

STATE OF TEXAS

COUNTY OF CALHOUN

CITY OF PORT LAVACA

AGREEMENT FOR USE OF ELEVATED STORAGE TANKS

This agreement for use of the City's Elevated Storage Tanks (Agreement) is between TISD Inc. (Lessee) and the City of Port Lavaca (Lessor).

Recitals

WHEREAS, Lessee needs use of the Lessor's two (2) elevated storage tanks for placement of antennas to transmit internet services;

WHEREAS, Lessee has represented to Lessor that the radio transmissions are not harmful to the citizens of the City of Port Lavaca;

WHEREAS, Lessee desires to provide in-kind services to the Lessor for the use of the elevated storage tanks for its antennas.

THEREFORE, it is agreed as follows:

1. Term. The initial terms of this agreement shall commence on April 9, 2024 and continue for three (3) years, unless terminated sooner as provided herein. This Agreement shall automatically renew for one (1) year terms unless terminated by either party pursuant to the terms of this Agreement.

2. Fees. Lessee agrees to provide monthly Managed Wi-Fi with a 10Mbps/connection to 55 sites at no expense to the City of Port Lavaca Lighthouse Beach RV Park. If internet services are not provided the lease agreement shall be FIVE HUNDRED DOLLARS (\$500.00) per tower, per month.
3. Payment. If internet service is provided, no fee shall be imposed, otherwise payment of the above-mentioned fee shall be due on the first day of each month.
4. Exclusivity. Lessor grants the Lessee an exclusive right to use the following frequency ranges on the elevated storage tanks: 900MHz, 2.4GHz, 3GHz, 5GHz, 6GHz, 10GHz, 11GHz, 70GHz, 80GHz.
5. Electrical Power. The Lessor will provide Lessee with electrical access at each site which shall consist of two (2) dual pole 15amp breakers and one (1) single pole 15amp breaker. The Lessee shall also provide emergency backup power at each site.
6. Location. Lessee may only place equipment on elevated storage tanks at locations and in a manner approved by the Lessor.
7. Termination for Cause. Either party shall have the right to terminate this Agreement for failure of performance by the other party. Such failure of performance shall be brought to the attention of the alleged failing party by written notice. Upon receipt of such notice, the alleged defaulting party shall have thirty (30) days to remedy such breach of performance or default. Should the party fail to remedy or cure the alleged breach of default within the prescribed thirty (30) days, this agreement will terminate.
8. Termination by Lessor. Lessor reserves the right to terminate this agreement, with or without cause, upon sixty (60) days' written notice to Lessee. Upon termination, Lessor will have no liability to Lessee and this Agreement shall be of no force or effect.

9. Antenna Installation. Upon request Lessee shall provide photographs or drawings of the proposed antennas before attaching them to the elevated storage tanks. The antennas shall be subject to the approval of the Lessor and the Lessor may reject any antenna it determines to be unlawful, unsightly, detrimental, or inappropriate to the City. Lessee is required to provide all equipment necessary and install antennas at no expense to the Lessor. Lessee will be responsible for all damages to Lessor property caused by the equipment or Lessee's personnel. Lessee shall be responsible for all placement and removal costs.
10. Maintenance of Antennas. The antennas shall be constructed and installed in good and workman like manner, shall be maintained in first-class order, and shall be subject to inspection by the Lessor. The Lessee shall, at its own expense, keep and maintain the antennas in good working order and repair, and shall maintain the antennas in a safe, clean, and attractive condition. The Lessee's duties of maintenance shall extend to the premises on which the antennas are erected and all facilities appurtenant to those premises. If the lessee fails to meet these maintenance requirements for a period of thirty (30) days after receipt of notice from the Lessor of a notice to maintain the antennas, the Lessor shall have the option to either repair, remove, or demolish the antennas. The Lessee shall be obligated to reimburse the lessor for all costs associated with repair or demolition incurred pursuant to the provisions outlined in this paragraph.
11. DISCLAIMER OR WARRANTIES, LESSOR HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO ANTENNAS THAT HAS BECOME ANY BASIS OF THIS BARGAIN. FURTHER, LESSOR HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE ANTENNAS THAT HAS CREATED

OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE ANTENNAS WOULD CONFORM TO ANY SUCH AFFIRMATION OR PROMISE.

12. Damage to Antennas. Lessee shall be responsible for the security of the antennas. Lessee hereby acknowledges that there is a risk of damage or vandalism due to the antennas' location on Lessor's property. Lessee hereby accepts these risks and agrees to hold the Lessor harmless and AGREES TO WAIVE, RELEASE, AND INDEMNIFY THE LESSOR, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM LIABILITY OF ANY NATURE OR KIND ON ACCOUNT OF ANY DAMAGE TO THE ANTENNAS.

13. Notices. Unless otherwise provided herein, any notices, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received as of three (3) days from mailing. Mailed notices shall be addressed as set forth below, but each party may change their address by written notice in accordance with the paragraph.

To the Lessor

City of Port Lavaca

ATTN: Jody Weaver

202 N. Virginia St.

Port Lavaca, TX 77979

To the Lessee

TISD, Inc.

ATTN: Dusty Chandler

3001 N. Cameron St.

Victoria, TX 77901

14. **Taxes.** Lessee shall pay any and all state, federal, or local taxes that may be imposed on the antennas or use of the antennas referred to in this Agreement.
15. **Insurance.** Lessee shall maintain:
  - a. Worker's Compensation Insurance, Statutory Benefits and Employer's Liability Insurance with limits not less than \$100,000.00;
  - b. General Liability Insurance with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the general aggregate, if the Lessee uses subcontractors:
  - c. Motor Vehicle Liability Insurance with an employer's non-ownership endorsement and with limits of liability of not less than \$1,000,000.00 combined single limit and \$1,000,000.00 per property damage combined, along with Umbrella coverage in the amount of \$1,000,000.00.
16. **Relationship of Parties.** The parties are acting as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture, or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect.
17. **Licenses and Permits.** Lessee shall give the proper authorities all requisite notice relating to the antennas and obtain all official permits and licenses required for the antennas' installation and/or use. Lessee shall abide by all federal, state, and municipal laws, ordinances, regulations, and other rules. This Agreement is subject to all applicable present and future valid laws governing the parties' obligations under this Agreement.

18. Assignment. Lessee may not assign this Agreement or any rights hereunder without express written consent of the Lessor.
19. Access to the Elevated Storage Tanks. The Lessor grants to the Lessee and to the Lessee's representatives and employees the right of access to the elevated storage tanks for the sole purpose of servicing, erecting, maintaining, and removing of antennas and equipment at all times during the term of this agreement.

#### MISCELLANEOUS

20. This Agreement shall be binding upon, and insure to the benefit of, the parties to this Agreement and their legal representatives, successors, and assigns when permitted by this Agreement.
21. This Agreement shall be constructed under and in accordance with the laws of the State of Texas and all obligations of the parties created by this Agreement are performable in Calhoun County, Texas. Any suit or action brought in connection with this Agreement shall have exclusive venue in Calhoun County, Texas.
22. Neither party shall be required to perform any term, condition, or covenant in this Agreement if so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any government authority, floods, and any other cause not reasonably in the control of the Lessee and Lessor and which by the exercise of due diligence Lessor and Lessee is unable, wholly or in part, to prevent or overcome.
23. If any term or provisions of this Agreement shall to any extent or for any reason be invalid or unenforceable, each remaining term of this Agreement shall be valid and enforceable to the extent allowed by law.

24. This Agreement may be executed in multiple counterparts, any of which may be considered an original. Any fully executed and acknowledged telephone facsimile, photographic, electronic, or other copy of this document shall be considered an original.
25. This Agreement contains the entire Agreement of the parties hereto with respect to the matters covered by its terms, and all prior statements, negotiations, and representations are deemed to have been integrated herein. No agreement, statement, or promise made by or to any party, or made by or to any employee, officer, or agent of any party, that is not contained in this Agreement shall be of any force or effect. No party may be deemed to have reasonably relied upon any statement, representation, or custom, practice or course of business which is inconsistent with the terms of this Agreement.
26. No waiver of a breach of any provisions of this Agreement shall be construed to be a waiver of any breach or any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of any such breach.
27. No party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their trustees, commissioners, officers, employees, and agents as a result its execution of this Agreement and performance of the functions and obligations described herein.
28. Lessee acknowledges that no lien rights exist with respect to public property, which includes elevated storage tanks.

Effective upon date of signing by last party.

City of Port Lavaca, Texas

By: 

Title:

Interim City Manager

Date:

4.9.2024

TISD, Inc

By: 

Title:

President

Date:

2/23/2024