



**TO:** The Honorable Mayor and the City Council

**FROM:** Ty Livingston, Director of Planning & Community Development

**DATE:** March 30, 2022

**SUBJECT:** Cabinet Ground Lease Agreement with ETSB

**BACKGROUND:**

The ETSB has approached the City regarding a ground lease agreement with the City in order to install new radio equipment on an existing tower at EastSide Centre. While the City does not own the tower, we do own the property at the base. As such a lease agreement for this property is needed. As I understand it, the new equipment is to the City's benefit to improve emergency communications for both our Police and Fire Departments. As such, the proposal here is to offer them the most favorable lease terms possible. The area for equipment will be within the existing compound and no changes will be visible on the ground.

**RECOMMENDATION:** Approval.

**RESOLUTION NO. 2122-131**

**East Peoria, Illinois**

\_\_\_\_\_, 2022

**RESOLUTION BY COMMISSIONER \_\_\_\_\_**

**WHEREAS**, the Tazewell County Emergency Telephone System Board (“ETSB”) seeks to install new equipment adjacent to the current cell tower location in the west parking lot at EastSide Centre in an effort to upgrade and improve the ETSB emergency communication system that serves the area mainly comprising the City of East Peoria; and

**WHEREAS**, the City and the ETSB have negotiated a five-year Ground Lease Agreement with up to four optional 5-year renewal terms for locating the proposed ETSB cabinet and related equipment for the upgraded and improved ETSB emergency communication system under the terms and conditions as set forth in Exhibit A, attached hereto and incorporated by reference (the “Ground Lease”); and

**WHEREAS**, the proposed new equipment for the upgraded and improved ETSB emergency communication system will directly benefit the emergency communications the City’s Police and Fire Departments; and

**WHEREAS**, the City hereby finds that it is in the best interest of the City to approve this proposed Ground Lease with the ETSB as provided in Exhibit A;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The above recitations are found to be true and correct.

**Section 2.** The Ground Lease with ETSB for the designated location at EastSide Centre is hereby approved, and the Mayor is hereby authorized and directed to execute the Ground Lease on behalf of the City, together with such changes thereto as the Mayor in his discretion may approve; provided, however, that the City shall have no obligation under the terms of this Resolution until an executed Ground Lease has been delivered to the ETSB.

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**ETSB Ground Lease**

**CABINET GROUND LEASE AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, (the “Effective Date”) by and between the CITY OF EAST PEORIA, ILLINOIS, an Illinois municipal corporation, hereinafter called “City” and the TAZEWELL COUNTY EMERGENCY TELEPHONE SYSTEM BOARD, hereinafter called “ETSB,” having its principal offices at 101 S. Capitol Street, Pekin, Illinois 61554.

**WHEREAS**, the City is the owner of the following described real property, which such property is leased to New Cingular Wireless (“Primary Tenant”) pursuant to that certain Lease Agreement between the City of East Peoria and New Cingular Wireless PCS, LLC dated April 6, 2011 (“Primary Lease”), and on which is located a Tower (the “Tower”) owned by the Primary Tenant and a compound for a wireless communication facility, as described in Exhibit “A” attached hereto, in the City of East Peoria, Tazewell County, Illinois; and

**WHEREAS**, the ETSB desires to lease antenna and related equipment space from Primary Tenant on and around said Tower pursuant to a Sublease Agreement with Primary Tenant (“Sublease”); and

**WHEREAS**, as a requirement of the Primary Lease, any sublessor of the Primary Tenant is required to have a ground lease with the City for the sublessor’s equipment building or cabinet and all appurtenances thereto; and

**NOW THEREFORE**, in consideration of the covenants, conditions, agreements, and rents hereinafter set forth, the adequacy of which is hereby acknowledged, the City and the ETSB agree as follows:

**1. ETSB Rights.**

a. The City hereby leases, lets and demises to the ETSB, a 12’ x 20’ area (approximately two hundred forty (240) square feet) of ground space adjacent to the Tower for the ETSB’s equipment building or cabinet and all appurtenances thereto as may be described generally in Exhibit B. The City also grants to the ETSB the right-of-way for ingress and egress to and from said equipment building or cabinet in the same locations granted to Primary Tenant, for the purpose of installing, operating and maintaining facilities to provide wireless communication service. The equipment space and ground space described above are hereinafter referred to as the “Leased Premises,” which are more particularly shown on Exhibit “B.”

b. The ETSB’s equipment cabinet and related equipment (the “Cabinet facilities”), shall be installed at ETSB’s expense substantially as shown on Exhibit “B.” Said equipment cabinet and all associated foundations and equipment shall be owned by ETSB and shall be removed from the Leased Premises by ETSB within a reasonable period following termination of this Lease, but in no event later than six (6) months thereafter.

The equipment building or cabinet will be placed adjacent to the Tower as described in Exhibit "B."

c. The City shall grant any and all easements on the Leased Premises as may be required by the appropriate electric, telephone, and any other utility company for the purpose of servicing the ETSB's Cabinet facilities and for connection of the ETSB's Cabinet facilities to its equipment on the Tower. The ETSB shall not use or permit the property to be used for any purpose other than for its Cabinet facility. The City shall allow the ETSB to install, operate, maintain, replace and remove its Cabinet facilities, and related cables, wires, conduits, air conditioning equipment, and other appurtenances as it may from time to time require. Although such equipment and appurtenances may become fixtures, they shall be and shall remain the property of the ETSB, and the ETSB shall have the right and obligation to remove all of them at the expiration or termination of this Lease. The ETSB, at its sole expense shall promptly repair the property once the fixtures are removed by the ETSB so that the property will be in substantially the same condition that it was at the beginning of the Lease. The ETSB shall have twenty-four (24) hour, seven (7) days a week access to the Leased Premises in order to perform its business functions.

d. Notwithstanding anything else to the contrary herein, this Agreement is subordinate to and subject to the rights granted to the Primary Tenant pursuant to the Primary Lease between the City and New Cingular. This Lease is being entered pursuant to the terms of the Primary Lease, requiring as a prerequisite to subleasing by the Primary Tenant, that a ground lease be executed between the City and the sublessor.

**2. Access.** Prior to and after the Effective Date and subject to the rights granted to the Primary Tenant, the ETSB and its authorized agents shall have access to the Leased Premises at such times as the City and the ETSB mutually agree for the purpose of undertaking any necessary tests, studies and inspections relating to the ETSB's proposed use of the Leased Premises. During the term of this Lease, only qualified and adequately insured agents, contractors or persons under the ETSB's direct supervision and control will be permitted to climb the Tower structure or to install or remove the ETSB's antennas and/or transmission lines from the Tower or install or service the Cabinet facilities.

**3. Term and Rental.**

a. The initial term ("Initial Term") of this Lease shall be five (5) years beginning on the earlier to occur of: (i) 120 days after full execution of the Sublease, or upon the ETSB's commencement of construction at the Leased Premises. Rent shall be paid in equal monthly installments, in advance, to City or to such other person, firm or place as City may from time to time so designate in writing. In any event, and notwithstanding the foregoing terms, the Term of this Lease will be coterminous with the sublease between the Tenant and the Primary Tenant on the Tower.

b. **Rental Payments.** In consideration of the Lease of the Leased Premises, the rental sums are based on the annual rates set forth as follows:

i. The first year's rental shall be \$1 payable to the City by the ETSB in annual installments.

ii. The rent shall be payable in advance, on an annual basis, on the 1st day of each year throughout the term hereof.

iii. No increase in this rent amount is anticipated throughout the duration of the agreement.

c. Utilities. The ETSB will be responsible for the ETSB's utilities at the Leased Premises. If provisions for emergency are required, the ETSB will be responsible for the installation and maintenance of stand-by generators as required.

**4. Additional Terms.**

a. This lease shall be automatically extended for four (4) additional five (5) year terms, each being a renewal term ("Renewal Term"), unless the ETSB provides written notice of its intention not to renew this Lease no later than three (3) months prior to the expiration of the Initial Term or of the then current Renewal Term, as the case may be; provided, however, such automatic right of renewal is contingent upon the ETSB not being in default of this Lease.

b. Notwithstanding the above, this Lease will be conterminous with the ETSB's Sublease of space from Primary Tenant and will terminate upon termination of that Sublease.

c. PROVIDED HOWEVER, if the ETSB is not in default hereunder and shall have paid all rents and sums due and payable to City by the ETSB as required herein, the ETSB shall have the right to terminate this Lease at any time. Upon such termination, this Lease shall become null and void, and the parties shall have no further obligations, including the payment of money, to each other.

**5. Tenants Use of Premises.** The ETSB may use the Leased Premises to construct, remove, replace, service, maintain, secure and operate ground equipment for a communications facility. The ETSB shall obtain all permits and approvals as may be required by any federal, state or local authorities. The City shall have the right to approve plans for any improvements installed by ETSB on the Leased Premises, such approval not to be unreasonably withheld, conditioned or delayed. The ETSB shall be allowed to place on the Leased Premises all signs required by federal, state, or local law.

**6. ETSB Covenants.** The ETSB covenants and agrees that the ETSB's equipment, its installation, operation and maintenance will:

a. Not interfere (physically or electronically) with the Primary Tenant's use of the Tower or any municipal uses at the Leased Premises. The ETSB shall conduct all

of the ETSB's activities and operations under this Lease in a manner to assure that the City's public safety, its emergency operations, communications, utility communications and utility operations (if any) are operated without obstruction or interference and that the City's other facilities on the Leased Premises are not damaged or interfered with, including the City's lease to and operations of the Primary Tenant. In the event there is harmful interference, damage or obstruction to said Tower or grounds or use thereof or other municipal uses, the ETSB will promptly take all steps necessary to identify the problem, and, if caused by the ETSB's equipment, take all reasonable steps to eliminate said harmful interference within thirty (30) days after notice is received from the City to the ETSB advising of the interference. If said interference cannot be eliminated within ten (10) days after receipt of notice thereof, the ETSB agrees to immediately suspend operations (transmissions), except for intermittent testing, at the Leased Premises while the interference problems are studied and a means found to mitigate them. If said interference cannot be eliminated, then the ETSB shall remove its building and equipment from the City's property and this Lease shall hereupon be terminated.

- b. Maintain its Cabinet Facilities in a safe condition, in good repair and in a manner reasonably suitable to the City so as not to conflict with the use of or other leasing of the Tower by the City. In carrying out its maintenance responsibilities, the ETSB shall not interfere with the use of the Tower, the property, related facilities, or other equipment of other tenants.
- c. Comply with all laws relating to the ETSB's specific and unique nature of use of the Leased Premises and building codes requiring modifications to the Leased Premises due to the improvements being made by the ETSB in the Leased Premises.

**7. Indemnification.**

(a) The ETSB agrees to indemnify, defend and hold the City harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Cabinet Facilities and the ETSB's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of the City, its employees, agents or independent contractors.

(b) The City agrees to indemnify, defend and hold the ETSB harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of the City or its employees or agents, or the City's breach of any provision of this Agreement except to the extent attributable to the negligent or intentional act or omission of the ETSB, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, the ETSB and City each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(d) Nothing in this Lease shall constitute a waiver of any defense City or ETSB may have to any cause of action or claim brought under or as a result of the operations under this Lease including and without limitation the defense of governmental immunities, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/, et seq, or the Emergency Telephone System Act, 50 ILCS 750/, et seq, .and all such defenses are expressly reserved.

**8. Environmental Issues.** The City, its heirs, grantees, successors, and assigns shall indemnify, defend, reimburse and hold harmless the ETSB from and against any and all environmental damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property or arising in any manner whatsoever out of the violation of any environmental requirements pertaining to the Property and any activities thereon, which conditions exist or existed prior to or at the time of the execution of this Lease or which may occur at any time in the future as a result of the actions of the City or its agents. The ETSB shall indemnify, defend, reimburse and hold harmless the City from and against any and all environmental damages arising from the presence Hazardous Materials upon, about or beneath the Property or migrating to or from the Property or arising in any manner whatsoever out of the violation of any environmental regulations pertaining to the Property and any activities thereon which occur as a result of the ETSB's use of the Property or presence thereon.

**9. Insurance.** During the term of this Lease, the ETSB will carry commercial general liability insurance with an insurance company licensed to do business in the State of Illinois rated at least A- by Best Rated Carriers approved to do business in Illinois by the State Insurance Commission with customary coverage and exclusions in the following amounts:

Bodily Injury	\$1,000,000 for personal injury including, without limitation, bodily injury and death, to any one person and \$2,000,000 for all injuries sustained by more than one person in any one occurrence.
Property Damage	\$1,000,000 for damage as a result of any one accident covering the Leased Premises and the ETSB's use thereof.

The ETSB may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance that the ETSB may maintain. The ETSB agrees to furnish the City with certificates of insurance certifying that the ETSB has in force and effect the above specified insurance. The ETSB further agrees to cause said policies of insurance to reflect the City as an additional insured, to the extent permitted by applicable law. The policy shall bear endorsements to the effect that insurer agrees to notify the City not less than thirty (30) days in advance of any modification or cancellation thereof.



**10. Taxes.** The ETSB shall pay its pro-rata share of applicable taxes which is attributable to the ETSB's use of the Leased Premises.

**11. Utilities.** The ETSB shall have a separate power meter installed for its electric service and the ETSB agrees to pay any and all costs related to said electric service and any other utilities required for its facilities on the Leased Premises.

**12. Quiet Title.** The City covenants that the ETSB, on paying the rent and performing the covenants by it herein made, shall and may peaceably and quietly have, hold and enjoy the Leased Premises under the terms and conditions specified in this Lease, subject to the rights of Primary Tenant under its lease.

**13. Choice of Law.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Illinois. Any litigation concerning this Lease be conducted exclusively in Tazewell County, Illinois and the parties hereby agree to the venue and personal jurisdiction of these courts.

**14. Notices.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, postage prepaid, return receipt requested, addressed as shown below (or to any other address that the party to be notified may have designed to the sender by like notice):

**ETSB:** Tazewell County ETSB  
101 S. Capitol Street  
Pekin, IL 61554

**City:** City of East Peoria  
Attention: Mayor  
401 W. Washington Street  
East Peoria, IL 61611

**15. Successors; Assigns.** This Lease shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

**16. Default; Termination.** If either party breaches a provision of this Lease, the non-breaching party shall provide and deliver the other party written notice of the alleged breach. If the breaching party has not cured the breach within thirty (30) days of the receipt of such notice (the "Cure Period") or if the breach cannot be cured within the Cure Period, and the breaching party has not performed substantial work to cure the breach within the Cure Period, the non-breaching party may then give written notice of its intent to terminate this Lease. Such termination shall become effective ten (10) days after the breaching party's receipt of the notice of intent to terminate; provided that the breaching party has not cured the breach within such additional ten (10) day period.

Upon expiration or termination of this Agreement, the ETSB shall at its sole cost and expense remove all of its equipment from the Leased Premises and shall upon request of the City

restore the Leased Premises to substantially the same condition as existed prior to the commencement of this Lease.

**17. Signs.** The City shall allow the ETSB to place any sign or placard on the Leased Premises or on the Cabinet facilities and appurtenances attached thereto as required by federal, state, or local law, including, without limitation, with the City’s Sign Ordinance.

**18. Integration/No Representations.** It is hereby mutually agreed and understood that this Lease contains all agreements, promises and understandings between the City and the ETSB and that no verbal or oral agreements, promises or understandings shall or will be binding upon either the City or the ETSB in any dispute, controversy or proceeding at law, and any addition to, variation or modification of this Lease shall be void and ineffective unless in writing signed by the parties hereto.

**IN WITNESS WHEREOF,** the parties signing by and through their duly authorized representatives hereto have set their hand and affixed their respective seals on the dates and year above written.

**City:**

Dated: \_\_\_\_\_

CITY OF EAST PEORIA, an Illinois  
municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**ETSB:**

Dated: \_\_\_\_\_

TAZEWELL COUNTY EMERGENCY  
TELEPHONE SYSTEM BOARD

By: \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT A**

**Primary Tenant's Leased Premises**

**Common Address:** 1 Eastside Drive, East Peoria, IL

**Legal Description:**

**LEASE AREA**

A PART OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 26 NORTH, RANGE 4 WEST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE N 89°56'05" W, 2498.39 FEET ALONG THE NORTH LINE OF SAID QUARTER SECTION TO A POINT; THENCE S 00°17'59" E, 199.18 FEET TO THE NORTHEAST CORNER OF THE LEASE AREA, THIS BEING THE POINT OF BEGINNING; THENCE S 00°02'30" W, 40.00 FEET TO A POINT; THENCE N 89°57'30" W, 40.00 FEET TO A POINT; THENCE N 00°02'30" E, 40.00 FEET TO A POINT; THENCE S 89°57'30" E, 40.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1,600 SQUARE FEET, MORE OR LESS.

**EXHIBIT B**

**ETSB's Leased Premises**

