

HABERSHAM COUNTY BOARD OF COMMISSION
EXECUTIVE SUMMARY

SUBJECT: Tallulah Falls Lease Agreement

DATE:1/31/23

BUDGET INFORMATION:
ANNUAL-
CAPITAL-

(x) **RECOMMENDATION**
() **POLICY DISCUSSION**
() **STATUS REPORT**
() **OTHER**

COMMISSION ACTION REQUESTED ON: 02/20/2023

PURPOSE: Habersham County would like to enter into a land lease agreement with Irvin Family Investments, L.L.L.P for the Tallulah Falls radio tower site. The lease is for 1 year at \$1,000 with the option to continue the lease yearly. A one-time fee of \$5,000 for the lease preparation is also included.

BACKGROUND / HISTORY: The tower site at Tallulah Falls is required for the current and future radio system. The county was under the impression that the city of Tallulah Falls owned the land on which the radio tower resides, but after research this was false. The county found the owners and requested a land purchase or land lease to which the Irvin Family Investments, L.L.L.P offered the attached lease agreement.

FACTS AND ISSUES:

- a. The tower site is required for the current system and the future P25 system.
 - b. The county has a tower, building, generator, and weather siren on the parcel currently.
 - c. The county currently has no quick options for relocation.
 - d. This tower site location is critical for gorge rescues.
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OPTIONS:

- 1) Approve lease agreement with Irvin Family, L.L.L.P for Tallulah Falls tower site.
 - 2) Deny lease agreement with Irvin Family, L.L.L.P for Tallulah Falls tower site.
 - 3) Find alternative site location for Tallulah Falls tower site.
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RECOMMENDED SAMPLE MOTION: I make a motion to approve the land lease agreement with Irvin Family Investments, L.L.L.P for the Tallulah Falls tower site.

DEPARTMENT:

Prepared by: Tom Priddy

Radio System Administrator

Director Lynn Smith__

Habersham County 911 Director_____

**ADMINISTRATIVE
COMMENTS:**

_____ **DATE:**_____

County Manager

Return to: Robert E. Tritt, Esq.
Dentons US LLP
303 Peachtree St., NE, Suite 5300
Atlanta, GA 30308

STATE OF GEORGIA

COUNTY OF HABERSHAM

**COMMUNICATIONS TOWER
EASEMENT AGREEMENT**

This Easement Agreement (“Agreement”) is made this ____ day of November, 2022 by and between **Irvin Family Investments, L.L.L.P.**, a Georgia limited liability limited partnership, and **Johnny Mark Irvin** (hereinafter collectively called “Irvin”) and the **Habersham County Board of Commissioners** (hereinafter called “Habersham”).

WHEREAS, Irvin is the owner of certain property located in Land Lot 183 of the 13th District of Habersham County, Georgia, as more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “Irvin Property”);

WHEREAS, in furtherance of Habersham’s 911 and emergency communication services Habersham has erected or caused to be erected upon the Irvin Property a communications tower and supporting structures and equipment, including new equipment to be installed on the tower and in the service building as part of Habersham’s current expansion of its E911 radio system (“Communications Facilities”) that are enclosed by a chain link fence and shown on a plat of survey prepared for Habersham County by Point to Point Land Surveyors, dated July 7, 2022 and labeled as the existing compound (the “Existing Compound”). Said plat (the “Plat”) is attached hereto as Exhibit “B” and incorporated herein by reference.

WHEREAS, the Existing Compound is accessed by a gravel road crossing portions of the Irvin Property and connecting to Gilbert Gate Road as shown on the Plat (the “Existing Tower Access Road”; the Existing Compound and Existing Tower access Road sometimes collectively the “Easement Areas”).

WHEREAS, Irvin desires to grant and Habersham desires to accept a non-exclusive terminable easement to the Existing Compound and the Existing Tower Access Road upon and subject to the terms hereof.

NOW, THEREFORE, for and in consideration of the sum of ten dollars and other good and valuable consideration, including the mutual covenants and agreements of the parties contained herein, the Parties agree as follows:

1. **Grant of Easement.** Irvin hereby grants, bargains, assigns, sets over, and conveys to Habersham for the use, benefit and enjoyment of Habersham a non-exclusive terminable easement over the Existing Compound for the purpose of allowing the use of the Communications Facilities; provided, however, Habersham will not expand, enlarge, or enhance the Communications Facilities without the express written permission of Irvin. Irvin further grants, bargains, assigns, sets over, and conveys to Habersham for the use, benefit and enjoyment of Habersham a non-exclusive terminable easement over the Existing Tower Access Road for the purpose accessing the Existing Compound. Habersham acknowledges and agrees that the Communications Facilities are located upon the Irvin Property pursuant to this easement only and that Habersham has no greater, other or different right to use the Irvin Property. Habersham's usage of the Existing Compound and the Existing Tower Access Road is with the express permission of Irvin subject to this Agreement. Habersham agrees that it shall not acquire fee simple title to the Existing Compound or the Existing Tower Access Road by adverse possession no matter how long Habersham's usage continues. Irvin retains all rights to the Existing Compound and the Existing Tower Access Road that are not inconsistent herewith.

2. **Other Uses.**

(a) Habersham acknowledges that in addition to the Communication Facilities within the Existing Compound there is a separate tower and supporting building located therein constructed by Georgia Power Company ("GPC") pursuant to an easement for a radio tower dated June 27, 1946 and recorded on March 29, 1994 in Deed Book 316, page 117 Habersham County Georgia Records ("Georgia Power Easement"). Irvin and Habersham do not know whether GPC is or is not using the Georgia Power Easement or whether GPC has or has not abandoned the Georgia Power Easement. Nothing herein is intended to limit, abridge, modify or enlarge GPC's rights or obligations under the Georgia Power Easement.

(b) Habersham's use of the Existing Compound and the Communications Facilities is for Habersham's internal county communications use (such as 911 emergency service). Habersham will not make commercial use of the Existing Compound or the Communications Facilities or permit others to do so without the prior written consent of Irvin. Irvin may condition its consent to commercial use upon sharing in the revenue generated therefrom upon such terms and conditions as may be agreed between Irvin and Habersham.

3. **Term.** This Agreement shall exist for a period of one year beginning on the first day of December, 2022, (the "Commencement Date") and ending on the 30th day November 2023 at

midnight, unless sooner terminated as provided herein. This Agreement shall automatically renew for consecutive one year terms; provided however, that either Irvin or Habersham may terminate this Agreement by written notice to other given at least six month prior to the automatic renewal, in which case this Agreement will terminate and all rights of use of Habersham shall end at the expiration of the term in effect when the termination notice was given.

4. **Easement Payments.**

(a) Habersham agrees to pay Irvin an annual easement payment of one thousand dollars (\$1,000.00) commencing on December 1, 2022 and being due the first day of December annually thereafter. In addition, Habersham will pay Irvin the one time sum of \$5,000 for the cost of preparation of this Agreement

(b) Easement payment checks shall be made payable to and mailed to:

Irvin Family Investments, LLP
PO Box 84
Clayton, GA 30525.

(c) If the annual easement payment is not received by the tenth (10th) day of November each year, Habersham shall pay Irvin a late charge of \$150.00.

5. **Representations and Covenants.** Habersham represents that the Communications Facilities were constructed in accordance with and comply with all applicable laws. For as long as this Agreement is in place, Habersham shall, at its own cost and expense, maintain and repair the Existing Compound in a good, orderly and safe condition, and in compliance with all applicable law and will periodically add gravel to the Existing Tower Access Road so that it remains drivable. Irvin shall have no obligation to maintain or repair the Existing Compound or the Existing Tower Access Road or to assure that they comply with applicable law.

6. **Taxes.** During the term of this Agreement, Habersham shall be responsible for payment of all real estate ad valorem taxes and governmental assessments levied upon the Irvin Property attributable to the Communications Facilities and shall indemnify Irvin from any liability therefor.

7. **Utility Bills.** Habersham shall pay all utility bills including without limitation electricity, fuel, light, heat and/or power bills incurred in connection with the Communications Facilities. If Habersham does not pay the same, Irvin may pay the same and such payment shall be added to payments owed by Habersham..

8. **Insurance.** Habersham shall provide at its expense and keep in force during the term of this Agreement, 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 Irvin Property. Such policy or policies shall include Irvin as an additional named insured. Habersham shall furnish to Irvin said policy or policies or certificates of insurance prior to the Commencement Date of this Agreement and shall furnish such proof of insurance during the term of this Agreement from time to time as requested by Irvin. Habersham shall have the right to add the Irvin Property to any existing liability insurance policy in lieu of providing separate coverage for this property.

9. **Indemnity.** Habersham agrees to indemnify and hold harmless Irvin from and against all claims for damages to persons or property, including wrongful death, by reason of Habersham's use of the Existing Compound or the Existing Tower Access Road, together with all expenses incurred by Irvin because thereof, including Irvin's reasonable attorneys' fees, expenses of litigation and court costs incurred in connection therewith.

10. **Governmental Orders.** Habersham agrees, at its own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Habersham's use of the Existing Compound or the Existing Tower Access Road.

11. **Assignment and Subletting.** Habersham shall not assign in whole or in part or parts, mortgage or otherwise encumber this Agreement or grant any interest in whole or in part or parts to any part of the Easement Area, including without limitation granting any other party the right to place equipment on the Communications Facilities without Irvin's prior written consent. Any assignment, grant, mortgage or encumbrance in violation of this prohibition shall be void ab initio.

12. **Removal of Facilities.** Habersham shall prior to the expiration of this Agreement remove all Communications Facilities which it has placed in the Existing Compound, provided however that Habersham shall repair all damage to the Easement Areas caused by such removal, and Habersham shall restore the Easement Areas to the original condition as existed before Habersham's use thereof. Any Communications Facilities left on the Easement Areas after the expiration date of this Agreement shall thereupon become the property of Irvin, and Habersham shall have no ownership right or claim whatsoever to said property.

13. **Termination of Agreement by Irvin.** In the event Habersham shall default in the payments herein reserved, when due, and fails to cure said default within five (5) days after written notice thereof from Irvin; or if Habersham shall be in default in performing any of the terms or provisions of this Agreement 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 Irvin, then Habersham shall be in default hereafter and Irvin may immediately terminate this Agreement. Upon such termination by Irvin, Habersham will cease use of the Easement Areas and remove all of the Communications Facilities therefrom.

14. **Effect of Termination of Easement.** No termination of this Agreement prior to the normal ending thereof, by lapse of time or otherwise, shall affect Irvin's right to collect payments for the period prior to termination thereof.

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

16. **Notices.** Every notice, approval, consent or other communication authorized or required by this Agreement 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:

Irvin:
Irvin Family Investments, LLLP
P.O. Box 845
Clayton, GA 30525

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

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

18. **Amendment.** Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties against whom enforcement of the change, waiver, discharge or termination is sought.

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

20. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

21. **Attorneys' Fees.** In the event of any legal proceeding arising hereunder the party not prevailing in such legal proceeding shall pay the reasonably incurred legal fees of the party that does prevail in such proceeding.

22. **Entire Agreement.** This Agreement 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.

23. **Execution of Counterparts.** This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all the parties.

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

SIGNATURES CONTINUE ON FOLLOWING PAGE

Signed, sealed and delivered in the
Presence of:

Witness

Notary Public

Signed, sealed and delivered in the
presence of:

Witness

Notary Public

Signed, sealed and delivered in the
presence of:

Witness

Notary Public

IRVIN:

Irvin Family Investments, L.L.L.P.:

By: _____
Johnny Irvin, General Partner

Johnny Mark Irvin

HABERSHAM:
HABERSHAM COUNTY BOARD OF
COMMISSIONERS

By: _____
Bruce Palmer, Chairman

Exhibit A

Irvin Property Legal Description (to be drawn from survey underway)

Exhibit B

Plat

