

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Ratification of Renewal of Lease with Ethel Jones for Ivy Mountain Tower Property

DATE: 4/11/2022

BUDGET INFORMATION:

ANNUAL- (\$13,000- E911 Operating Funds)

CAPITAL-

☐ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COMMISSION ACTION REQUESTED ON: April 18, 2022

PURPOSE: To ratify the renewal of a five-year lease of Ms. Ethel Wood Jones property by the Habersham County Board of Commissioners for the purpose of placement and maintenance of the emergency communications tower and associated building located on Ivy Mountain.

BACKGROUND / HISTORY: The Habersham County Board of Commissioners has been leasing this property for the purpose of placement and maintenance of an emergency communications tower since at least 2007. The most recent agreement was signed on April 1, 2012 with a five year term and option to renew for a second five year term. The lease agreement expires on March 31, 2022. Commissioner Bruce Palmer signed a new lease agreement with Ms. Ethel Wood Jones for another five-year term beginning April 1, 2022 pending the approval of the Board of Commissioners. This lease agreement is being presented tonight for ratification by the Board of Commissioners.

FACTS AND ISSUES:

- a. Habersham County Board of Commissioners has leased Ethel Wood Jones property for the purposes of placement and maintenance of an emergency communications tower and associated building since at least 2007.
- b. The most recent lease agreement was signed April 1, 2012, and expired March 31, 2022.
- c. Chairman Palmer signed on behalf of the Board of Commissioners to renew this lease starting April 1, 2022 for another five year term pending approval of the Board.
- d. The Board of Commissioners is being asked to ratify Chairman Palmers renewal of this lease.
- e. Payments are made quarterly to Ms. Jones as follows:
 - i. \$3,250.00 quarterly for the first year
 - ii. \$3,500.00 quarterly for the second year
 - iii. \$3,750.00 quarterly for the third year
 - iv. \$4,000.00 quarterly for the fourth year
 - v. \$4,250.00 quarterly for the fifth year.

OPTIONS:

- 1) Approve ratifying the renewal of the lease agreement with Ethel Jones for her property on which Habersham County's Ivy Mountain communications tower and building stands.
 - 2) Deny approval to ratify the lease agreement.
 - 3) Commission defined alternative.
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RECOMMENDED SAMPLE MOTION: "I move to approve the renewal of Habersham County's lease of Ethel Jones property for the placement and maintenance of the Ivy Mountain communications tower and building."

DEPARTMENT:

Prepared by: Brandalin Carnes

County Clerk

Commission Office _____

ADMINISTRATIVE

COMMENTS: _____

_____ **DATE:** _____

County Manager

**COMMUNICATIONS TOWER
LEASE AGREEMENT**

This Lease Agreement is made this 24th day of March, 2022 by and between **Ethel Wood Jones** (hereinafter called "Landlord") and the **Habersham County Board of Commissioners** (hereinafter called "Tenant").

1. *Leased Premises.* Landlord, for and in consideration of the rents, covenants and agreements contained herein and agreed to be paid, kept and performed by Tenant, has leased and rented, and by these presents does lease and rent unto Tenant, and Tenant hereby agrees to lease and take upon the following terms and conditions, the following described property (hereinafter called the "Leased Premises"), to wit:

All that tract or parcel of land lying and being in Land Lot 91 of the 11th District of Habersham County, Georgia, being more particularly described as Lot 62 of Ivy Mountain Subdivision as shown on a plat thereof prepared by Patton-Pless and Associates, Georgia Registered Surveyors, dated November of 1970; recorded in Book 10, page 107, Office of the Clerk of the Superior Court of Habersham County, Georgia, said plat being incorporated herein and made a part of this description.

2. *Purpose of the Lease and Use of the Leased Premises.* The purpose of this lease shall be solely for the placement and maintenance of a communications tower and associate building on the Leased Premises and for the sole use thereof by Habersham County Board of Commissioners for its internal county communications use and emergency communications use (such as 911 emergency service). No other use of the Lease Premises or placement of any other communications service or devices shall be permitted unless Tenant provides Landlord with advance notice of the price, terms and conditions of said proposed sublease, which shall be subject to Landlord's prior approval, which shall not be unreasonably withheld and provided that Tenant shall pay to Landlord 50 percent of that portion of said rent paid by the subtenant in excess of the payments due from Habersham County.

3. *Alternative Tenant.* Landlord reserves the right to rent the Leased Premises to an alternative tenant for the placement of additional communications devices on the existing tower and/or for the construction, installation and maintenance of another communications tower upon such terms and conditions as Landlord may deem proper in Landlord's sole discretion, provided, however, that said alternative tenant shall provide to the Habersham County Board of Commissioners sufficient space for its continued usage of the existing tower and/or shared usage of any new communications tower placed on the Leased Premises by or for said alternative tenant at no cost to Habersham County. Upon installation of a new communications tower by the alternative tenant, this Lease shall terminate, but

in exchange for Landlord granting Habersham County Board of Commissioners the right to continue to place its communications equipment on said new tower, the Habersham County Board of Commissioners shall continue to pay an annual rental equal to the annual ad valorem taxes on the above described property or communications tower for such period of time that the county uses said tower for placement and use of its communications equipment.

4. *Term.* To have and to hold the same for a term of five years beginning on the 1st day of April, 2022, (the "Commencement Date") and ending on the 31st day of March, 2027 at midnight, unless sooner terminated as hereinafter provided.

5. *Rental.*

a. During the first term of this Lease (April 1, 2022 through March 31, 2027), Tenant agrees to pay Landlord quarterly rental payments commencing on April 1, 2022 and the first day of each quarter thereafter (January 1, April 1, July 1 and October 1 of each year) in the following amounts for each quarterly payment:

- i. \$3,250.00 for the first year 22/23
- ii. \$3,500.00 for the second year 23/24
- iii. \$3,750.00 for the third year 24/25
- iv. \$4,000.00 for the fourth year 25/26
- v. \$4,250.00 for the fifth year 26/27

b. Rent checks shall be made payable to and mailed to Mrs. Ethel W. Jones, 4052 Chambers Road, Macon, GA 31206.

c. If the quarterly rent payment is not received by the tenth (10th) day of each quarter, Tenant shall pay Landlord a late charge of \$75.00 (excluding the initial payment hereunder).

6. *Taxes.* During the term of this Lease, Tenant shall be responsible for payment of all real estate ad valorem taxes and governmental assessments levied upon the Leased Premises for any reason or purpose whatsoever and shall indemnify Landlord from any liability therefore.

7. *Utility Bills.* Tenant shall pay all utility bills including without limitation electricity, fuel, light, heat and/or power bills for Leased Premises and/or for any equipment located thereon. If Tenant does not pay the same, Landlord may pay the same and such payment shall be added to Tenant's rent owed to Landlord for the Leased Premises.

8. *Insurance.* Tenant shall provide at its expense, and keep in force during the term of this Lease, general liability insurance from a good and solvent insurance company licensed to do business in the State of Georgia in an amount of at least Five Hundred Thousand Dollars (\$500,000.00) with respect to injury, death or property damages arising from any one accident or occurrence on the Lease

Premises. Such policy or policies shall include Landlord as an additional named insured. Tenant shall furnish to Landlord said policy or policies or certificates of insurance prior to the Commencement Date of this Lease and shall furnish such proof of insurance during the term of this Lease from time to time as requested by Landlord. Tenant shall have the right to add the Leased Premises to any existing liability insurance policy in lieu of providing separate coverage for this property.

9. *Use of Premises.* The Lease Premises shall be used for erection and maintenance of a communications tower and no other purpose.

10. *Abandonment of Leased Premises.* Tenant agrees not to abandon or vacate the Leased Premises during the period of this Lease and agrees to use said premises for the purpose herein leased until the expiration hereof.

11. *Indemnity.* Tenant agrees to indemnify and hold harmless Landlord from and against all claims for damages to persons or property, including wrongful death, by reason of Tenant's use or occupancy of the Leased Premises, together with all expenses incurred by Landlord because thereof, including Landlord's reasonable attorneys' fees, expenses of litigation and court costs incurred in connection therewith.

12. *Governmental Orders.* Tenant agrees, at its own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of the Leased Premises.

13. *Assignment and Subletting.* Tenant shall not assign, sublease in whole or in part or parts, mortgage or otherwise encumber this Lease in whole or in part or parts or any part of the Leased Premises without the Landlord's prior written consent which shall not be unreasonably withheld. Any assignment, sublease, mortgage or encumbrance in violation of this prohibition shall be void ab initio.

14. *Removal of Fixtures.* Tenant at the expiration (or termination for cause) of this Lease shall remove all fixtures and equipment which it has placed in the Leased Premise. Further, Tenant shall repair all damage to said Leased Premises caused by such removal and Tenant shall restore Leased Premises to the original condition as existed before Tenant's use and occupancy thereof.

15. *Cancellation of Lease by Landlord.* In the event Tenant shall default in the payment of rent herein reserved, when due, and fails to cure said default within five (5) days after written notice thereof from Landlord; or if Tenant shall be in default in performing any of the terms or provisions of this Lease other than the provision requiring the payment of rent, and fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Landlord. Upon such termination by Landlord, Tenant will at once surrender possession of the premises to Landlord and remove all of Tenant's personal property therefrom; and Landlord may forthwith re-enter the premises and resposess himself thereof, and remove all persons and effects therefrom, using such force as may be necessary without being guilty of trespass, forcible entry or detainer or other tort. In the alternative,

Landlord, as Tenant's agent, without terminating this Lease, upon Tenant's default, may at Landlord's option enter upon and rent the Leased Premises at the best price obtainable by reasonable effort, with or without advertisement and by private negotiation and for such amount of rent Landlord deems proper. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting.

16. *Effect of Termination of Lease.* No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

17. *No Estate in Land.* This contract shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.

18. *Holding Over.* If Tenant remains in possession of the Leased Premises after expiration of the term hereof, with Landlord's acquiescence and without any express agreement of parties, the term of this Lease shall automatically be extended for one month at three times the established rate herein and for successive terms of one month thereafter, each cancellable by Landlord or Tenant immediately upon notice thereof.

19. *Attorneys' Fees.* If any rent or other charges owing under this Lease is collected by or through an attorney at law, Tenant agrees to pay fifteen percent (15%) thereof as attorneys' fees. Tenant waives all homestead rights and exemptions which he may have under any law as against any obligation owing under this Lease. Tenant hereby assigns to Landlord his homestead rights and exemption.

20. *Rights Cumulative.* All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

21. *Notices.* Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and delivered either personally or sent postage prepaid by United States certified mail, return receipt requested, directed to the other party at the following addresses or such other address as designated in writing in accordance herewith:

Landlord:
Ms. Nancy J. Launius
1031 Heidi Trail
Buckhead, GA 30625

Tenant:
Habersham County Board of Commissioners
130 Jacob's Way
Clarksville, GA 30523

22. *Waiver of Rights.* No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with his obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

23. *Time of Essence.* Time is of the essence of this Agreement.

24. *Entire Agreement.* This Lease contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, shall be of any force or effect.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals on the day and year first above written.

Signed, sealed and delivered in the presence of:

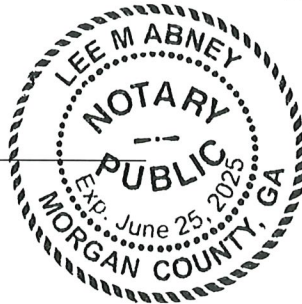
LANDLORD:

Kathleen Smith
Witness

Ethel W. Jones (SEAL)
ETHEL W. JONES

Nancy Jones Laurens
POA

[Signature]
Notary Public



Signed, sealed and delivered in the presence of:

TENANT:
HABERSHAM COUNTY BOARD OF COMMISSIONERS

Alvin
Witness

By: Bruce Palmer
Chairman Bruce Palmer

Brandalin D. Carnes
Notary Public

