

HABERSHAM COUNTY BOARD OF COMMISSION
EXECUTIVE SUMMARY

SUBJECT: Larry Mize Land Lease Agreement

DATE:4/27/2023

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

BUDGET INFORMATION:
ANNUAL-
CAPITAL-

COMMISSION ACTION REQUESTED ON: 05/15/2023.

PURPOSE: Habersham County would like to enter into a land lease agreement with Larry Mize, for the Laurel radio tower site. The lease is for 10 years at \$1,200 a month and a 3% increase year after year. The agreement also states the landowner receives 40% of the income from any colocation.

BACKGROUND / HISTORY: The tower site at the Mize property is required for the future radio system. The Mize property is the 5th alternative site identified after leaving the original site. The original site was opposed by a local HOA and the maintenance for the access road was going to be costly for the county. This location has an access road, utilities, and level ground meaning less site development costs.

FACTS AND ISSUES:

- a. The tower site is required for the future P25 system.
 - b. The location would mean less site development.
 - c. The county currently has no quick options for another alternative site location.
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OPTIONS:

- 1)Approve lease agreement with Larry Mize for Laurel tower site.
 - 2)Deny lease agreement with Larry Mize for Laurel site.
 - 3)Find alternative site location for Laurel tower site.
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RECOMMENDED SAMPLE MOTION: I make a motion to approve the land lease agreement with Larry Mize for the Laurel tower site.

DEPARTMENT:

Prepared by: Tom Priddy

Director Lynn Smith _____

**ADMINISTRATIVE
COMMENTS:** _____

_____ **DATE:** _____

County Manager

COMMUNICATIONS TOWER LEASE AGREEMENT

This Lease Agreement is made this ____ day of May, 2023 by and between **LARRY E. MIZE** (hereinafter referred to as "Landlord") and the **Habersham County Board of Commissioners** (hereinafter referred to as "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:

A 75 foot X 75 foot compound site and 20 foot access easement as shown on Exhibit "A" attached hereto and incorporated herein by reference thereto located on the following property:

All that tract or parcel of land lying and being a part of Land Lot No. 125 of the 11th Land District of Habersham County, Georgia, bounded on all sides by lands of A. E. Mize and A. E. Mize, Jr., and being more particularly described according to survey and plat made by Hubert Lovell, Registered Surveyor, under date of April 30, 1979, a copy of said plat being of record in Plat Book 15, Page 77, Clerk's office, Superior Court, Habersham County, Georgia, as follows: TO LOCATE THE POINT OF BEGINNING BEGIN at the original corner common to Land Lots Nos. 108, 109, 124 and 125 and run S. 84° 00' W. 2100 feet, more or less, to corner in the center line of the intersection of a county road and private driveway; thence the center line of the private driveway the following courses and distances: N. 82° 56' W. 217.6 feet to corner; thence N. 72° 30' W. 46.3 feet to corner; thence N. 49° 11' W. 148.6 feet to corner; thence N. 42° 16' W. 87 feet to corner; thence N. 29° 38' W. 220.6 feet to corner; thence N. 01° 55' W. 416.9 feet to corner; thence N. 12° 24' W. 277.5 feet to corner; thence N. 02° 42' E. 148 feet to corner; thence N. 06° 35' W. 118.9 feet to the true beginning point of the tract hereby conveyed; thence E. 100 feet to iron pin corner; thence N. 315 feet to iron pin corner; thence W. 350 feet to iron pin corner; thence S. 315 feet to iron pin corner; thence E. 250 feet to the beginning corner, containing 2.50 acres, more or less, all as shown by the plat referred to above, which is incorporated herein and made a part of this description by reference.

ALSO: For the consideration expressed above the Grantors hereby grant and convey unto the Grantee, his heirs, successors and assign, an easement for a driveway 20 feet in width upon, over and across lands of Grantors, as shown by the plat hereinabove referred to. BEGINNING at a corner at the intersection of the county road and the private driveway, as shown on said plat, and running thence N. 82° 56' W. 217.6 feet; thence N. 72° 03' W. 46.3 feet; thence N. 49° 11' W. 148.6

feet; thence N. 42° 16' W. 87 feet; thence N. 29° 38' W. 220.6 feet; thence N. 01° 55' W. 416.9 feet; thence N. 12° 24' W. 277.5 feet; thence N. 02° 42' E. 149 feet; thence N. 06° 35' W. 118.9 feet to corner; said driveway being 10 feet in width on each side from the center line of said driveway at all points.

NOTE: The compound site and access easement will be more specifically depicted on a plat of survey being prepared to be attached as Exhibit "B" hereto when completed and shall take precedence over Exhibit "A" when attached to the originals hereof.

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. Should Tenant co-locate income producing communications services on the Leased Premises, Tenant shall remit monthly 40 percent of all income derived and collected for co-location communication services.

3. *Term.* To have and to hold the same for a term of ten years beginning on the 1st day of June, 2023, (the "Commencement Date") and ending on the 31st day of May, 2033 at midnight, unless sooner terminated as hereinafter provided.

5. *Rental.*

- a. Tenant agrees to pay Landlord a monthly rental payment of **one thousand two hundred and 00/100 dollars (\$1,200.00)** commencing on 1st day of June, 2023 and being due the tenth day of the month thereafter. Said monthly rental payment shall increase three percent annually on June 1.
- b. Rent checks shall be made payable to and mailed to: Larry E. Mize and remitted to the address set forth in the Notice section below.
- c. If payment is not received within 30 days, 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 therefor.

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 for 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 purposes 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. *Termination 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 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 30 days after the date of receipt of written notice of default from Landlord. Upon such termination by Landlord, Tenant will surrender possession of the premises to Landlord and remove all of Tenant's personal property therefrom.

16. *Termination of Lease by Tenant.* Tenant may terminate this Lease by providing written notice to the Landlord, sixty (60) days prior to the expiration of the current term. In the event of termination of this Lease by Tenant, Tenant will remove all of Tenant's personal property from the Lease Premises prior to the expiration of the current term.

17. *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.

18. *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.

19. *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.

20. *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 15 percent 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.

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

22. *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:
Larry E. Mize
1083 Piedmont Orchard Road
Clarksville, GA 30523

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

23. *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.

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

25. *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:

Witness

LARRY E. MIZE (SEAL)

Notary Public

Signed, sealed and delivered in the
presence of:

TENANT:
HABERSHAM COUNTY BOARD OF
COMMISSIONERS

Witness

By: _____
Chairman Bruce Palmer

Notary Public

Exhibit A

75ftx75ft Compound with access road



Larry Mize land lease

\$14,400.00	1st year
\$432.00	3% increase to next year
14,832.00	2nd year
\$444.96	3% increase to next year
\$15,276.96	3rd year
\$458.31	3% increase to next year
\$15,735.27	4th year
\$472.06	3% increase to next year
\$16,207.33	5th year
\$486.22	3% increase to next year
\$16,693.55	6th year
\$500.81	3% increase to next year
\$17,194.35	7th year
\$515.83	3% increase to next year
\$17,710.18	8th year
\$531.31	3% increase to next year
\$18,241.49	9th year
\$547.24	3% increase to next year
\$18,788.73	10th year
\$165,079.86	10-year lease total

Mail original to:
Habersham County
County Administration Building
130 Jacob's Way
Clarksville, GA 30523

Habersham County P25 700/800 MHz
Simulcast Trunked Radio Network Project

ACCESS EASEMENT

GEORGIA, HABERSHAM COUNTY

This conveyance executed this ____ day of April, 2023 that for and in consideration of Ten dollars (\$10.00) in hand paid, receipt of which is acknowledged, the undersigned does hereby grant, sell and convey unto Habersham County, Georgia, for the term of the said lease an access easement for same, and appurtenances shown across and through the land indicated on the plat attached hereto as Exhibit "A." Said land is further described as set forth in Exhibit "B."

The Grantee shall have the right of ingress and egress on said lands for the purpose of constructing and maintaining said Network Project equipment and appurtenances and shall exercise reasonable diligence in doing necessary work in connection therewith so as to avoid damaging the property. The easement granted shall inure to the benefit of and be binding on the Grantee and Grantor and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, Larry E. Mize, hereto sets hand and seal the day and year above written.

Signed, sealed and delivered in
the presence of:

LANDLORD

Secretary

Larry E. Mize

Notary Public

Commission Expires

EXHIBIT

tabbies

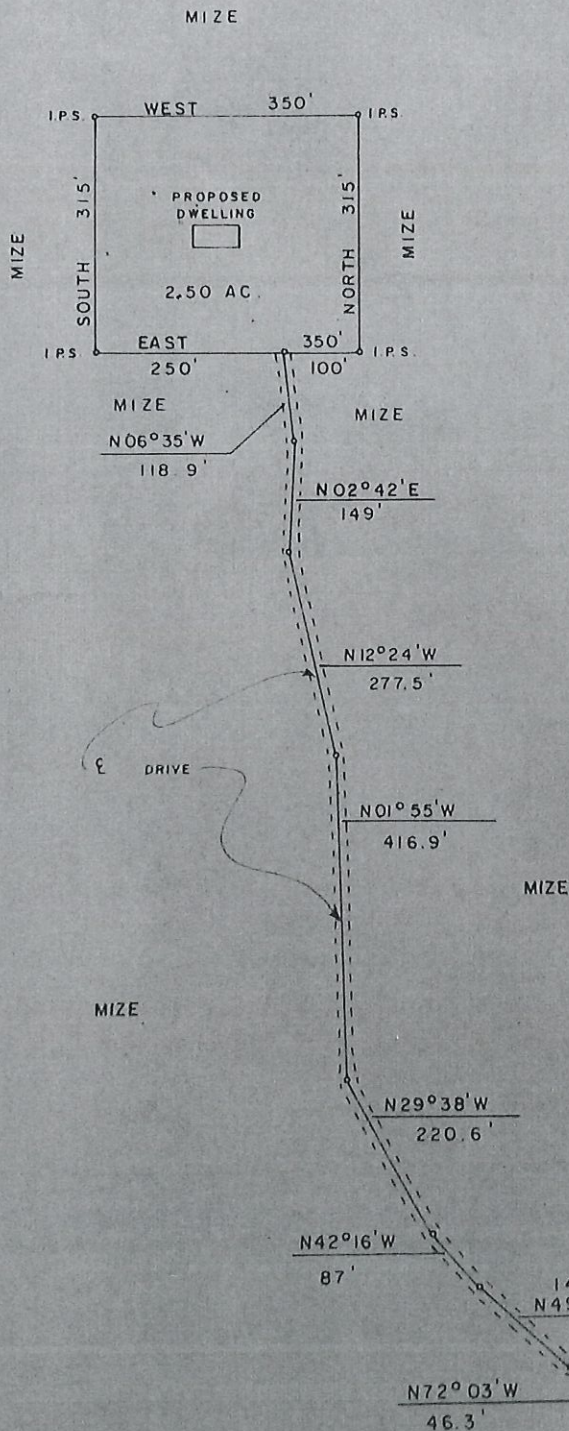
"A"

PROPERTY OF
LARRY E. MIZE
HABERSHAM COUNTY
GEORGIA

SCALE — 1" = 200'
APRIL 30, 1979

NOTE
PROPERTY IS LOCATED IN
LL 125 OF THE 11TH DIST.

GEORGIA, HABERSHAM COUNTY
CLERK'S OFFICE, SUPERIOR COURT
FILED FOR RECORD May 18
1979 AT 8:30 O'CLOCK A. M.
RECORDED May 18 1979
IN BOOK NO. 13 PAGE 27
Ernest W. Manning CLERK



SURVEYOR
HUBERT LOVELL
GA. REG. NO. 1553
CLARKESVILLE, GA.

Hubert Lovell

CERTIFICATION
IN MY OPINION, THIS PLAT IS A TRUE REPRESENTATION
OF THE LAND PLATTED AND HAS BEEN PREPARED IN CONFORMITY
WITH MINIMUM STANDARDS OF LAW

APPROX. N. 1000' 2100'

PRO
9 AN
SKYL
IN LA
THE
SEE
BY J
JAN.

Error
1:43

LL 108

LL 108

LL 108

LL 108

LL 108

LL 108

LL 108

LL 108

EXHIBIT "B"

All that tract or parcel of land lying and being a part of Land Lot No. 125 of the 11th Land District of Habersham County, Georgia, bounded on all sides by lands of A. E. Mize and A. E. Mize, Jr., and being more particularly described according to survey and plat made by Hubert Lovell, Registered Surveyor, under date of April 30, 1979, a copy of said plat being of record in Plat Book 15, Page 77, Clerk's office, Superior Court, Habersham County, Georgia, as follows: TO LOCATE THE POINT OF BEGINNING BEGIN at the original corner common to Land Lots Nos. 108, 109, 124 and 125 and run S. 84° 00' W. 2100 feet, more or less, to corner in the center line of the intersection of a county road and private driveway; thence the center line of the private driveway the following courses and distances: N. 82° 56' W. 217.6 feet to corner; thence N. 72° 30' W. 46.3 feet to corner; thence N. 49° 11' W. 148.6 feet to corner; thence N. 42° 16' W. 87 feet to corner; thence N. 29° 38' W. 220.6 feet to corner; thence N. 01° 55' W. 416.9 feet to corner; thence N. 12° 24' W. 277.5 feet to corner; thence N. 02° 42' E. 148 feet to corner; thence N. 06° 35' W. 118.9 feet to the true beginning point of the tract hereby conveyed; thence E. 100 feet to iron pin corner; thence N. 315 feet to iron pin corner; thence W. 350 feet to iron pin corner; thence S. 315 feet to iron pin corner; thence E. 250 feet to the beginning corner, containing 2.50 acres, more or less, all as shown by the plat referred to above, which is incorporated herein and made a part of this description by reference.

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