM.

12. **Termination.** Notice of termination pursuant shall be given in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. Compensation paid for the Lease of the PREMISES prior to said termination date shall be retained by LANDLORD. Upon such termination, this AGREEMENT shall become null and void and the PARTIES shall have no further obligations to one and other. Upon termination of this AGREEMENT, TENANT shall remove its SYSTEM from the PREMISES within 60 days. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the PREMISES, including use of the PREMISES by LANDLORD or any of LANDLORD's assignees or lessees. Upon removal of the SYSTEM (or portions thereof) TENANT shall restore the affected area of the PREMISES to the reasonable satisfaction of LANDLORD less ordinary wear and tear.

~~If TENANT submits a written request for permission not to remove all or a portion of the SYSTEM, and LANDLORD consents to such non-removal, title to and/or ownership of the affected SYSTEM shall thereupon transfer to LANDLORD and thereafter shall be the sole and entire property of LANDLORD, and TENANT shall be relieved of its duty to otherwise remove same.~~

13. **Alteration, Damage or Destruction.** If a PREMISES Water Tower, Pole or other structure owned by LANDLORD is altered, destroyed or damaged so as to materially hinder TENANT's effective use of the PREMISES for its SYSTEM, through no fault or negligence of TENANT, LANDLORD shall have no obligation to repair any damage to any portion of the PREMISES and TENANT may elect to terminate this AGREEMENT upon thirty (30) days' notice to LANDLORD. In such event, TENANT shall promptly remove the SYSTEM from the PREMISES.

14. **Insurance.** During the term of the AGREEMENT, TENANT shall (unless optional as set forth below) maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum \$100,000 for each accident.

ii. Comprehensive commercial general liability insurance with minimum limits of \$1,000,000, with a \$2,000,000 minimum umbrella as the combined single limit for each occurrence of bodily injury, personal injury and property damage.

iii. Automobile liability insurance covering all owned, hired, and non-owned *vehicles in use* by TENANT, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law.

15. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed via certified mail, return receipt requested; to the following addresses:

If to LANDLORD, to:

County Manager: Randell Woodruff
Pender County
805 South Walker Street
Burgaw, NC 28425

If to TENANT, to:

Kelley McNeill, Vice President
Communication Specialists Company of Wilmington, LLC
3330 Wrightsville Avenue
Wilmington, NC 28403

16. **Assignment.**

TENANT may not assign this Agreement or sublet the PREMISES without the prior written consent of LANDLORD at any time, except to *an affiliate* or successor of interest, but such assignment or sublease shall be effective as to LANDLORD until written consent thereof is provided from LANDLORD.

17. **Successors and Assigns.** *This* AGREEMENT shall be binding upon and inure to the benefit of the PARTIES, their respective successors, personal representatives and assigns.

18. **Non-Waiver.** Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this AGREEMENT or to exercise any of its rights hereunder shall not waive such rights, but the PARTIES shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

19. **Cooperation.**

a. TENANT shall act as the sole agent in securing any necessary state or federal permits required for equipment installation. LANDLORD agrees that TENANT's inability to secure Federal, County or Municipal permits for the deployment of SERVICES as contemplated in this AGREEMENT may result in TENANT's inability to provide SERVICES.

b. Each party shall provide to the other party a telephone number which will be answered by a representative of such party twenty-four (24) hours a day for use in the event of an emergency. Each party agrees to notify the other party if there is a change in the emergency telephone number.

20. **Entire Understanding / No Oral Modification.** All prior understandings and agreements between the PARTIES *are merged* into this AGREEMENT, and this AGREEMENT may not be modified orally or in any manner other than by an *agreement in writing* signed by both PARTIES.

21. **Miscellaneous.**

a. LANDLORD and TENANT represent that each, respectively, has full right, power, and authority to execute this AGREEMENT.

b. This AGREEMENT (with its Exhibits) constitutes the entire AGREEMENT and understanding of the PARTIES and supersedes all proposals, negotiations, and other agreements of any kind. Any modification of, or amendment to this AGREEMENT must be in writing and executed by both PARTIES.

c. This AGREEMENT shall be construed in accordance with the laws of the State of North Carolina.

d. If any term of this AGREEMENT is found to be void or invalid, such invalidity shall not affect the remaining terms of this AGREEMENT, which shall continue in full force and effect.

This AGREEMENT was executed as of the date first set forth above.

LANDLORD: Pender County Government
By: Randell Woodruff
Title: County Manager

Signature: _____

TENANT: Communication Specialists Company of Wilmington, LLC
By: Kelley McNeill
Title: VP, Internet Services Division

Signature: _____