

22-48  
TOWER LEASE  
AGREEMENT

This Tower Lease Agreement ("Agreement") is made and entered effective as of the \_\_\_\_<sup>th</sup> day of May, 2022 ("Effective Date"), by and between Eastern Illinois Electric Cooperative, Inc., ("Landlord") an Illinois not for profit corporation, and Ford County, Illinois, ("Lessee") an Illinois body corporate and politic, alternatively referred to from time to time as "Party" or "Parties" as the case may be.

WITNESSETH:

WHEREAS, Landlord owns and has easement rights in property located at 330 W Ottawa, Paxton, IL. 60957 (IL-PAXTON-CN-1) (GPS 40.4533, -88.1031) on which is located a transmitter building and a transmitter tower approximately 320 feet high, together with other land, structures, and facilities owned by Landlord (all hereinafter "Leased Premises") which are or may be used or useful in the operation of Landlord's Two-Way Stations or other stations (hereinafter "Landlord's other Lessees");

WHEREAS, Lessee has inspected the property ("Leased Premises") which is the subject of this Agreement and accepts the same as is, and

WHEREAS, Lessee, or any of its agents, successors or assigns, wish to lease space on Landlord's property for Emergency Radio Equipment, as identified in the attached exhibit \_\_, at various licensed and unlicensed frequencies, as Lessee has been granted authority to broadcast from the premises by the Federal Communications Commission (hereinafter, "FCC"). Lessee wishes to lease space on Leased Premises for operation of such equipment, and represents that it is properly and fully licensed to carry on such business, and

WHEREAS, Lessee acknowledges that Landlord has leased or will lease similar space to other communications and broadcast stations, and Lessee's operations are subject to the operations of Landlord's other lessees' and of Landlord's equipment, including, but not limited to, any interference with the transmission and reception of Lessee's signals caused by the operation of any such equipment.

NOW THEREFORE, the Parties agree as follows:

1. **Leased Premises.** Landlord hereby leases space at or near the base of the tower, in the transmitter building, as well as space at or near the 220-foot level for distribution and point to point antennas (hereinafter "the Leased Premises"), the precise location of such space to be designated by Landlord, subject only to the

reasonable approval of the Lessee.

2. **Compliance.** Lessee's right to use the Leased Premises is expressly contingent upon its obtaining all the certificates, permits, licenses, and other approvals that may be required by any federal, state, or local authority solely for the purpose of transmitting the signal of various licensed and unlicensed frequencies in such manner, at such times, and to the extent permitted by the Federal Communications Commission (FCC) and any other regulatory authorities having jurisdiction. Lessee is granted this authority for its internal use only. Lessee warrants that its operation will comply with all authorization, regulations, rules, and requirements of the FCC and all other federal, state and local laws, regulations, ordinances, rules, and other government requirements, as well as judicial and administrative interpretations and applications thereof; and that all required certificates, permits, licenses, and other approvals for Lessee's operations on the Leased Property are and will be in full force and effect at all times during the term of this Agreement and any extension thereof. In the event that any such certificate, permit, license or other approval is finally rejected, cancelled, expires, lapses, or is otherwise withdrawn or terminated by any applicable governmental authority so that Lessee, in its sole discretion, determines that it will be unable to use the Leased Premises for the Intended Use (defined below), Lessee shall have the right to terminate this Agreement.
3. **Initial Term.** The initial term of this Agreement shall commence on the Effective Date and expire at the end of the fifth (5<sup>th</sup>) year of this Agreement. The term of this Agreement will be evaluated annually subject to cancellation by either Party at the end of such initial term by written notice delivered to the other Party at least one hundred eighty (180) days prior to the end of initial term. Lessee agrees to make monthly rent payments for the term hereof at the rate of \$150.00 (adjusted as hereinafter stated) per month payable in advance on the first day of each month, such payments to be made to Landlord at P. O. Box 96, Paxton, Illinois 60957. Such initial payment and base monthly rent shall permit Lessee to operate only the antennas approved by Landlord at or near the 220-foot level on Landlord's tower. The monthly rental payments for each subsequent twelve-month period shall be adjusted January 1, 2023, and each January 1 thereafter, by an amount equal to any change during the preceding year in the cost of living (all items) for the Chicago, Illinois areas as published by the U.S. Bureau of Labor Statistics.
4. **Renewal.** Subject to the terms and conditions of this Agreement, it may be extended for three (3) five (5) year renewal periods (each a "Renewal Term") commencing on the first day of the month following the expiration date of the Initial Term or prior Renewal Term. Accordingly, this Agreement shall automatically

renew for each Renewal Term of five (5) years unless canceled by either Party by providing written notice to the other Party at least ninety (90) days prior to the expiration of the Initial Term or applicable Renewal Term. Any additional Renewal Terms beyond the third Renewal Term shall require a mutual consent in writing signed by the Parties.

5. **Utilities.** Landlord shall provide one (1) free of charge electric service. Lessee shall use the Landlord's utilities unless otherwise requested by Landlord due to significant changes in consumption by Lessee.
6. **Taxes.** Lessee shall pay all taxes on its property located on the Leased Premises with respect to its use thereof, if applicable, and which may initially be imposed upon Landlord, other than any tax on rental income; provided that, the payment of any such tax may be waived if it is deemed to be *de minimus* in amount by Landlord. In the event the Leased Premises relates to a public body use for which no taxes are assessed, then Lessee shall have no tax obligation.
7. **Non-Interference.** (a) Lessee's operations and equipment shall not interfere with the transmission or reception of the signals of Landlord's operations.  
(b) If Landlord concludes that such interference or impairment has occurred from any act or failure to act and so notified Lessee, Lessee shall have forty-eight (48) hours to eliminate such interference or impairment.  
(c) Lessee acknowledges that Landlord shall have no liability for any interference with the transmission or reception of Lessee's signals or the impairment of its operations by any of Landlord's stations or any of Landlord's agents, contractors, or suppliers or any of Landlord's other Lessees, and that neither Landlord nor its agents or employees nor Landlord's other Lessees shall be subject to any liability, action, claim, loss, expense or damage resulting from such interference or impairment.
8. **Maintenance of Premises.** Lessee shall maintain the area that it specifically leases at or near the base of the tower, in the transmitting building, and at or near the distribution and point to point antenna level as referred to in Section 1, including any improvements made, in good condition; shall not make or allow to be made any alteration thereto or modification thereof without the prior written consent of the Landlord; and shall not commit or suffer to be committed any waste upon the Leased Premises. Lessee shall keep the Leased Premises closed and locked at all times and shall comply with the terms of any other agreements of Landlord with surrounding property owners that may apply.
9. **Insurance.** Lessee shall maintain "occurrence" form comprehensive general liability insurance coverage during the Initial Term and any Renewal Terms of this Agreement. Such coverage shall include, but not be

limited to, bodily injury, property damage-broad form, and personal injury, for the hazards of Premises/Operation, broad form contractual, independent contractors, and products/completed operations. Such coverage shall have limits of liability of not less than \$1,000,000 per occurrence, \$5,000,000 aggregate; and property damage of not less than \$1,000,000. These limits may be satisfied by Lessee's comprehensive general liability coverage or in combination with an umbrella or excess liability policy. Lessee must keep in force during the Initial Term and any Renewal Terms of this Agreement a policy covering damages to all property at the Leased Premises. The amount of the property insurance shall be sufficient to replace the damaged property, including loss of use, and shall contain ordinance and law coverage. All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and shall be reasonably satisfactory to Landlord. Landlord shall be named as an additional insured on such insurance policies and Lessee shall provide Landlord with applicable extensions or riders verifying such coverage.

10. **Indemnification.** Lessee shall indemnify and hold harmless Landlord and any of its officers, directors, agents, or employees from and against all claims, actions, losses, expenses or damages or liabilities, including but not limited to attorneys' fees and expenses of settlement, caused by or arising out of the performance, failure to perform, or breach of any of Lessee's obligations, covenants, or warranties under this Agreement. This indemnification obligation shall survive the expiration or earlier termination of this Agreement, and shall not be limited by insurance that Lessee is required to provide pursuant this Agreement or otherwise.

11. **Default.**

The occurrence of any one or more of the following events shall constitute a default hereunder by Lessee:

- A. Any FCC authority under which Lessee operates is revoked or suspended or otherwise terminated;
- B. Lessee's operations interfere with the transmission or reception of any broadcast signal of Landlord or of any of Landlord's other lessees and Lessee has not eliminated such interferences;
- C. Lessee fails to pay rent as required hereunder, or any part thereof, and such default shall continue for a period of thirty (30) days after written notice thereof;
- D. Lessee knowingly fails to perform any of its other obligations under this lease within ten (10) days after written notice and demand;
- E. If Lessee shall at any time make a general assignment for the benefit of creditors or become adjudicated a bankrupt, or upon the sale under execution of said leasehold estate or any part thereof, or if a receiver be appointed to take care of the leased premises.

In the event of any such default by Lessee, Landlord shall give written notice to Lessee of such default and that it has ten (10) days after such notice to cure the same.

12. **Sublease.** Lessee shall not let or sublet the whole or any part of the premises, or assign this Agreement or any rights or interests hereunder, either voluntarily or by operation of law, or allow the Leased Premises to be

occupied by anyone other than Lessee without the prior written consent of Landlord; provided that, in the event of a sale or transfer of Lessee, or its assets, the purchaser may continue the use of the Leased Premises under the terms herein provided, subject to Landlord's consent which shall not be unreasonably withheld.

13. **Assignment.** This Agreement and all of Landlord's rights and obligations hereunder may be assigned or transferred by Landlord to such successors in interest or to such assignees of all or part of Landlord's business as Landlord may determine in its sole discretion.
14. **Unanticipated Events.** Landlord shall not be liable for failure to perform any of its obligations hereunder if such failure is caused by any strike or labor dispute or any cause beyond its control, including without limitation any energy shortage or disruption; and shall not be liable in any case for consequential or incidental damages or for loss of profits with respect to any claim by Lessee arising out of the performance, failure to perform or breach of any of Landlord's obligations hereunder. In the event that either Party hereto shall be delayed or hindered in or prevented from the performance of any of their or its respective responsibilities anywhere herein contained, by reason of (i) the destruction, in whole or in part, of any building or improvement forming a part of the entire Premises, or (ii) strikes, or (iii) lockouts, or (iv) labor disputes, or (v) war, whether declared or undeclared, or (vi) riot, or (vii) Act of God, or (viii) embargoes, or (ix) delays in transportation, or (x) inability to procure materials and/or labor, or (xi) failure of power, or (xii) unreasonably restrictive governmental laws or regulations, whether valid or not, or (xiii) insurrection, or (xiv) pandemics or epidemics or (xv) any other reason other than financial, beyond the reasonable control of such Party, and not the fault of the Party so delayed or hindered in or prevented from performing work or doing acts otherwise required under this Agreement, then performance of such work or doing of such acts shall be excused for the period of the delay, and the period for the performance of such work or doing of such acts shall be extended for a period equivalent to the period of such delay; provided that, the provisions of this Section shall not operate so as to excuse or release Lessee from its obligations hereunder.
15. **Acknowledgement of Events.** The Parties acknowledge and agree that the global COVID-19 pandemic ("COVID-19") is ongoing, dynamic, unpredictable, and as such may impact the ability of the Parties to meet their obligations under this Agreement. The Parties agree that, for so long as there is an impact of COVID-19 on either Party's performance, all performance efforts shall be on a reasonable efforts basis only and they shall not be responsible for failure to meet its obligations, to the extent that it can be demonstrated that either is precluded from doing so as a result of COVID-19. The Parties shall work, in good faith, to make any

reasonable adjustments that may be required as a result of COVID-19.

16. **Mechanic's Liens.** Lessee shall not permit any mechanic's or materialmen's or other liens to exist against the Premises for any labor or material furnished Lessee in connection with work of any character performed on Premises by or at the direction of Lessee. However, Lessee shall respectively have the right to contest the validity or amount of any such lien, but upon the final determination of such questions shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at the contestant's own expense. If Lessee desires to contest any such lien, then prior to commencing such contest it will furnish Landlord with a bond, in form, content, amount and issued by a surety satisfactory to Landlord, to secure the payment of such obligation.
17. **Survival of Terms.** The provisions herein relating to warranties, indemnification, insurance, and Hazardous Materials apply notwithstanding any other provision of this Agreement and shall survive termination, performance or expiration of this Agreement.
18. **Applicable Law and Venue.** The provisions of this Agreement and all duties, obligations and rights arising therefrom shall be governed by and construed in accordance with the domestic laws of the State of Illinois, without giving effect to any choice of law or conflict of law principles or rules (whether of the State of Illinois or any other jurisdiction) that could otherwise be construed to cause the application of the laws of any jurisdiction other than the State of Illinois. In the event of any claim or suit regarding this Agreement, Ford County, Illinois shall be the applicable venue for any such claim(s) or suit.
19. **Notice.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, or (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, or (c) sent by overnight delivery by a reputable courier to the address of the Party set forth herein or (d) telecopied to the facsimile number of the Party set forth in this Section. Such notice or communication shall be deemed given and received (i) if sent by personal delivery or by overnight courier, when delivered, (ii) if sent by telecopier, when evidence of successful transmission by telecopier has been received by sender or, (iii) in the case of mailed notice, four (4) days following deposit in the United States mail. Shall be provided by written notice in the manner detailed in this Section. Such notice shall be sent as follows:



If to Landlord, to:  
Eastern Illinois Electric Cooperative, Inc.  
330 Ottawa Rd.  
Paxton, IL. 60957  
ATTN: President/CEO

If to Lessee, to:  
Ford County, Illinois  
235 N. American St.  
Paxton, IL 60957  
ATTN: Board Chairperson

20. **Agreement Termination.** Except as Set forth in Section 2 hereof (for which no notice is required), this Agreement maybe terminated by either Party upon sixty (60) days written notice to the other. In the event that this Agreement is terminatedor not renewed, Lessee shall have Three Hundred Sixty Five (365) days from termination or non-renewal to remove its facilities and related equipment from the Leased Premises, and repair and restore the Leased Premises to its pre-Agreement condition. At the end of such\_termination or expiration, Lessee shall also peaceably quit and surrender to the Landlord possession of the Leased Premises subject to the other provisions of this Agreement. If within such Three Hundred Sixty Five (365) days Lessee does not remove such facilities and equipment, then it shall be deemed to have been abandoned by Lessee and Landlord may treat it as the Landlord's own and retain, remove or dispose of it as it sees fit; provided that, that in the event Landlord undertakes removal and disposal, Lessee shall reimburse Landlord for the costs and expenses thereof. In addition, Lessee shall be responsible for the cost and expense of any repair, damage, rent, additional rent, and reasonable attorney's and paralegal's fees and other charges associated with this Agreement, all of which shall be immediately due and payable from Lessee to Landlord. In the event of termination or non-renewal of this Agreement, Landlord shall have the option to purchase the facilities and related equipment at their current fair market value as determined in good faith by the Parties. In the event of such purchase and sale, Landlord shall undertake all future responsibility for the facilities and related equipment; provided that, Lessee shall remain liable for any obligations, debts, expenses, or claims of any kind or character which arose prior to such sale to Landlord, all of which shall survive thereafter.
21. **Alternative Dispute Resolution.** Landlord and Lessee shall attempt to settle any claim or controversy arising out of this Agreement through consultation, negotiation and cooperation. If such attempts fail, then the dispute shall first be submitted to a mutually acceptable neutral advisor for mediation, as the Parties shall

agree upon in advance. Neither of the Parties shall unreasonably withhold acceptance of such an advisor, and his or her selection shall be made within thirty (30) days after notice by the other Party demanding such mediation. Cost of such mediation or any other alternate dispute resolution agreed upon by the Parties shall be shared equally by Landlord and Lessee. Any dispute which cannot be so resolved between the Parties within ninety (90) days of the date of the initial demand by either Party for such mediation, shall be resolved by court proceeding. The use of such a procedure shall not be construed to affect adversely the rights of either Party under the doctrines of laches, waiver or estoppel. Nothing in this Section shall prevent either Party from pursuing court proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a Party or others.

22. **Hazardous Materials.** Lessee shall not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials (as hereinafter defined) in, on, under, around or above the Leased Premises now or at any future time, except in accordance with the terms of this Agreement, and shall indemnify, defend, and save Landlord harmless from any and all actions, proceedings, claims, costs, expenses and losses of any kind, including, but not limited to, those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may arise in connection with the existence of Hazardous Materials on the Premises occurring or caused by the acts or omissions of Lessee in whole or in part during the Term hereof. The term "**Hazardous Materials,**" when used herein, shall include, but shall not be limited to, any substances, materials, or wastes that are regulated by any local governmental authority, the State of Illinois, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive, carcinogenic, or other properties that may be hazardous to human health or the environment, including without limitation, above or underground storage tanks, flammables, explosives, radioactive materials, radon, petroleum and petroleum products, asbestos, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides and toxic or hazardous substances or materials of any kind, including without limitation, substances now or hereafter defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" pursuant to applicable federal and state law.



Lessee shall indemnify, defend and hold harmless Landlord and its respective officers, directors, agents and employees and their respective successors and assigns from all fines, suits, procedures, claims liabilities, damages and actions of every kind, and all costs associated therewith (including attorneys', experts' and consultants' fees and costs of testing) arising out of or in any way connected with: (i) any deposit, spill, discharge or other release of Hazardous Materials that is caused by the acts or omissions of Lessee; (ii) Lessee's failure to provide all information, make all submissions, and take all steps required by all applicable governmental authorities; (iii) any violation or alleged violation by Lessee of any Environmental Laws; and (iv) the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup of Hazardous Materials as a result the acts or omissions of Lessee. Lessee's obligations and liabilities under this Section shall survive the expiration of this Agreement.

23. **Waiver.** Failure or delay on the part of Landlord or Lessee to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver thereof. A waiver, to be effective, must be in writing and must be signed by the Party making the waiver. A written waiver of a default at any one time shall not operate as a waiver of any other default or of the same type of default on a future occasion. Except as expressly waived in writing, the Parties shall at all times retain any and all remedies available to them at law or in equity.
24. **Construction of Language.** The terms Lease, Lease Agreement, or Agreement shall be inclusive of each other, and include renewals, extensions or modifications of the Lease. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular shall be held to include the plural and the plural to include the singular, when the sense requires. Section headings and titles are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.
25. **Severability.** If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect
26. **Marginal Headings.** The headings in this Lease are used only for convenience in finding the subject matters, and are not to be taken as part of this Lease, or to be used in determining the intent of the Parties.
27. **No Intended Third Party Beneficiaries.** Landlord and Lessee may each, separately, deal with other persons in connection with the Premises or with other matters that may also relate to or be the subject of this Lease. Landlord and Lessee do not intend to make any such third person with whom each of them may deal an intended third party beneficiary under this Lease. There is no third person who is an intended third party

beneficiary under this Lease. No incidental beneficiary (whatever relationship such person or entity, of any kind or character whatsoever, may have with Landlord or Lessee) shall have any right to bring an action or suit, or to assert any claim against Landlord or Lessee hereunder.

28. **No Partnership or Joint Venture.** Landlord or Lessee shall not be deemed pursuant to the terms of this Agreement to create any binding or legally enforceable agency, partnership, or joint venture relationship.
29. **Due Authority.** Landlord and Lessee represent and warrant to each other, that they have each taken all corporate or other actions necessary to properly and effectively enter into this Agreement and, once executed, this Agreement shall be binding and enforceable against Landlord and Lessee.
30. **Counterparts.** This Agreement may be executed in any number of counterparts as may be convenient or required for the benefit of the Parties. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the Parties hereto. Any signature page to any counterpart may be detached from any such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto, except having attached to it additional signature pages.
31. **Electronic Signatures.** This Agreement may be executed in one or more counterparts and shall be binding on a Party upon execution. Any original executed in counterpart shall be deemed an executed original. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means ("Electronic Signature"), shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Electronic Signature of a Party shall be deemed to be an original signature for all purposes.
32. **Binding Effect.** This Agreement shall extend to and bind the representatives, permitted successors and assigns of the Parties hereto; provided that, such permission shall not be unreasonably withheld. Lessee may file a Memorandum of Lease in the county where the Leased Premises are located. Such memorandum shall be released upon termination hereof. In the event Lessee fails to properly release any such memorandum, Landlord may do so.

33. **Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Agreement.
34. **Complete Agreement; Amendments.** This Agreement, including recitals, and any exhibits or amendments hereto constitute the entire agreement and understanding of the Parties and supersede all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind except as set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both Parties.

IN WITNESS WHEREOF, Landlord and Lessee have caused this Tower Lease Agreement to be executed as of the day and year first above written.

LANDLORD: Eastern Illini Electric Cooperative, Inc.

By: \_\_\_\_\_  
Robert E. Hunzinger, President/CEO

By: \_\_\_\_\_  
Chase Sanders, Manager of Procurement and  
Physical Resources

LESSEE: Ford County, Illinois

By: \_\_\_\_\_  
Debbie Smith, Ford County Board  
Chairman

ATTEST:

\_\_\_\_\_  
Amy Frederick, County Clerk

