

**MEETING DATE: 03/02/20**

**ITEM: 10C**

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## **AGENDA ITEM SUMMARY**

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**Subject: Renewal of water tower antenna lease agreement**

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### **Background Summary:**

This lease has been in existence for quite awhile for an antenna on top of the water tower. It is set to expire in April 2020 and we have been in negotiation with I Wireless for the past few months on the terms of a new lease. I am including the final draft of the new lease plus the previous lease and amendments for your review. The term of the lease will be extended for three additional 5 year terms but we may elect to not renew the lease at the end of each of those 5 years.

The amount paid currently on this is \$1600.44 and it will be increased at the beginning of each 5 year period by 15%.

We recommend approval of this lease.

**RESOLUTION NO. 42-20**

***RESOLUTION APPROVING RENEWAL OF THE LEASE AGREEMENT BETWEEN  
CITY OF CHARLES CITY AND I WIRELESS***

WHEREAS, the City Council of the City of Charles City, Iowa had previously approved a lease with Omnitel in 2005 for a parcel of real estate located in Charles City, Floyd County, Iowa, for the purpose of operating a PCS telecommunication facility on the following described real estate, to-wit:

A portion of space on the 820 Rove Avenue Watertower and space on site for an equipment shelter; and

WHEREAS, this lease was recently assigned to I Wireless, and,

WHEREAS, the lease will be for three 5 year terms with the option to cancel the lease at the end of each of those terms, and

WHEREAS, the current rent of \$1600.44 will be increased 15% at the start of each 5 year term,

NOW, THEREFORE, BE IT RESOLVED by the City of Charles City, Iowa meeting in regular session on this 2<sup>nd</sup> day of March, 2020 that the Mayor and City Clerk are hereby authorized and directed to execute a lease with I Wireless for three 5 year terms which will expire in April, 2035.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 2<sup>nd</sup> day of March 2020.

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Dean Andrews, Mayor

Attest:

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Trudy O'Donnell, City Clerk

### THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement (the "**Amendment**") is effective as of the date of execution by the last party to sign (the "**Effective Date**") by and between City of Charles City, Floyd County, Iowa, an Iowa Municipality ("**Landlord**") and T-Mobile Central LLC, a Delaware limited liability company, as successor-in-interest to Iowa Wireless Services, LLC, a Delaware limited liability company ("**Tenant**") (each a "**Party**", or collectively, the "**Parties**").

Landlord and Tenant (or their predecessors-in-interest) entered into that certain Lease Agreement dated April 5, 2018, as amended by First Amendment to Lease Agreement dated August 6, 2012, as further amended by Second Amendment to Lease Agreement dated April 2, 2018 (collectively, the "**Lease**") regarding the leased premises ("**Premises**") located at 820 Rove Avenue, Charles City, Iowa 50616 (the "**Property**").

For good and valuable consideration, Landlord and Tenant agree as follows:

1. At the expiration of the Lease, the Term of the Lease will automatically be extended for three (3) additional and successive five (5) year terms (each a "**Renewal Term**"), provided, that Tenant may elect not to renew by providing Landlord thirty (30) days' notice prior to the expiration of the then current Renewal Term.
2. At the commencement of the first Renewal Term provided for in this Amendment, Tenant shall pay Landlord One Thousand Six Hundred and 44/100 Dollars (\$1,600.44) per month ("**Rent**") in advance, by the fifth (5<sup>th</sup>) day of each month. Any Rent previously paid from and after the commencement of the first Renewal Term provided for in this Amendment shall be offset against the new Rent. Rent shall be adjusted, effective on the first day of the second Renewal Term and each subsequent Renewal Term, by an amount equal to fifteen percent (15%) over the Rent for the immediately preceding Renewal Term.
3. Landlord may freely assign the Lease to its affiliates and will secure Tenant's reasonable consent before assigning the Lease to non-affiliates.
4. Any charges payable under the Lease other than Rent shall be billed by Landlord to Tenant within twelve (12) months from the date in which the charges were incurred or due; otherwise the same shall be deemed time-barred and be forever waived and released by Landlord.
5. All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time

to time designate any other address for this purpose by providing written notice to the other Party.

If to Tenant:

If to Landlord:

T-Mobile USA, Inc.  
12920 SE 38th Street  
Bellevue, WA 98006  
Attn: Lease Compliance/ DM03414A

City of Charles City  
105 Milwaukee Mall  
Charles City, IA 5061

- 6. Landlord will execute a Memorandum of Lease at Tenant 's request. If the Property is encumbered by a deed, mortgage or other security interest, Landlord will also execute a subordination, non-disturbance and attornment agreement.
- 7. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified. To the extent any provision contained in this Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall control. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.
- 8. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Amendment will legally bind the Parties to the same extent as originals.
- 9. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Amendment. Landlord represents and warrants to Tenant that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.
- 10. This Amendment will be binding on and inure to the benefit of the Parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

IN WITNESS, the Parties execute this Amendment as of the Effective Date.

**LANDLORD:**

**TENANT:**

**City of Charles City, Iowa**

**T-Mobile Central LLC, a Delaware limited liability company**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
T-Mobile Contract Attorney  
as to form

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") made as of this 5<sup>th</sup> day of April, 2005, between Charles City, Floyd County, Iowa ("LESSOR"), and FMTC Wireless, Inc. d/b/a OmniTel ("LESSEE").

### RECITALS:

A. Lessor is the owner of a water tower (the "Tower") located on real property owned by Lessor located at 820 Rove Avenue, Charles City, Iowa;

B. Lessee desires to lease from Lessor certain space on this water tower for the purpose of operating a PCS telecommunication facility (the "Telecommunication Facility"), to which Lessor has agreed on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Leased Premises.** Lessor hereby leases to Lessee:
  - a. **Antenna Space.** Space on the Tower for Lessee's Equipment.
  - b. **Access.** A nonexclusive right to gain access to the Tower and Equipment Shelter for the purpose of installation, repair and replacement of the Lessee's Equipment.
  - c. **Equipment Shelter.** Up to 120 square feet of ground space adjacent to the Tower, as indicated in the site plan attached hereto as Exhibit "A" for construction of an equipment shelter ("Equipment Shelter"). If applicable, Lessee may, at its expense enclose its Equipment Shelter with a fence.
  - d. **Utilities.** The right, in common with others, to maintain such power, telephone and utility lines within the Property as may be necessary for the operation of Lessee's Equipment.

All of the foregoing shall be collectively referred to herein as the "Leased Premises."

2. **Lessee's Equipment.** The term "Lessee's Equipment" shall mean all Lessee's antennas, coax cables, transmitters, switching units, wireless internet equipment, and other associated equipment associated with operation of the Telecommunication Facility as described in Exhibit "B".

Lessee shall not install additional equipment upon the Tower, or in any material respect without the prior written consent of the Lessor. Notwithstanding the foregoing, Lessee shall be permitted to replace or upgrade existing equipment upon written notice to Lessor as long as such replacement or upgrade does not materially increase the size, weight or loading of equipment upon the Tower.

3. **Term.** The term of this Lease shall commence on the 5<sup>th</sup> day of April, 2005, and end on the 4<sup>th</sup> day of April, 2010. So long as Lessee is not in material default under the terms of this Lease, this Lease shall automatically renew for up to two (2) additional five year terms (each a "Renewal Term"), unless Lessee gives Lessor written notice of its intention to terminate this Lease before commencement of the renewal term. Lessee shall hold the Leased Premises during the Extended Terms upon the same terms, covenants and conditions herein contained, but with the adjustment in rent as provided in paragraph 4.

4. **Rent.** Rent shall be paid monthly beginning on the 1st day of the lease and the rent shall be in the amount of \$1,250 per month for the first three months and then \$1450.00 per month thereafter. This rent shall be increased annually effective as of each anniversary by the percentage increase in the CPI over the CPI for the 12 months prior to the adjustment date. The CPI means the Consumer Price Index for all Urban Consumers, U.S. city average, all items, issued by the Bureau of Labor Statistics for the United States Department of Labor. If CPI is converted to a different standard reference base or otherwise revised, the adjustment set forth in this paragraph shall be made with the use of the conversion formula published by the Bureau of Labor Statistics. Interest shall accrue on delinquent rent at the rate of 8% per annum from the date of delinquency.

5. **Use of Leased Premises.** The Leased Premises is to be used for the installation, removal, operation, repair, and maintenance of the Lessee's Equipment. Operation of Lessee's Equipment shall be conducted in accordance with the standards imposed by the FCC and any other governmental body or agency as shall have jurisdiction over the installation, repair, alteration, operation, or replacement of Lessee's Equipment or with any activities of Lessee on the Leased Premises.

a. **Additional Tenants.** Lessor shall have the right to lease space on the Tower to any other person or persons desiring to engage in any form of broadcasting and/or electromagnetic communication, provided that no such subsequent use shall be permitted to interfere with rights granted to Lessee hereunder.

b. **Interference.**

(i) Lessee's operation of the Equipment shall not cause any interference with the signal of any other transmitter/receiver for lawfully operated two-way channels, television, radio or microwave uses, whether on or off the Leased Premises or the Property or whether transmitted or received by Lessor or Lessor's other lessees or licensees (Prohibited Interference). Lessee agrees to at all times operate within compliance with FCC rules. Furthermore, Lessee agrees that it shall immediately correct and eliminate any Prohibited Interference caused by the operation of the Equipment. Should Lessee fail to immediately correct any such Prohibited Interference within forty-eight (48) hours of notice by Lessor of such Prohibited Interference, then Lessor may, at its option, enter the Leased Premises, correct such Prohibited Interference and invoice the costs of such correction to Lessee, which invoice shall be payable within ten (10) days of receipt by Lessee. If Lessor does not exercise its option to correct the Prohibited Interference and if Lessee fails to correct the interference within thirty (30)

days of Lessor's notification of the same, Lessor shall have the option to terminate this Lease and thereafter shall have no further obligations to Lessee.

(ii) Lessor shall prohibit other tenants on the Tower from causing interference with the operation of Lessee's Equipment, to the extent the equipment of such other tenants was installed subsequent to the installation of Lessee's Equipment ("Objectionable Interference"). Should Objectionable Interference be experienced, Lessor shall cooperate with Lessee in identifying the source of the Objectionable Interference and in causing that party to take such reasonable steps necessary to eliminate the Objectionable Interference. In the event such party causing the Objectionable Interference fails to correct such problem such that Lessee's Telecommunication Facility is no longer materially affected within thirty (30) days of Lessee notifying Lessor of such problem, Lessee shall have the right to terminate this Lease.

6. **Compliance with Laws.** Lessee shall comply with all laws and regulations of the federal, state, county and municipal authorities applicable to the Leased Premises, the housing and operation of Lessee's Equipment therein, and the exercise of the rights conferred hereunder. Lessee shall conduct its business in such a manner as regards noise, other nuisances or otherwise as unreasonably and unnecessarily interfere with or disturb the Lessor in the conduct or the main purpose of the water tower or other Lessees of the Tower. Lessor represents, and warrants that the Tower has been constructed and shall be operated and maintained in accordance with AWWA industry standards and complies with applicable FAA regulations, including lighting requirements.

7. **Lessee's Risks.** All Lessee's Equipment and personal property of every kind or description which may at any time be on the Leased Premises shall be at Lessee's sole risk, or at the risk of those claiming under Lessee, and Lessor shall not be liable for damage to or theft of or misappropriation of such property, any injury or damage to persons or property resulting from or related to Lessee's Equipment or personal property or any latent defect in any improvements located upon the Property, except for the gross negligence or intentional misconduct of Lessor, its employees and agents.

8. **Lessee's Rights to Access.** Lessor hereby grants to Lessee a nonexclusive right to access the Leased Premises to the extent reasonably necessary to enable Lessee to install, operate, maintain and monitor Lessee's Equipment. Lessee shall provide Lessor with at least 24 hours' prior notice of its intention to obtain access to the Tower and Lessee's agent shall be accompanied by an employee of the Lessor at the time that it is given access. In cases of an emergency, a telephone number will be provided to Lessee to contact Lessor, and an employee of Lessor will immediately provide access to the Tower, but in the event that the employee is required to report after regular business hours, the Lessee shall pay the reasonable cost incurred by Lessor in providing the services of this employee. Notwithstanding the foregoing, Lessee shall be entitled to 24/7 access to all ground-based equipment, without accompaniment by Lessor. Lessee shall notify Lessor prior to or within 24 hours after entering the gated area to service its ground-based equipment. Lessor shall coordinate with Lessee on either providing a key to the existing gated compound or allowing locks to be daisy chained together. If Lessee enters the property unaccompanied by a representative of Lessor for the purpose of servicing its ground-based equipment, Lessee shall be responsible to lock the gate upon departure, and a failure to do so may cause Lessee to lose its privilege to have unaccompanied access to the property.



9. **Utilities.** Lessee shall at its sole cost and expense initiate, contract for, obtain and pay for any electrical service used by Lessee at the Leased Premises, but the plans shall be submitted to the Lessor for its approval prior to installation. A meter shall be installed and maintained by Lessee at Lessee's sole cost and expense which shall separately record the amount the electrical power used by Lessee. Lessee shall timely pay all charges for electrical power and all other services used by Lessee in connection with the operation of Lessee's Equipment. No other utilities (water, sewer or gas) will be available at the Leased Premises during the Term. In no event shall Lessor be liable for the quality, quantity, failure or interruption of electrical service to the Leased Premises or damages resulting directly or indirectly therefrom.

10. **Taxes.** Lessee will pay when due any taxes levied against the Lessee's Equipment and any other personal property of Lessee located on the Leased Premises or as a result of Lessee's Equipment being located on the Property or Leased Premises. Where possible, Lessee shall cause the Lessee's Equipment or other personal property to be assessed and billed separately from any taxes paid upon Lessor's real property.

11. **Indemnification.** LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR AND LESSOR'S AGENTS, EMPLOYEES, CONTRACTORS, TENANTS, CUSTOMERS AND INVITEES ("LESSOR INDEMNITEES") HARMLESS FROM ALL CLAIMS FOR LOSS OR DAMAGE ON ACCOUNT OF INJURY OR DEATH TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY PERSON OR PERSONS OCCURRING ON THE PROPERTY, TO THE EXTENT CAUSED BY (A) LESSEE'S EQUIPMENT, OR (B) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S AGENTS, EMPLOYEES, CONTRACTORS OR INVITEES IN CONNECTION WITH LESSEE'S USE OF THE PROPERTY UNDER THIS AGREEMENT. LESSEE WAIVES ALL CLAIMS AGAINST LESSOR AND THE OTHER LESSOR INDEMNITEES, WHICH LESSEE OR ITS SUCCESSORS AND ASSIGNS MAY HAVE AGAINST LESSOR OR ANY OTHER LESSOR INDEMNITEE FOR LOSS, THEFT OR DAMAGE TO PROPERTY OR LESSEE'S EQUIPMENT OR FOR INJURIES TO PERSONS IN, UPON OR ABOUT THE PROPERTY OR THE TOWER FROM ANY CAUSE WHATSOEVER, OTHER THAN LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BUT SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN PARAGRAPH 14.

WITHOUT LIMITING THE FOREGOING, LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DEMANDS, SUITS AND PROCEEDINGS, INCURRED, MADE OR COMMENCED BY ANY PARTY AGAINST ANY OF THE FOREGOING, FOR PERSONAL, PROPERTY OR OTHER DAMAGE, CAUSED BY, RESULTING FROM, OR ARISING OUT OF, OR BY VIRTUE OF (I) THE USE BY LESSEE, ITS AGENTS, SERVANTS, EMPLOYEES OR INVITEES OF THE TOWER, OR LEASED PREMISES, OR (II) THE PERFORMANCE BY, OR CARRYING OUT BY IT, HIM OR THEM, OF ANY TERMS AND CONDITIONS HEREOF, OR (III) THE FAILURE TO PERFORM ANY TERM, COVENANT OR CONDITION REQUIRED TO BE PERFORMED BY

LESSEE HEREUNDER, OR (IV) ANY DAMAGE OR INJURY THAT MAY OCCUR AS A RESULT OF AN UNSAFE CONDITION, CAUSED BY LESSEE OR OF ANY NEGLIGENT INSTALLATION OR MAINTENANCE, OF LESSEE'S EQUIPMENT, OR (V) LESSEE'S FAILURE TO COMPLY WITH ANY APPLICABLE STATUTE, RULE, REGULATION, ORDER OR OTHER STANDARD PERTAINING TO THE USE OR INSTALLATION OR MAINTENANCE OF LESSEE'S EQUIPMENT OR (IV) INTERRUPTION IN SERVICE BY LESSEE TO ITS CUSTOMERS UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR, BUT SUBJECT TO THE PROVISION OF PARAGRAPH 14; AND FROM AND AGAINST ANY AND ALL EXPENSES AND LOSSES THAT MAY BE INCURRED BY LESSOR, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AS A RESULT OF ANY SUCH CLAIM, DEMAND SUIT OR PROCEEDING, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES, COURT COSTS AND EXPENSES INCURRED IN RESPONDING TO OR DEFENDING ANY SUCH CLAIM, DEMAND SUIT OR PROCEEDING. IN PARTICULAR, AND NOT IN LIMITATION OF THE FOREGOING, LESSEE AGREES TO INDEMNIFY AND HOLD THE LESSOR INDEMNITEES HARMLESS FROM ANY LIABILITY, LOSS OR EXPENSE THAT MAY OCCUR OR ARISE OUT OF ANY PROHIBITED INTERFERENCE CAUSED BY THE LESSEE'S EQUIPMENT TO TWO-WAY CHANNELS, TELEVISION OR RADIO TRANSMITTERS/RECEIVERS OR MICROWAVE INSTALLATIONS, WHETHER ON OR OFF THE LEASED PREMISES OR THE PROPERTY.

SUBJECT TO THE PROVISIONS OF PARAGRAPH 14, LESSOR AGREES TO INDEMNIFY AND HOLD LESSEE AND LESSEE'S AGENTS, EMPLOYEES, CONTRACTORS, TENANTS, CUSTOMERS AND INVITEES (THE "LESSEE INDEMNITIES") HARMLESS FROM ANY AND ALL CLAIMS FOR LOSS OR DAMAGE OR ACCOUNT OF INJURY OR DEATH TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY PERSON OR PERSONS OCCURRING ON THE LEASED PREMISE TO THE EXTENTS CAUSED BY LESSOR'S FAILURE TO PERFORM ANY OBLIGATION HEREUNDER, OR ANY ACT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. WITHOUT LIMITING THE FOREGOING, BUT SUBJECT TO THE PROVISIONS OF PARAGRAPH 14 BELOW, LESSOR SHALL INDEMNIFY AND HOLD HARMLESS LESSEE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL COST, LOSSES, CLAIMS, DEMANDS, SUITS AND PROCEEDINGS, INCURRED, MADE OR COMMENCED BY ANY PARTY AGAINST ANY OF THE FOREGOING FOR PERSONAL, PROPERTY OR OTHER DAMAGE, CAUSED BY, RESULTING FROM, OR ARISING OUT OF, OR BY VIRTUE OF LESSOR'S FAILURE TO PERFORM ANY OBLIGATION UNDER THIS LEASE, OR ANY NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LESSOR; AND FROM AND AGAINST ANY AND ALL EXPENSES AND LOSSES THAT MAY BE INCURRED BY LESSEE, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AS A RESULT OF ANY SUCH CLAIM, DEMAND, SUIT, OR PROCEEDING, INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES, COURT COSTS AND EXPENSES INCURRED IN RESPONDING TO OR DEFENDING SUCH SUIT, DEMAND, SUIT OR PROCEEDING. THE INDEMNITY OBLIGATIONS UNDER THIS

**SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

12. **Liability Insurance.** Lessee shall obtain, and at all times thereafter maintain, at a minimum, commercial general liability insurance for bodily injury and property damage, which includes products/completed operations and all standard broad form comprehensive general liability extensions. Such insurance shall provide for bodily injury and property damage coverage with primary and/or umbrella coverage limits not less than \$2,000,000 aggregate per location and no less than \$1,000,000 per occurrence. The City shall be named as an additional insured under Lessee's policy.

13. **Tower Damage.** In the event that the Tower is fully or partially destroyed or damaged by fire, lightning, wind storm, explosion, collapse, vandalism or from any other casualty so as to be unfit for Lessee's occupancy, and the Tower cannot be restored or rebuilt by Lessor within 180 days, then either Lessee or Lessor may elect to terminate this lease by written notice to the other party.

14. **Limitation of Lessor's Liability.**

a. **Damage to Persons or Property.** Lessor, its agents or employees shall not be liable for any loss of or damage to property of Lessee or of Lessee's agent, contractors, employees, invitees or licensees or any injury or damage to persons or property resulting from any cause of whatever nature unless proximately caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors.

b. **Service Interruption.** Lessor shall incur no liability to Lessee for service interruptions resulting from maintenance and repair work to the facilities of Lessor or alterations to the Tower required by Lessor or governmental authority. Lessee is hereby put on notice that service interruptions will be required in order that maintenance and repair work may be accomplished. Lessor shall, at least 30 days prior to the beginning of any scheduled repair or maintenance work, advise the Lessee of work to be performed on the Tower or the equipment of other Lessees which may affect the condition or operation of Lessee's equipment, and shall schedule such work to minimize the disruption of Lessee's service. Lessee shall thereupon be responsible to remove or otherwise protect its equipment in a manner approved by Lessor prior to the initiation of their repair work. Any delay, disruption or hindrance caused by Lessor shall not affect or impair Lessee's obligation to pay monthly rent hereunder unless said disruption prevents use by the Lessee for a period greater than twenty-four (24) consecutive hours or forty-eight (48) hours cumulative in any week, in which case Lessee may terminate the lease by written notice to Lessor.

c. **Lessee's Remedies Upon Lessor's Default.** If Lessor should default in performance of any of its obligations under the terms of this lease and fail to remedy the default within 10 days after receiving written notice thereof from Lessee, then Lessee may terminate this lease and remove its equipment from Lessee's property. Lessee's termination of the lease upon Lessor's default shall constitute Lessee's sole and exclusive remedy for Lessor's default, and Lessor shall have no liability for monetary damages suffered by Lessee as a result of Lessor's default, except as provided in Section 11 above.

d. **Limitation of Lessor's Liability for Consequential Damages Arising from Service Interruption.** Lessor shall incur no liability to Lessee or Lessee's customers for service interruptions resulting from maintenance and repair work to the facilities of Lessor or alterations to the Tower required by Lessor or governmental authority or arising from damage to the Tower or Lessee's equipment caused by acts of God. Lessor shall, at least 30 days prior to the beginning of any scheduled repair or maintenance work, advise the Lessee of work to be performed on the Tower or the equipment of other Lessees which may affect the condition or operation of Lessee's equipment, and shall schedule such work to minimize the disruption of Lessee's service. Lessee shall thereupon be responsible to remove or otherwise protect its equipment in a manner approved by Lessor prior to the initiation of their repair work. Any delay, disruption or hindrance caused by Lessor shall not affect or impair Lessee's obligation to pay monthly rent hereunder unless said disruption prevents use by the Lessee for a period greater than twenty-four (24) consecutive hours or forty-eight (48) cumulative in any week, in which case Lessee may terminate the lease by written notice to Lessor.

15. **Remedies of Lessor and Lessee for Default.**

a. **Lessor's Default.** If Lessor should default in performance of any of its obligations under the terms of this lease and fail to remedy the default within 10 days after receiving written notice thereof from Lessee, then Lessee may terminate this lease and remove its equipment from Lessor's property. Lessee's termination of the lease upon Lessor's default shall constitute Lessee's sole and exclusive remedy for Lessor's default, and Lessor shall have no liability for monetary damages suffered by Lessee as a result of Lessor's default, except as provided in Section above.

b. **Lessee's Default.** In the event that Lessee shall default on the payment of rent or default in the performance of any other covenant or agreement of this lease and such default shall continue for 10 days after Lessee's receipt of written notice thereof, then Lessor may terminate this lease or exercise any other remedy available at law or in equity. If Lessor terminates the lease, then Lessee shall immediately remove its equipment from the property, and if it fails to do so within 30 days of Lessor's demand, then Lessor may remove and store Lessee's equipment at Lessee's sole expense.

16. **Environmental Warranty.** Lessee hereby represents and warrants that its use of the premises herein will not generate any hazardous substances on the premises and, with the exception of batteries, or other materials disclosed to Lessor in advance, it will not store on or transport to or over the premises any hazardous substance.

17. **Assignment.** Lessee may not sublet, assign, mortgage or encumber this lease without the express written consent of the Lessor, which consent shall not be unreasonably withheld or delayed.

18. **Removal of Lessee's Equipment.** Lessee shall, at the termination of this Lease, surrender possession of the Leased Premises to Lessor in as good a condition as prior to the commencement of this Lease, reasonable wear and tear excepted. Lessee agrees at the

termination of this Lease to remove Lessee's Equipment and to pay all costs in connection with such removal.

19. **Applicable Law.** This Lease shall be construed and governed in accordance with the internal laws of the state of Iowa, and parties consent to the personal and subject matter jurisdiction of the Iowa District Court in and for Floyd County to resolve any disputes arising under the terms of this agreement.

20. **Quiet Enjoyment.** Lessor covenants that Lessee shall have quiet enjoyment of the Leased Premises throughout the duration of the Lease, as the same may be renewed and extended, and that Lessor will not intentionally disturb Lessee's occupation thereof as long as Lessee is not in default under this Lease.

21. **Attorney's Fees.** In any action at law or in equity, the substantially prevailing party shall be entitled to recover the reasonable costs and expenses of its successful case, including reasonable attorney's fees and costs of appeal from the non-prevailing party.

22. **Binding Effect.** All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

23. **Entire Agreement.** This Lease constitutes the entire contract between the parties, and supersedes any prior understanding or oral or written agreements between them respecting the within subject matter.

24. **Modifications.** This Lease may not be modified, except in writing signed by the party against whom such modification is sought to be enforced.

25. **Authority.** The persons who have executed this Lease Agreement represent and warrant that they are duly authorized to execute this Lease Agreement in their individual or representative capacity as indicated.

Executed this 5<sup>th</sup> day of April, 2005.

LESSOR

CITY OF CHARLES CITY

By: James A. Erb  
Mayor

ATTEST:

[Signature]  
City Clerk

LESSEE

FMTC WIRELESS, INC.  
d/b/a OMNITEL

By: Ronald J. Landry

Its: General Manager

**FIRST AMENDMENT TO LEASE AGREEMENT**

This First Amendment to Lease Agreement ("First Amendment") is entered into this 6<sup>th</sup> day of Aug, 2012, by and between Charles City, Floyd County Iowa ("LESSOR") and FMTC Wireless, Inc. d/b/a Omnitel ("LESSEE").

**WHEREAS**, LESSOR and LESSEE, entered into a Lease Agreement dated April 5<sup>th</sup>, 2005 (the "Lease Agreement") providing for, *intra alia*, the lease of certain space on the water tower located at 820 Rove Avenue, Charles City, Iowa (the "Tower") sufficient for the purpose of placement and operation of Lessee's antennas, coax cables, transmitters, switching units, wireless internet equipment, and other equipment associated with the operation of the Telecommunication Facility ("Lessee's Equipment).

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Lessee's Equipment. The parties agree to amend Lessee's Equipment as described in Exhibit A of this First Amendment. This Exhibit A will replace Exhibit B of the Lease Agreement in its entirety.

2. Memorandum of Lease Amendment. The parties agree to execute and file a Memorandum outlining the terms of this First Amendment with the Floyd County, Iowa Recorder.

3. Entire Agreement. This Agreement, along with the terms of the Lease Agreement, constitutes the entire agreement of the parties with respect to the subject matter thereof. Capitalized terms not otherwise defined herein shall have the meaning described in the Lease Agreement. Except as expressly set forth herein, all terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESSETH THEREOF, the parties have executed this First Amendment as effective as of the date first written above.

**LESSOR**

**LESSEE**

**CITY OF CHARLES CITY**

**FMTC WIRELESS, INC.**

**d/b/a OMNITEL**

By: James Erb  
James Erb, City Mayor

By: Ronald Landner, Jr.

Print Name: Ronald Landner, JR.

Attest: Trudy O'Connell  
Trudy O'Connell, City Clerk

Its: President

Omnitel Site #047U008, Charles City WT

## EXHIBIT A

### Equipment Summary

1. Three 4G Panel Antennas
2. Six GSM Panel Antennas
3. Six runs of 1 5/8 inch Coaxial Cables Connected to the GSM and 4G Panel Antennas
4. Six Broadband Antennas and Associated ODU Units
5. Six runs of Cat 5 Cable Connected to the Broadband Antennas
6. One 10 foot by 12 Foot Shelter

All Necessary Conduits, Brackets and Mounting Hardware to Properly Install the Above Items.

Omnitel Site #047U008, Charles City WT

Pa 2 of 2

## SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Amendment"), dated April 2, 2018, and Effective April 5, 2018, between the City of Charles City, Floyd County, Iowa, an Iowa municipality, ("LESSOR") and Iowa Wireless Services, LLC, a Delaware limited liability company, as successor-in-interest to FMTC Wireless, Inc., an Iowa corporation, doing business as Omnitel Communications, Inc. ("LESSEE").

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement dated April 5, 2005, ("LEASE"), whereby LESSOR leased to LESSEE that certain Premises, on a portion of property located at 820 Rove Avenue, Charles City, Iowa;

WHEREAS, the Lease Agreement was amended by a First Amendment to Lease Agreement dated August 6, 2012;

WHEREAS, LESSOR and LESSEE desire to amend the LEASE to allow the rent to increase annually by a fixed percentage instead of the variable rate determined by the Consumer Price Index (CPI); and

WHEREAS, LESSOR and LESSEE, in their mutual interest, wish to amend the LEASE as set forth below accordingly,

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE agrees as follows:

1. Paragraph 4, **Rent**, shall be replaced with the following new paragraph:

4. **Rent.** Rent was paid monthly beginning on April 5, 2005 in the amount of One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) per month through July 6, 2006. Thereafter, rent increased to One Thousand Four Hundred Fifty Dollars and Zero Cents (\$1,450.00) per month. From April 2, 2018 through the end of the last Renewal Term, Rent shall increase annually on the Anniversary Date, April 5<sup>th</sup>, by Three Percent (3%) over the previous Rent according to the following table:

Term	Start Date	End Date	Monthly Rent
First 3 Months	April 5, 2005	July 5, 2005	\$1,250.00
4-12 Months	July 6, 2005	April 4, 2006	\$1,450.00
Years 2-5 of First Term	April 5, 2006	April 4, 2010	Adjusted by CPI annually
Second Term	April 5, 2010	April 4, 2015	Adjusted by CPI annually
Third Term	April 5, 2015	April 4, 2018	Adjusted by CPI annually
First Amendment adopted in Third Term	April 5, 2018	April 4, 2019	\$1,553.83
Remainder of Third Term	April 5, 2019	April 4, 2020	\$1,600.44

2. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the LEASE and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the LEASE to itself shall be deemed to refer to this Amendment.



IWS Site Number: IA-1182/047-0008  
IWS Site Name: Charles City WT

3. **Capitalized Terms.** All capitalized terms used by not defined herein have the same meanings as defined in the Lease.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Amendment to the dates set forth below.

LESSOR:


City of Charles City, Iowa

By: 

Printed Name: Dean Andrews

Title: Mayor

Date: 4/2/18

Attest: 

Trudy O'Donnell, City Clerk

LESSEE:

Iowa Wireless Services, LLC

A Delaware limited liability company

By: 

Printed Name: J. Craven Shumaker

Title: Vice President

Date: April 5, 2018