

TOWER/GROUND LEASE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

WHEREAS, the City Of Seguin, Texas (“City”) is the fee simple owner of a tract of real estate described in EXHIBIT “A” and depicted in EXHIBIT “B” (“Property”) (consisting of 2 total pages), which are attached hereto, incorporated herein, and made a part hereof for all purposes, and also owns a water tower (“Tower”) located on the Property, with a physical address of 1400 Lucille Street, Seguin, Texas, 78155, such Tower and Property collectively hereinafter referred to at times as the “Leased Premises”; and

WHEREAS, Guadalupe Valley Electric Cooperative, Inc., a Texas non-profit corporation (“GVEC”) desires space on the Leased Premises for the transmission and reception of internet, radio, and related communication signals and for the installation, maintenance, repair and replacement of related facilities including but not limited to GVEC’s tower and base, antennas, microwave dishes, wiring and cables (including but not limited to wiring and cables extending from the antennas down the Tower), air conditioning equipment, utility lines, and equipment shelter and/or cabinets, and related appurtenances belonging to GVEC (collectively, “Facilities”); and

WHEREAS, City agrees to lease space at the Leased Premises to GVEC, and GVEC agrees to the terms of this Agreement for said Premises, and the parties desire to reduce their agreement to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS this Tower/Ground Lease Agreement (the “Agreement”) authorized by the City is made and entered into on this _____ day of _____, 2023, by and between the City, a political subdivision of the State of

Texas and having its principal office in Seguin, Guadalupe County, Texas, and GVEC, a non-profit corporation duly incorporated under and by virtue of the laws of the State of Texas and having its principal office in Gonzales, Gonzales County, Texas, as follows:

1. **Grant of Lease.** City does hereby lease to GVEC, and GVEC leases from the City sufficient space on, in and around the Tower to attach a minimum of three (3) and a maximum of nine (9) antennas, together with all of GVEC's other Facilities, together with the right of ingress and egress to and from the Tower over the Leased Premises. The Facilities covered by this Agreement necessarily include, but are not limited to any equipment previously described above to properly and efficiently conduct the transmission and reception of internet and related communication signals, such as any required wiring and cables from the antennas down the standpipe to the base of the tower and space in the standpipe. The method of installation of all Facilities shall be approved by the City, with the City's approval being automatically granted if no response has occurred within five (5) business days from City's request for approval.

The City shall provide ingress and egress to and from the Facilities and other such access as may be required by any appropriate electric and telephone companies, or other contractors identified to the City by GVEC, for the purposes of servicing GVEC's Facilities. GVEC shall not permit the Premises to be used for any purpose other than an internet and related communications transmission and reception facility, utilizing the referenced Facilities, without written consent of the City, such consent not to be unreasonably withheld, conditioned, or delayed. GVEC shall be allowed to construct, install, operate, maintain, replace, repair, reconstruct, abandon in place and remove its Facilities as it may from time to time require. If any of the Facilities become fixtures, they shall nevertheless be and remain the property of GVEC

and GVEC shall remove all or any part of them upon the termination or expiration of this Agreement. GVEC shall have full 24-hour access every day of the year to the Leased Premises.

2. **Term.** The term of this Agreement shall be for five (5) years commencing on the _____ day of _____, 20____ (the "Initial Term"), and shall automatically be extended for additional five (5) year periods thereafter (each being a "Renewal Term") under the same terms and conditions, unless either party notifies the other party in writing on or before twelve (12) months before (i) the expiration of the Initial Term, or (ii) expiration of each Renewal Term.

3. **Consideration.** In consideration for this Agreement, GVEC shall pay to the City a monthly rental equal to three per cent (3%) of the total revenues billed by GVEC to its customers from the City's Tower, such amount to be paid by GVEC to the City on or before the 10th day of each rental month, provided, however, it is expressly agreed and stipulated that the minimum monthly rentals shall never be less than \$150.00. Any obligation to pay rent shall automatically terminate upon termination of this Agreement, except for any unpaid amounts. If this Agreement is terminated at a time other than the last day of a month, the rent shall be prorated as of the date of termination, and any pre-paid rent above the pro-rated amount shall be immediately refunded to GVEC.

4. **Governmental Authorizations.** The City is responsible for obtaining and maintaining current any and all permits and other governmental authorizations required for the construction, modification, ownership, operation and use of the Leased Premises, and for any facilities and appurtenances of the City attached (whether now or in the future) to the Leased Premises. GVEC is responsible for obtaining and maintaining current any and all permits and other governmental authorizations required for the construction, installation, operation, reconstruction, attachment, modification and operation of the Facilities.

5. **Physical Interference.** GVEC shall not use, nor shall it permit its lessees, licensees, employees, invitees or agents to use, any portion of the Leased Premises in any way that unreasonably interferes with the City's use of the Leased Premises as of the date of this Agreement. Similarly, the City shall not use, nor shall it permit its lessees, licensees, employees, invitees or agents to use, any portion of the Leased Premises in any way that unreasonably interferes with the operations of GVEC (including but not limited to interfering with GVEC's ability to transmit signal). In the event any such interference does not cease within five (5) business days of the receipt of written notice by the non-interfering party sent to the interfering party according to the notice provisions herein, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Agreement immediately upon written notice according to the notice provisions herein.

6. **Electronic Interference.** GVEC agrees to install Facilities of a type and frequency that will not cause electronic interference to existing equipment of the City or equipment of any other lessee of the Leased Premises that is located on the Leased Premises as of the date of this Agreement. GVEC further agrees to comply with any laws or regulations applicable to safe climbing practices in the installation and maintenance of the Facilities. In the event GVEC's equipment causes electronic interference, even if resulting from operations in full compliance with any applicable Federal Communications Commission ("FCC") regulations, and after the City has notified GVEC of such electronic interference in writing according to the notice provisions herein, GVEC will use its best efforts to correct and eliminate the electronic interference. The City agrees to ensure that the City or any other tenants of the Leased Premises

who currently have or in the future take possession of the Leased Premises install only such equipment that is of the type and frequency that will not cause electronic interference to the existing or future Facilities installed by GVEC on the Leased Premises. If it is determined that the electronic interference with GVEC's Facilities is being caused by the City's own equipment installed after the commencement of this Agreement or equipment of another lessee of the Leased Premises, the City will use its best efforts to correct the electronic interference immediately, even if it results from operation in full compliance with any applicable FCC regulations. In the event the electronic interference cannot be corrected, the electronic interfering equipment, regardless of whether it is owned or operated by GVEC, another lessee, or by the City, will be required to be modified or moved from the Leased Premises to eliminate such electronic interference. The parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction by injunction or other appropriate remedy. Either the City or GVEC may in its discretion cause an electronic interference analysis to be made by independent third party and require the party found to be electronically interfering to correct the electronic interference or cease all operations of such electronic interfering equipment, with the party causing the electronic interference to pay for the costs of the analysis.

City will not grant a license, lease, easement, or similar right to use or possess the Leased Premises without including in such license, lease, easement, or similar agreements a provision stating that the party's use will not unreasonably interfere with GVEC's rights under this Agreement, including but not limited to causing electrical interference to GVEC's Facilities on the Leased Premises. Furthermore, such agreements will state that prior to installation of

improvements, such third parties shall be required to conduct band width testing of its equipment, City equipment, and the equipment of GVEC.

7. **Future Improvements.** In the event the City or anyone acting by, through, or under the City undertakes any painting, construction, repairs, improvements, or other alterations on the Leased Premises, the City shall notify GVEC in writing at least fourteen (14) days in advance if such activities may impact GVEC's Facilities in any way or prevent GVEC from accessing its Facilities.

8. **Facilities.** GVEC shall have the right, at its expense, to erect and maintain its Facilities on the Leased Premises and to replace and upgrade its Facilities at any time during the term of this Agreement. GVEC shall cause all construction it undertakes on the Leased Premises to occur lien-free and in compliance with all applicable laws and ordinances. The Facilities shall remain the exclusive property of GVEC and GVEC shall have the right to remove its Facilities at any time during the Initial Term, any Renewal Term, or upon or within 30 days after termination of this Agreement.

9. **Effects on City Improvements.** No materials shall be used in the installation of GVEC's Facilities that cause corrosion, rust, or deterioration of any of the City's improvements on the Leased Premises without applicable mitigation equipment also being used to mitigate the possibility of corrosion, rust, or deterioration.

10. **Termination.** Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability as follows:

- (a) Upon thirty (30) days written notice from the City to GVEC if GVEC fails to provide the consideration set forth in paragraph 3 above;
- (b) Upon thirty (30) days written notice by either party if the other party commits a non-monetary, material default and fails to cure or commence curing default within that thirty (30) day period, or such

longer period as may be required to diligently complete a cure commenced within that thirty (30) day period;

- (c) Upon ninety (90) days written notice from GVEC to the City; and
- (d) Immediately upon written notice by GVEC, if the Tower, standpipe area or antenna facilities are destroyed or damaged so that in GVEC's reasonable judgment GVEC's effective use of its Facilities is substantially or adversely affected, in such event the rights and obligations of the parties relating to use and payment for the Leased Premises shall cease as of the date of the damage or destruction.

Within a reasonable time after termination, GVEC shall remove all its Facilities from the Leased Premises. Any actual damage caused by the removal of said Facilities will be the sole responsibility of GVEC. Upon termination, GVEC will have no obligation to continue offering any of the services GVEC was providing under paragraph 3 above, if applicable.

11. Taxes. GVEC shall pay any personal property taxes assessed directly against its Facilities. The City will pay any and all taxes that may be assessed on the Leased Premises.

12. Insurance. GVEC will carry a policy for Commercial General Liability Insurance Coverage in an aggregate amount of FOUR MILLION AND NO/100 DOLLARS (\$4,000,000. 00) and cause the City to be listed as an additional insured under the terms of said policy and provide a certificate of such insurance to the City. GVEC may satisfy this requirement by obtaining the appropriate endorsement to any master policy liability insurance GVEC may maintain.

13. Indemnity. GVEC SHALL INDEMNIFY, DEFEND AND HOLD THE CITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LOSSES, LIABILITIES, DAMAGES, LAWSUITS, JUDGMENTS, CLAIMS, ACTIONS, PENALTIES, FINES AND EXPENSES (INCLUDING WITHOUT LIMITATION, INTEREST, PENALTIES, AND REASONABLE ATTORNEY'S

FEES) (“CLAIMS”) ASSERTED BY ANY THIRD PERSON OR THIRD-PARTY ENTITY, GVEC’S AFFILIATES, SUBCONTRACTORS AND/OR AGENTS FOR PERSONAL OR BODILY INJURIES, DEATH OR DAMAGE TO PROPERTY ARISING FROM OR IN ANY MANNER GROWING OUT OF OR ATTRIBUTED TO ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF GVEC, ITS AFFILIATES, OR GVEC’S OR ITS AFFILIATES’ EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND/OR AGENTS RELATING (1) TO GVEC’S ACTIVITIES UNDER THIS AGREEMENT INCLUDING BUT NOT LIMITED TO GVEC’S OPERATIONS OR FACILITIES; OR (2) THE FAILURE OF GVEC TO COMPLY WITH, OR ANY ACTUAL OR ALLEGED VIOLATION OF, ANY APPLICABLE LAW, STATUTE, ORDINANCE, GOVERNMENTAL ADMINISTRATIVE ORDER OR RULE AS THEY RELATE TO GVEC’S USE OF THE LEASED PREMISES.

THE CITY SHALL INDEMNIFY, DEFEND AND HOLD GVEC AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LOSSES, LIABILITIES, DAMAGES, LAWSUITS, JUDGMENTS, CLAIMS, ACTIONS, PENALTIES, FINES AND EXPENSES (INCLUDING WITHOUT LIMITATION, INTEREST, PENALTIES, AND REASONABLE ATTORNEY’S FEES) (“CLAIMS”) ASSERTED BY ANY THIRD PERSON OR THIRD-PARTY ENTITY, CITY’S AFFILIATES, SUBCONTRACTORS AND/OR AGENTS FOR PERSONAL OR BODILY INJURIES, DEATH OR DAMAGE TO PROPERTY ARISING FROM OR IN ANY MANNER GROWING OUT OF OR ATTRIBUTED TO ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS AFFILIATES, OR THE CITY’S OR ITS AFFILIATES’ EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND/OR AGENTS RELATING (1) TO THE CITY’S ACTIVITIES ON OR RELATING TO THE LEASED

PREMISES, INCLUDING BUT NOT LIMITED TO THE CITY'S OPERATIONS, EQUIPMENT, FACILITIES, OR CONNECTIONS; OR (2) THE FAILURE OF THE CITY TO COMPLY WITH, OR ANY ACTUAL OR ALLEGED VIOLATION OF, ANY APPLICABLE LAW, STATUTE, ORDINANCE, GOVERNMENTAL ADMINISTRATIVE ORDER OR RULE AS THEY RELATE TO THE CITY'S USE OF THE LEASED PREMISES.

Each party shall give the other party prompt notice of any claim for which indemnification is or will be sought under this Section and shall cooperate and assist the indemnitor in the defense of the claim. The provisions of this section shall survive termination or expiration of this Agreement for the applicable statutes of limitations for any such claims.

14. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to GVEC

Guadalupe Valley Electric Cooperative, Inc.
P.O. Box 118
Gonzales, TX 78629

If to City:

City of Seguin
205 North River
Seguin, TX 78155

15. Authorization to Execute/Quiet Enjoyment. The City covenants and warrants to GVEC that (i) the City has full right, power and authority to execute this Agreement; (ii) the City has good and unencumbered title to the Leased Premises free and clear of any liens or mortgages, except those disclosed to GVEC and which will not interfere with GVEC's rights to or use of the Leased Premises; and (iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on the City. The City covenants that all times during the term of this

Agreement, GVEC's quiet enjoyment of the Leased Premises or any part thereof shall not be disturbed as long as GVEC is not in material default beyond any applicable grace or cure period.

16. Hazardous Substances. The City represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Leased Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. The City and GVEC shall not introduce or use any Hazardous Substance on the Leased Premises in violation of any applicable law. The City shall be responsible for, and shall promptly conduct any investigation and remediation required by any applicable environmental law, all spills or other releases of any Hazardous Substance not caused by GVEC, and that have occurred or which may occur on the Leased Premises. GVEC shall be responsible for any remediation required by the City or any applicable environmental law for all spills or other releases of any Hazardous Substance caused by GVEC.

17. Assignment. GVEC shall have the right to assign or otherwise transfer this Agreement, in whole or in part, to any person or business entity with the ability to operate a wireless communications business, or which is a parent, subsidiary or affiliate of GVEC, is merged or consolidated with GVEC or purchases more than fifty (50) percent of either an ownership interest in GVEC or of its parent, subsidiaries, or affiliates, or the assets of GVEC. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns. GVEC will remain responsible for any obligations incurring under this Agreement prior to any assignment or transfer.

18. Lien Rights. The City hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or

personal property under applicable laws, and the City gives GVEC and its mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in GVEC' s and/or its mortgagee's sole discretion and without the City's consent.

19. **Severability.** Nothing contained in this Agreement shall be construed to require commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any law, such law shall prevail; provided however, that in such event, the affected provisions of this Agreement shall be modified to the minimum extent necessary to permit compliance with such law and all provisions of this agreement shall continue in full force and effect. In the event that any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and the Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained in it.

20. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding the parties, and supersedes all offers, negotiations and other agreements, with respect to the subject matter and property covered by this Agreement.

21. **Texas Law.** This Agreement shall be construed in accordance with the laws of the State of Texas.

22. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, when taken together, shall constitute one and the same instrument. Signature pages from multiple counterparts may be combined to create fully executed instruments.

IN WITNESS WHEREOF, the City has caused these presents to be subscribed by on behalf of the City and GVEC has caused these presents to be subscribed on behalf of GVEC, on this the ____ day of _____, 20__.

CITY OF SEGUIN
Seguin, Texas

By: _____
Steve Parker, City Manager

Guadalupe Valley Electric Cooperative, Inc.

By: Ceason Barnick
Ceason Barnick
Senior Executive Manager of Customer Relations

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2023, by Steve Parker, the City Manager of the City of Seguin, on behalf of the City of Seguin, Seguin, Texas.

Notary Public in and for The State of Texas

THE STATE OF TEXAS §

COUNTY OF GONZALES §

This instrument was acknowledged before me on this the 23 day of March, 2023, by Ceason Barnick, Senior Executive Manager of Customer Relations of Guadalupe Valley Electric Cooperative, Inc., a Texas non-profit corporation, on behalf of said corporation.

Denise Stewart
Notary Public in and for The State of Texas

