

IV. ACTION ITEM

G. Water Tower Lease

LEASE AGREEMENT FOR WATER TOWER AND APPURTENANCES

**Between
Eastern Illinois University
and
City of Charleston**

PREAMBLE

This Lease Agreement ("Lease") is made and entered into as of July 1, 2023 by and between the Board of Trustees of Eastern Illinois University, an arm and agency of the State of Illinois ("Eastern"), and the City of Charleston ("Charleston"), an Illinois municipal corporation. Eastern and Charleston are jointly referred to herein as the "Parties", and individually as "Party".

RECITALS

WHEREAS, Charleston operates a municipal water works throughout its corporate limits that includes infrastructure serving Eastern and serving customers located adjacent to and surrounding the Eastern campus ("City System"); and

WHEREAS, Eastern owns and operates its own distribution system within its campus ("University System"); and

WHEREAS, the University's water system includes a water tower and surrounding property as depicted on Exhibit A attached hereto and incorporated herein, with a common address of 600 Lincoln Ave., Charleston, IL 61920 (the water tower and the surrounding land depicted on Exhibit A is hereafter referred to as the "University Water Tower" or "Premises"), that is connected to the City System; and

WHEREAS, based upon Charleston's familiarity and experience with the operation and management of the City System, the Parties hereto have determined that it is reasonable for Charleston to undertake the responsibility for operating, maintaining and managing the University Water Tower pursuant to this Lease Agreement; and

WHEREAS, the Parties intend the University Water Tower to continue to be of benefit to the City System and the University System.

PROVISIONS

NOW, THEREFORE, in consideration of the mutual agreements contained herein and of the recitals hereinabove set forth, and in further accordance with the Intergovernmental Cooperation Act, Article VII, Sec.10 of the Illinois Constitution and Sec. 8-1-7 of the Illinois Municipal Code, Eastern and Charleston do hereby agree as follows:

SECTION I: Term of Lease Agreement.

In accordance with 30 ILCS 500/40-25, in support of Eastern's water system, the initial term ("Initial Lease Term") of this Lease Agreement shall commence on the Effective Date and shall expire after 30 years on June 30, 2053 unless sooner terminated as provided herein. After the expiration of the Initial Lease Term (unless terminated earlier as provided herein), this Agreement shall automatically renew for up to a maximum of two (2) additional thirty (30) year periods starting on July 1, 2053 (hereinafter "Extended Lease Periods").

Either Party may terminate this Lease during the Initial Lease Term, or any Extended Lease Period, upon not less than three hundred and sixty-five (365) days written notice.

SECTION II: Responsibilities and Obligations of Charleston

City, through its designated officers and employees, shall perform the duties of operating, maintaining and managing the University Water Tower as part of the City System in a cost-effective manner. Those duties and responsibilities shall include but not be limited to the following:

A. Care, Maintenance and Management of University Water Tower

Charleston shall:

- 1) Operate and maintain the University Water Tower in good working order, to assure that water is delivered to the City System's customers, which includes Eastern's water system.
- 2) Make such inspections as are necessary and required by law to *assure* the proper functioning of the University Water Tower
- 3) Report any malfunctions in the equipment or the City System in general to any required regulatory agencies;
- 4) If maintenance or repair work on the tower or pipes serving the tower is necessary, perform work with City forces, prepare bid specifications according to City policy, hire contractors, and perform maintenance work on the tower.
- 5) While performing the maintenance, repair, or operation of the University Water Tower minimize impact to surrounding Eastern property.
- 6) After any type of work is performed on the tower, repair damages or disturbance to the property or landscaping surrounding the tower and restore the disturbed areas to a condition better than or equal to the pre-disturbance condition.
- 7) Prepare and submit any and all reports that may be required by federal, state and local regulatory agencies having jurisdiction over the University Water Tower;
- 8) Provide adequate staff for proper operation and maintenance of the University Water Tower;
- 9) Generally operate and maintain the University Water Tower in compliance with all required permits and applicable federal, state and local rules and regulations;

10) Take any other actions necessary to assure the proper functioning of the University Water Tower.

B. Rent/Payment of Expenses and Accounting of Expenditures:

During the term of this Lease, City shall pay the cost of maintenance, repair, and operation the University Water Tower. Charleston shall in accordance with generally accepted accounting principles and industry standards, keep complete and accurate records of all costs incurred in operating, maintaining and managing the University Water Tower.

SECTION III: Responsibilities and Obligations of Eastern

A. Right to Access.

In consideration of Charleston's provision of services as described in Section II of this Lease, Eastern hereby grants Charleston a lease to access, occupy and control the University Water Tower and surrounding property, as shown in Exhibit A (aka the Premises), as reasonably necessary, for so long as this Lease shall be in force and effect.

B. Wireless Communication Equipment and Leases.

Eastern grants Charleston the right to install and maintain wireless communications facilities (e.g., antennas, generators, cabling) for exclusively governmental purposes on the University Water Tower. All facilities installed on the exterior of the tower must be approved by Eastern.

SECTION IV: Insurance.

The Parties agree to the Insurance provisions attached hereto as Exhibit B.

SECTION V: Access to the University Water Tower.

It is understood by the Parties that Eastern, through its Trustees, agents and designees, consistent with all safety obligations and standards, shall have full and complete access to the site of the University Water Tower. Charleston shall have the right to regulate the time and extent of access if necessary to protect the functioning of the University Water Tower and prevent any safety hazards.

SECTION VI: Successors and Assigns.

The covenants and agreements herein shall be binding upon, inure to, extend to and be for the benefit of the corporate successors of the Parties.

SECTION VII: Remedies.

Upon a breach of this Lease, any Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both, or may seek to obtain rescission for repudiation or material failure of performance. Notwithstanding the foregoing, before the failure of any Party to perform its obligations under this Agreement shall be deemed to be a

breach of this Lease, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Lease may be found to have occurred if such performance has commenced to the satisfaction of the complaining Party within thirty (30) days of receipt of such notice.

SECTION VIII: Severability.

In the event that any phrase, section, paragraph, article or portion of this Lease is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, and such finding of invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining portions of this Lease. None of the Parties shall contest the validity, legality or enforceability of any phrase, section, paragraph, article or provision of this Lease.

SECTION IX: Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of Illinois.

SECTION XI: Execution.

This Lease may be executed by any official(s) of the Parties after its approval by their respective corporate authorities.

SECTION XII: Amendments.

This Lease may be amended in writing by mutual consent of the Parties.

IN WITNESS whereof, the CITY and the Board of Trustees of EASTERN ILLIONIS UNIVERSITY have authorized the execution of this Intergovernmental Lease Agreement this _____day of _____, 2023.

CITY OF CHARLESTON

Board of Trustees of EASTERN ILLINOIS UNIVERSITY

By: _____

By: _____

Title:

Title:

Attest:

Attest:

By: _____

By: _____

Print Name: _____

Title: _____

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EXHIBIT B

Insurance

The following insurance provisions shall apply to the Lease Agreement For Water Tower and Appurtenances between the City of Charleston (“**City**”) and the Board of Trustees of Eastern Illinois University (“**Eastern**”) for the water tower and surrounding property located on Eastern Campus (“**Lease**”).

- 1.1 The City and its contractors, subcontractors, consultants, and agent who perform work and/or undertake operations related to the Lease (hereinafter “**Insuring Entities**” when referenced cumulatively and “**Insuring Entity**” when referenced individually) shall, at their own expense, secure and maintain in effect throughout the duration of this LEASE, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the LEASE of the types and limits shown herein unless otherwise agreed to in writing by Eastern.
- 1.2 The Insuring Entities shall cause the State of Illinois and the Board of Trustees of Eastern Illinois University and their officers, agents, employees, and volunteers to be named as additional insureds by endorsement on all policies except workers’ compensation and professional liability. If any Insuring Entity, other than the City, maintains higher limits than the minimums shown below, the State of Illinois and Eastern shall be entitled to coverage for the higher limits. All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of not less than A - VII according to the A.M. Best Company. In the alternative, the City may instead self-insure through participation in a self-insured intergovernmental risk pool. The City shall require and verify that all contractors, consultants, and vendors maintain insurance meeting all requirements stated herein, and the City shall ensure that ~~the State of Illinois and~~ Eastern, and its officers, agents, employees, and volunteers are additional insureds on such insurance. For CGL coverage, subcontractors, consultants, and vendors shall provide coverage with a form at least as broad as CG 20 38 04 13.
- 1.3 Where policies are permitted to be written on a claims-made basis, then the policy retroactive date must coincide with or precede the start of services under this agreement, and the coverage shall be maintained for at least three years after the completion of the work.
- 1.4 The Insuring Entities shall provide insurance coverage at least as broad in not less than the following amounts unless otherwise agreed to in writing by Eastern:

- a. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01 or equivalent):

Limits:

General Aggregate	\$2,000,000.00
Products/Completed Liability Aggregate	\$2,000,000.00
Each Occurrence	\$2,000,000.00
Personal Injury	\$2,000,000.00

- b. Professional Liability [applicable only to the construction engineering phase of the Project]:

Limits:

Annual Aggregate	\$2,000,000.00
Per Occurrence or Wrongful Act	\$2,000,000.00

- c. Worker's Compensation:

i. Worker's Compensation Insurance shall be provided in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees at the site of the project, and in the event work is sublet, the Consultant shall require each subconsultant to provide Worker's Compensation Insurance. In the event employees engaged in hazardous work under this Agreement at the Project site are not protected under the Worker's Compensation statute, the Consultant shall provide, and cause each subconsultant to provide, adequate and suitable insurance coverage for the protection of each employee not otherwise provided.

ii. Employer's Liability Per occurrence for Bodily Injury or Disease \$2,000,000.00

- d. Automobile Liability:

Coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

Limits: Per occurrence for Bodily Injury and Property Damage: \$2,000,000.00

- e. Umbrella for each of the above-named insurance policies, except worker's compensation.

Limits: Each Occurrence/Aggregate \$2,000,000.00

- f. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions of any Insuring Entity other than the City shall be declared to and approved by the Eastern. At the option of the Eastern, said Insuring Entit(ies) shall either reduce or eliminate such deductibles or self-insured retentions as respects Eastern, and their respective officers, officials, employees and volunteers, or the Insuring Entit(ies) shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related claim administration, and defense expenses.

- g. Other Insurance Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The policy of Commercial General Liability Insurance for Insuring Entities shall include an endorsement naming Eastern as additional insureds.

2. Eastern and its officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of any Insuring Entity, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Insuring Entity's insurance policy.

3. For any claims related to operations and work performed under the LEASE, the Insuring Entity(ies') insurance coverage shall be primary insurance with respect to Eastern or its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by Eastern or its officers, agents, employees, or volunteers shall be excess of the Insuring Entity's insurance and shall not contribute with it.

4. Each certificate of insurance and policy shall contain a provision that termination or failure to renew the policy shall not be made without thirty (30) days written notice to Eastern. Additional insured certificates of coverage will contain a provision that the provider will provide as much written notice as practicable given the conditions surrounding the termination or failure to renew.

h. Waiver of Subrogation

The Insuring Entities, other than the City, agree to waive subrogation which any insurer of such Insuring Entities may acquire from an Insuring Entity by virtue of the payment of any loss. The Insuring Entities shall obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy of each Insuring Entity, other than the City, shall be endorsed with a waiver of subrogation in favor of Eastern for all work performed by said Insuring Entity and its employees, agents, subconsultants and subcontractors.

i. Verification of Coverage

The City shall, upon written request, furnish Eastern with original certificates and endorsements effecting coverage required herein upon request by Eastern. All certificates and endorsements of other Insuring Entities shall be received and approved by the City before work, or operations begin. However, failure to do so shall not operate as a waiver of these insurance requirements. Eastern reserves the right to require complete, certified copies of all required insurance policies of Insuring Entities other than the City, including endorsements affecting the coverage required by these specifications at any time.

2. Eastern shall maintain commercial general liability and property insurance coverage on the Premises and the policy shall be endorsed to name the City, its officers, officials, employees, and agents as Additional Insureds on the appropriate endorsement(s) to the insurance policy or policies, not more restrictive than ISO GC2010 and CG2037 or such equivalent forms, which provides coverage for bodily injury or property damage caused in whole or in part by the acts and omissions of Eastern and those for whose acts Eastern is responsible. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis for these covered claims.