



ORDINANCE 2020-08 OF THE VILLAGE OF ASHVILLE



AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR OR MAYOR TO EXECUTE AN AGREEMENT WITH THE TEAYS VALLEY SCHOOL DISTRICT FOR USE OF THE VILLAGE'S WATER TOWER FOR PLACEMENT OF A COMMUNICATION ANTENNA, AND DECLARING AN EMERGENCY

WHEREAS, the Teays Valley School District needs a location for a communication antenna; and
WHEREAS, the Village of Ashville has an elevated water tower; and
WHEREAS, Council for the Village of Ashville is pleased to work with the Teays Valley School District in providing a location for their communication needs; and
WHEREAS, Council for the Village of Ashville now wants to authorize the Village Administrator to enter into an agreement with the Teays Valley School District.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ASHVILLE, PICKAWAY COUNTY, OHIO THAT:

SECTION I

The Village Administrator or Mayor are hereby authorized and directed to enter into an Agreement with the Teays Valley School District, in substantially the same format and content, as the document attached hereto as Exhibit "A" and incorporated herein by reference, on behalf of the Village of Ashville.

SECTION II

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision making bodies of the Village of Ashville which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

SECTION III

All prior legislation, or any parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.

SECTION IV

Council declares this to be an emergency measure necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that Village Council needs to approve and enter into this Agreement. Wherefore, provided this Ordinance receives the required affirmative votes of Council, this Ordinance shall take effect and be in force immediately upon passage by Council and approval by the Mayor.

Offered by: Nelson R. Embrey
Seconded by: Roger L. Clark

Upon roll call on the adoption of the ordinance, the vote was as follow:

Roger L. Clark Yes No Nelson R. Embrey Yes No Randy S. Loveless Yes No R. David Rainey Yes No Tracie N. Sorvillo Yes No Darryl E. Ward Yes No

PASSED THIS 26th DAY OF OCTOBER, 2020

ATTEST:

April D. Grube, Clerk-Fiscal Officer

DATE: 10/26/2020

APPROVED:

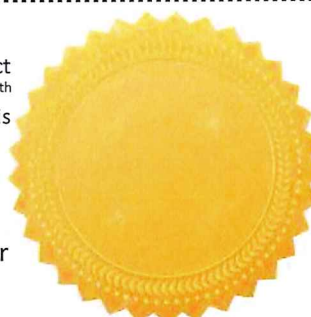
Charles K. Wise, Mayor

DATE: 26 OCT 2020

Prepared: 09/11/2020
Revised Date:
Review Date:

CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify, that the foregoing is a true and correct copy of the ordinance adopted by the Village of Ashville Council held on 26th day of October 2020, and that I am duly authorized to execute this certificate.



Clerk-Fiscal Officer
(Original signature of April D. Grube) (TITLE)

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease Agreement"), made this 22 day of September, year 2020, between Village of Ashville ("Village"), and Teays Valley School District ("School") (Village and School collectively referred to herein as the "parties") and existing under the laws of Ohio.

WHEREAS, School is under contract with R.E.M. Communications, Inc. to provide communication service to School and Village and School have shared interests to help facilitate School's provision of improved communication by and between School's buses for the safety and well-being of Village residents and School students; and,

WHEREAS, Village owns and operates a water tower and adjacent water equipment building ideally located for School to place a communications antenna facility, equipment, cabinets and other necessary devices to support School's contract with R.E.M. Communications, Inc. and provide efficient communication service by and between School's buses. NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **Leased Premises.** Village hereby leases to the School, for the period, at the rent, and upon the terms and conditions hereafter set forth, the non-exclusive use of:

The Top of the Village of Ashville Water Tower Structure ("Structure") and adequate, nominal space in the adjacent water equipment building at 140 Park Street, Ashville, Ohio 43103 to install a control panel and grants to School a non-exclusive easement for reasonable access thereto and for adequate utility services (the Leased Premises).

2. **Term.** The Term of this Lease Agreement shall be for five (5) years commencing on the date of execution of this Lease Agreement. Thereafter, this Lease Agreement shall automatically renew for one (1) additional five (5)-year term unless either party provides 60 days' advance written notice of its desire to not renew. This Lease Agreement may be terminated in accordance with those provisions set forth in Section 12.

3. **Rental.** School shall pay Village as basic rent for the Leased Premises the sum of \$100 for each year of the Lease Agreement. Rent payment for the initial year of this Lease Agreement shall be payable to Village immediately upon execution of this Lease Agreement, and the same amount shall be payable for each subsequent year under this Lease Agreement by no later than the 15th day of September, next beginning on September 15, 2021.

4. **Governmental Approval Contingency.**

- a. **School Application.** School's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This shall include the engineering study specified in Subparagraph 4(b) below on the Structure to be conducted at School's expense. Village shall cooperate with School in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the School's proposed use thereof.

b. Interference Study. School must pay for the reasonable cost of a radio frequency interference study carried out by R.E.M. Communications, Inc., showing that School's intended use will not interfere with any existing communications facilities. If the study finds that there is a potential for interference that cannot be reasonably remedied, Village may terminate this Lease Agreement immediately and refund the initial rental to School.

c. Non-approval. In the event that any application necessary under Subparagraph 4(a) above is finally rejected or any certificate, permit, license, or approval issued to School is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that School, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, School shall have the right to terminate this Lease Agreement. Notice of School's exercise of its right to terminate shall be given to Village in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by Village as evidenced by the return receipt. Upon such termination, this Lease Agreement shall become null and void and the parties shall have no further obligations to each other.

5. **School's Use.**

a. User Priority. School agrees that the following priorities of use of the Leased Premises, in descending order, shall apply in the event of communication interference or other conflict while this Lease Agreement is in effect, and School's use shall be subordinate accordingly:

1. Village;
2. Public safety agencies, including but not limited to law enforcement, fire, and ambulance services, that are not part of the Village;
3. Other governmental agencies where use is not related to public safety; and
4. Government-regulated entities whose antennas offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or which School is legally authorized to provide. This use shall be non-exclusive, and Village specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Leased Premises.

(b) Purposes. School shall use the Leased Premises only for the purpose of installing, maintaining, and operating a Village-approved communications antenna facility, equipment, cabinets and an accessory building (collectively, "Antenna Facilities"), and uses incidental thereto for providing radio and wireless telecommunication services which School is legally authorized to provide. This use shall be non-exclusive, and Village specifically reserves the right to allow the Leased Premises to be used by other entities and to make additions, deletions, or modifications to its own facilities on the Leased Premises.

(c) Operation. School shall have the right, at its sole cost and expense, to install, operate and maintain the Antenna Facilities on the Leased Premises in accordance with good engineering practices and with all applicable FCC rules and regulations. School's installation of all Antenna Facilities shall be done according to plans approved by Village, which approval shall not be unreasonably withheld. School's Antenna Facilities shall not be located in such a manner and place on the Leased Premises that interferes with or obstructs the Village's decal and other signage presently located on the Structure and Leased Premises. Any damage done to the Leased premises or other Village property including the Structure during installation or during operations shall be repaired at School's expense within 30 days after notification of damage. The Antenna Facilities shall remain the exclusive property of the School, unless otherwise provided in this Lease Agreement.

(d) Maintenance Improvement Expense. All modifications to the Leased Premises and all improvements made for School's benefit shall be at the School's expense and such improvements, including antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the Village's facilities on or adjacent to the Leased Premises, and secured by School. If School's Antenna Facilities are mounted on the Structure they shall, at all times, be painted, at School's expense, the same color as the Structure as approved by Village.

(e) Drawings. School shall provide Village with as-built drawings of the equipment and improvements installed on the Leased Premises, which show the actual location of all Antenna Facilities. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Leased Premises.

(f) No Interference. School shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to Village so as not to conflict with the use of the Structure, Leased Premises, and surrounding premises by Village. School shall not unreasonably interfere with the Village or any other entity's use of the Structure or Leased Premises in effect at the time of execution of this Lease Agreement, and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by Village.

(g) Access. School, at all times during this Lease Agreement, shall have access to the Leased Premises in order to install, operate, and maintain its Antenna Facilities. Village shall provide notice to School twenty-four (24) hours in advance, except in an emergency, of any maintenance on the Leased Premises that will require School to temporarily move its Antenna Facilities. In such instance, School will be responsible for any costs incurred in temporarily moving its Antenna Facilities. School shall have access to the Structure only with the approval of Village. School shall request access to the Structure twenty-four (24) hours in advance (business days) except in an emergency, and Village's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for School to have access to the Structure at some time other than the normal working hours of Village, Village may charge School for whatever expense, including employees' wages, that Village may incur in providing such access to School. Should School request Village to alter any operations with the Structure, such as draining or lowering the water level, so that School can install, add to, or maintain its Antenna Facilities, School shall pay the Village all its costs related to doing so.

6. **Additional Maintenance Expenses.** Upon notice from Village, School shall promptly pay to Village additional Village expenses incurred in maintaining the Leased Premises, including painting or other maintenance of the Structure, that are caused by School's use of the Leased Premises.
7. **Advances in Technology.** As technology advances and improved antennas are developed which are routinely used in School's business, Village may require, in its sole discretion, the replacement of existing antennas with the improved antennas if the new antennas are more aesthetically pleasing or otherwise foster a public purpose, as long as the installation and use of the improved antennas are practical and technically feasible at this location.
8. **Insurance and Indemnification.**
 - (a) School shall, during the term of this Lease Agreement, maintain property coverage on all personal property and fixtures owned by School. School acknowledges that Village is not responsible for insuring against the loss of School's equipment improvements. School shall also maintain single limit or combined limit general liability insurance policy of an amount not less than the limits set forth in Ohio Revised Code (ORC) 2744 for property damage arising from one occurrence or for bodily or personal injuries or death or damages arising from one occurrence.
 - (b) Each party shall be responsible for its own actions, omissions, or negligence and/or the actions, omissions, or negligence of its respective boards, board members, officials, officers, employees, agents, representatives, servants, and/or volunteers, resulting from or related in any manner to the performance of this Lease Agreement. The parties agree to be individually and solely responsible for any and all liability, loss, damages, injury, including death, penalties, costs, fines, fees, and/or related expenses that each may incur as a result of its own actions, omissions, or negligence and/or the actions, omissions, or negligence of its respective boards, board members, officials, employees, agents, representatives, servants, and/or volunteers in the performance of this Lease Agreement.
9. **Damage or Destruction.** If the Leased Premises are damaged or destroyed by fire, winds, flood or other natural or manmade causes, Village shall have the option to repair or replace the Leased Premises at its sole expense, or to terminate this Lease Agreement immediately effective on the date of such damage or destruction. In the event it elects to terminate the Lease Agreement, neither School nor Village shall have any further obligations hereunder. If Village elects to repair or replace the Leased Premises, until such repair or replacement is completed so that the School can resume full operations, the School's rental hereunder shall abate until the Leased Premises are restored to a condition that the School can resume full operations at the Leased Premises.
10. **Lease Termination.**
 - (a) **Events of Termination.** Except as otherwise provided herein, this Lease Agreement may be terminated as follows:
 - (i) by either party, for any reason, upon 90 days' prior written notice to the other party;

(ii) by School, upon 60 days' prior written notice to Village, based on the effective or anticipated termination of the contractual arrangements between School and R.E.M. Communications, Inc. for the provision of bus communication services to School;

(iii) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);

(iv) by School for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the Antenna Facilities or School's business;

(v) by School for cause if the Leased Premises is or becomes unacceptable for technological reasons including without limitation shadowing or interference under School's Antenna Facilities, design or engineering specifications or the communications systems to which the Antenna Facilities belong;

(vi) by Village, upon 120 days' prior written notice to School if its Council decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by School and/or discontinue use of the Structure for all purposes;

(vii) by Village if it determines that the Structure is structurally unsound, including, but not limited to, consideration of age of the Structure, damage or destruction of all or part of the Structure on the Leased Premises from any source, or factors relating to condition of the Leased Premises;

(viii) by Village if it determines that a potential user with a higher priority under Subparagraph 5(a) above cannot find another adequate location, or the Antenna Facilities unreasonably interfere with another user with a higher priority, regardless of whether or not such an interference was predicted in the initial interference study that was part of the application process, provided that for a one year period after termination under this subparagraph, Village shall not lease the Leased Premises to another party with equal or lesser priority for the same use as that of School; or

(ix) by Village if it determines that School has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before the Village's Council.

(b) Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rentals paid for the Lease prior to said termination date shall be retained by Village. Notices issued under this Lease Agreement shall be addressed as follows:

If to Village:

Village of Ashville
ATTN: Franklin Christman, Village Administrator
P.O. Box 195
200 East Station Street
Ashville, Ohio 43103

If to School:

Teays Valley Local Schools
385 Viking Way
Ashville, Ohio 43103

(c) Site Restoration. In the event that this Lease Agreement is terminated or not renewed, School shall have 60 days from the termination or expiration date to remove its Antenna Facilities, and related equipment from the Leased Premises, repair the site and restore the surface of the Structure. In the event that School's Antenna Facilities, and related equipment are not removed to the reasonable satisfaction of the Village, they shall be deemed abandoned and become the property of the Village and School shall have no further rights thereto.

11. School Interference.

(a) With Structure. School shall not interfere with Village's use of the Structure and agrees to cease all such actions which unreasonably and materially interfere with Village's use thereof no later than three business days after receipt of written notice of the interference from Village. In the event that School's cessation of action is material to School's use of the Leased Premises and such cessation frustrates School's use of the Leased Premises, within School's sole discretion, School shall have the immediate right to terminate this Lease.

(b) With Higher Priority Users. If School's Antenna Facilities cause impermissible interference with higher priority users as set forth in under Subparagraph 5(a) above or with pre-existing Schools, School shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving Village's written notice of the interference, School shall immediately cease operating its Antenna Facilities and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after School received Village's written notice, Village may at its option terminate this Lease immediately.

(c) Interference Study - New Occupants. Upon written notice by Village that it has a bona fide request from any other entity to lease an area including or in close proximity to the Leased Premises ("Leased Premises Area"), School agrees to provide Village, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by School on the Leased Premises at the time of such request. Village may then have an independent, registered professional engineer of Village's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to School. Village shall require the new applicant to pay for such interference studies, unless the Village or other higher priority user requests the use. In that event, the School agrees to pay its pro rata share, in comparison to all other entities occupying the Leased Premises Area, for the necessary interference studies.

(d) Interference - New Occupants. Village agrees that it will not grant a future lease in the Leased Premises Area to any entity who is of equal or lower priority to School, if such entity's use is reasonably anticipated to interfere with School's operation of its Antenna Facilities. Village agrees further that any future lease of the Leased Premises Area will prohibit a user of equal or lower priority from interfering with School's Antenna Facilities. Village agrees that it will require any subsequent occupants of the Leased Premises Area of equal or lower priority to School to provide School these same assurances against interference. Village shall have the obligation to eliminate any interference with the operations of School caused by such subsequent occupants. If such interference is not eliminated, School shall have the right to terminate this Lease Agreement or seek injunctive relief against the interfering occupant, at School's expense.

12. Assignment. This Lease Agreement may not be sold, assigned, or transferred by School without the prior written consent of the Village, such consent not to be unreasonably withheld.

13. Miscellaneous Provisions.

(a) Village warrants that it has full right, power, and authority to execute this Lease Agreement. Village covenants that School, in paying rent and performing the covenants by it herein made, shall and may peacefully and quietly have, hold, and enjoy the Leased Premises.

(b) School's obligations hereunder shall be contingent upon School's ability to use the premises for the purpose described in Paragraph (6) above, including but not limited to receipt of all necessary easements, permits, zoning approvals, and regulatory approvals.

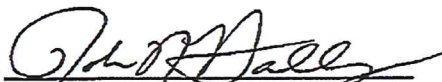
(c) School shall obtain all necessary governmental and regulatory approvals required for its occupation and use of the Premises, including but not limited to zoning changes, and shall be responsible for the cost of obtaining such approvals. The Village shall cooperate with the School in obtaining such approvals.

- (d) The provisions of this Lease Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.
- (e) This Lease Agreement contains the entire agreement of the parties with respect to any matter mentioned herein and supersedes any prior oral or written agreements.
- (f) This Lease may only be amended in writing and signed by the parties in interest at the time of such amendment.
- (g) No waiver by either party of any provision hereof shall be deemed a waiver of any other provision or of any prior or subsequent breach or any provision hereof.
- (h) If any term or provision of this Lease Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not be construed to affect any other provision of this Lease Agreement, and the remaining provision shall be enforceable in accordance with their terms.
- (i) This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Any dispute arising hereunder shall be litigated in the appropriate courts of Pickaway County, Ohio.
- (j) If School does not promptly vacate the premises at the end of the Lease Agreement's automatic renewal term, such holding over shall be treated as creating a month to month tenancy.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the day and year first written above.

Signature Page


Teays Valley School District

Signature: 

Print: Robin N. Halley

Title: Superintendent

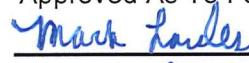
Village of Ashville

Signature: 

Print: Franklin Christman

Title: Village Administrator

Approved As To Form


(OCM per authority, 10/28/20)

Mark Landes, Esquire
Village Law Solicitor