

MEMORANDUM

TO: Gregg Mandsager, City Administrator
FROM: Richard Klimes, Director of Parks and Recreation
DATE: March 1, 2014
RE: Greenwood Cemetery Cell Tower Lease Extension – Resolution Setting Public Hearing

INTRODUCTION:

Please accept this memo and the attached resolution and public notice as a request to set a Public Hearing for the proposed Lease Amendment for the West Cellular Tower in Greenwood Cemetery.

BACKGROUND:

In 1998, the City of Muscatine entered into an agreement to host a cellular tower at Greenwood Cemetery for (6) six (5) year renewable terms. The City was to be paid a 10% increase during each renewal period. The original monthly lease amount was \$500.00 and is currently \$694.31.

The tenant that is renting the west tower is interested in extending the lease time period to 2043 which is an additional (3) three (5) five year periods. The City would continue to receive 10% increases for each renewal period. With the amended lease, the City will also receive 25% of the gross lease payments from all additional tower renters.

RECOMMENDATION/RATIONALE:

At this time, City Staff would recommend that the City Council approve the proposed “Lease Amendment” for the West Cellular Tower in Greenwood Cemetery with TOWERCO 2013 LLC to 2043 with (3) three (5) five year renewal periods with 10% increases for each period and 25% of the gross lease payments for any additional tower leases paid to the City.

BACKUP INFORMATION:

1. Proposed Amendment

Thank you for your time and attention to this matter. Please contact me if you have any questions or concerns.

RESOLUTION NO. _____

**RESOLUTION TO EXECUTE LEASE AMMENDMENT OF PUBLIC PROPERTY IN
GREENWOOD CEMETERY TO TOWERCO 2013 LLC FOR COMMUNICATION
PURPOSES**

WHEREAS, a public hearing was held by the City Council on March 20, 2014 regarding a Lease Amendment of Public Property in Greenwood Cemetery to TOWERCO 2013 LLC for communication purposes, and

WHEREAS, an acceptable lease proposal amendment has been received by the City from TOWERCO 2013 LLC for the West Cellular Tower.

IT IS THEREFORE RESOLVED that the Lease Amendment is approved, the Mayor and City Clerk are hereby authorized to execute said agreement to take effect upon execution.

Passed this _____ day of _____, 2014 and approved this _____ day of _____, 2014.

DeWayne Hopkins, Mayor

Date

ATTEST:

Gregg Mandsager, City Clerk

Date

FIRST AMENDMENT TO SITE LEASE WITH OPTION

This Amended Memorandum of Agreement ("Amended Memorandum") is made effective as of the later of the signature dates below between CITY OF MUSCATINE ("Landlord") and TOWERCO 2013 LLC, a Delaware limited liability company ("Tenant").

RECITALS

1. Landlord and Tenant (as successor in interest to Iowa Wireless Services LP) are parties to that certain lease agreement dated August 20, 1998 (as amended and assigned, the "Lease") for certain real property and easements (collectively the "Premises") which are a portion of that real property owned by Landlord located in the City of Muscatine, County of Muscatine, State of Iowa (the "Land").

A. The Agreement has an original term, including all Renewal Terms (as defined in the Agreement), that would terminate on September 10, 2028 ("Original Term"), and Landlord and Tenant desire to amend the term of the Agreement to provide for additional renewal terms (each a "Renewal Term") beyond the Original Term, and provide for certain other changes as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Agreement as follows:

1. ***One-Time Payment.*** Within fifteen (15) days of the full execution of this Amendment, Tenant shall pay to Landlord a one-time lump sum payment of One Thousand Two Hundred Dollars and No Cents (\$1,200.00), for consideration and to cover Landlord's time and legal review of this Amendment. This one-time lump sum payment shall be deemed fully earned by Landlord and non-refundable.

2. ***Renewal.*** Section 2(D) of the Agreement is amended by deleting the first sentence in its entirety and replacing it with the following:

"Tenant shall have the right to extend the Term for eight (8) successive five (5) year terms (the "Renewal Terms")."

Subject to the terms of the Agreement, and assuming the exercise by Tenant of all renewal options currently in the Agreement, the final expiration date of the Agreement would be September 10, 2043.

3. ***Assignment and Subleasing.*** Section 2(N) of the Agreement is amended by deleting the first two paragraphs in their entirety and replacing them with the following:

"Tenant may assign this Lease upon written notice to Landlord, to any person controlling, controlled by, or under common control with Tenant, or Tenant's radio communications business and assumes all obligations of Tenant under the Lease. Upon such assignment, Tenant shall be

relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder.

Tenant may sublease the Premises, upon written notice to Landlord, only if such sublease is subject to the provisions of the Lease. Upon Tenant subleasing or licensing the Premises to a third party wireless telecommunication provider ("Co-locator"), Tenant shall remit or pay to Landlord, twenty-five percent (25%) of the rent or revenue Tenant receives from subleasing or licensing a portion of the Premises to the Co-Locator. Such revenue share payment shall become due and payable only at such time when the Tenant has received its rental payment from the Co-Locator. If a Co-Locator terminates its sublease or license agreement with Tenant, Tenant shall no longer be required to make the revenue share payment. Any payments made by the Co-Locator to Tenant reimbursing Tenants for any costs or capital outlays related to the maintenance or physical improvements to the Premises shall not be considered revenue and therefore not subject to a revenue share payment.

4. ***Agreement in Full Force.*** Except as expressly amended hereby, all terms and conditions of the Agreement shall remain in full force and effect, and, in the event of any inconsistencies between this Amendment and the terms of the Agreement, the terms set forth in this Amendment shall govern and control. The covenants, representations and conditions in the Agreement are mutual and dependent.

5. ***EstoppeL*** Landlord hereby certifies to Tenant (i) that the Agreement is in full force and effect and has not been amended, modified or supplemented in any respect, either orally or in writing, except for this Amendment and the amendments referenced in this Amendment (if any) and is the only agreement relating to the Premises entered into between the Tenant and Landlord; (ii) the Agreement as amended hereby fully represents the entire agreement between the parties thereto and has not been assigned by Landlord other than as set forth herein; (iii) there is no existing default on the part of the Landlord or Tenant in any of the terms and conditions thereof and no event has occurred which, with the passing of time or giving of notice, or both, would constitute an event of default under the Agreement; (iv) rent has been paid through and including the date hereof as called for in the Agreement and (v) Landlord does not have any offsets, credits or defenses with respect to the Agreement.

6. ***Recording of Agreement.*** Landlord agrees to promptly execute and deliver to Tenant a memorandum of the Agreement in recordable format upon request of Tenant.

7. ***Counterparts.*** This Amendment may be executed in one or more counterparts which shall be construed together as one document.

8. ***Defined Terms.*** Unless otherwise defined, all defined terms used in this Amendment shall have the meanings ascribed to them under the Agreement.

9. ***Successors and Assigns.*** Upon full execution by Tenant and Landlord, this Amendment (i) shall be binding upon and shall inure to the benefit of each of the parties and their respective successors, assigns, receivers and trustees; and (ii) may be modified or amended only by a written agreement executed by each of the parties.

10. ***Non-Binding Until Fully Executed.*** This Amendment is for discussion purposes only and does not constitute a formal offer by either party. This Amendment is not and will not be binding on either party until and unless it is fully executed by both parties.

11. ***Recitals.*** The recitals at the beginning of this Amendment are incorporated in and made a part of this Amendment.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

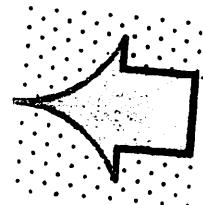
IN WITNESS WHEREOF, the parties have executed this Amendment as of the later of the signature dates below.

LANDLORD:
THE CITY OF MUSCATINE

By: _____
Name: _____
Title: _____
Date: _____

TENANT:
TOWERCO 2013 LLC, a Delaware limited
liability company

By: Daniel Hunt
Name: Daniel Hunt
Title: Vice President & CFO
Date: 1/30/2014



ORIGINAL

Site: IA-0058
Market: Des Moines, MTA

SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is effective this 20th day of August, 1998 between City of Muscatine ("Landlord"), and IOWA WIRELESS SERVICES, LP, ("Tenant").

1. Option to Lease.

A. In consideration of the payment of Two Hundred Fifty Dollars (\$250.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease a portion of the real property described in attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term, commencing on the date hereof and ending at 12:00 AM on the 20th day of August, 1999 (the "Option Period"). The Option Period may be extended by Tenant for an additional 12 months upon written notice to Landlord and payment of the sum of Two Hundred Fifty Dollars (\$250.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

B. During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises from all applicable government and/or regulatory entities (the "Governmental Approvals") including appointing Tenant as agent for all conditional-use permit applications and zoning change applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, conditional-use permits, perform surveys, soil tests, and other engineering procedures or environmental investigations on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section K hereof, using the form of Notification attached hereto as Exhibit F.

2. Terms of Lease.

If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant without the necessity of the Parties executing any additional lease instruments, that certain portion of the Property sufficient for placement of Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in attached Exhibit B (collectively referred to hereinafter as the "Premises"):

The Premises, located in a portion of the E ½ of the NW ¼ of Section 3, Township 76N, Range 2W of the 5th P.M., City of Muscatine, Muscatine County, Iowa, comprises approximately 5,625 square feet.

A. Term. The initial term of this Lease shall be five years commencing on the date of the exercise of the option by Tenant, (the "Commencement Date"), and terminating at Midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred.

B. Permitted Use. The Premises may be used by Tenant for, among other things, the transmission and reception of radio communication signals and for the construction, maintenance, repair or replacement of related facilities, towers, antennas, equipment or buildings and related activities. Tenant shall obtain, at Tenant's expense, all Governmental Approvals and may (prior to or after the Commencement Date) obtain a title report, perform environmental and other surveys, soil tests, and other engineering procedures on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations and Governmental Approvals. Landlord agrees to reasonably cooperate with Tenant (at no cost to Landlord), where required, to perform such procedures or obtain Governmental Approvals. If necessary, Tenant has the right to immediately terminate this Lease if Tenant notifies Landlord of unacceptable results of any title report, governmental approvals, environmental survey or soil tests prior to Tenant's installation of the Antenna Facilities (as defined below) on the Premises.

C. Rent

(i) Tenant shall pay Landlord, as Rent, Five Hundred Dollars (\$500.00) per month ("Rent"). Rent shall be payable in advance beginning on the Commencement Date for the remainder of the month in which the Commencement Date falls and for the following month, and thereafter rent will be payable monthly in advance on the fifth day of each month for the following month to the City of Muscatine at Landlord's address specified in Section K below. For the purpose of this Lease, all references to "month" shall be deemed to refer to a calendar month. If the Commencement Date does not fall on the fifth day of the month, then Rent for the period from the Commencement Date to the last day of the following month shall be prorated based on the actual number of days from the Commencement Date to the last day of the following month.

(ii) If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be refunded to Tenant.

D. Renewal. Tenant shall have the right to extend this Lease for five additional, five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that rent shall be increased by ten percent (10%) of the rent paid over the preceding term.

This Lease shall automatically renew for each successive Renewal Term unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Lease, at least 60 days prior to the expiration of the term or any Renewal Term.

If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

E. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

F. Improvements; Utilities; Access.

(i) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its system, including without limitation radio transmitting and receiving antennas, and tower and bases not to exceed a height of 150 feet, an electronic equipment shelter, and related cables and utility lines (collectively the "Antenna Facilities"). The Antenna Facilities shall be initially configured generally as set forth in Exhibit C. Tenant shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right, to remove the Antenna Facilities upon termination of this Lease.

(ii) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, the construction of a fence.

(iii) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located thereon in commercially reasonable condition and repair during the term of this Lease, normal wear and tear excepted. Upon termination of this Lease, Tenant shall remove the Antenna Facilities and the Premises shall be returned to Landlord in good, usable condition, normal wear and tear excepted.

(iv) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall install separate meters for utilities used on the Property.

(v) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement ("Easement") for ingress, egress, and access (including access as described in Section 1B of the Option to Lease) to the Premises adequate to install and maintain utilities, which include, but are not limited to the installation of underground power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon prior written notice, provided Tenant's Antenna Facilities remain fully functional and continue to transmit at full power, Landlord shall have the right, at

Landlord's sole expense, to relocate the Easement to Tenant, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease.

(vi) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the term of this Lease and any Renewal Term.

(vii) The antenna facilities are to be constructed for collocation which Tenant is actively pursuing.

(viii) Subject to the written approval of Tenant's Engineer, which shall not be unreasonably withheld or delayed, Landlord is granted the right to install its own transmitting and receiving antennas, related equipment, cables and utility lines, on the tower at its own expense and without payment of any fees to Tenant. However, such installation shall not interfere with Tenant's use of its facilities or the site, and any operation expense and maintenance of the Landlord's facilities shall be Landlord's expense.

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

(i) Upon thirty (30) days' written notice by Landlord for failure to cure a material default for payment of amounts due under this Lease within that thirty (30) day period;

(ii) Upon thirty (30) days' written notice by either party if the other party defaults and fails to cure or commence curing such default within that 30-day period, or such longer period as may be required to diligently complete a cure commenced within that 30-day period;

(iii) Upon ninety (90) days' written notice by Tenant, if it is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(iv) Upon ninety (90) days' written notice by Tenant if the Property, Building or the Antenna Facilities are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(v) Immediately upon written notice if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction;

(vi) At the time title of the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to

render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

(vii) Immediately upon written notice in the event that Tenant determines the existence of a violation of any environmental law or a condition that requires remediation under any environmental laws that existed as of and/or prior to the Commencement Date, or which may be the basis for assertion of any third party claims. If Tenant elects to continue this Lease, Landlord shall be responsible for taking all actions necessary to investigate and remediate said contamination in accordance with Landlord's obligations as set out in Paragraph M.

H. Taxes. Tenant shall pay any property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. In the event that Landlord has a successor in title, then Tenant shall have the option to pay said taxes and deduct them from Rent amounts due under this agreement.

I. Insurance and Subrogation.

(i) Tenant will provide Commercial General Liability Insurance in an aggregate amount of \$1,000,000 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(ii) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

J. Hold Harmless. Tenant agrees to hold Landlord harmless from claims arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the negligence or intentional acts of Landlord, its employees, agents or independent contractors, and except for claims released under the provisions of Section I (ii) of this Agreement.

K. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Tenant: Iowa Wireless Services, L.P.
Attn.: PCS Leasing Administrator
312 8th Street Suite 410
Des Moines, Iowa 50309
Phone: 515-258-7000
Fax: 515-258-7100

If to Landlord: City of Muscatine
215 Sycamore Street
Muscatine, Iowa 52761
Phone: 319-264-1550
FAX: 319-264-0750

L. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.

Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

M. Environmental Laws. Tenant represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws (as defined in attached Exhibit D). Landlord represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance (as defined in attached Exhibit D) as of the date of this Lease.

Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, not caused solely by Tenant, that have occurred or which may occur on the Property.

Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Landlord may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or release into the environment arising solely from Tenant's activities on the Property.

Landlord agrees to defend, indemnify and hold Tenant harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Tenant may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from Landlord's activities during this Lease and from all activities on the Property prior to the commencement of this Lease.

The indemnifications in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

N. Assignment and Subleasing. Subject to the written approval of Landlord, which shall not be unreasonably withheld or delayed, Tenant may assign this Lease upon written notice to Landlord, to any person controlling, controlled by, or under common control with Tenant, or any person or entity that, after first receiving FCC or state regulatory agency approvals, acquires Tenant's radio communications business and assumes all obligations of Tenant under this Lease. Upon such assignment Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder.

Tenant may sublease the Premises, upon written notice to and approved by Landlord, only if such sublease is subject to the provisions of this Lease. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed or withheld.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns, (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagee located on the Premises, except that the cure period for any Mortgagee shall not be less than thirty (30) days after receipt of the default notice, as provided in Section G of this Lease. All such notices to Mortgagees shall be sent to Mortgagee at the address specified by Tenant upon entering into a financing agreement. Failure by Landlord to give Mortgagee such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagee to cure any default and to remove any property of Tenant or Mortgagee located on the Premises, as described in Section P.

O. Successors and Assigns. This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

P. Miscellaneous.

(i) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(ii) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(iii) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(iv) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

(v) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as Exhibit E) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party.

(vi) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(vii) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

(viii) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(ix) The submission of this document for examination does not constitute an offer to lease or a reservation of or option for the Premises and shall become effective only upon execution by both Tenant and Landlord

(x) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(xi) The parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property) and Exhibit C (the site plan) may be attached to this Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, B and/or C, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Lessee with such final, more complete exhibit(s).

(xii) At this termination of this Lease for any reason, the Tenant shall continue to pay rent at the current monthly rental rate until Tenant's Antenna Facilities are removed from the site, and until the site is restored to as near the original condition as practicable.

The Execution Date of this Lease is the 20th day of August, 1998.

LANDLORD:

CITY OF MUSCATINE

By:

OF MUSCATINE

Its:

7

By:

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—
—

Its:

Tax ID #: 42-6005008

TENANT:

IOWA WIRELESS SERVICES, L.P.

By INS WIRELESS, INC., as General Partner

By:

Michael W. L.

[tex]

VPD OPERATIONS