

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Fair View Lease Agreement

DATE: 7/8/2022

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-0

() OTHER

CAPITAL-0

SPLOST - 0

COMMISSION ACTION REQUESTED ON: 07/18/2022

PURPOSE: Habersham County would like to enter into a lease agreement with **RLH, Et Al, LLC f/k/a/ RLH, Et Al, LLLP** for a potential tower site for the new L3/Harris P25 radio system. This lease is known as the Communications Tower or Fairview site. Land must be acquired before the project can begin the build. This agreement is at a cost of \$3,600.00 per quarter.

BACKGROUND / HISTORY: Habersham County is in the process of acquiring land to construct towers on various sites within the county for the new L3/Harris P25 radio system. The site location has been identified as a key location for proper coverage for this section of the county. The towers' location was moved out of the Fairview school's property due to concerns of the fall radius of the tower. Other locations on the school's property did not meet the requirements for the tower site. Possible higher costs of relocation made the decision of working with the landowner for a lease the best option.

FACTS AND ISSUES:

- a) This site has been identified as a needed coverage site to complete the network between tower sites.
 - b) The new L3/Harris P25 radio system cannot be completed without this site.
 - c) The identified location is ideal for utilities and access without additional costs to the project.
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OPTIONS:

- 1. Approve signing of the lease agreements between Habersham County and **RLH, Et Al, LLC f/k/a/ RLH, Et Al, LLLP**.
 - 2. Deny approval of lease agreements
 - 3. Find other property that will need to be purchased or leased.
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RECOMMENDED SAMPLE MOTION: I make a motion to sign the lease agreement for the Radio Network Project between Habersham County and **RLH, Et Al, LLC f/k/a/ RLH, Et Al, LLLP**.

DEPARTMENT:

Prepared by: Tom Priddy, Radio System Administrator

Director: Lynn Smith_____

ADMINISTRATIVE**COMMENTS:**_____

—

_____ **DATE:** _____

County Manager

COMMUNICATIONS TOWER LEASE AGREEMENT

This Lease Agreement is made this ____ day of July, 2022 by and between **RLH, Et Al, LLC f/k/a/ RLH, Et Al, LLLP** (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 Lots 26 and 35 of the 10th Land District of Habersham County, Georgia, being more particularly described as set for in the Plat of Survey attached hereto as Exhibit "A" and incorporated herein by reference thereto. Said parcel shall include a 20-foot access easement as set forth in Exhibit "A" as well.

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) and/or placement of any other communications service or devices which shall be permitted by Tenant.

3. *Term.* To have and to hold the same for a term of five years beginning on the 1st day of July, 2022, (the "Commencement Date") and ending on the 30th of June, 2027 at midnight, unless sooner terminated as hereinafter provided.

5. *Rental.*

- a. During the first term of this Lease, Tenant agrees to pay Landlord quarterly rental payments commencing on July 1, 2022 and the first day of each quarter thereafter (October 1, January 1, April 1 and July 1 of each year) in the following amount for each quarterly payment: \$3,600.00 per quarter

- b. Rent checks shall be made payable to and mailed to: Dr. Ralph Haynes, RLH, et al, LLC, 1411 N. Mangum Street, Durham, NC 27701-1310.
 - 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.
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. Construction of the tower upon the leased premises shall no interfere with the lease hunting rights on said property during the 2022-2023 hunting season.
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 may (if not in default hereunder) prior to the expiration of this Lease remove all fixtures and equipment which he has placed in the Leased Premises, provided however that 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. Any fixtures or equipment of Tenant left on the Leased Premises after the expiration date of this Lease shall thereupon become the property of Landlord and Tenant shall have no ownership right or claim whatsoever to said property. Should Landlord elect to have Tenant leave its equipment on the premises, Landlord shall pay to Tenant the appraised value of said equipment including, but not limited to, the tower.

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 respossess 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 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:
RLH, Et Al, LLC
1411 N. Mangum St.
Durham, NC 27701-1310

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.

SIGNATURES ARE ON FOLLOWING PAGE

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:

Witness

(SEAL)
RLH, Et Al, LLC
Carol E. Haynes as Co-Trustee of the Ralph L. Haynes 2012 Irrevocable Trust and Managing Member of RLH, ET. AL., LLC.

Notary Public

Signed, sealed and delivered in the presence of:

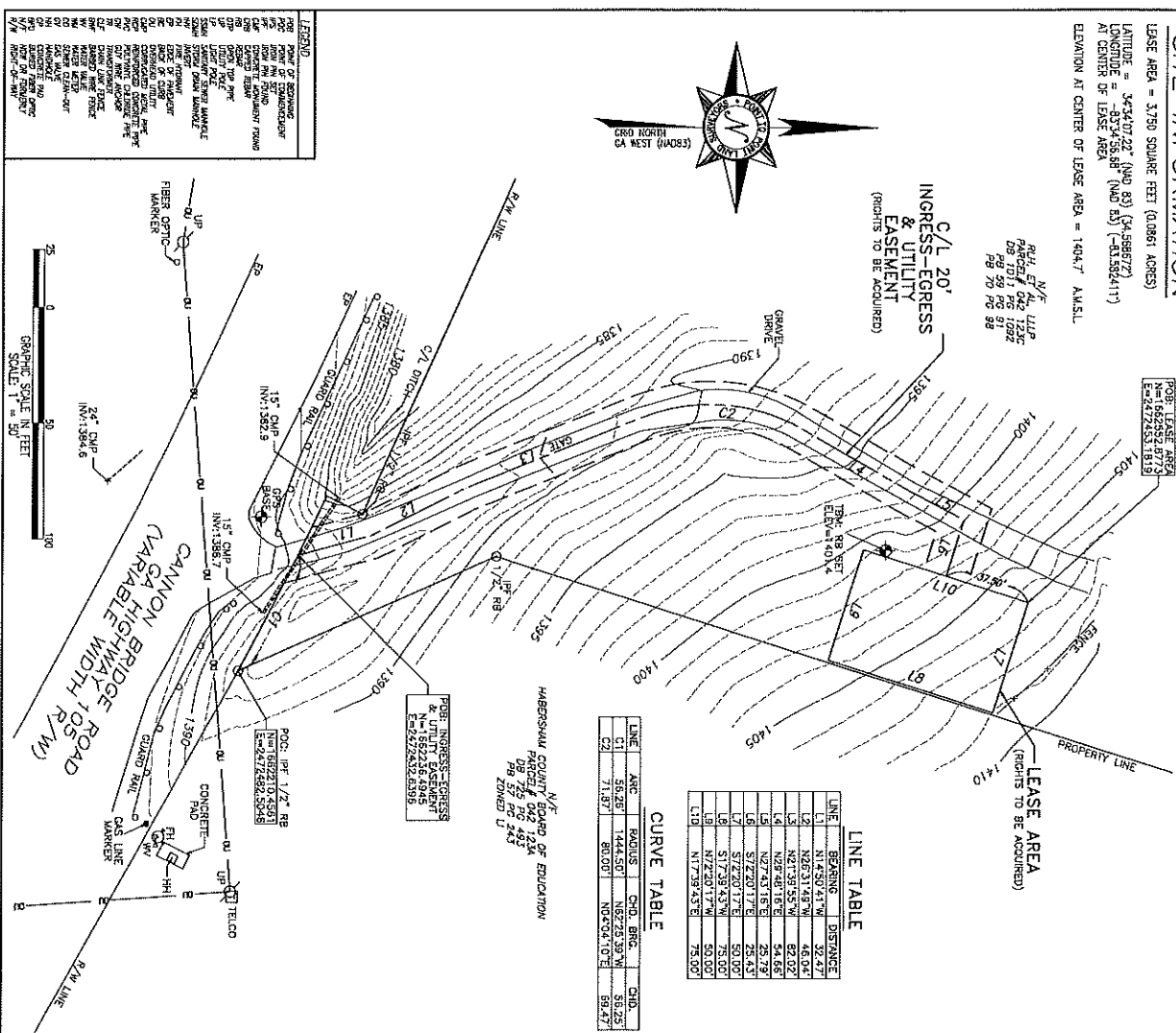
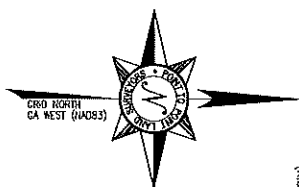
TENANT:
HABERSHAM COUNTY BOARD OF COMMISSIONERS

Witness

By: _____
Chairman Bruce Palmer

Notary Public

LEASE AREA = 3,750 SQUARE FEET (0.0861 ACRES)
 LATITUDE = 34°34'07.22" (NAD 83) (34.568672°)
 LONGITUDE = -83°34'55.88" (NAD 83) (-83.582417°)
 AT CENTER OF LEASE AREA
 ELEVATION AT CENTER OF LEASE AREA = 1404.7' A.M.S.L.



TOGETHER WITH A 20-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT (MEASURING 10 FEET EACH SIDE OF CENTERLINE) LYING AND BEING IN LOTS 35, 10TH DISTRICT HABESHAM COUNTY, GEORGIA, BEING A PORTION OF TR. OF RUL ET AL, LLP AS RECORDED IN DEED BOOK 1011 PAGE 1092, HABBSHAM COUNTY RECORDS, BEING DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

[illegible]

LEASE AREA

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 35, 10TH DISTRICT, HABERSHAM COUNTY, GEORGIA, BEING A PORTION OF THE LANDS OF RAIL ET AL, SLIP AS RECORDED IN DEED BOOK 1011 PAGE 1092, HABERSHAM COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO THE EAST OF BEGINNING, COMMENCE AT A 1/2-INCH BROAD PEARL POINT ON THE NORTHEASTLY RIGHT-OF-WAY LINE OF CANNON BRIDGE ROAD (ALSO KNOWN AS GEORGIA HIGHWAY 115) AND HAVING A VARIABLE WIDTH RIGHT-OF-WAY, SAID 1/2-INCH BROAD PEARL MARKING THE SOUTHWEST CORNER OF SAID RHT. ET AL. LANDS AND HAVING A GEOMETRIC (RND. NODS. WEST) ZONE VALUE OF 15682.0 (6567.14567) OF 1444.50 FEET TO A POINT, THENCE LEAVING SAID NORTHEASTLY RIGHT-OF-WAY LINE OF CANNON BRIDGE ROAD, 56.25 FEET ALONG THE WEST CURVE TO THE POINT, THENCE 56.25 FEET TO A POINT, THENCE LEAVING SAID NORTHEASTLY RIGHT-OF-WAY LINE OF CANNON BRIDGE ROAD AND RUNNING, NORTH 1450.41° WEST, 32.47 FEET TO A POINT; THENCE, NORTH 2631.49° WEST, 46.04 FEET TO A POINT; THENCE, NORTH 213.95° WEST, 82.02 FEET TO A POINT; THENCE, 71.87 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET AND BEING SCORED BY A CHORD BEARING, NORTH 09:04:10 EAST, 69.47 FEET TO A POINT; THENCE, NORTH 29:48:11 EAST, 54.86 FEET TO A POINT; THENCE, NORTH 27:43:16 EAST, 23.79 FEET TO A POINT; THENCE, NORTH 17:04:17 EAST, 23.43 FEET TO A POINT ON THE WESTERN END OF THE LATEST RECORDED PLAT, PLAT 23-43, BEING THE POINT OF BEGINNING, THENCE, SOUTH 17:59:43 WEST, 117.93 FEET TO A POINT, THENCE, SOUTH 17:59:43 WEST, 51.50 FEET TO A POINT, HAVING A GEOMETRIC (RND. NODS. WEST) ZONE VALUE OF 11793.43 (5150.50) TO A POINT, THENCE, NORTH 22:07:17 EAST, 50.00 FEET TO A POINT; THENCE, SOUTH 17:39:43 WEST, 75.00 FEET TO A POINT; THENCE, NORTH 22:07:17° WEST, 50.00 FEET TO A POINT; THENCE, NORTH 17:39:43° EAST, 75.00 FEET TO A POINT AND THE WEST ZONE.

BEARINGS BASED ON GEORGIA GRID NORTH, NAD83, WEST ZONE.

SAD TRACT CONTAINS 0.0861 ACRES (3,790 SQUARE FEET), MORE OR LESS.

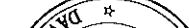
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 POINT TO POINT LAND SURVEYORS 100 Governors Trace, Ste. 103 Peachtree City, GA 30269 (p) 678.565.4440 (f) 678.565.4497 (w) pointtopointsurvey.com EXHIBIT SURVEY PREPARED BY: POINT TO POINT LAND SURVEYORS 100 Governors Trace, Ste. 103 Peachtree City, GA 30269 (p) 678.565.4440 (f) 678.565.4497 (w) pointtopointsurvey.com											

EXHIBIT "A"

