Jean Birmingham Council Chambers, City Hall
401 South Alamo
Marshall, TX 75670
903-935-4421

Members
Amy Ware, District 4 - Mayor
Risa Jordan-Anderson, District 1
Leo Morris, District 2
Dathaniel Campbell, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

PLEASE SILENCE ALL DEVICES
SPECIAL-CALLED CITY COUNCIL MEETING

January 16, 2025
6:00 PM

1. **Call to Order and Roll Call**

2. **Invocation and Pledges**

3. **Presentations & Proclamations**
   A. Presentation of the 2025 National Human Trafficking Prevention Month Proclamation.
   B. Presentation of the Employee of the Month - January (Employee Engagement Committee)

4. **Citizen Comments**
   Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The “Citizens Comments” portion of the meeting meets the requirements of this law and is the public’s opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.

5. **Items to be Withdrawn From Consent Agenda**

6. **Consent Agenda**
   The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.
   A. Consider approval of the minutes from the December 12, 2024 Regular Council meeting. (City Secretary)
   B. **R-25-01** Consider approval of a resolution designating an official newspaper for the City of Marshall for fiscal year 2025. (City Secretary)
   C. Consider approval of a lease with American Tower Corporation. (Support Services)

7. **Consideration of Items Withdrawn From the Consent Agenda**

8. **Ordinance**
   A. **O-25-01** Consider approval of an ordinance granting to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, the right, privilege and

franchise to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the public rights-of-way of the City of Marshall, Texas for the transportation, delivery, sale and distribution of natural gas; containing other provisions relating to the foregoing subject; providing for severability and providing an effective date. (City Manager)

9. Resolution

A. Presentation of an update on the I369 and SL390 Utility Relocation Project FY2025 and consider approval of a resolution (**R-25-02**) accepting a SIB loan from TxDOT. (Public Works)

B. **R-25-03** Consider approval of a resolution regarding a request for a Certificate of Consistency. (City Manager and Planning & Development)

10. Action Items for City Council Consideration

11. Discussion and Reports for City Council Consideration and Direction

A. Presentation of an overview of the Street Sweeping Program. (Public Works)

B. Reports regarding an update on Raw Water Intake and Water Production. (Public Works)

C. Presentation of Code Enforcement Processes and Procedures. (Planning & Development)

12. Adjournment

Posted: January 13, 2024
10:00 AM
N. Smith

This meeting will be conducted in accordance with the Americans with Disabilities Act. Requests for sign interpretive services will be available with at least 72-hour notice prior to the meeting. To make arrangements for these services, please call the City Secretary's Office at 903-935-4446.

City of MARSHALL TEXAS	TO:	City Council
	DATE:	January 16, 2025
	ITEM #:	3.A
	SUBJECT:	Presentation of the 2025 National Human Trafficking Prevention Month Proclamation.

Recommendation for Action: Present proclamation.

Executive Summary: Nell Spencer, Women's Center of East Texas, reached out to the City asking for the Council to read the proclamation for Human Trafficking Prevention Month.

Budget Cost: $0.00

Staff Contact: Nikki Smith, City Secretary

Attachments: 1. National Human Trafficking Prevention Month 2025

PROCLAMATION

2025 NATIONAL HUMAN TRAFFICKING PREVENTION MONTH

WHEREAS, human trafficking is a public health issue and crime that harms the health and well-being of individuals, families, and communities, often across generations; and

WHEREAS, human trafficking can happen to anyone, but certain populations are at greater risk, including people affected by abuse, violence, poverty, unstable living situations, social disconnection, or discrimination; and

WHEREAS, including the forced or fraudulent recruitment, harboring, or transportation of people for labor or commercial sex; and

WHEREAS, nearly 25 years since the passing of the Trafficking Victims Protection Act, an estimated 27.6 million people are subjected to human trafficking globally, including an estimated 313,000 victims in Texas, 79,000 of whom are minors and youth; and

WHEREAS, people can be trafficked in person and online; in industries such as restaurants, domestic work, construction, agriculture, and factories; and by strangers or someone they know, including employers, partners, and family members;

WHEREAS, "Connecting the Dots. Strengthening Communities. Preventing Trafficking." Underscores the need to understand how human trafficking relates to other forms of violence and how we can prevent it by strengthening protective factors at the individual, relational, community, and societal levels: and

WHEREAS, the Women's Center of East Texas is dedicated to ensuring anyone impacted by human trafficking can receive services that provide individualized care, understand the impact of trauma, and incorporate cultural and linguistic needs;

WHEREAS, every individual, family, community, and organization can contribute to enhancing human trafficking awareness, prevention, and response by learning about ways to help.

NOW, THEREFORE, WE, the CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS do hereby proclaim the month of January 2025 to be ***HUMAN TRAFFICKING PREVENTION MONTH*** in Marshall, Texas.

____
Amy Ware, Mayor
Marshall City Council

City of MARSHALL TEXAS

TO:	City Council
DATE:	January 16, 2025
ITEM #:	3.B
SUBJECT:	Presentation of the Employee of the Month - January (Employee Engagement Committee)

Recommendation for Action:

Executive Summary: The Employee Engagement Committee is a dedicated assembly of employees who have voluntarily united with the common goal of orchestrating and executing activities aimed at engaging and motivating their fellow colleagues. Their primary mission is to cultivate a positive and productive workplace culture while actively enhancing the employer-employee relationship. Among the initiatives employed is the recognition of outstanding contributions through the Employee of the Month program. The committee diligently reviews nominations, carefully deliberates, and collectively decides on the deserving individual to receive this esteemed acknowledgment.

Budget Cost:

Staff Contact:

Attachments: None

	TO:	City Council
	DATE:	January 16, 2025
	ITEM #:	6.A
	SUBJECT:	Consider approval of the minutes from the December 12, 2024 Regular Council meeting. (City Secretary)

Recommendation for Action: Consider approval of the minutes from the December 12, 2024 Regular Council meeting.

Executive Summary: Minutes from the Regular meeting held on December 12, 2024.

Budget Cost: N/A

Staff Contact: Nikki Smith, City Secretary

Attachments: 1. 12-12-24 Minutes

Jean Birmingham Council Chambers, City Hall
401 South Alamo
Marshall, TX 75670
903-935-4421

Members
Amy Ware, District 4 - Mayor
Risa Jordan-Anderson, District 1
Leo Morris, District 2
Dathaniel Campbell, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

MINUTES
PLEASE SILENCE ALL DEVICES
REGULAR CITY COUNCIL MEETING
December 12, 2024
6:00 PM

1. Call to Order and Roll Call

Mayor Amy Ware called the Regular meeting to order in the Council Chambers, City Hall at 06:01 PM.

PRESENT:

Mayor and Council Members:
Mayor Amy Ware
Councilmember Leo Morris
Councilmember Reba Godfrey
Councilmember Amanda Abraham
Councilmember Micah Fenton
Councilmember Dathaniel Campbell
Councilmember Risa Jordan-Anderson

ADMINISTRATIVE STAFF PRESENT:
Melissa Vossmer, Interim City Manager
David Rainwater, Fire Chief
Cliff Carruth, Police Chief
Dawn Jones, Finance Director
Eric Powell, Public Works Director
Scott Rectenwald, City Attorney
Randy Pritchard, Support Services Director
Nikki Smith, City Secretary/Payroll Accountant
Reggie Cooper, Planning & Development Director
Marina Garcia-Heredia, Parks & Recreation Director
Alex Agnor, Economic Development & Strategic Initiatives Director

2. Invocation and Pledges

Mayor Ware

3. Presentations & Proclamations

A. Presentation of the Employee of the Month - December. (Employee Engagement Committee)
Lacy Burson, Employee Engagement Committee, stated the Employee of the Month for December, sponsored by Hometown Tire, is Thomas Carlisle, Main Street.

B. Presentation of the Employee of the 4th Quarter 2024. (Employee Engagement Committee)

Lacy Burson stated the Employee of the 4th Quarter of 2024Month, sponsored by Patterson Chrysler Dodge Jeep Ram, is Thomas Carlisle, Main Street. Stormy Nickerson, Patterson Chrysler Dodge Jeep Ram, thanked Thomas for his hard work and dedication and presented a check for $250. Thomas Carlisle thanked God and his coworkers for the recognitions of Employee of the Month and 4th Quarter.

C. Presentation of the Employee of the Year 2024. (Employee Engagement Committee)

Kristina Hamilton, Employee Engagement Committee, stated the Employee of the Year 2024, sponsored by Maverick Chevrolet/Marshall Ford, is Edward Irving, Parks & Recreation. Edward Irving thanked God, and his coworkers for this recognition. Samantha Spear, Maverick Chevrolet & Marshall Ford representative thanked Edward Irving for his hard work and dedication.

Mayor Ware thanked the employees for their hard work and dedication to the citizens and City of Marshall, Texas.

D. Recognition of Graduates of the MPD Citizens Police Academy. (Police)

Cliff Carruth, Police Chief, recognized the graduates of the recently held Citizens Police Academy.

E. Presentation from The Martin House Children's Advocacy Center - Impact Report 9/1/23-8/31/24. (Finance)

Dawn Jones, Finance Director, introduced Tracey Moore, Therapy Director, and Christie Glenn, Program Director, who presented the most recent annual statistics report for The Martin House Children's Advocacy Center and gave an example of a success story of one of the children assisted at the advocacy center. Cliff Carruth pointed out the need for the services provided by the advocacy center.

F. Presentation of Annual Allocation to The Martin House Children's Advocacy Center. (Finance and Police)

Dawn Jones asked for approval to award $28,000 from Child Safety Fees to The Martin House Children’s Advocacy Center.

4. Citizen Comments

Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The “Citizens Comments” portion of the meeting meets the requirements of this law and is the public’s opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.

There were no citizen comments.

5. Items to be Withdrawn From Consent Agenda

There were no items withdrawn from the Consent Agenda.

6. Consent Agenda

The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

Councilmember Campbell made a motion to approve the Consent Agenda. Councilmember Godfrey seconded the motion, which passed by a vote of 7:0.

A. Consider approval of the minutes from the November 14, 2024 Regular Council meeting. (City Secretary)

B. Consider approval of the 2025 City Council meeting schedule. (City Secretary)

C. Consider approval of Interlocal Agreements with Harrison County for Public Library Services. (Community & Neighborhood Services)

D. Consider approval of Interlocal Agreements with Harrison County for Ambulance/Rescue Services. (Fire)

E. Consider approval of participation in a Texas Opioid Settlement. (City Attorney)

F. Consider approval of an appointment to the Visit Marshall Advisory Board. (Economic Development & Strategic Initiatives)

G. Consider approval of appointments to the Marshall Economic Development Corporation Board of Directors. (Marshall EDC)

7. Consideration of Items Withdrawn From the Consent Agenda

There were no items withdrawn from the Consent Agenda.

8. Ordinance

A. **O-24-26** Consider an Ordinance making Hollis Taylor a one-way street from east to west. (Police and Public Works)
Cliff Carruth, and Eric Powell, Public Works Director, stated MISD Police Chief Joe Aldridge made a request to change Hollis Taylor Street into a one-way street to allow traffic to flow from East to West. The reason for his request is due to the safety hazard of this narrow street on Hollis Taylor Street that is not wide enough to allow two (2) cars going in the opposite direction to pass each other. Both Cliff Carruth and Eric Powell asked council for approval of this ordinance to decrease disturbances due to the narrow roadway and the high volume of traffic during school.

Councilmembers asked questions and discussed.

Councilmember Godfrey made a motion to approve ordinance O-24-26 making Hollis Taylor a one-way street from east to west. Councilmember Jordan-Anderson seconded the motion, which passed by a vote of 7:0.

B. **O-24-27** Consider an Ordinance establishing a four way stop at the intersection of St. Francis and Meadow Streets. (Police and Public Works)

Cliff Carruth and Eric Powell asked for approval of an ordinance establishing a four-way stop at the intersection of St. Francis and Meadow Streets as requested by representatives of the Marshall Independent School District Police Department. A four-way stop will allow all traffic access to this intersection and allow the police to ensure everyone can have access into this intersection.

Councilmember Godfrey made a motion to approve ordinance O-24-27 establishing a four-way stop at the intersection of St. Francis and Meadow Streets. Councilmember Jordan-Anderson seconded the motion, which passed by a vote of 7:0.

9. Resolution

A. **R-24-20** Consider approval of a resolution authorizing the Police Department to apply for and receive funding under the 2024 Justice Assistance Grant Program being administered by the Office of The Governor. (Police)

Cliff Carruth asked for approval of a resolution authorizing the Police Department to apply for grant funding from the Office of the Governor for the MPD Technology Program. The items the Police Department intends to purchase with this grant are one (1) powered door breaching equipment set to assist in entering locked buildings under emergency circumstances, and nine (9) thermal vision monoculars for the Patrol Division and the Special Response Team.

Councilmember Godfrey made a motion to approve resolution R-24-20 authorizing the Police Department to apply for and receive funding under the 2024 Justice Assistance Grant Program being administered by the Office of The Governor. Councilmember Abraham seconded the motion, which passed by a vote of 7:0.

10. Action Items for City Council Consideration

A. Consider approval of amendment(s) to the City of Marshall Employee Handbook. (Human Resources)

Kristina Hamilton, Assistant Finance Director, asked for approval of the following amendments to the City of Marshall Employee Handbook:

2.13 Probationary Period
New Employee Probation – New employee probation is a period of three (3) months of duty following the first date of employment with the City, except for Police, Public Safety Communications and Fire employees whose period of probation is twelve (12) months.

5.01 Sick Leave/Sick Leave Donation
Sick leave may be used after the completion of three (3) months of satisfactory full-time employment unless the probationary period has been extended due to a workers' compensation injury that makes the employee unable to perform the essential functions of their job.

5.02 Vacation Leave
B. Accumulation

- **Vacation leave will accrue to a maximum 240 hours for full-time non-civil service employees.**
- The maximum amount of unused vacation that an employee shall be allowed to have at the beginning of any new fiscal year shall be no more than 240 hours (full-time employees/police shift personnel) and 360 hours for fire shift personnel.

4. Scheduling and Using Accrued Leave

- Employees must submit a Leave Request Form to their supervisor to request vacation leave. Approval will be made based on a number of factors including business needs, staffing requirements, and seniority of employees. Employees are eligible to use vacation leave once the employee has completed their introductory period of three (3) months. Under no circumstances will vacation leave be granted in advance of accrual. Paid holidays occurring while an employee is on approved vacation will not be charged to vacation leave. "On-Call" or "Call Back" non-exempt employee's vacation will be credited up to eight (8) hours for call out time worked.

5.03 Holiday Leave

- Addition of two (2) holidays
    - Presidents' Day – 3rd Monday in February
    - Texas Independence Day – March 2nd

6.02 Overtime/Flex Time

- **Employees will no longer have the option to receive Compensatory Time in lieu of overtime.**

6.05 Car Allowance/Pool Vehicle

- Use of Pool Vehicles:
    - City of Marshall provides pool vehicles for employees to use for work-related travel. Employees are encouraged to use these vehicles whenever possible to ensure safety, compliance, and cost – effectiveness.
- Use of Personal Vehicles:
    - Employees may choose to use their personal vehicles for work-related travel. However if a city pool vehicle is available no mileage will be reimbursed.

- Exclusions:
    - This policy does not apply to employees who receive a vehicle allowance. Employees who receive a car allowance may use the pool vehicle when they travel further than 120 miles round trip.
- Insurance Requirements:
    - Employees must maintain valid automobile insurance coverage that meets or exceeds the minimum requirements set forth by state law. Proof of insurance may be requested by the company at any time.
- Reimbursement:
    - Mileage reimbursement for the use of personal vehicles for work-related travel will be provided at the standard company rate, subject to prior approval by the employee's supervisor. This reimbursement is intended to cover fuel and wear-and-tear costs.

Councilmember Abraham made a motion to approve all changes except for 6.02 & 6.05. The motion failed due to the lack of a second.

Councilmember Abraham made a motion to table approval of amendment(s) to the City of Marshall Employee Handbook. Councilmember Campbell seconded the motion, which passed by a vote of 7:0.

B. Consider Approval of the Improvements Contract for City Arena to be awarded to Halff. (Parks & Recreation)

Marina Garcia-Heredia, Parks & Recreation Director, asked for approval to award an Improvements Contract to Halff for the creation of a master plan and design documents for the City Arena at a cost of $189,650.00. Marina Garcia-Heredia stated the improvements will be funded through the allocated Capital Improvement Fund and the 2020 Debt Fund focusing on rehabilitation of the existing restrooms, drainage from the arena to the pond and roof repair. Michael Priestner, Halff representative, provided information and the cost of the master plan and design documents.

Councilmember Godfrey made a motion to approve the Improvements Contract for City Arena to be awarded to Halff at a cost of $819,650.00. Councilmember Jordan-Anderson seconded the motion, which passed by a vote of 7:0.

C. Consider approval of the appointment of the Animal Shelter Manager as the Local Rabies Control Authority. (Police)

Cliff Carruth asked for approval of the appointment of the Animal Shelter Manager as the Local Rabies Control Authority in order to ensure continuity in enforcing leash laws, public education campaigns, and the investigation of bite incidents, which are critical for reducing the presence of dogs at large and protecting public health in our neighborhoods.

Councilmember Abraham made a motion to approve the appointment of the Animal Shelter Manager as the Local Rabies Control Authority. Councilmember Campbell seconded the motion, which passed by a vote of 7:0.

11. **Discussions and Reports for City Council Consideration and Direction**

A. Update on Airport Park and other Park Improvements Projects. (Parks & Recreation)
Marina Garcia-Heredia provided the background, additional expenditures, pending needs and timeline of completion for Airport Park and other Park Improvement Projects currently taking place in the city. Marina Garcia-Heredia stated inclusive playground equipment is being installed at Lions Park. Marina Garcia-Heredia stated Adopt-a-Park & Bench programs are being researched, and pavilion rentals will begin in 2025. Marina Garcia-Heredia informed the council that 16 tournaments and other events have already been planned for Airport Park. Smith Park is in the process of upgrading through the CDBG process and Bella Wyatt has equipment on the way, but there were delays in the freight.
Councilmembers asked questions and discussed.

B. Presentation of the 2024 Animal Services Annual Report. (Police)
Cliff Carruth presented the 2024 annual report for Animal Services. Cliff Carruth discussed yearly statistics including the intake and disposition of animals, as well as the current condition of the Pet Adoption Center. Cliff Carruth also spoke regarding actions taken to address issues in ongoing operations, programs provided by the adoption center, events and accomplishments, and challenges faced during the past year. Cliff Carruth provided an implementation timeline for planned enhancements in 2025 and beyond.
Councilmembers asked questions and discussed.

C. Updated report from the Marshall Economic Development Corporation. (Marshall EDC)
Rush Harris, Executive Director, Marshall Economic Development, presented a summary report regarding Marshall Economic Development activities in 2024. Rush Harris stated the report is also available for the public to view on Marshall Economic Development's website.
Councilmembers asked questions and discussed.

D. Presentation of the City of Marshall Financial Report for the period ending October 31, 2024. (Finance)
Dawn Jones presented the Financial Report for the month ending October 31, 2024, highlighting the expenditures and revenues for the major funds. Melissa Vossmer, Interim City Manager, stated the financial report will be presented on a monthly basis going forward.

12. **Adjournment**
Councilmember Godfrey made a motion to adjourn. Councilmember Campbell seconded the motion, which passed by a vote of 7:0.

APPROVED:

____
Mayor of the City Council
of the City of Marshall, Texas

ATTEST:

____
City Secretary

TO:	City Council
DATE:	January 16, 2025
ITEM #:	6.B
SUBJECT:	**R-25-01** Consider approval of a resolution designating an official newspaper for the City of Marshall for fiscal year 2025. (City Secretary)

Recommendation for Action: Requesting approval of the resolution.

Executive Summary: The City of Marshall, Texas is required annually to designate the official newspaper of said city to be in compliance with Section 52.004 of the Texas Local Government Code. It is our recommendation to utilize the Marshall News Messenger as the official newspaper for publication requirements within the various departments.

Budget Cost: N/A

Staff Contact: Nikki Smith, City Secretary

Attachments: 1. R-25-01 Newspaper Designation

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS, DESIGNATING AN OFFICIAL NEWSPAPER FOR THE CITY OF MARSHALL FOR FISCAL YEAR 2025.

WHEREAS, in accordance with Section 52.004 of the Texas Local Government Code, the City of Marshall, Texas is required annually to designate the official newspaper of said city; and

WHEREAS, the City Council finds that the MARSHALL NEWS MESSENGER is a public newspaper of general circulation qualified under Section 52.004 of the Local Government Code.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marshall, Texas designate the Marshall News Messenger, whose physical address is 100 North Bolivar Street, Suite 301, Marshall, Texas as the official newspaper of the City of Marshall, Texas for fiscal year ending December 31, 2025.

PASSED, APPROVED AND ADOPTED this 9th day of January 2025.

____
Mayor of the City Council
of the City of Marshall, Texas

ATTEST:

____
Nikki Smith, City Secretary

TO:	City Council
DATE:	January 16, 2025
ITEM #:	6.C
SUBJECT:	Consider approval of a lease with American Tower Corporation. (Support Services)

Recommendation for Action: Staff recommends approval of the agreement with ATC

Executive Summary: This contract is an agreement to lease tower space on the ATC Sam Houston tower site for antennas for the new TXWarn Radio system being installed.

Budget Cost: The lease agreement is for $1900 per month. The first year will be covered in the overall cost of the project.

Staff Contact: Randy Pritchard

Attachments: 1. City of Marshall Texas @ Sam Houston TX_417213_SLA_071724 - Redraft 111524

LICENSE AGREEMENT

ATC Contract No: ________________

This LICENSE AGREEMENT ("**Agreement**") is entered into as of the latter signature date hereof ("**Effective Date**") by and between ATC Sequoia LLC, a Delaware limited liability company, with a place of business at 10 Presidential Way, Woburn, MA 01801 ("**Licensor**") and the City of Marshall, a political subdivision of the state of Texas, with a place of business at 401 S. Alamo, Marshall, TX 75670 ("**Licensee**").

I. TOWER FACILITY INFORMATION:

Site Name: Sam Houston TX
Site Number: 417213
Address and/or location of Tower Facility: 445 N. Fulton St. Marshall, Texas 75670-3228
Tower Facility Coordinates: Lat. 32° 32' 52.615" N32.54794849 Long. 94° 22' 12.216" W-94.37005999

II. NOTICE & EMERGENCY CONTACTS:

- Licensee's local emergency contact (name and number): Randy Pritchard (903) 930-0842.
- Licensor's local emergency contact: Network Operations Communications Center (800) 830-3365.
- Notices to Licensee shall be sent to Licensee's address above to the attention of Randy Pritchard.
- Notices to Licensor shall be sent to Licensor's address above to the attention of Contracts Manager.
- Licensor's Remittance Address: ATC Sequoia LLC, 29637 Network Place, Chicago, IL 60673-1296; all payments shall include a reference to the Site Name and Site Number as identified above in Section I.

III. PERMITTED USE OF TOWER FACILITY BY LICENSEE:

Transmitting and Receiving frequencies: See Exhibit A for specific frequencies.
Antenna mount height on tower: See Exhibit A for specific location.
All other permitted uses of the Tower Facility including Licensee's Approved Equipment, and the Licensed Space are further described in Section 4 of this Agreement and Exhibits A and B attached hereto.

IV. FEES & TERM:

Monthly License Fee: One Thousand Nine Hundred and 00/100 Dollars ($1,900.00), increased by the Annual Escalator on the first anniversary of the Commencement Date of this Agreement and each anniversary of the Commencement Date thereafter during the Term (as defined in Appendix I).

Annual Escalator: Three percent (3%).

Application Fee: N/A.

Relocation Application Fee: Five Hundred and 00/100 Dollars ($500.00) per Application submitted pursuant to Subsection 10(c), subject to increases at the Annual Escalator, compounded on each anniversary of the Effective Date.

Site Inspection Fee: N/A.

Initial Term: A period of fourteen (14) years beginning on the Commencement Date. The "**Commencement Date**" shall be the earlier of: (i) the date of Licensor's issuance of a NTP or (ii) October 17, 2024.

Renewal Terms: Three (3) additional periods of five (5) years each.

Connection Fee (as described in Subsection 5(b)): N/A

Electricity for operation of Approved Equipment is to be provided by (check one):

☐ Licensor, with the cost of such electricity to be paid by Licensee at the initial rate of $N/A per month ("**Utility Fee**") subject to adjustment pursuant to Subsection 5(b), OR
☒ Licensee, at its sole expense.

V. TERMS & CONDITIONS:

The attached terms and conditions are incorporated herein by this reference.

VI. OTHER PROVISIONS:

Other provisions: (check one): ☐ None ☒ As listed below

A. PCN/PCN Retention Fee/Cross-Default. Licensee, an Affiliate of Licensee or any entity or individual acting on behalf Licensee or an Affiliate of Licensee shall only issue Prior Coordination Notices ("**PCNs**") for the Permitted Frequencies set forth in Exhibit A and shall not issue PCNs for any other frequencies at this Tower Facility or at any other tower facility owned and/or operated by Licensor unless Licensee has submitted an Application for use of the subject frequencies to Licensor for which a partially executed License Agreement shall be signed by Licensee and returned to Licensor within sixty (60) days of the submittal of the Application. Licensee shall withdraw PCNs filed for any frequencies which are not licensed to Licensee by Licensor, no more than ten (10) days from the date of Licensee's withdrawal of an Application or Licensor's election to not process a Licensee-submitted Application. Failure to comply with the terms of this Subsection A shall constitute an event of default pursuant to Section 21 hereof (a "**PCN Default**") for which the cure period is set forth in Section 21. In the event Licensee fails to cure a PCN Default within the cure period set forth in Section 21, then, in addition to all other obligations of Licensee under this Agreement, Licensee shall pay Licensor Twenty Five Thousand and 00/100 Dollars ($25,000.00) per month as liquidated damages for each tower facility wherein Licensee maintains an active PCN in breach of this Subsection A ("**PCN Retention Fee**"). Licensor and Licensee acknowledge that holding PCNs in violation of this Subsection A reduces Licensor's opportunity to license space at Licensor's tower facilities and since the actual amount of such lost revenue is difficult to determine, Licensor and Licensee agree that the PCN Retention Fee is a reasonable estimate of the damages that would accrue if a breach occurred. Licensor and Licensee agree that the PCN Retention Fee is fair and reasonable and would not act as a penalty to the breaching Party. The PCN Retention Fee shall be remitted by Licensee within ten (10) days of Licensor's written notice to Licensee of Licensee's uncured default of this Subsection A and Licensee shall continue to remit payment of the PCN Retention Fee on a monthly basis on or before the first day of each calendar month while such default of this Subsection A remains uncured. In the event that Licensor does not receive the PCN Retention Fee on or before the first day of each month, then Licensor may, at its option, declare a default of this Agreement and all agreements between Licensor and Licensee and the PCN Retention Fee shall continue to be due and payable as set forth herein until the time Licensee withdraws the subject PCNs.

B. Notwithstanding anything to the contrary in this Agreement, the offer expressed to Licensee in this Agreement shall automatically become null and void with no further obligation by either Party hereto if a structural analysis of the Tower Facility completed after the execution of this Agreement by Licensor but before the commencement of the installation of Licensee's Approved Equipment indicates that the Tower Facility is not suitable for Licensee's Approved Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Facility on mutually agreeable terms.

C. Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Facility on mutually agreeable terms to accommodate Licensee's installation. Licensor and Licensee agree and acknowledge that Licensee shall be responsible for all costs associated with said modifications or repairs.

D. Licensee shall require its vendor, Enertech, to pay to Licensor within thirty (30) days of execution of this Agreement, a “Capital Contribution Fee” in the amount of Thirty-Thousand Nine Hundred Thirty-Seven and 00/100 Dollars ($30,937.00) which fee represents the contribution for costs associated with the tower modification required to accommodate the installation of Licensee’s equipment.

E. WAIVER OF TEXAS DECEPTIVE TRADE PRACTICES ACT. LICENSEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF ITS TRANSACTION WITH LICENSOR, AND THAT IT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH LICENSOR. LICENSEE HEREBY WAIVES ALL ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ. OF THE TEXAS BUSINESS AND COMMERCE CODE (THE “DTPA”), A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF LICENSEE’S OWN SELECTION, LICENSEE VOLUNTARILY CONSENTS TO THIS WAIVER.

F. The “Rider for Verizon Subleased Sites” attached hereto is hereby incorporated into this Agreement in its entirety and the terms and conditions contained therein shall supersede any contradictory provision in this Agreement.

G. Notwithstanding anything to the contrary contained herein, Licensee shall pay to Licensor a one-time non-refundable fee in the amount of Two Thousand and 00/100 Dollars ($2,000.00) (the “**Collocation Fee**”) payable concurrent with the submission of the Application. The Collocation Fee is inclusive of the Application Fee, Site Inspection Fee, SSIS Fee, and Structural Analysis Fee (each fee as defined herein) associated with Licensee’s initial application. For the avoidance of doubt, any design modifications to the Approved Equipment, whether prior to the initial installation of Licensee’s Approved Equipment or any subsequent modifications thereto, may result in an additional Application Fee, Site Inspection Fee, SSIS Fee, or Structural Analysis Fee, as applicable, for each design change.

[Signatures appear on next page]

IN WITNESS WHEREOF, each Party in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative as of the day and year written below; *provided, however,* that this Agreement shall not become effective as to either Party until executed by both Parties.

LICENSOR: ATC Sequoia LLC, a Delaware limited liability company	**LICENSEE:** City of Marshall, a political subdivision of the State of Texas
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

TERMS AND CONDITIONS

1. DEFINITIONS.

Capitalized terms defined in the body of this Agreement are indexed by location in Appendix I attached hereto. Capitalized terms used in Agreement but not defined herein are defined in Appendix I.

2. GRANT OF LICENSE.

Subject to the terms of this Agreement, Licensor hereby grants Licensee a non-exclusive license to install, maintain and operate the Approved Equipment at the Licensed Space. All Approved Equipment shall be and remain Licensee's personal property throughout the Term of this Agreement. Licensor shall maintain the Tower Facility in good order and repair, wear and tear, damage by fire, the elements or other casualty excepted. In no event shall Licensee's license as granted herein include rights to use the air space above the Approved Equipment, and Licensor reserves the right to install, construct and/or operate additional improvements or equipment of Licensor or others above Licensee's Approved Equipment, including Licensee's shelter (commonly referred to as "stacking"), provided that such additional improvements or equipment do not materially and adversely interfere with the access to or operation of the Approved Equipment, including Licensee's shelter. Licensee is not required to utilize a stackable shelter, provided that, if Licensee opts to install a shelter that is not stackable and if Licensor receives an offer to license the air space above Licensee's non-stackable shelter by a proposed subsequent user, Licensor may, at its election, upon thirty (30) days' prior written notice require Licensee to replace such non-stackable shelter with a stackable shelter of a comparable size, provided that the proposed subsequent user agrees in writing to be wholly responsible for the cost of Licensee's shelter replacement. Subject to any limitations contained in the Ground Lease, Licensor grants Licensee a right of access to the Tower Facility twenty-four (24) hours per day, seven (7) days per week during the Term. Licensor grants Licensee a designated location for the installation of Licensee's utilities over, under or across the Tower Facility (collectively, "**Easement**"). Licensee shall be responsible for any and all Damage or loss that results from the installation of any cables or utility wires by Licensee or any company or person retained by Licensee (including a public utility company), including, without limitation, any damage or loss that results from the accidental cutting of utility wires or cables of any other party operating at the Tower Facility. Licensor shall provide Licensee with one set of keys and/or codes to access the Tower Facility. Licensee shall be responsible for ensuring that Licensor has, at all times, a complete and accurate written list of all employees and agents of Licensee who have been provided the keys or access codes to the Tower Facility. Licensor shall have the right to continue to occupy the Tower Facility and to grant rights to others to the Tower Facility in its sole discretion. Licensee shall have no property rights or interest in the Tower Facility or the Easement by virtue of this Agreement. If Licensor's right to license space on the Tower Facility to Licensee is subject to a right of first refusal for the benefit of a third party and if such third party exercises its right of first refusal prior to the Commencement Date, Licensor may terminate this Agreement upon written notice to Licensee.

3. EXHIBITS.

Within forty-five (45) days following the Commencement Date, Licensee shall provide Licensor with as-built or construction drawings showing the Approved Equipment as installed in both hard copy and electronic form ("**Construction Drawings**"); such Construction Drawings shall include the location of any shelters, cabinets, grounding rings, cables, and utility lines associated with Licensee's use of the Tower Facility. Upon receipt, Licensor shall attach the Construction Drawings as Exhibit C hereto. In the event that Licensee fails to deliver the Construction Drawings as required by this Section, Licensor may cause such Construction Drawings to be prepared on behalf of Licensee and Licensor shall assess a fee for such Construction Drawings in an amount equal to one hundred twenty percent (120%) of the actual cost of obtaining the Construction Drawings including in-house labor, which upon invoicing shall become immediately due and payable by Licensee. In the event of inconsistency or discrepancy between (a) Exhibit A and Exhibit B hereto, Exhibit A shall govern, and (b) between Exhibit A (with respect to Approved Equipment and antenna locations) together with Exhibit B (with respect to Ground Space installation locations) and Exhibit C hereto, Exhibits A and B shall govern, notwithstanding any approval or signature by Licensor or its agents. Licensee hereby acknowledges and agrees that installation of the Approved

Equipment must be in strict accordance with the approved Construction Drawings and Exhibits A and B. Notwithstanding the forgoing, Licensee shall not infer nor shall acceptance of the Construction Drawings by Licensor be deemed to be a representation by Licensor that (i) such Construction Drawings or the plans and specifications described therein are in compliance with federal, state or local laws, ordinances, rules or regulations, (ii) that such installation shall not cause impermissible or unlawful interference, or (iii) that such installation is consistent with Licensee's permitted installation as specifically set forth in Exhibits A and B hereto.

4. USE.

Subject to the terms of any Ground Lease, Licensee shall be permitted the non-exclusive right to install, maintain, operate, service, modify and/or replace its Approved Equipment at the Licensed Space, which Approved Equipment shall be utilized for the transmission and reception of wireless voice and data communications signals (such transmission and reception to be solely within the Permitted Frequencies, and, if the Permitted Frequencies include licensed spectrum, within the spectrum licensed to Licensee by the FCC). If as of the Effective Date, Licensee's wireless business consists of a one-way network which requires only that signals be transmitted from the Tower Facility, then notwithstanding the foregoing sentence, Licensee's use of the Tower Facility under this Agreement shall be limited to the transmission of wireless voice and data communications signals from the Tower Facility. Licensee's permitted use with respect to the Licensed Space shall be limited solely to that enumerated in this Section, and, except pursuant to a separate agreement with Licensor, no person or entity other than Licensee shall have the right to install, maintain or operate its equipment or transmit or receive communications at, or otherwise use, the Licensed Space.

5. LICENSE FEES; TAXES; ASSESSMENTS.

(a) **Monthly License Fee**. The Monthly License Fee as adjusted by the Annual Escalator, shall be payable in advance on the first day of each calendar month during the Term beginning upon the Commencement Date. If the Commencement Date is not the first day of a calendar month, the Monthly License Fee for any partial month shall be prorated on a daily basis.

(b) **Utilities**.

(i) All utility services installed on the Tower Facility for the use or benefit of Licensee shall be made at the sole cost and expense of Licensee and shall be separately metered from Licensor's utilities. Licensee shall be solely responsible for extending utilities to the Tower Facility as necessary for the operation of the Approved Equipment and for the payment of utility charges including connection charges and security deposits incurred by Licensee. Licensee shall obtain and pay the cost of telephone connections, the installation of which shall be in compliance with the procedures for installation and maintenance of Approved Equipment set forth herein.

(ii) **Interruptions in Service.** Licensor shall not be liable in any respect for damages to either person or property nor shall Licensee be relieved from fulfilling any covenant or agreement hereof as a result of any temporary or permanent interruption of electrical service or of any common heating, ventilation and air conditioning system to the extent provided by Licensor. Licensor shall use reasonable diligence to restore any interruption as promptly as practicable to the extent that Licensor can reasonably effect such restoration, but Licensee shall have no claim for damages, consequential or otherwise, on account of any interruption. Licensor has no obligation or responsibility to provide emergency or "backup" power to Licensee.

(c) **Taxes**.

(i) **Property Taxes**. Licensee shall be responsible for the reporting and payment when due of any tax directly related to Licensee's ownership or operation of the Approved Equipment and such reporting and payment shall be made directly to the appropriate tax authorities. Licensee shall reimburse Licensor in full for any taxes assessed against Licensor but attributed to the Approved Equipment within thirty (30) days of Licensor's request for such reimbursement. Licensor shall pay all property taxes directly assessed against Licensor's property or for which Licensor is obligated to pay under the Ground Lease, provided, however, Licensee shall reimburse Licensee's pro rata share of such taxes. Licensee's pro rata share shall be determined by dividing such taxes evenly among all users Licensor has permitted to utilize any portion of the Tower Facility. Licensee shall reimburse Licensor for such taxes within thirty (30) days of Licensor's request for such reimbursement.

(ii) **Sales; Use and Other Taxes**. Licensor shall be responsible for billing, collecting, reporting, and remitting sales, use and other taxes directly related to any Monthly License Fee or other payments received pursuant to this Agreement. Licensee shall be responsible for reimbursing Licensor for all such sales, use and other taxes billed related to any payments received pursuant to this Agreement. Licensor shall add to the Monthly License Fee or any other payment then due and payable any associated sales, use or other tax, which shall be paid by Licensee at the same time and in the same manner as the Monthly License Fee or other payment due and payable under this Agreement.

(d) **Federal Use Fees & Assessments**. In the event that a particular Licensed Space is at a Tower Facility located on property which is owned by the Bureau of Land Management ("**BLM**") or the United States Forest Service ("**USFS**"), Licensee shall reimburse Licensor for any and all fees or assessments attributable to this Agreement or Licensee's use of the Licensed Space paid by Licensor to the BLM or USFS related to such Tower Facility within thirty (30) days of Licensor's request for such reimbursement.

(e) **Restrictions on Reimbursement.** Solely for the purposes of determining Licensee's portion of such taxes, fees, assessments or similar expenses as contemplated in this Section 5 or anywhere else in this Agreement, if any such amounts are determined in whole or in part on the income or profits (aside from gross revenues) of any person or entity, Licensor and Licensee shall agree on a fixed amount (subject to the Annual Escalator, which shall be applied in the same manner as it is applied to the Monthly License Fee), that shall be treated as such tax, fee, assessment or similar expense in lieu of the actual amount, which agreed to amount shall be set forth in an amendment to this Agreement.

(f) **Payment Address**. All payments due under this Agreement shall be made to Licensor at Licensor's Remittance Address shown on page 1 of this Agreement or such other address as Licensor may notify Licensee of in writing.

(g) **No Set-Off**. All payments due under this Agreement shall be due without set-off, notice, counterclaim, or demand from Licensor to Licensee.

(h) **Effect of Partial Payment**. No endorsement or statement on any check or letter accompanying a check for payment of any monies due and payable under the terms of this Agreement shall be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to its right to recover the balance of such monies or to pursue any other remedy provided by law or in this Agreement.

6. TERM.

(a) **Initial Term**. The Initial Term of this Agreement shall be as specified on page 1.

(b) **Renewal Term**. The Term of this Agreement may be extended for each of the Renewal Terms as specified on page 1 of this Agreement, provided that at the time of each such renewal, (i) the Ground Lease remains in effect and has not expired or been terminated, (ii) Licensee is not in default hereunder and no condition exists which if left uncured would with the passage of time or the giving of notice result in a default by Licensee hereunder and (iii) the original Licensee identified on page 1 of this Agreement has not assigned, sublicensed, subleased or otherwise transferred any of its rights hereunder. Provided that the foregoing conditions are satisfied, this Agreement shall automatically renew for each successive Renewal Term unless either Party notifies the other in writing of its intention not to renew this Agreement at least one hundred eighty (180) days prior to the end of the then existing Term.

(c) **Holdover Term**. If Licensee fails to remove the Approved Equipment at the expiration of the Term, such failure shall be deemed to extend the Term of this Agreement on a month-to-month basis under the same terms and conditions herein except that (i) a monthly license fee shall be due on or before the first day of every calendar month during such month-to-month term in an amount equal to one hundred fifty percent (150%) of the Monthly License Fee in effect for the last month of the Term prior to the commencement of such month-to-month term ("**Holdover Fee**"), such Holdover Fee to escalate annually on the anniversary of the Commencement Date by an amount equal to six percent (6%) of the Holdover Fee in effect for the month immediately prior to the month in which such escalation takes place, and (ii) the month-to-month extension shall be terminable upon fifteen (15) days' prior written notice from either Licensor or Licensee to the other; provided, however, nothing contained herein shall grant Licensee the unilateral right to extend the Term of this Agreement after the expiration of the Term. In addition to the monthly license fee payable to Licensor in the event of an extension under this Subsection 6(c), Licensee agrees to indemnify and hold Licensor harmless from any Damages arising out of or in connection with the extension, the operation of the Approved Equipment at the Tower Facility and Licensee's failure to perform all of its obligations under this Agreement at the termination or earlier expiration of this Agreement.

7. COMMON EXPENSES.

Licensee shall reimburse Licensor for Licensee's pro-rata share of all common expenses (the "**Common Expenses**") incurred by Licensor in the installation, operation, maintenance and repair of the Tower Facility, including, but not limited to, the construction, maintenance and repair of a common septic system and field, insurance, common utilities and any and all other costs of operating and maintaining the Tower Facility. Notwithstanding the foregoing, the cost and expenses associated with any Damage which is directly attributable to the acts or omissions of Licensee or Licensee's contractors shall be borne solely by Licensee. Licensee shall not be required to pay any share of costs or expenses incurred to replace the Tower. In the event that Licensee also licenses space within a building or shelter owned by Licensor on the Tower Facility, Licensee shall also reimburse Licensor for its pro-rata share of all Common Expenses incurred for the operation, maintenance, repair and replacement associated with such building or shelter, including, without limitation, the physical structure of the building, HVAC system, and common utility expenses. In the event that Licensee is connected to a generator or back-up power supply owned by Licensor, Licensee shall also reimburse Licensor for its pro-rata share of all expenses incurred for the operation, maintenance, repair and replacement associated with such generator, including, without limitation, fuel expenses. For the purposes of this Section, a "pro-rata share" of costs and expenses shall be determined based on the number of licensees using the Tower Facility (or with respect to a shared shelter or building, the number of licensees using Licensor's shelter or building) on the first day of the month in which an invoice is mailed to Licensee. Licensee shall reimburse Licensor for Common Expenses within thirty (30) days following receipt of an invoice from Licensor.

8. SITE INSPECTION.

Concurrent with Licensee's delivery of a fully executed Agreement to Licensor, and before the date of any subsequent modifications to or installation of additional Approved Equipment, Licensee shall pay Licensor the Site Inspection Fee as defined on page 1 of this Agreement. Licensee acknowledges that any site inspection performed by Licensor of Licensee's installation is for the sole purpose and benefit of Licensor and its affiliates, and Licensee shall not infer from or rely on any inspection by Licensor as assuring Licensee's installation complies with any Applicable Laws, that the installation was performed in a good, workmanlike manner or that such installation will not cause impermissible or unlawful interference.

9. LABELING.

Licensee shall identify its Approved Equipment, including its equipment cabinets and coaxial cable (at the top and bottom of the Tower) (unless such cabinet is located in a building or cabinet owned by Licensee) by labels with Licensee's name, contact phone number and date of installation. In the event that Licensee fails to comply with this provision and fails to cure such deficiency within ten (10) days of Licensor's written notice of such failure, Licensor may, but is not obligated to, in addition to any other rights it may have hereunder, label the Approved Equipment and assess against Licensee a fee of One Thousand Five Hundred and 00/100 Dollars ($1,500) ("**Labeling Fee**") which shall be payable to Licensor upon receipt of an invoice therefor. Licensor shall not be responsible to Licensee for any expenses or Damages incurred by Licensee arising from the interruption of Licensee's service caused by Licensor if Licensor is unable to identify the Approved Equipment as belonging to Licensee as a result of Licensee's failure to label such Approved Equipment.

10. IMPROVEMENTS BY LICENSEE.

(a) **Installation and Approved Vendors**. Prior to the commencement of Licensee's initial installation, and again prior to any installation of any additional equipment, Licensee shall submit to Licensor for review and approval, detailed plans and specifications accurately describing all aspects of the proposed work relating to the construction, installation, relocation, and reconfiguration of Licensee's Approved Equipment on the Tower. Licensee shall provide notice to Licensor no less than five (5) days prior to the date upon which Licensee intends to commence Work at the Tower Facility, together with a construction schedule, so Licensor has the opportunity to be present during any such Work. Licensee shall not commence Work on the Tower Facility until Licensor issues to Licensee a NTP. Licensor shall issue a NTP only upon request from Licensee and receipt of the following complete and accurate documentation: (1) evidence that any contingencies set forth in the approval of Licensee's Application have been satisfied; (2) evidence that Licensee has obtained all required governmental approvals including, but not limited to, zoning approvals, building permits, and any applicable environmental approvals including copies of the same; (3) a copy of the plans and specifications that have been approved by Licensor for the proposed equipment installation; (4) evidence that any party, other than Licensor but including Licensee, that will be performing the Work are on Licensor's approved vendor list, with valid and current worker's compensation and general liability insurance certificates on file with Licensor naming Licensor as an additional insured and which otherwise satisfy the insurance coverage requirements set forth in Subsection 15(d) of this Agreement; and (5) a construction schedule. In no event will a NTP be issued prior to the payment by Licensee of a Relocation Application Fee when required pursuant to Subsection 10(c) of this Agreement. Notwithstanding anything to the contrary in this Agreement, Licensor reserves the right, in its sole discretion, to refuse to permit any person or company to climb the Tower.

(b) **Structural Analysis/Interference Analysis**. Prior to the commencement of any Work on the Tower Facility by or for the benefit of Licensee, Licensor may, in its reasonable discretion, perform or cause to be performed a structural analysis or require a professional engineer's certified letter to determine the availability of capacity at the Tower Facility for the installation or modification of any Approved Equipment and/or additional equipment at the Licensed Space by Licensee. Licensee agrees to remit payment to Licensor for all reasonable costs and expenses incurred by Licensor for such structural analysis or professional engineer's certified letter ("**Structural Analysis Fee**") within thirty (30) days following receipt of an invoice from Licensor. The foregoing charge shall be at Licensor's prevailing rates for the performance of same or the amount Licensor's vendor is then charging Licensor, as applicable. In the event a structural analysis is performed after the execution of this Agreement but prior to the initial installation of the Approved Equipment, and such analysis indicates that the existing Tower cannot accommodate the proposed installation of Licensee's Approved Equipment thereon, Licensor shall notify Licensee that modification of the Tower is required and inform Licensee of the fee Licensor will charge Licensee to complete such modification (which fee shall be a reasonable estimate of Licensor's actual cost of making such modifications). Such modification shall become part of the Tower Facility and be Licensor's sole property. If Licensee elects not to pay such fee, and Licensee and Licensor do not otherwise reach an agreement regarding the costs of such modification, Licensee may terminate this Agreement upon written notice to Licensor. Prior to the commencement of any initial or subsequent construction or installation on the Tower Facility by or for the benefit of Licensee and/or the modification of Licensee's Permitted Frequencies propagated from the Licensed Space, Licensor may elect to perform a shared site interference study ("**SSIS**") and Licensee shall pay Licensor a fee of One Thousand Six Hundred and 00/100 Dollars ($1,600.00) per study ("**SSIS Fee**"), as adjusted annually on the anniversary of the Commencement Date by a percentage rate equal to the Annual Escalator. This fee shall be payable at the time Licensee pays the Relocation Application Fee where required pursuant to Subsection 10(c) of this Agreement, or immediately upon receipt of notice from Licensor that Licensor has determined that a SSIS is required. In the event a SSIS is performed after the execution of this Agreement by Licensor but prior to the installation of Licensee's Approved Equipment, and such SSIS indicates that the proposed installation of Licensee's Approved Equipment on the Tower is acceptable, such an indication in no way relieves Licensee of its obligations under Section 11 herein.

(c) **Equipment; Relocation, Modification, Removal**. Licensor hereby grants Licensee reasonable access to the Licensed Space for the purpose of installing and maintaining the Approved Equipment and its appurtenances. Except as otherwise provided, Licensee shall be responsible for all site Work to be done on the Licensed Space or the Easement pursuant to this Agreement. Licensee shall provide all materials and shall pay for all labor for the construction, installation, operation, maintenance, and repair of the Approved Equipment. Licensee shall not construct, install, or operate any equipment or improvements on the Tower Facility other than those which are described on Exhibit A, alter the Permitted Frequencies, or alter the operation of the Approved Equipment. Licensee shall submit an Application, utilizing Licensor's then current form, to request the right to replace or modify its Approved Equipment, alter the Permitted Frequencies or increase the Ground Space, which Application shall be accompanied by a Relocation Application Fee. Licensor shall evaluate for approval the feasibility of Licensee's request, which approval shall be in Licensor's sole discretion. Licensee acknowledges that any such relocation or modification of the Approved Equipment may result in an increase in the Monthly License Fee. An amendment to this Agreement shall be prepared to reflect each addition or modification to Licensee's Approved Equipment to which Licensor has given its written consent and the resulting increase in the Monthly License Fee, if any. Licensee shall have the right to remove all Approved Equipment at Licensee's sole expense on or before the expiration or earlier termination of the License provided Licensee repairs any damage to the Tower Facility or the Tower caused by such removal. Within thirty (30) days of the expiration or termination of this Agreement for any reason, Licensee shall: (i) remove the Approved Equipment and any other property of Licensee at the Tower Facility at Licensee's sole risk, cost, and expense; (ii) deliver the Licensed Space in substantially the same and in as good a condition as received (ordinary wear and tear excepted); and (iii) repair any damage caused by the removal of the Approved Equipment within ten (10) days of the occurrence of such damage. If Licensee fails to timely pay the Holdover Fee or does not remove its Approved Equipment within thirty (30) days after the expiration or termination of this Agreement, (i) the Approved Equipment shall be deemed conclusively and absolutely abandoned by Licensee and anyone claiming by, through, or under Licensee except for Hazardous Substances and waste and Approved Equipment containing Hazardous Substances and waste; and (ii) Licensor shall have the right to remove the Approved Equipment at Licensee's sole expense and dispose of such Approved Equipment in any manner Licensor so elects, and Licensee shall reimburse Licensor for its expenses upon demand without off-set.

11. RF INTERFERENCE/ USER PRIORITY.

(a) **Definitions**. For purposes of this Section 11, the following capitalized terms shall have the meanings set forth herein:

(i) **Interference** includes any performance degradation, misinterpretation, or loss of information to a radio communications system caused by unwanted energy emissions, radiations, or inductions, but shall not include permissible interference as defined by the FCC, and in addition, with regard to Unlicensed Frequencies, congestion.

(ii) **Licensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are licensed by the FCC in the geographic area where the Tower Facility is located.

(iii) A **Licensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Licensed Frequencies at the Tower Facility, but only with respect to such Licensed Frequencies.

(iv) A **Priority User** is any Licensed User of the Tower Facility that holds a priority position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.

(v) A **Subsequent User** is any user of the Tower Facility that holds a subordinate position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.

(vi) **Unlicensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are not licensed by the FCC and are available for use by the general public in the geographic area where the Tower Facility is located.

(vii) An **Unlicensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Unlicensed Frequencies at the Tower Facility, but only with respect to such Unlicensed Frequencies.

(b) **Information**. Licensee shall cooperate with Licensor and with other lessees, licensees, or occupants of the Tower Facility for purposes of avoiding Interference and/or investigating claims of Interference. Upon request, Licensee, within ten (10) days of Licensor's request, shall provide Licensor with a list of Licensee's transmit and receive frequencies and Approved Equipment specifications necessary to resolve or investigate claims of Interference.

(c) **Unlicensed Frequencies**. Notwithstanding any other provision contained herein, as among Licensor, Licensee and other users of the Tower or Tower Facility, (i) an Unlicensed User shall have no priority with respect to any other FCC Unlicensed Users with respect to Interference; and (ii) an Unlicensed User's rights and obligations with respect to such Interference shall be determined and governed by FCC Rules and Regulations and any other Applicable Law. Licensor expressly disclaims any and all warranties and accepts no responsibility for management, mediation, mitigation or resolution of Interference among FCC Unlicensed Users operating at the Tower Facility and shall have no liability therefor.

(d) **Licensed Frequencies**. Subject to FCC Rules and Regulations and other Applicable Law, the Parties acknowledge and agree that the accepted industry standard for priority protection from Interference between multiple Licensed Users has been based on the priority of occupancy of each user to another user of the Tower or Tower Facility, which priority has been based on the order of submittal of its collocation Application by each user of the Tower or Tower Facility. Should the application of FCC Rules and Regulations and other Applicable Law not resolve any claims of Interference consistent with Subsections 11(e), 11(f) and 11(g) below, as among Licensor, Licensee and other users of the Tower Facility, (i) each Licensed User's priority shall be maintained so long as the Licensed User does not change the equipment and/or frequency that it is entitled to use at the Tower Facility at the time of its initial occupancy; and (ii) Licensee acknowledges and agrees that if Licensee replaces its Approved Equipment or alters the radio frequency of the Approved Equipment to a frequency range other than as described on page 1 of this Agreement, Licensee will lose its priority position for protection from Interference with regard to Approved Equipment operating at the new frequency in its relationship to other Licensed Users which are in place as of the date Licensee replaces its Approved Equipment or alters its radio frequency, consistent with this Section 11.

(e) **Correction**.

(i) **Licensee**. Licensee agrees not to cause Interference with the operations of any other user of the Tower or Tower Facility and to comply with all other terms and provisions of this Section 11 imposed upon Licensee. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that Licensee's Approved Equipment is causing Interference to the installations of Licensor or a Priority User, Licensee shall, within 48 hours of notification from Licensor, take such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Licensee's operations. If Licensee cannot mitigate or eliminate such Interference within the 48 hour period, Licensor may file a complaint with the FCC (currently the FCC's Enforcement Bureau, Spectrum Enforcement Division) or if such other user of the Tower Facility which is subject to Interference from Licensee's Approved Equipment is a Priority User, then upon the request of such Priority User consistent with Licensor's contractual obligations owed to the Priority User, Licensor may require that Licensee turn off or power down its interfering Approved Equipment and only power up or use such Approved Equipment during off-peak hours specified by Licensor in order to test whether such Interference continues or has been satisfactorily eliminated. If Licensee is unable to resolve or eliminate, to the satisfaction of Licensor, such Interference within thirty (30) days from Licensee's initial notification thereof, Licensee will immediately remove or cease operations of the interfering Approved Equipment.

(ii) **Licensor**. Upon the request of Licensee, Licensor hereby covenants to take commercially reasonable efforts to prohibit a Subsequent User from causing Interference with the operations of Licensee to the extent Licensee is a Priority User pursuant this Section 11. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that a Subsequent User's equipment is causing Interference to the installations of Licensee, upon Licensee's request, Licensor shall, within 48 hours of request, commence such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Subsequent User's operations.

(iii) **Government Users**. Notwithstanding the foregoing, if another user of the Tower or Tower Facility is a governmental entity, Licensor shall give such governmental entity written notice of the Interference within five (5) Business Days of Licensor's determination that such action is reasonably necessary. Licensor shall have the right to give the governmental entity five (5) Business Days, or more as specified in the governmental site or occupancy agreement or as required by Applicable Law, from the receipt of such notice prior to Licensor being required to take any actions required by this Subsection 11(e) to cure such Interference.

(f) **FCC Requirements Regarding Interference**. Nothing herein shall prejudice, limit, or impair Licensee's rights under Applicable Law, including, but not limited to, FCC Rules and Regulations to redress any Interference independently of the terms of this Section 11. Notwithstanding anything herein to the contrary, the provisions set forth in this Section 11 shall be interpreted in a manner so as not to be inconsistent with Applicable Law, including, but not limited to, FCC Rules and Regulations and nothing herein relieves Licensee from complying with all Applicable Laws governing the propagation of radio frequencies and/or radio frequency interference. The Parties acknowledge that currently FCC Rules and Regulations govern the obligations of wireless telecommunication service providers with respect to the operation of equipment and use of frequencies. Consequently, the provisions set forth in this Section 11 are expressly subject to CFR, Title 47, including but not limited to Part 15, et seq, governing Radio Frequency Devices; Part 20, et seq, governing commercial mobile radio services; Part 24, et seq, governing personal communications services; Part 90, et seq, governing private land mobile radio services; and Part 96, et seq, governing Citizens Broadband Radio Service. In addition, in accordance with good engineering practice and standard industry protocols, licensees employ a wide range of techniques and practices, including those involving the use of proper types of equipment as well those related to the adjustment of operating parameters, in a mutually cooperative effort to identify and mitigate sources of Interference. The obligation of Part 20 licensees, including, but not limited to, private paging, specialized mobile radio services, cellular radiotelephone service and personal communications services, to avoid Interference is set forth in 47 CFR Part 90, Subpart N – Operating Requirements, §90.403(e). Claims of Interference are ultimately cognizable before the FCC's Enforcement Bureau, Spectrum Enforcement Division. Licensee shall observe good engineering practice and standard industry protocols, applying such commercially reasonable techniques as constitute best practices among licensees, in the deployment of their frequencies and the operation of the Approved Equipment. If Licensee deploys its frequencies or operates the Approved Equipment in a manner which prevents any other user of the Tower or Tower Facility from decoding signal imbedded in their licensed frequencies such that the Spectrum Enforcement Division makes a determination that Licensee is the cause of the Interference and Licensee fails or refuses to mitigate or eliminate the Interference within the time and in the manner prescribed by the Spectrum Enforcement Division, Licensee shall be default of this Agreement and the remedies set forth in Section 22 shall apply.

(g) **Public Safety Interference**. As of the Commencement Date, Licensor and Licensee are aware of the publication of FCC Final Rule, Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding, *Federal Register*: November 22, 2004 (Volume 69, Number 224), Rules and Regulations, Page 67823-67853 ("**Final Rule**"). Claims of Interference made by or against users which are public safety entities shall be in compliance with the Final Rule as and when effective, or otherwise in accordance with FCC Rules and Regulations.

(h) **AM Detuning**. The parties acknowledge that the FCC Rules and Regulations govern the obligations of Licensee with respect to the operation of the Approved Equipment. Consequently, the provisions set forth in this Agreement are expressly subject to the FCC Rules and Regulations, including, but not limited to 47 C.F.R. §§ 27.63, 22.371 and 73.1692. Licensee agrees, at Licensee's sole cost, to comply with the foregoing as well as any and all other FCC Rules, Regulations and public guidance relating to AM detuning as such provisions currently exist or are hereafter modified. Licensee shall be fully responsible for any pre and/or post installation testing for AM interference at the Tower Facility and for the installation of any new detuning apparatus or the adjustment of any existing detuning apparatus that may be necessary to prevent adverse effects on the radiation pattern of any AM station caused by the installation of the Approved Equipment. Licensee shall provide Licensor with written proof of such compliance. In the event that Licensee determines that pre or post-installation testing for AM interference is not required at the Tower Facility, such a determination shall be at Licensee's sole risk. If Licensee or Licensor receives a complaint of interference from an AM broadcast station after the Approved Equipment is added to a Tower or a Tower is modified to accommodate Licensee, Licensee shall eliminate such interference within thirty (30) days of the receipt of such complaint. Licensee's failure to eliminate such interference within such thirty (30) day period shall constitute a default under this Agreement and Licensor shall have the right to eliminate such interference at Licensee's expense. Licensee further agrees to indemnify Licensor in the event that Licensee's failure to comply with the FCC Rules and Regulations prior to installation/modification of the Approved Equipment results in any administrative investigation, proceeding or adjudication with respect to Licensor.

12. SITE RULES AND REGULATIONS.

Licensee agrees to comply with the reasonable rules and regulations established from time to time at the Tower Facility by Licensor, which may be modified by Licensor from time to time upon receipt by Licensee of such revised rules and regulations. Such rules and regulations will not unreasonably interfere with Licensee's use of the Licensed Space under this Agreement.

13. DESTRUCTION; CONDEMNATION.

(a) **Destruction**. If the Tower or other portions of the improvements at the Tower Facility owned by Licensor are destroyed or so damaged as to materially interfere with Licensee's use and benefits from the Licensed Space, Licensor or Licensee shall be entitled to elect to cancel and terminate this Agreement on the date of such casualty and any unearned Monthly License Fee paid in advance of such date shall be refunded by Licensor to Licensee within thirty (30) days of such termination date. Notwithstanding the foregoing, Licensor may elect, in its sole discretion, to restore the damaged improvements, in which case Licensee and Licensor shall remain bound to the terms of this Agreement but Licensee shall be entitled to an abatement of the Monthly License Fee during the loss of use. If the Tower is so damaged that reconstruction or repair cannot reasonably be undertaken without removing the Approved Equipment, then (i) Licensor may, upon giving written notice to Licensee, remove any of the Approved Equipment and interrupt the signal activity of Licensee, (ii) Licensee may, at Licensee's sole cost and expense, install temporary facilities pending such reconstruction or repair, provided such temporary facilities do not interfere with the construction, rebuilding or operation of the Tower, (iii) Licensor agrees to provide Licensee alternative space, if available, on the Tower or at the Tower Facility during such reconstruction/repair period and (iv) should Licensor not substantially restore or replace the Tower in a fashion sufficient to allow Licensee to resume operations thereon within 6 months of the date of casualty, provided that such 6 month period shall be automatically extended for so long as Licensor has commenced and diligently continues to restore or replace such Tower, and Licensee's operation has been materially disrupted for sixty (60) or more consecutive days, then Licensee, upon thirty (30) days' prior written notice to Licensor, may terminate this Agreement.

(b) **Condemnation**. If the whole or any substantial part of the Tower Facility shall be taken by any public authority under the power of eminent domain or in deed or conveyance in lieu of condemnation so as to materially interfere with Licensee's use thereof and benefits from the Licensed Space, then this Agreement shall terminate on the part so taken on the date of possession by such authority of that part, and Licensor or Licensee shall have the right to terminate this Agreement and any unearned Monthly License Fee paid in advance of such termination shall be refunded by Licensor to Licensee within thirty (30) days following such termination. Notwithstanding the foregoing, Licensor may elect to rebuild the Tower or other improvements affected by such condemnation at an alternate location or property owned, leased, or managed by Licensor, in which case Licensee and Licensor shall remain bound hereby. Upon such relocation of the Tower or improvements, the Licensed Space shall be modified to include the new Tower or improvements and the property on which the same are located and this Agreement shall be amended accordingly to clarify the rights of Licensor and Licensee with respect to the Licensed Space. Licensee agrees not to make a claim to the condemning authority for any condemnation award to the extent such claim shall diminish or affect the award made to Licensor with regard to such condemnation.

(c) **License Fee Abatement**. The Monthly License Fee with respect to the affected Tower Facility shall be abated during any period that the Tower has not been restored following an event described in Subsections (a) or (b) above so long as Licensee is unable to continue to operate from a temporary location at the Tower Facility during any period of restoration.

14. COMPLIANCE WITH LAWS.

Licensor shall be responsible for compliance with any marking and lighting requirements of the FAA and the FCC applicable to the Tower Facility, provided that if the requirement for compliance results from the presence of the Approved Equipment on the Tower, Licensee shall pay the costs and expenses therefor (including any lighting automated alarm system so required). Licensee has the responsibility of carrying out the terms of Licensee's FCC license with respect to tower light observation and notification to the FAA if those requirements imposed on Licensee are in excess of those required of Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee shall at all times comply with all Applicable Laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Approved Equipment and other alterations or improvements authorized pursuant to the provisions of this Agreement.

15. INDEMNIFICATION; INSURANCE.

(a) **Mutual Indemnity**. Subject to the mutual waiver of subrogation set forth in Section 27, Licensee and Licensor each indemnifies the other against and holds the other harmless from any and all costs, demands, Damages, suits, expenses, or causes of action (including reasonable attorney's fees and court costs) which arise out of the use and/or occupancy of the Licensed Space by the Indemnifying Party. This indemnity does not apply to any Claims to the extent arising from the gross negligence or intentional misconduct of the Indemnified Party.

(b) **Limits on Indemnification**. Neither Party shall be responsible or liable to any of the foregoing Indemnified Parties for any Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Tower Facility or for any structural or power failures or destruction or damage to the Tower Facility except to the extent caused by the sole, joint, or concurrent gross negligence or willful misconduct of such Party.

(c) **Survival.** The provisions of this Section 15 shall survive the expiration or earlier termination of this Agreement with respect to any events occurring on or before expiration or termination of same whether or not Claims relating thereto are asserted before or after such expiration or termination.

(d) **Insurance**. Licensor and Licensee shall keep in full force and effect, during the Term of this Agreement, insurance coverage in accordance with Appendix II attached hereto.

16. LIMITATION OF PARTIES' LIABILITY.

NEITHER LICENSOR NOR LICENSEE SHALL BE RESPONSIBLE FOR, AND HEREBY WAIVES ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED RESULTING FROM (i) LICENSEE'S USE OR LICENSEE'S INABILITY TO USE THE TOWER FACILITY, OR (ii) DAMAGE TO THE OTHER'S EQUIPMENT. If Licensor shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Agreement or is charged with an indemnity obligation hereunder, and if Licensee shall, as a consequence thereof, recover a money judgment against Licensor (whether compensatory or punitive in nature), Licensee agrees that it shall look solely to Licensor's right, title and interest in and to the Tower Facility and the Tower for the collection of such judgment, and Licensee further agrees that no other assets of Licensor shall be subject to levy, execution or other process for the satisfaction of Licensee's judgment, and that Licensor shall not be personally liable for any deficiency.

17. DISCLAIMER OF WARRANTY.

LICENSOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ASSOCIATED WITH THE TOWER FACILITY OR THE TOWER. LICENSEE HEREBY ACCEPTS THE TOWER FACILITY "AS IS, WHERE IS, WITH ALL FAULTS."

18. NOTICES.

All notices, demands, approvals, requests and other communications shall be in writing to such Party at the address listed in the introductory paragraph of this Agreement (and in each case, in the event of notice to Licensor, with a copy of such notice to American Towers LLC, 116 Huntington Avenue, Boston, MA 02116, Attention: General Counsel) or at such other address as such Party shall designate by notice to the other Party hereto in accordance with this Section 18 (the **"Notice Address"**) and may be personally delivered; mailed, via United States certified mail, return receipt requested; or transmitted by overnight courier for next Business Day delivery, and, if not delivered personally, shall be deemed to be duly given or made two (2) Business Days after deposit with the applicable carrier or courier. Notices will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (i) any notice that is given by a Party may be given by the attorneys for that Party and shall be deemed effective for all purposes herein, and (iii) only notices, letters, documents, or instruments threatening to declare or declaring such addressee or recipient in default under this Agreement shall be required to be sent to the attorneys representing such addressee or recipient, if the name and address of such attorney is provided for herein.

19. ASSIGNMENT; SUBLEASING.

Licensee may not, directly or indirectly, assign this Agreement as a whole, or any portion of Licensee's rights, title and interests hereunder without Licensor's prior written consent. In no event may Licensee sublet, sublease, or permit any use of the Tower Facility or Licensed Space by any other party. Any permitted assignee shall expressly assume, and become bound by, all of Licensee's obligations under this Agreement. Licensor may freely assign, transfer, or sublease this Agreement and, in such event, Licensor shall be relieved of all of its obligations under this Agreement from and after the date of such assignment or transfer. Licensee shall pay Licensor a fee of Five Hundred and 00/100 Dollars ($500.00) (which fee shall increase annually on each anniversary of the Commencement Date by a percentage rate increase equal to the Annual Escalator) in each instance in which Licensee requests Licensor to consent to an assignment of this Agreement or in which Licensee seeks an estoppel certificate, non-disturbance agreement, subordination agreement or other similar agreement to defray the administrative cost incurred by Licensor to process such requests, prepare and process any necessary documentation, and modify its database and other information systems to reflect any such agreement. Such fee is due upon submission of Licensor's request and is hereby deemed fully earned by Licensor upon receipt. Notwithstanding anything to the contrary, Licensor may condition its consent to any assignment, on among other things, (i) requiring that the assignee execute a new form of license agreement so long as the Monthly License Fee and Initial and Renewal Terms of such agreement are consistent with those set forth in this Agreement, and (ii) requiring the assignee to demonstrate that it maintains at the time of such assignment, as evidenced by current financial statements provided to Licensor, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee hereunder through the unexpired balance of the then current Initial Term or Renewal Term. Any purported assignment by Licensee in violation of the terms of this Agreement shall be void. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

20. SUBORDINATION TO GROUND LEASE.

The Parties acknowledge and agree that in the event Licensor's rights in the Licensed Space and/or any part of the Tower Facility is derived in whole or part pursuant to an underlying lease, sublease, permit, easement or other right of use agreement (a "**Ground Lease**"), all terms, conditions and covenants contained in this Agreement shall be specifically subject to and subordinate to the terms and conditions of the applicable Ground Lease. In the event that any of the provisions of the Ground Lease are in conflict with any of the provisions of this Agreement (other than those provisions relating to the length of term, termination rights or financial consideration), the terms of the Ground Lease shall control. Further, Licensee agrees to comply with the terms of such Ground Lease as applicable to the access and occupancy of the Licensed Space. Notwithstanding anything contained in this Agreement to the contrary, if the Ground Lease expires or is terminated for any reason, this Agreement shall terminate on the effective date of such termination and Licensor shall have no liability to Licensee as a result of the termination of this Agreement. Licensor is under no obligation to extend the term of or renew the Ground Lease. Licensor shall give Licensee written notice of such termination or expiration of this Agreement as a result of the termination or expiration of the Ground Lease as soon as practicable. Unless prohibited by the terms of such Ground Lease, upon Licensee's written request, Licensor shall provide a copy of any applicable Ground Lease with the economic terms and other terms that Licensor deems reasonably confidential redacted.

21. DEFAULT.

The occurrence of any of the following instances shall be considered to be a default or a breach of this Agreement by Licensee: (i) any failure of Licensee to pay the Monthly License Fee, or any other charge for which Licensee has the responsibility of payment under this Agreement, within ten (10) Business Days of the date following written notice to Licensee from Licensor, or its designee, of such delinquency, it being understood, however, that Licensor is obligated to provide such notice only two times in each calendar year, and the third instance of the failure to pay the Monthly License Fee or any other charge shall be an immediate default without notice to Licensee if not paid within ten (10) Business Days of the date when due; (ii) except for a PCN Default for which the cure period is set forth in clause (iv) below, any failure of Licensee to perform or observe any term, covenant, provision or condition of this Agreement which failure is not corrected or cured by Licensee within thirty (30) days of receipt by Licensee of written notice from Licensor, or its designee, of the existence of such a default; except such thirty (30) day cure period shall be extended as reasonably necessary to permit Licensee to complete a cure so long as Licensee commences the cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure; (iii) failure of Licensee to abide by the Interference provisions as set forth in Section 11; (iv) a PCN Default occurs that Licensee fails to cure within ten (10) days of Licensor's written notice to Licensee, or its designee of the existence of such default; (v) Licensee shall become bankrupt, insolvent or file a voluntary petition in bankruptcy, have an involuntary petition in bankruptcy filed against Licensee which cannot be or is not dismissed by Licensee within sixty (60) days of the date of the filing of the involuntary petition, file for reorganization or arrange for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of Licensee's assets, or Licensee makes an assignment for such purposes for the benefit of creditors; (vi) this Agreement or Licensee's interest herein or Licensee's interest in the Tower Facility are executed upon or attached; (vii) Licensee commits or fails to perform an act which results in a default under or nonconformance with the Ground Lease by Licensor and the same shall not be cured within five (5) Business Days (or such shorter time as permitted under the Ground Lease to cure) of the date following written notice to Licensee from Licensor, or its designee, of such default; or (viii) the imposition of any lien on the Approved Equipment except as may be expressly authorized by this Agreement, or an attempt by Licensee or anyone claiming through Licensee to encumber Licensor's interest in the Tower Facility, and the same shall not be dismissed or otherwise removed within ten (10) Business Days of written notice from Licensor to Licensee.

22. REMEDIES.

In the event of a default or a breach of this Agreement by Licensee and after Licensee's failure to cure the same within the time allowed Licensee to cure such default, if applicable, then Licensor may, in addition to all other rights or remedies Licensor may have hereunder at law or in equity, (i) terminate this Agreement by giving written notice to Licensee, stating the date upon which such termination shall be effective, accelerating and declaring to be immediately due and payable the then present value of all Monthly License Fees and other charges or fees which would have otherwise been due Licensor absent a breach of this Agreement by Licensee, discounted by an annual percentage rate equal to five percent (5%), (ii) terminate electrical power to the Approved Equipment, and/or (iii) remove the Approved Equipment without being deemed liable for trespass or conversion and store the same at Licensee's sole cost and expense for a period of thirty (30) days after which the Approved Equipment, other than Hazardous Substances, will be deemed conclusively abandoned if not claimed by Licensee. Licensee shall pay all reasonable attorney's fees, court costs, removal and storage fees (including any damage caused thereby), and other items of cost reasonably incurred by Licensor in recovering the Monthly License Fee or other fee or charge. Licensee shall not be permitted to claim the Approved Equipment until Licensor has been reimbursed for removal and storage fees. Past due amounts under this Agreement will bear interest from the date upon which the past due amount was due until the date paid at a rate equal to eighteen percent (18%) per annum, or at a lower rate if required by law in the state in which this Agreement is to be performed. In addition, Licensee shall be assessed a late payment fee equal to twenty-five percent (25%) of the then-current Monthly License Fee for any payment or reimbursement due to Licensor under this Agreement which is overdue by ten (10) days or more and such fee shall be assessed for each thirty (30) day period thereafter that any such amount (or portion thereof) remains unpaid.

23. GOVERNMENTAL APPROVALS; PERMITS.

In the event that any governmental permit, approval or authorization required for Licensor's use of, operation of, or right to license space to Licensee at the Tower Facility is terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Licensor may terminate this Agreement. Licensee hereby agrees that in the event of a governmental or legal order requiring the removal of the Approved Equipment from the Tower, the modification of the Tower, or the removal of the Tower, Licensee shall remove the Approved Equipment promptly, but in no event later than the date required by such order, at Licensee's sole cost and expense. Licensor shall cooperate with Licensee in Licensee's efforts to obtain any permits or other approvals that may be necessary for Licensee's installation and operation of the Approved Equipment, provided that Licensor shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation. Licensor may elect to obtain such required approvals or permits on Licensee's behalf, at Licensee's sole cost and expense. In no event may Licensee encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Tower Facility or Licensor's current or future use or ability to license space at the Tower Facility as part of or in exchange for obtaining any such approval or permit. In the event that Licensee's shelter or cabinets are installed above a third-party or Licensor-owned shelter or building, Licensee shall be solely responsible for obtaining any required approvals, or permits in connection with such shelter or cabinet installation, excepting the consent of other users at the Tower Facility and/or the ground landlord which shall remain the sole responsibility of Licensor where required.

24. REPLACEMENT OF TOWER/RELOCATION OF APPROVED EQUIPMENT.

(a) **Replacement of Tower**. Licensor may, at its election, replace or rebuild the Tower or a portion thereof. Such replacement will (i) be at Licensor's sole cost and (ii) not result in an interruption of Licensee's communications services beyond that which is necessary to replace the existing Tower. If Licensee, in Licensee's reasonable discretion, cannot operate the Approved Equipment from the existing Tower during such replacement or rebuild of the Tower, Licensee may establish, at Licensee's sole cost, a temporary facility on the Tower Facility to provide such services as Licensee deems necessary during any such construction by Licensor so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensor's approval. The Monthly License Fee due hereunder shall be abated for any period during which Licensee is prevented from broadcasting from the existing Tower due to such replacement or relocation. At the request of either Party, Licensor and Licensee shall enter into an amendment to this Agreement to clarify the rights of Licensor and Licensee to the new Tower Facility.

(b) **Relocation of Approved Equipment**. In the event another Paying Carrier (as hereinafter defined) desires to occupy the space on the Tower (which includes any necessary vertical separation as determined by Licensor) where Licensee's Approved Equipment is then located (the "**Trigger Condition**"), Licensor reserves the right to require Licensee to decide whether to (i) terminate this Agreement, (ii) relocate Licensee's Approved Equipment located at the Tower Facility, at Licensee's sole cost and expense, to another antenna mount height on the Tower, or (iii) increase the Monthly License Fee to that which would initially be paid by the Paying Carrier ("**Paying Carrier Rate**"), all in accordance with the terms and provisions provided in this Subsection 24(b). Upon the Trigger Condition occurring, Licensor may notify Licensee in writing ("**Relocation Notice**") that the Trigger Condition has occurred and if other spaces or antenna mount heights are available to accommodate Licensee's Approved Equipment on the Tower (without the requirement of any improvements to the Tower by Licensor), indicate which other spaces or antenna mount heights are so available and, also, indicate the Paying Carrier Rate. Within ten (10) Business Days of Licensee's receipt of the Relocation Notice, Licensee will be required to inform Licensor in writing of its election either to (A) increase the Monthly License Fee to the Paying Carrier Rate (which would thereafter be subject to escalation of the Monthly License Fee generally as otherwise provided in this Agreement) and continue to occupy the same space or antenna mount height on the Tower; (B) provided other spaces or antenna mount height are available on the Tower, relocate Licensee's Approved Equipment to one of the other such spaces or antenna mount height as specified in the Relocation Notice; or (C) remove Licensee's Approved Equipment from Tower and terminate this Agreement. If Licensee elects option (A), then such election shall be effective and the Monthly License Fee shall increase effective upon the eleventh Business Day after Licensee's receipt of the Relocation Notice without further act or deed. If Licensee elects option (B), if such option is available, and notifies Licensor that it elects to relocate its Approved Equipment to a particular antenna mount height or space specified in the Relocation Notice, Licensee shall have forty-five (45) days of Licensee's receipt of the Relocation Notice to relocate its Approved Equipment on the Tower to such elected space or antenna mount height at Licensee's sole cost and expense, such relocation to be subject to all of the terms and conditions of this Agreement otherwise imposed. If Licensee elects or is deemed to elect option (C), Licensee will remove its Approved Equipment from the Tower Facility within forty-five (45) days of Licensee's receipt of the Relocation Notice, such removal to be subject to all terms and conditions of this Agreement otherwise imposed. If Licensor fails to receive notice from Licensee within such ten (10) Business Day period as to whether Licensee elects option (A), (B) or (C), then Licensee shall be deemed conclusively to have elected option (C). If Licensee elects option (B) or elects or is deemed to elect option (C), if Licensee fails to relocate or remove the Approved Equipment within such time period as required above, TIME BEING OF THE ESSENCE, then the Approved Equipment shall be deemed conclusively and absolutely abandoned by Licensee and anyone claiming by, through, or under Licensee except for Hazardous Substances and waste and equipment containing Hazardous Substances and waste, which shall be removed by Licensee from the Tower Facility immediately; and Licensor shall have the right to remove the Approved Equipment at Licensee's sole expense and dispose of such Approved Equipment in any manner Licensor so elects, and Licensee shall reimburse Licensor for its expenses upon demand without off-set. For purposes of this Subsection, a "**Paying Carrier**" is a paying carrier or potential licensee of Licensor which, through a written Application or offer, offers to monetarily compensate Licensor for the right to use the space on the Tower included in the Licensed Space.

(c) **Tower Removal**: If during the term of this Agreement Licensor determines based on engineering structural standards generally applied to communications towers that the Tower is or has become structurally unsound such that pursuant to generally accepted industry safety standards the Tower or a portion thereof must be removed, then, upon ninety (90) days' prior written notice to Licensee, Licensor may, in its sole discretion either (i) remove the Tower and terminate this Agreement effective as of the date of such removal, or (ii) modify the Tower and relocate Licensee's Approved Equipment to an alternative location on the modified Tower. If Licensee and Licensor are not able to agree on an alternative location on the modified Tower for the installation of Licensee's Approved Equipment within the foregoing ninety (90) day notice period, then Licensee or Licensor may elect to terminate this Agreement.

25. EMISSIONS.

If antenna power output ("**RF Emissions**") is presently or hereafter becomes subject to any restrictions imposed by the FCC or other governmental agency for RF Emissions standards on Maximum Permissible Exposure ("**MPE**") limits, or if the Tower Facility otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Licensee shall comply with Licensor's reasonable requests for modifications to the Approved Equipment which are reasonably necessary for Licensor to comply with such limits, rules, regulations, restrictions or ordinances and Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower Facility to promptly comply. If Licensor requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Licensee and all other licensees of the Tower within thirty (30) days of Licensor's request therefor. If said study or a study sponsored by any governmental agency indicates that RF Emissions at the Tower Facility do not comply with MPE limits, then Licensee and Licensor, each for itself, shall immediately take any and all steps necessary to ensure that it is individually in compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to comply with MPE and in addition, Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower to take similar steps necessary to ensure that they are individually in compliance with such limits.

26. ENVIRONMENTAL.

Licensee covenants that it will not use, store, dispose, or release any Hazardous Substances on the Tower Facility in violation of Applicable Law. Licensee agrees to indemnify and save harmless Licensor against any and all Claims, liabilities, causes of action, Damages, orders, judgments, and clean-up costs arising from Licensee's breach of any of the covenants contained in this Section 26. The obligations of Licensee to indemnify Licensor pursuant to this Section 26 shall survive the termination or expiration of this Agreement.

27. SUBROGATION.

(a) **Waiver**. Licensor and Licensee waive all rights against each other and any of their respective consultants and contractors, agents and employees, for Damages caused by perils to the extent covered by the proceeds of the insurance provided herein, except such rights as they may have to the insurance proceeds. All insurance policies required under this Agreement shall contain a waiver of subrogation provision under the terms of which the insurance carrier of a Party waives all of such carrier's rights to proceed against the other Party. Licensee's insurance policies shall provide such waivers of subrogation by endorsement. Licensee shall require by appropriate agreements, written where legally required for validity, similar waivers from its contractors and subcontractors. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(b) **Mutual Release**. Notwithstanding anything in this Agreement to the contrary, Licensor and Licensee each release the other and its respective affiliates, employees and representatives from any Claims by them or any one claiming through or under them by way of subrogation or otherwise for Damage to any person or to the Tower Facility and to the fixtures, personal property, improvements and alterations in or on the Tower Facility that are caused by or result from risks insured against under any insurance policy carried by each and required by this Agreement, provided that such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies and only to the extent of the proceeds received from such policy.

28. GOVERNING LAW.

This Agreement shall be governed by the laws of the state in which the Tower Facility is located, with the exception of its choice of laws provisions. If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect. Any approval, consent, decision, or election to be made or given by a Party may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness or good faith) is provided for explicitly.

29. MISCELLANEOUS.

Upon Licensor's written request, Licensee shall promptly furnish Licensor with complete and accurate information in response to any reasonable request by Licensor for information about any of the Approved Equipment or utilities utilized by Licensee at the Tower Facility or any of the channels and frequencies utilized by Licensee thereon. In the event that this Agreement is executed by Licensor, its Affiliates or any trade name utilized by Licensor or its Affiliates and such signatory does not hold the real Tower Facility or leasehold interest in the affected Tower Facility, the execution of this Agreement shall be deemed to have been properly executed by Licensor or Licensor's Affiliate which properly holds such interest in the affected Tower Facility. Upon the termination or expiration of this Agreement, Licensee shall immediately upon the request of Licensor deliver a release of any instruments of record evidencing such Agreement. Notwithstanding the expiration or earlier termination of this Agreement, Sections 15, 16, 17, and 26 shall survive the expiration or earlier termination of this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter herein and shall supersede all prior offers, negotiations and agreements, whether written or oral. No revision of this Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this first be proven.

30. CONFIDENTIALITY.

Neither Party shall use the other's name, service mark or trademark in any public announcement or advertisement without the prior written consent of the other Party, which may be withheld in such Party's sole and absolute discretion.

The submission of this Agreement for examination and negotiation does not constitute an offer to license, or a reservation of, or option for, any portion of the Tower Facility, and Licensee shall have no right to use or occupy any portion of the Tower Facility or any appurtenant easement area hereunder until the execution and delivery of this Agreement by both Licensor and Licensee.

ATTACHED EXHIBITS:

Exhibit A: List of Approved Equipment and location of the Licensed Space

Exhibit B: Site Drawings indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Exhibit C: As-Built Drawings or Construction Drawings to be attached within forty-five (45) days after the Commencement Date in accordance with Section 3

Appendix I: Definitions

Appendix II: Insurance

Exhibit A

List of Approved Equipment and location of the Licensed Space

Exhibit B

Site Drawing indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)

Licensee shall not commence installation until Licensor has approved in writing said drawing and attached it hereto.

Exhibit C

As Built Drawings or Construction Drawings

To be attached hereto within forty-five (45) days after the Commencement Date.

Appendix I

Defined Terms

Affiliate(s): Any corporation, partnership, limited liability company or other entity that (i) is controlled directly or indirectly (through one or more subsidiaries) by Licensee, (ii) is the successor or surviving entity by a merger or consolidation of Licensee pursuant to Applicable Law, or (iii) purchases all or substantially all of the assets of Licensee. For purposes of this definition, "**control**" means the possession of the right through the ownership of fifty percent (50%) or more of the shares with voting rights to effectively direct the business decisions of the subject entity.

Agreement: defined in the introductory paragraph.

Annual Escalator: defined in Section IV.

Applicable Law: All applicable statutes, ordinances, laws, regulations and directives of any federal, state or local governmental unit, authority or agency having jurisdiction over a Licensed Space or affecting the rights and obligations of Licensor or Licensee under this Agreement, including without limitation, the Communications Act of 1934, as amended from time to time, FCC Rules and Regulations, and the rules, regulations and written policies and decisions of the FAA.

Application: defined in Section IV.

Application Fee: defined in Section IV.

Approved Equipment: the communications system, including antennas, radio equipment, cabling and conduits, shelter and/or cabinets and other personal property owned or operated by Licensee at the Licensed Space, as defined in Exhibit A or B to this Agreement.

BLM: defined in Subsection 5(d).

Business Day: a day other than a Saturday, Sunday or legal holiday for commercial banks under the laws of the United States or the state in which the Tower Facility is located.

Claims: demands, claims, suits, actions, proceedings or investigations brought against a Party by an unrelated or unaffiliated person or entity.

Commencement Date: defined in Section IV.

Common Expenses: defined in Section 7.

Connection Fee: defined in Section IV.

Construction Drawings: defined in Section 3.

Damages: debts, liabilities, obligations, losses, damages, excluding consequential or punitive damages, costs and expenses, interest (including, without limitation, prejudgment interest), penalties, reasonable legal fees, court costs, disbursements and costs of investigations, deficiencies, levies, duties and imposts.

Easement: defined in Section 2.

Effective Date: defined in the introductory paragraph.

FAA: the United States Federal Aviation Administration or any successor federal agency established for the same or similar purpose.

FCC: the United States Federal Communications Commission or any successor federal agency established for the same or similar purpose.

FCC Rules and Regulations: All of the rules, regulations, public guidance, written policies and decisions governing telecommunications generally and wireless telecommunications specifically as promulgated and administered by the FCC, which on the Effective Date includes, but is not limited to, those administered by the Wireless Telecommunications Bureau of the FCC and more specifically referenced as the Code of Federal Regulations, title 47, parts 0 through 101, as amended.

Final Rule: defined in Subsection 11(g).

Ground Lease: defined in Section 20.

Ground Space: The portion of the Tower Facility licensed for use by Licensee to locate a portion of the Approved Equipment thereon, in the square footage amount depicted on Exhibit B of this Agreement. In no event shall the Ground Space include the air space or rights above the Approved Equipment located in the Ground Space.

Hazardous Substances: Any hazardous material or substance which is or becomes defined as a hazardous substance, pollutant or contaminant subject to reporting, investigation or remediation pursuant to Applicable Law; any substance which is or becomes regulated by any federal, state or local governmental authority; and any oil, petroleum products and their by-products.

Holdover Fee: defined in Subsection 6(c).

Indemnified Party: any person or entity entitled to indemnification under Section 15 hereof.

Indemnifying Party: any person or entity obligated to provide indemnification under Section 15 hereof.

Initial Term: defined in Section IV and referenced in Subsection 6(c).

Interference: defined in Subsection 11(a)(i).

Labeling Fee: defined in Section 9.

Licensed Frequencies: defined in Subsection 11(a)(ii).

Licensed Space: Location of the Approved Equipment on the Tower and at the Ground Space as more specifically described in Exhibits A and B attached hereto.

Licensed User: defined in Subsection 11(a)(iii).

Licensee: defined in the introductory paragraph.

Licensor: defined in the introductory paragraph.

Monthly License Fee: defined in Section IV and referenced in Subsection 5(a).

MPE: defined in Section 25.

Notice Address: defined in Section 18.

NTP (Notice to Proceed): Written notice from Licensor to Licensee acknowledging that all required documentation for the construction and installation of the Approved Equipment has been received and approved by Licensor and Licensee is authorized to commence its installation of the Approved Equipment at the Licensed Space, as more particularly set forth in Subsection 10(a) of this Agreement.

Paying Carrier: defined in Subsection 24(b).

Paying Carrier Rate: defined in Subsection 24(b).

Party(ies): Licensor or Licensee.

PCN Default: defined in Subsection VI.A.

PCN Retention Fee: defined in Subsection VI.A.

PCNs: defined in Subsection VI.A.

Permitted Frequencies: defined in Section III.

Priority User: defined in Subsection 11(a)(iv).

Relocation Application Fee: defined in Section IV.

Relocation Notice: defined in Subsection 24(b).

Remittance Address: defined in Section II.

Renewal Term(s): defined in Section IV and referenced in Subsection 6(b).

RF Emissions: defined in Section 25.

Site Inspection Fee: defined in Section IV.

SSIS: defined in Subsection 10(b).

SSIS Fee: defined in Subsection 10(b).

Structural Analysis Fee: defined in Subsection 10(b).

Subsequent User: defined in Subsection 11(a)(v).

Term: Initial Term and each Renewal Term which is affected pursuant to Section 6 of this Agreement.

Tower: A communications or broadcast tower owned and operated by Licensor and located at the Tower Facility.

Tower Facility: Certain real property owned, leased, subleased, licensed or managed by Licensor shown on page 1 of this Agreement, on which a Tower owned, leased, licensed or managed by Licensor is located.

Trigger Condition: defined in Section 24(b).

Unlicensed Frequencies: defined in Subsection 11(a)(vi).

Unlicensed User: defined in Subsection 11(a)(vii).

Utility Change Event: defined in Subsection 5(b).

Utility Fee: defined in Section IV.

USFS: defined in Section 5(d).

Work: all work relating to the construction, installation, relocation and reconfiguration of Licensee's Approved Equipment on the Tower, including without limitation, construction management, construction of an equipment pad, installation or modification of lines, antennas, shelters and equipment cabinets.

Appendix II

Insurance

A. Licensor shall maintain in full force during the Term of this Agreement the following insurance:

1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of Five Hundred Thousand and 00/100 Dollars ($500,000.00) per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.

2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence.

3. An umbrella policy of not less than Five Million and 00/100 Dollars ($5,000,000.00).

The above insurance shall provide that Licensee will receive not less than thirty (30) days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item A shall contain a waiver of subrogation against Licensee and shall name Licensee as an additional insured, and shall be primary over any insurance coverage in favor of Licensee but only with respect to and to the extent of the insured liabilities assumed by Licensor under this Agreement and shall contain a standard cross-liability endorsement.

B. Licensee shall maintain in full force during the Term of this Agreement and shall cause all contractors or subcontractors performing Work on any Licensed Space prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:

1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of Five Hundred Thousand and 00/100 Dollars ($500,000.00) per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.

2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall not be less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence.

3. An umbrella policy of not less than Five Million and 00/100 Dollars ($5,000,000.00).

The above insurance shall provide that Licensor will receive not less than thirty (30) days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item B shall contain a waiver of subrogation against Licensor and shall name Licensor as additional insured, and shall be primary over any insurance coverage in favor of Licensor but only with respect to and to the extent of the insured liabilities assumed by Licensee under this Agreement and shall contain a standard cross-liability endorsement.

C. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of any insurance company carrying insurance for either Party, or failure of any such insurance company to pay Claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve either Party from any obligations under this Agreement, and (b) Licensor reserves the right, from time to time, to increase the required liability limits described above in Items A and/or B in accordance with then-current customary insurance requirements in the tower industry nationally.

RIDER FOR VERIZON SUBLEASED SITES
(This Rider is non-negotiable)

Licensee and Licensor have entered into the attached license agreement, whether subject to a master license agreement or as an independent site license agreement, as applicable (the "***License Agreement***") with respect to the communication tower and site described therein (the "***Site***"). Licensee acknowledges that (i) Licensor has certain rights and obligations with respect to the Site pursuant to a Master Prepaid Lease (as amended from time to time) ("***Verizon Sublease***") between ATC Sequoia LLC, an Affiliate of Licensor, and the Persons set forth on Schedule 2 of the Verizon Sublease ("***Verizon***") or pursuant to a Sale Site Master Lease Agreement between Verizon and other Affiliates of Licensor ("***Verizon MLA***") and (ii) Verizon is a third party beneficiary of the non-monetary performance obligations of Licensee under the License Agreement. Pursuant to the Verizon Sublease and Verizon MLA, the License Agreement must contain the following provisions, which provisions are hereby incorporated into the License Agreement and made a part thereof and may not be superseded, altered or amended by the License Agreement (including any conflicting or inconsistent provisions in the License Agreement) or any attachment, exhibit, amendment, supplement, schedule, or other written instrument associated with the Site or the License Agreement:

1. **Ground Lease/Verizon Sublease**: The License Agreement shall be subject and subordinate to all of the terms and conditions of the underlying ground lease, sublease, or any easement, license or other agreement or document pursuant to which Verizon or Licensor holds a leasehold or subleasehold interest, leasehold or subleasehold estate, easement, license, sublicense or other interest in such Site, together with any extensions of the term thereof (whether by exercise of any right or option contained therein or by execution of a new ground lease or other instrument providing for the use of such Site), and including all amendments, modifications, supplements, assignments and guarantees related thereto ("***Ground Lease***") of the Site. Any and all references to the Ground Lease in the License Agreement shall be deemed to refer only to the Ground Lease (a copy of which Licensor shall provide to Licensee following a written request and redacted as Licensor deems reasonably necessary) and not the Verizon Sublease, if applicable. Licensee shall fully comply with the Ground Lease at the Site. In the event that a default or non-compliance with a provision of the Ground Lease is caused by Licensee, Licensee shall, upon Licensor's written request at Licensee's sole expense, cure or otherwise remedy such default or non-compliance within the cure period provided for pursuant to the Ground Lease.

2. **Quiet Enjoyment**: Licensee shall not engage in any conduct or activity that would reasonably be expected to interfere with Verizon's quiet enjoyment of Verizon's collocation space at the Site or with the operation of Verizon's communications facilities at the Site.

3. **Verizon's Collocation Space**: Licensee shall not (i) stack any communications equipment on or above Verizon's equipment shelter at the Site, or (ii) install or store any communications equipment or other property in vacant space inside Verizon's equipment shelter at the Site.

4. **Interference**: In addition to the rights and obligations of Licensor and Licensee as set forth in interference section of the License Agreement, Licensee agrees that:

   A. Licensee will not (i) place any obstructions on a Site that prevent Verizon from having access to repair and replace all of Verizon's communications equipment and improvements (including related cables) or from being able to fully open any equipment cabinet doors in such space and repairing and replacing equipment therein or that impede airflow to and around Verizon's communications equipment, (ii) install communications equipment that interferes with Verizon's operations at the Site or causes a cessation of Verizon's services at a Site or (iii) install, modify or operate any equipment (including modifying the frequency at which such equipment is operated) subsequently to the installation of Verizon's communications equipment that interferes with Verizon's permitted, lawfully installed and properly operated FCC licensed transmissions or reception (except for intermittent testing).

B. If Licensee is notified that its equipment or operations are (i) interfering with or creating an imminent risk to the performance of Verizon's permitted, lawfully installed and properly operated FCC licensed transmissions or reception or (ii) causing harmful RF interference, Licensee shall immediately take all commercially reasonable efforts and necessary steps to determine the cause of and eliminate such interference. If such interference continues for a period in excess of 48 hours after Licensor's receipt of notice from Verizon, then Licensee will remove or adjust the installation to end the interference or reduce power or cease operations (except for intermittent testing) until such time as Licensee can make repairs to or modify the interfering equipment. If Licensee fails to promptly reduce power or cease operations as required to eliminate RF interference, then Licensor shall terminate the operation of any equipment causing such RF interference.

C. If Licensee is notified that its equipment or operations (i) are materially interfering with Verizon's operations or cause a cessation of Verizon's services or (ii) cause an obstruction under Section 4(a)(i) above, Licensee shall immediately take all commercially reasonable efforts and necessary steps to determine the cause of and eliminate such interference or obstruction. If such interference or obstruction continues for a period in excess of 10 days after Licensor's receipt of notice from Verizon, then Licensee will remove or adjust the installation to end the interference.

5. **Maintenance**: Licensee shall, at all times, keep and maintain its communications equipment and improvements in a structurally safe and sound condition and in working order, in accordance with the Applicable Standard of Care. Licensee shall not commence any installation, maintenance, replacement or repair of its improvements, communications equipment or other equipment at the Site until Licensee has obtained all Governmental Approvals necessary for such work, from all Governmental Authorities having jurisdiction with respect to such Site or such work.

6. **Environmental**: Licensee covenants and agrees that Licensee (i) shall not conduct or allow to be conducted upon the Site any business operations or activities, or employ or use the Site, to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials; provided, however, that Licensee shall have the right to bring, use and keep on the Site electronics, batteries, generators and associated fuel tanks and other Hazardous Materials used in the tower or telecommunication industry for the operation and maintenance of the Site provided that all such Hazardous Materials are brought, used, kept and allowed at the Site in compliance with applicable Environmental Laws; (ii) will carry on its business and operations at the Site in compliance in all respects with, and will remain in compliance with, all applicable Environmental Laws; (iii) will not create or permit to be created any lien against the Site for the costs of any response, removal or remedial action or clean-up of Hazardous Materials; and (iv) Licensee shall promptly notify Licensor in writing if Licensee receives any notice, letter, citation, order, warning, complaint, claim or demand that (A) the Licensee has violated, or is about to violate, any Environmental Law, (B) there has been a release or there is a threat of release, of Hazardous Materials at or from Licensee's collocation space of, or otherwise affecting, the Site, (C) Licensee may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of Hazardous Materials, or (D) Licensee's collocation space of the Site is subject to a lien in favor of any Governmental Authority for any liability, cost or damages under any Environmental Law.

7. **Compliance with Laws**: Licensee covenants and agrees that its use of the Site shall comply with all applicable Laws. In addition, Licensee shall not install or modify any communications equipment such that it is not authorized by, or violates, any applicable Laws or is not made or installed in accordance with generally accepted engineering practices.

8. **Insurance**: Licensee shall maintain in full force and effect at all times during the term of the License Agreement, the following types of insurance with respect to its collocation space on the Site, paying as they become due all premiums for such insurance:

(i) Commercial general liability insurance insuring on an occurrence basis against liability of Licensee and its officers, employees, agents, licensees and invitees arising out of, by reason of or in connection with the use, occupancy or maintenance of Licensee's collocation space on the Site, with a minimum limit of $1.0 million for bodily injury and/or property damage per occurrence;

(ii) Umbrella or excess liability insurance with minimum limits of $5.0 million per occurrence and in the aggregate;

(iii) Workers' compensation insurance (or state sanctioned self-insurance program) affording statutory coverage for all employees of Licensee and any employees of its Affiliates performing activities on the Site, with employer's liability coverage with a minimum limit of $500,000 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws; and

(iv) Commercial automobile liability insurance, including coverage for all owned, hired and non-owned automobiles, as required by Law.

9. **Miscellaneous**:

A. Licensor reserves the right to freely assign the License Agreement to Verizon or any of its Affiliates at any time.

B. Licensee shall not incur, grant or permit to exist any liens against the Site or any part thereof. Licensee shall cause any such lien to be discharged by payment, satisfaction or posting of bond within thirty (30) days after the earlier of (i) the date Licensee has obtained knowledge of such lien, or (ii) written notice from Licensor or Verizon. If Licensee fails to cause any lien to be discharged within the permitted time, Licensor may cause it to be discharged and may pay the amount of such lien in order to do so, which amount and any other costs incurred by Licensor shall be promptly paid to Licensor by Licensee.

10. **Defined Terms**: For purposes of the foregoing provisions, the following capitalized terms shall have the following meanings:

A. "***Applicable Standard of Care***" means, with respect to any obligation or performance requirement, the then-current general standard of care in the telecommunications industry applicable to such obligation or performance requirement.

B. "***Environmental Law***" or "***Environmental Laws***" means any federal, state or local statute, Law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or public or workplace health and safety as may now or at any time hereafter be in effect, including the following, as the same may be amended or replaced from time to time, and all regulations promulgated under or in connection therewith: the Superfund Amendments and Reauthorization Act of 1986; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act of 1976; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; the Hazardous Materials Transportation Act; and the Occupational Safety and Health Act of 1970.

C. "***Governmental Approvals***" means all licenses, permits, franchises, certifications, waivers, variances, registrations, consents, approvals, qualifications, determinations and other authorizations to, from or with any Governmental Authority.

D. "***Governmental Authority***" means, with respect to any person or the Site, any foreign, domestic, federal, territorial, state, tribal or local governmental authority, administrative body, quasi-governmental authority, court, government or self-regulatory organization, commission, board, administrative hearing body, arbitration panel, tribunal or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, in each case having jurisdiction over such person or such Site.

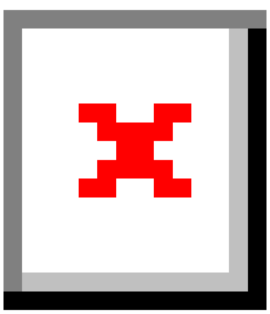
E. "***Hazardous Materials***" means and includes petroleum products, flammable explosives, radioactive materials, asbestos or any material containing asbestos, polychlorinated biphenyls or any hazardous, toxic or dangerous waste, substance or material, in each case, defined as such (or any similar term) or regulated by, in or for the purposes of Environmental Laws, including Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

F. ***"Law"*** means any federal, state or local law, statute, common law, rule, code, regulation, ordinance or order of, or issued by, any Governmental Authority, including without limitation any standards (including but not limited to engineering standards or wind speed requirements) which are applied to the Site according to any such applicable law, statute, rule, code, regulation, ordinance or order.

TO: City Council
DATE: January 16, 2025
ITEM #: 8.A
SUBJECT: **O-25-01** Consider approval of an ordinance granting to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, the right, privilege and franchise to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the public rights-of-way of the City of Marshall, Texas for the transportation, delivery, sale and distribution of natural gas; containing other provisions relating to the foregoing subject; providing for severability and providing an effective date. (City Manager)

Recommendation for Action: Approve Ordnance 0-25-01 as Recommended

Executive Summary: See Attached Memo



Budget Cost: See Attached Memo for financial impact.

Staff Contact: Melissa Byrne Vossmer, Interim City Manager
Scott Rectenwald, City Attorney

Attachments:

1. Agenda Item - CenterPoint Franchise Agreement
2. Red-Lined Final Draft Proposed CenterPoint Energy Franchise Agreement (as of 12-6-24)
3. Final Draft Marshall - CenterPoint Energy Franchise Agreement (DRAFT as of 12-6-24)

The City of Marshall has a Franchise Agreement with CenterPoint Energy Resources Group dba CenterPoint Energy Texas Gas Operations (CenterPoint). The current Franchise Agreement (Agreement) was executed in October 1987 from the original Franchise Agreement executed in 1948. Entex is referenced in these agreements which was a name commonly used in previous years. Entex was a CenterPoint Energy predecessor company that owned gas utilities in South and East Texas, Louisiana, and Mississippi. CenterPoint Entex is the term that is colloquially used to refer to the CenterPoint Energy's gas operations in Texas. The formal/legal name for the gas utility is "CenterPoint Energy Resources Corp." In short, CenterPoint Energy has been the gas provider to Marshall since at least 1948.

The reason for the Franchise Agreement with CenterPoint is because they are a private business using City property – namely the rights-of-way - throughout the City where they have built their gas distribution system. A private business can use a City's rights-of-way (ROW) with the City's permission, but must also commit to working with the City in the rights-of-way and extreme coordination as these same rights-of-way are where the City's utilities are located as well. They must also make payment to the City for this use of public property. Streets and sidewalks are also impacted some as there may be a portion of the gas distribution system located under this infrastructure as well.

The working relationship the City has with CenterPoint is generally a good one. CenterPoint is generally careful of our infrastructure and keeps Staff informed as to their work locations. If there are complaints about their work site they are responsive and for the most part they do a good job.

Key provisions of the proposed Agreement such as how working work in the rights-of-way will be accomplished, coordination, movement of their infrastructure in the case of a City project, location requests etc. are addressed to the satisfaction of Staff. While the City Attorney and the City Manager have been the primary Staff, the proposed Agreement has also been reviewed by the Public Works Director and Finance Director who are in agreement that this document is satisfactory.

Staff did address the following recommended changes as noted in the marked up draft included so you can see the original language and the final proposed language:

- ROW work/coordination: Language is included to require more coordination with the city

- Professional Engineer (PE) stamps: Language was revised to require documentation with a PE stamp if requested by city and to the extent such documentation exists

- Termination notice: 60-day notice revised to 30-day notice

- Interest on late payments: Revised from 3% to 6%

CenterPoint currently pays the City a flat 2.5% on gross receipts. The proposed Agreement included two options of increases to the flat percentage payments.

1. An increase to 4% gross receipts and the working relationship and City's jurisdiction of the Franchise remains the same; or,

2. An increase to 5% gross receipts and the City relinquishes its' ROW jurisdiction to the Texas Railroad Commission (Railroad Commission). City would continue to receive the payment but the work relationship would between the Railroad Commission and CenterPoint. The very nature of handing over local jurisdictional control in any manner to a state commission does not seem to be a prudent recommendation

In addition, under both scenarios, revenue receive would continue to include: seven cents (7¢) per 1000 cubic feet (Mcf) for natural gas transported by CenterPoint for its Transport Customers during such quarter. A Transport customer means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of the City for consumption within the corporate city limits.

The fiscal analysis of revenue that results from each of these payment options to the City is addressed in the Financial section of the agenda item.

Furthermore, Article XI Franchises and Public Utilities, Section 11.01 of the Charter stipulates that the term of the Franchise Agreement cannot exceed thirty (30) years. In conversation, Staff agreed it would not be prudent to recommend the maximum length allowed by the Charter though it was originally suggested by CenterPoint.

Instead Staff recommended an initial term of ten (10) years with two, five (5) year extensions. At any time after the initial ten years the City has an opportunity to provide notice of intent to not renew the Agreement, requiring a ninety (90) day notice. The shorter proposed 10-year term provides some flexibility to the City as we do not know what the future will bring and a future Council can assess the Agreement at that time.

The City's Charter anticipated the need to address Franchise Agreements in Article VIII, Franchise and Public Utilities, Section 11.03 Ordinance Granting a Public Utility Franchise reads as follows:

> *Every ordinance granting, renewing, extending or amending a public utility franchise shall be read at no more than two (2) meetings of the Council unless the franchise ordinance requires reading at additional meetings. At least ten (10) days before Council considers such ordinance the caption of such ordinance shall be published in the official newspaper of the City or using such other media as authorized by law and the expense of such publication shall be borne by the franchise holder or prospective franchise-holder.*

To meet the requirements of the Charter for Council consideration at the January 9th City Council meeting, working with the City Secretary, the caption of the proposed ordinance was published on December 28, 2024 which reads as follows:

> **AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MARSHALL, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

The Charter states no more than two (2) Readings of the Ordinance are required. A second Reading will be scheduled for the January 23rd City Council meeting.

Staff recommends that the Agreement be approved.

									% of Total Sales	% of Total Sales	TL FY 2025 Increase
		Assumptions	**Qt 1**	**Qt 2**	**Qt 3**	**Qt 4**	**TL**	**Total Sales**	**2.5%**	**4.0%**	
:erPoint	**FY 2023**		78,599.86	27,981.78	20,135.48	29,990.94	156,708.06	6,268,322	156,708	250,733	94,025
$117,594.10	**FY 2024**	**75.040%**	50,906.96	24,253.13	19,928.74		95,088.83	4,703,764	117,594	188,151	70,556
$125,079.00	**FY 2024**	**100% QT 4**	50,906.96	24,253.13	19,928.74			5,003,191	125,080	200,128	75,048
			64.77%	86.67%	98.97%						

CITY OF MARSHALL
ORDINANCE NO. __________

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MARSHALL, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARSHALL.

Section 1. GRANT OF AUTHORITY. Subject to the terms, conditions and provisions of this ordinance, the right, privilege and franchise is hereby granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company," to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Marshall, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Marshall, as the same are now and as the same may from time to time be extended.

Section 2. DEFINITIONS.

A. "City" shall mean the City of Marshall, Texas.

B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.

C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, regulators, meters, fixtures, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply, and sales of natural gas for heating, lighting, power, and any other purposes for which natural gas may now or hereafter be used.

D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.

E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE. This Franchise shall become effective on the Effective Date described in Section 21 and shall be in full force and effect for a term of ten~~thirty~~ (~~3~~10) years. This franchise shall automatically renew itself for two successive five (5) year periods following the primary term unless either the City or Company provides notice to the contrary to the other at least ninety (90) days prior to the expiration of the primary term or any succeeding five (5) year renewal term.

Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM. All Facilities installed by Company shall be of sound material and good quality, and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal and State regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 13 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities, the right to coordinate with the Company to accommodate the City's work on or in Public Rights-of-Way or to accommodate public use of Public Rights-of-Way for events, special occasions, and other instances during particularly busy times, and the general exercise of the City's police power. Company shall keep current and up-to-date maps showing the physical location of Company's facilities and make available for inspection by the City at no cost during normal working hours.

Section 5. STREETS TO BE RESTORED TO GOOD CONDITION. Company and its contractors shall give City reasonable notice, of the dates, location, and nature of all work to be performed on its Facilities within the Public Rights-of-Way, subject to the City's right to coordinate with Company for alternative dates and times if reasonably necessary to accommodate other work on or in Public Rights-of-Way or public use of Public Rights-of-Way for events, special occasions, and other instances during particularly busy times. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of-Way when necessary for the installation, replacement, abandonment, operation, or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any license, charge, fee, street or alley rental, or other character of charge or levy in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. If City does charge Company any such additional amount, then Company may deduct the amount charged from the next succeeding franchise payment or payments, as provided in Section 7, until fully reimbursed. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work. Company shall not be required to pay City any fees for costs incurred by City for outside professional review of any work on Company's Facilities within Public Rights-of-Way. Upon the City's request, Company shall ~~not~~ be required to provide City with engineering or design documentation that has a professional engineer stamp, to the extent such documentation exists, for any work on Company's Facilities within Public Rights-of-Way.

Section 6. QUALITY OF SERVICE. The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality-of-service rules of the Railroad Commission of Texas, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the Company shall do all things reasonably within its power to restore normal service as quickly as practicable.

Section 7. PAYMENT TO THE CITY. In consideration of the rights and privileges herein granted, the administration of the Franchise by the City, the temporary interference with the use of Public Rights-of-Way and cost and obligations undertaken by the city in relation thereto and in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy of the Streets, alleys, and public places of the City, and in lieu of any inspection fee, the Company agrees to pay to the City franchise fees in the amount and manner described herein, subject to an offset as described in Section 5.

Company agrees to pay to the City quarterly during the continuance of this Franchise a sum of money equal to four percent (4%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of gas within the corporate limits of the City plus seven cents (7¢) per Mcf for natural gas transported by Company for its Transport Customers during such quarter. "Transport Customer" means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of City for consumption within the corporate limits of City. The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter; provided, however, the first such payment shall be prorated as necessary to reflect only those gross receipts received and transportation volumes delivered by Company after the Effective Date of this Franchise. In no event shall the Company be required to remit to the City franchise fee amounts that for any reason whatsoever are not fully recoverable from its customers. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date.

Section 8. ANNEXATIONS BY CITY. This Franchise shall extend to and include any and all territory that is annexed by the City during the term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Marshall. After such sixty (60) day period the payment provisions specified in Section 7 of this Franchise shall apply to gross receipts and transport fees received by the Company from customers located within such annexed territory. Company shall true-up its map of City boundaries to the City's map on an annual basis.

Section 9. NON-EXCLUSIVE FRANCHISE. Nothing contained in this Franchise shall ever be construed as conferring upon the Company any exclusive rights or privileges of any nature whatsoever.

Section 10. COMPLIANCE AND REMEDIES. (a) In the event the Company by act or omission violates any material term, condition or provision of this Franchise, the City shall notify the Company in writing of such violation. Should the Company fail or refuse to correct any such violation within thirty (30) days from the date of City's notice, the City shall, upon written notification to the Company, have the right to terminate this agreement. Any such termination and cancellation shall be by ordinance adopted by City Council; provided, however, before any such ordinance is adopted, the Company must be given at least thirty~~sixty~~ (~~6~~30) days' advance written notice. Such notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise the Company that it will be provided an opportunity to be heard by City Council regarding such proposed action before any such action is taken and shall set forth the time, date, and place of the hearing.

(b) Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, the Company shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

(c) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

Section 11. RESERVE OF POWERS. Except as otherwise provided in this Franchise, the City by the granting of this Franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers, claims and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and under the Charter and Ordinances of the City of Marshall or other applicable law, to regulate public utilities within the City and to regulate the use of the Streets by the Company; and the Company by its acceptance of this Franchise agrees that, except as otherwise provided in this Franchise, all lawful powers and rights, whether regulatory or otherwise, as are or as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

SECTION 12. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO

ANY PERSON OR PROPERTY BY REASON OF THE CONSTRUCTION AND MAINTENANCE OF THE COMPANY'S NATURAL GAS DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE OR NONFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ATTORNEY'S FEES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY, A PERSON, PERSONS, COMPANY OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.

Section 13. RELOCATION OF FACILITIES. The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Section 14. GOVERNMENTAL FUNCTION. All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 15. RECORDS AND REPORTS. (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the company's principal office in Houston, Texas.

(b) Access by City. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the City, all books and records related to Company's operations under this Franchise shall be made available for inspection and copying no later than thirty (30) days from receipt of such request.

(c) Interest on Underpayments and Overpayments. (1) Amounts due to City for late payments shall include interest, compounded daily equal to six percent (6%)~~the return on equity~~

~~plus three percent (3%) granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City.~~ (2) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company shall pay simple interest on such amounts equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers. (3) Amounts due Company for past overpayments shall include simple interest equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City; provided, however, if there is a change in the approved return on equity during the time period subject to the City's audit or inquiry, then for each time period during which there was an overpayment, the approved return on equity in effect during such time period shall be used in calculating interest under this subparagraph (c). Interest payable on such sums shall be credited to customers.

Section 16. EASEMENT. In consideration for the compensation set forth in Section 7, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

Section 17. [LEFT BLANK].

Section 18. ACCEPTANCE. The Company shall, within thirty (30) days following the final passage and approval of this Franchise, file with the City Secretary of the City of Marshall either 1) a written statement signed in its name and behalf in the following form or 2) this document duly executed below by the Vice President of Regional Operations:

"To the Honorable Mayor and City Council Members of the City of Marshall:

CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, its successors and assigns, hereby accepts the attached Franchise Ordinance, and agrees to be bound by all of its terms and provisions."

CENTERPOINT ENERGY RESOURCES CORP.,
DBA CENTERPOINT ENERGY TEXAS GAS
OPERATIONS

By: ______________________________
Nathan Brownell, Vice President, Texas Gas

Dated this ________day of_______________ _______.

Section 19. GOVERNING LAW AND SEVERABILITY. This Franchise shall be governed and construed according to the laws of the State of Texas excluding, however, any conflict of laws rule that would apply the law of another jurisdiction. If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Marshall in adopting this Franchise that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 20. NOTICES. Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

CenterPoint Energy Resources Corp.
Vice President, Regulatory Relations
P.O. Box 4567
Houston, TX 77210-4567

With a copy to:

Regulatory Legal
P.O. Box 2628
Houston, TX 77252-2628

Every such communication to the City or the City Council shall be sent to the:

City Manager
410 South Alamo Boulevard
P.O. Box 698
Marshall, Texas 75670

With a Copy to:

City Secretary
410 South Alamo Boulevard
P.O. Box 698
Marshall, Texas 75670

Section 21. PUBLICATION, PASSAGE, AND EFFECTIVE DATE. This Franchise, having been published, if required, shall take effect and be in force from and after the first day of the month following thirty days after receipt by the Company's acceptance filed pursuant to Section 18 ("Effective Date"). The Company shall pay the cost of those publications.

Section 22. COMPLIANCE WITH CHARTER AND ORDINANCES. This Franchise, the rights granted hereby, and the operations and activities performed by Company pursuant hereto shall be subject to applicable provisions of the Charter of the City of Marshall, Texas. Except to the extent otherwise expressly provided herein, the Franchise and rights granted hereby and the operations and activities performed by Company pursuant hereto, shall be subject to all valid ordinances and regulations of the City insofar as such ordinances and regulations (a) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the Franchise and right granted to Company hereby, (b) do not conflict with or are not inconsistent with the terms and provisions contained in this ordinance, or (c) do not modify, preempt, or cause Company to violate the terms of a tariff approved by the Railroad Commission of Texas, Railroad Commission Rules, or the Gas Utility Regulatory Act~~, or (d) do not unreasonably regulate the Company's operations and activities in the City Right of Way~~. If Company believes a future Ordinance unreasonably regulates its operations and activities in the City Right-of-Way, City and Company shall meet and reach a mutually agreeable solution.

Read in full, passed and adopted on first reading at a regular meeting of the City Council of the City of Marshall, Texas, on the ___________day of ____________________, 2024 and approved by the Mayor.

APPROVED:

____
Amy Ware, Mayor
City of Marshall, Texas

ATTEST:

____
Nikki Smith, City Secretary
City of Marshall, Texas

THE STATE OF TEXAS §
§
COUNTY OF HARRISON §

I, the duly appointed, qualified and acting City Secretary of City of Marshall, Texas, do hereby certify that the above and foregoing ordinance was read, passed and adopted on first reading at a regular meeting of the City Council of said City of Marshall, Texas, held on the _____ day of _______________, 2024; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least

72 hours preceding the day of said meeting; that the Mayor Amy Ware, and _________City Council Members:

1. Risa Jordan-Anderson
2. Leo Morris
3. Dathaniel Campbell
4. Reba Godfrey
5. Amanda Abraham
6. Micah Fenton

were present at said meeting and acted as the Council throughout; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books for the purpose of recording the ordinances of the City of Marshall, Texas.

EXECUTED under my hand and the official seal of the City of Marshall, Texas at said City, this ________day of _________, 2024.

____
Nikki Smith, City Secretary
City of Marshall, Texas

[SEAL]

CITY OF MARSHALL
ORDINANCE NO. __________

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MARSHALL, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARSHALL.

Section 1. GRANT OF AUTHORITY. Subject to the terms, conditions and provisions of this ordinance, the right, privilege and franchise is hereby granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company," to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Marshall, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Marshall, as the same are now and as the same may from time to time be extended.

Section 2. DEFINITIONS.

A. "City" shall mean the City of Marshall, Texas.

B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.

C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, regulators, meters, fixtures, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply, and sales of natural gas for heating, lighting, power, and any other purposes for which natural gas may now or hereafter be used.

D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.

E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE. This Franchise shall become effective on the Effective Date described in Section 21 and shall be in full force and effect for a term of ten~~thirty~~ (~~3~~10) years. This franchise shall automatically renew itself for two successive five (5) year periods following the primary term unless either the City or Company provides notice to the contrary to the other at least ninety (90) days prior to the expiration of the primary term or any succeeding five (5) year renewal term.

Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM. All Facilities installed by Company shall be of sound material and good quality, and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal and State regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 13 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities, the right to coordinate with the Company to accommodate the City's work on or in Public Rights-of-Way or to accommodate public use of Public Rights-of-Way for events, special occasions, and other instances during particularly busy times, and the general exercise of the City's police power. Company shall keep current and up-to-date maps showing the physical location of Company's facilities and make available for inspection by the City at no cost during normal working hours.

Section 5. STREETS TO BE RESTORED TO GOOD CONDITION. Company and its contractors shall give City reasonable notice, of the dates, location, and nature of all work to be performed on its Facilities within the Public Rights-of-Way, subject to the City's right to coordinate with Company for alternative dates and times if reasonably necessary to accommodate other work on or in Public Rights-of-Way or public use of Public Rights-of-Way for events, special occasions, and other instances during particularly busy times. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of-Way when necessary for the installation, replacement, abandonment, operation, or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any license, charge, fee, street or alley rental, or other character of charge or levy in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. If City does charge Company any such additional amount, then Company may deduct the amount charged from the next succeeding franchise payment or payments, as provided in Section 7, until fully reimbursed. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work. Company shall not be required to pay City any fees for costs incurred by City for outside professional review of any work on Company's Facilities within Public Rights-of-Way. Upon the City's request, Company shall ~~not~~ be required to provide City with engineering or design documentation that has a professional engineer stamp, to the extent such documentation exists, for any work on Company's Facilities within Public Rights-of-Way.

Section 6. QUALITY OF SERVICE. The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality-of-service rules of the Railroad Commission of Texas, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the Company shall do all things reasonably within its power to restore normal service as quickly as practicable.

Section 7. PAYMENT TO THE CITY. In consideration of the rights and privileges herein granted, the administration of the Franchise by the City, the temporary interference with the use of Public Rights-of-Way and cost and obligations undertaken by the city in relation thereto and in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy of the Streets, alleys, and public places of the City, and in lieu of any inspection fee, the Company agrees to pay to the City franchise fees in the amount and manner described herein, subject to an offset as described in Section 5.

Company agrees to pay to the City quarterly during the continuance of this Franchise a sum of money equal to four percent (4%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of gas within the corporate limits of the City plus seven cents (7¢) per Mcf for natural gas transported by Company for its Transport Customers during such quarter. "Transport Customer" means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of City for consumption within the corporate limits of City. The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter; provided, however, the first such payment shall be prorated as necessary to reflect only those gross receipts received and transportation volumes delivered by Company after the Effective Date of this Franchise. In no event shall the Company be required to remit to the City franchise fee amounts that for any reason whatsoever are not fully recoverable from its customers. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date.

Section 8. ANNEXATIONS BY CITY. This Franchise shall extend to and include any and all territory that is annexed by the City during the term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Marshall. After such sixty (60) day period the payment provisions specified in Section 7 of this Franchise shall apply to gross receipts and transport fees received by the Company from customers located within such annexed territory. Company shall true-up its map of City boundaries to the City's map on an annual basis.

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(b) Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, the Company shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

(c) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

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SECTION 12. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO

ANY PERSON OR PROPERTY BY REASON OF THE CONSTRUCTION AND MAINTENANCE OF THE COMPANY'S NATURAL GAS DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE OR NONFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ATTORNEY'S FEES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY, A PERSON, PERSONS, COMPANY OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.

Section 13. RELOCATION OF FACILITIES. The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Section 14. GOVERNMENTAL FUNCTION. All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 15. RECORDS AND REPORTS. (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the company's principal office in Houston, Texas.

(b) Access by City. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the City, all books and records related to Company's operations under this Franchise shall be made available for inspection and copying no later than thirty (30) days from receipt of such request.

(c) Interest on Underpayments and Overpayments. (1) Amounts due to City for late payments shall include interest, compounded daily equal to six percent (6%)~~the return on equity~~

~~plus three percent (3%) granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City.~~ (2) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company shall pay simple interest on such amounts equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers. (3) Amounts due Company for past overpayments shall include simple interest equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City; provided, however, if there is a change in the approved return on equity during the time period subject to the City's audit or inquiry, then for each time period during which there was an overpayment, the approved return on equity in effect during such time period shall be used in calculating interest under this subparagraph (c). Interest payable on such sums shall be credited to customers.

Section 16. EASEMENT. In consideration for the compensation set forth in Section 7, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

Section 17. [LEFT BLANK].

Section 18. ACCEPTANCE. The Company shall, within thirty (30) days following the final passage and approval of this Franchise, file with the City Secretary of the City of Marshall either 1) a written statement signed in its name and behalf in the following form or 2) this document duly executed below by the Vice President of Regional Operations:

"To the Honorable Mayor and City Council Members of the City of Marshall:

CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, its successors and assigns, hereby accepts the attached Franchise Ordinance, and agrees to be bound by all of its terms and provisions."

CENTERPOINT ENERGY RESOURCES CORP.,
DBA CENTERPOINT ENERGY TEXAS GAS
OPERATIONS

By: ______________________________
Nathan Brownell, Vice President, Texas Gas

Dated this ________day of_______________ _______.

Section 19. GOVERNING LAW AND SEVERABILITY. This Franchise shall be governed and construed according to the laws of the State of Texas excluding, however, any conflict of laws rule that would apply the law of another jurisdiction. If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Marshall in adopting this Franchise that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 20. NOTICES. Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

CenterPoint Energy Resources Corp.
Vice President, Regulatory Relations
P.O. Box 4567
Houston, TX 77210-4567

With a copy to:

Regulatory Legal
P.O. Box 2628
Houston, TX 77252-2628

Every such communication to the City or the City Council shall be sent to the:

City Manager
410 South Alamo Boulevard
P.O. Box 698
Marshall, Texas 75670

With a Copy to:

City Secretary
410 South Alamo Boulevard
P.O. Box 698
Marshall, Texas 75670

Section 21. PUBLICATION, PASSAGE, AND EFFECTIVE DATE. This Franchise, having been published, if required, shall take effect and be in force from and after the first day of the month following thirty days after receipt by the Company's acceptance filed pursuant to Section 18 ("Effective Date"). The Company shall pay the cost of those publications.

Section 22. COMPLIANCE WITH CHARTER AND ORDINANCES. This Franchise, the rights granted hereby, and the operations and activities performed by Company pursuant hereto shall be subject to applicable provisions of the Charter of the City of Marshall, Texas. Except to the extent otherwise expressly provided herein, the Franchise and rights granted hereby and the operations and activities performed by Company pursuant hereto, shall be subject to all valid ordinances and regulations of the City insofar as such ordinances and regulations (a) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the Franchise and right granted to Company hereby, (b) do not conflict with or are not inconsistent with the terms and provisions contained in this ordinance, or (c) do not modify, preempt, or cause Company to violate the terms of a tariff approved by the Railroad Commission of Texas, Railroad Commission Rules, or the Gas Utility Regulatory Act~~, or (d) do not unreasonably regulate the Company's operations and activities in the City Right of Way~~. If Company believes a future Ordinance unreasonably regulates its operations and activities in the City Right-of-Way, City and Company shall meet and reach a mutually agreeable solution.

Read in full, passed and adopted on first reading at a regular meeting of the City Council of the City of Marshall, Texas, on the ___________day of _____________________, 2024 and approved by the Mayor.

APPROVED:

____
Amy Ware, Mayor
City of Marshall, Texas

ATTEST:

____
Nikki Smith, City Secretary
City of Marshall, Texas

THE STATE OF TEXAS §
§
COUNTY OF HARRISON §

I, the duly appointed, qualified and acting City Secretary of City of Marshall, Texas, do hereby certify that the above and foregoing ordinance was read, passed and adopted on first reading at a regular meeting of the City Council of said City of Marshall, Texas, held on the _____ day of ______________, 2024; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least

72 hours preceding the day of said meeting; that the Mayor Amy Ware, and _________City Council Members:

1. Risa Jordan-Anderson
2. Leo Morris
3. Dathaniel Campbell
4. Reba Godfrey
5. Amanda Abraham
6. Micah Fenton

were present at said meeting and acted as the Council throughout; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books for the purpose of recording the ordinances of the City of Marshall, Texas.

EXECUTED under my hand and the official seal of the City of Marshall, Texas at said City, this ________day of _________, 2024.

____
Nikki Smith, City Secretary
City of Marshall, Texas

[SEAL]

TO:	City Council
DATE:	January 16, 2025
ITEM #:	9.A
SUBJECT:	Presentation of an update on the I369 and SL390 Utility Relocation Project FY2025 and consider approval of a resolution (**R-25-02**) accepting a SIB loan from TxDOT. (Public Works)

Recommendation for Action: Potential passing resolution accepting SIB loan from TxDOT if all loan agreement information is available (could be on January 23, 2025 agenda)

Executive Summary: I-20 Utility Relocations

The I-20 Utility Relocations project for the City of Marshall, under KSA Project No. 103076, has reached 95% design completion. The tentative bid schedule is contingent upon TxDOT acquiring required property and the City securing temporary construction easements. TxDOT aims to finalize Possession and Use Agreements (PUAs) for most properties by mid-February 2025.

Key milestones for the proposed bid schedule are as follows:

- **Advertisement:** Begins February 11, 2025
- **Pre-Bid Conference:** February 27, 2025
- **Bid Opening:** March 6, 2025
- **Council Contract Award:** March 13, 2025
- **Estimated Construction Start:** April 23, 2025
- **Estimated Construction Completion:** January 18, 2026

The project schedule includes a construction duration of approximately 270 days.

SL390 Utility Relocations

The SL390 Utility Relocations project is currently at 90% design completion. Progress is dependent on TxDOT resolving eminent domain issues for multiple properties, which TxDOT estimates will take 6 to 8 months. The bid schedule will be determined after a meeting with TxDOT in January, contingent on TxDOT obtaining PUAs prior to bidding.

Next Steps

- TxDOT finalizes PUA agreements for both projects.
- Confirm property acquisition timelines and temporary easement approvals.
- Conduct necessary coordination meetings with TxDOT to finalize schedules.

TxDOT SIB Loan Status:

- Texas Transportation Commission approved loan on December 17, 2024
- TxDOT is preparing draft loan agreement paperwork
- Expected fund disbursement on February 6, 2025.

Budget Cost:

Staff Contact: Eric Powell, PE Director of Public Works

Attachments: 1. SIBLoanResolution01092025

RESOLUTION NO. _______

RESOLUTION AUTHORIZING THE EXECUTION OF A STATE INFRASTRUCTURE BANK LOAN AGREEMENT; AUTHORIZING THE INTERIM CITY MANAGER DIRECTOR TO ACT ON BEHALF OF THE CITY OF MARSHALL IN ALL MATTERS RELATING TO THE LOAN AGREEMENT

WHEREAS, the State Infrastructure Bank, operated by the Texas Department of Transportation, is a revolving loan fund; and

WHEREAS, the City of Marshall (the "City") deems it proper and in the best interest of the City to execute a loan agreement from the State Infrastructure Bank in an amount up to $16,000,000 to be used for water and sewer utility line relocations necessary for Utility relocations on IH-20, State Loop 390, and US 59 Relief Route (Future I-369); and

WHEREAS, the City is qualified to apply for and obtain financial assistance from the State Infrastructure Bank for this purpose;

WHEREAS, on September 12, 2024 the City Council approved Resolution R-24-17 authorizing the submission of a loan application to the State Infrastructure Bank;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL:

Section 1. That the City Council hereby accepts the State Infrastructure Bank loan agreement in its substantially final form in order to secure receipt of funds in an amount up to $16,000,000 to be fully repaid over 25 years necessary for Utility relocations on IH-20, State Loop 390, and US 59 Relief Route (Future I-369).

Section 2. That the City Council/ hereby authorizes Melissa Vossmer, Interim City Manager to execute the State Infrastructure Bank loan agreement, together with all required documentation, to effectuate the City's intent to borrow such funds.

Section 3. That the City Council further authorizes the Interim City Manager to take or perform any actions required for implementation of this resolution to receive funding from the State Infrastructure Bank.

PASSED, APPROVED, AND RESOLVED THIS THE 9th DAY OF JANUARY, 2025.

____
Amy Ware, Mayor
City of Marshall

ATTEST:

____
Nikki Smith, City Secretary
[SEAL]

City of MARSHALL TEXAS	TO:	City Council
	DATE:	January 16, 2025
	ITEM #:	9.B
	SUBJECT:	**R-25-03** Consider approval of a resolution regarding a request for a Certificate of Consistency. (City Manager and Planning & Development)

Recommendation for Action: Consider approval of a resolution regarding a Certificate of Consistency.

Executive Summary: This project first came to Staff's attention in an email dated October 29th, copy attached, from Dr. Tracy Andrus inviting community members to a meeting concerning the potential of development of a 52-unit supportive housing project in Marshall. This meeting was scheduled for November 8, 2024.

On November 13th Staff received an email requesting the Mayor execute the HUD **Certification of Consistency Plan with the Consolidated Plan** in support of the proposed housing project. Since the signing of the document was in the official capacity of Mayor, I advised the Mayor the request to sign the document be held and if desired, the item would be placed on a Council agenda for consideration and action. Dr. Andrus was notified of Staff's recommendation. This did not go forward on the December agenda as Staff was informed it wasn't absolutely needed by Dr. Andrus in a phone call and we were not asked to include.

Prior to the end of 2024, a request from Dr. Andrus was again received to execute the Certificate and if not possible, write a letter stating the City Council would consider the Certification at the January 9th Council meeting. Ultimately, this did not need to happen and the item was placed on the January 9th Agenda. The item is on your agenda for the January 9th for consideration.

At this time, Staff has very little information about the exact location in Marshall. Or really any detail as the project is not at that stage. However, the 52 – unit supportive housing project referred to as The Phoenix Project, as identified, is consistent with the Consolidated Plan. Attached is the 2020-2024 Consolidated Plan. The new plan is scheduled for a spring 2025 release. In the 2020-2024 plan, the affordable housing section spans from page 24-81. Also, in our review, we discovered that the form utilized by Dr. Andrus is no longer valid and we have provided an updated copy of the form to him.

It appears the intent is to provide affordable housing. If this is the intent, it would be consistent with the current Consolidated Plan. This item, if approved, does not commit to any support by the City of the project. If the project goes forward and is funded, the development of these 52-units will still be required to meet all Marshall land use, zoning, and development and building requirements.

Staff believes Dr. Andrus will be at the City meeting and can answer more specific questions.

Budget Cost: N/A

Staff Contact: Melissa Vossmer, Interim City Manager and Reggie Cooper, Planning & Development Director

Attachments:
1. TAF COC Builds Project
2. HUD-2991 Certificate of Consistency

Project Details **Completed** - Sep 23 2024 Project Details

Please save regularly, or consider working in a word processing document and copy/paste into the text fields below.

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Please provide a detailed description of the Propsed Project

Responses should be in narrative (paragraph) format and directly address the items in the example below (using the format 1a)...1a.1)... etc). If you do not have a response to one of the requested items, please explicitly state so.

1a) Please provide as much detail about the need for the proposed project as possible, including how the need was determined. **1a.1)** Please give the address of the proposed project site, if known, (if unknown, please explicitly state so) **1b)** Please describe the total budget requested from HUD by activity**. 1c)** Please give the anticipated timeline of the proposed project (1-5)yrs including anticipated challenges and the Agency's plan for contingencies, **1d**) Please describe the other financing committed to the project particularly Federal State or local (including private) funds. Please describe the source of the other leveraged commitments (i.e. Local Commitments HOME ARP $2,000,000 etc...). Clearly state what percentage of the total **construction** budget the HUD request represents.

1a. Marshall, TX and Harrison County are in critical need of additional housing for its residents as illustrated in our 5-year consolidated plan (Marshall Consolidated plan 2020-2024). There is a need for 1,2,3,4, bedroom houses and multifamily structures for our residents. This need for the permanent supportive housing units, acquisition and rehabilitation were all discussed at the city and county levels among, local leaders, politicians, Marshall Economic Development Corporation, educators, clergy, mental health and physical health providers, mission Marshall, public housing authorities, higher education stakeholders and people with lived experience. Marshall has a large homeless population and a very small number of vacant housing units. TAF project if funded will add 30 permanent supportive housing units of which two (2) will be used for domestic violence safe houses, 28 units (15-3 bedrooms, 8-2 bedrooms, 5-1 bedrooms) at a cost of $166K per unit as a whole). TAF will also negotiate with Wiley College to acquire a vacant nursing home owned by Wiley College and rehab the building which has the capability to house up to 60 individuals/small families. The facility was last used as a dormitory for college students. TAF will also upgrade its current shelter by installing a fire alarm system and re-roofing the flat roof. We will also use the funds to upgrade the electric and plumbing in the shelter. This transitional shelter will be used to temporary hold program participants as we assist them with finding permanent housing. TAF has identified and have access to a 6.7-acre tract in the middle of Marshall that will be used to build a community of permanent supportive housing. The property is located within walking distance to East Texas Baptist University. TAF has also identified and have access to a 4-acre tract in the outskirts of Marshall and approximately 10 vacant lots that can be used for building. All of these properties are already part of our portfolio. We will utilize the 9% or 4% housing tax credits for the building of these properties to reduce our tax liability. We will also utilize the City of Marshall's 10-year tax abatement incentive for community improvement/development.

1a1. There are several addresses for the proposed project site including a 6.7-acre tract located at 1515 Evans Street in Marshall, Texas, additionally, we have a total of 10 individual lots in Marshall, Texas that are available for

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development. We also have a 4-acre tract off of Hwy 2625 that we can use for development. All of these properties are currently available and suitable for development. We are planning on rehabbing the homeless shelter located at 303 W. Burleson Street Marshall, TX, and acquiring a building located at 509 S. Grove Street in Marshall, TX. 1b. The total budget requested from HUD is 10,000,000. 70% (7,000,000) of the award will be used for a mix of new construction, acquisition, rehabilitation and possible conversion of PSH units. 20% of the award (2,000,000) will be used for supportive services, operating costs, and project based rental assistance. 10% of the award will be used for administrative costs.

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Con solidated Plan.
(Type or clearly print the following information:)

Applicant Name: Tracy Andrus Foundation

Project Name: TAF COC Builds Application

Location of the Project: Marshall, Texas

Name of the Federal Program to which the applicant is applying: Housing and Urban Development (HUD)

Name of Certifying Jurisdiction: City of Marshall, Texas

Certifying Official of the Jurisdiction Name: ______

Title: ______

Signature: ______

Date: ______

TO:	City Council
DATE:	January 16, 2025
ITEM #:	11.A
SUBJECT:	Presentation of an overview of the Street Sweeping Program. (Public Works)

Recommendation for Action: None

Executive Summary: The city's street sweeping operations are facing significant challenges due to persistent equipment malfunctions and a shortage of qualified personnel. These issues have led to missed routes, decreased cleanliness standards, and potential environmental concerns.

Key Challenges:

1. Equipment Reliability:

- **Frequent Breakdowns:** Our aging street sweeper is experiencing regular mechanical failures, resulting in service interruptions.
- **Maintenance Delays:** Supply chain disruptions have hindered timely repairs and the procurement of replacement parts, prolonging equipment downtime.

2. Manpower Shortage:

- **Staffing Deficits:** The department is operating with a reduced workforce, making it challenging to cover all scheduled routes effectively. The sweeper requires a CDL license which only two members of the street division presently have (one is the crew chief)
- **Recruitment Difficulties:** Attracting and retaining skilled operators has been problematic, exacerbating the manpower shortage.

3. Implications:

- **Service Gaps:** Missed street sweeping schedules have led to accumulated debris, affecting urban cleanliness.
- **Community Dissatisfaction:** Residents have expressed concerns over the decline in street maintenance, impacting public perception of municipal services.

4. Recommendations:

1. **Enhance Equipment Maintenance:**
    - **Preventive Maintenance Programs:** Implement regular maintenance schedules to extend the lifespan of existing equipment and reduce unexpected breakdowns.
    - **Expedite Repairs:** Streamline procurement processes to mitigate supply chain delays and ensure timely availability of necessary parts.

- **Replace Equipment:** Submit budget request in FY2025 for a replacement sweeper (estimated cost is $300,000 to $350,000)

2. **Address Staffing Shortages:**
   - **Recruitment Initiatives:** Develop targeted recruitment strategies, including partnerships with local vocational schools, to attract qualified candidates.
   - **Training Programs:** Invest in comprehensive training for new hires to quickly build a skilled workforce capable of meeting operational demands.
3. **Operational Adjustments:**
   - **Route Optimization:** Analyze and adjust street sweeping schedules to prioritize high-traffic areas and maximize coverage with available resources.
   - **Community Communication:** Inform residents of any service changes or delays to manage expectations and maintain transparency.

By addressing these challenges through strategic maintenance and staffing solutions, the city can restore the efficiency of its street sweeping operations, thereby enhancing urban cleanliness and resident satisfaction.

Budget Cost: N/A

Staff Contact: Eric Powell, PE Director of Public Works

Attachments: None

TO:	City Council
DATE:	January 16, 2025
ITEM #:	11.B
SUBJECT:	Reports regarding an update on Raw Water Intake and Water Production. (Public Works)

Recommendation for Action: No action needed

Executive Summary: Raw Water Intake Facility:

The current intake system operates at approximately 30-35% efficiency, indicating significant performance degradation due to aging and worn components. To enhance operational efficiency and reliability, the following key upgrades are recommended:

1. **Vertical Turbine Pumps:**
    - **Current Status:** 2 out of 4 pumps (500 HP each) are operational but are rebuilt/original units.
    - **Recommendation:** Replace all four pumps to ensure optimal performance.
    - **Estimated Cost:** New 500 HP vertical turbine pumps range from $840,000 per unit.
2. **Pump Control Valves and Gate Valves:**
    - **Current Status:** All 4 of the 18-inch pump control valves (check valves) and 4 of the 18-inch gate valves are worn and inefficient.
    - **Recommendation:** Replace all valves to restore full operational capacity.
    - **Estimated Cost:** Industrial valve prices vary based on specifications; for instance, certain control valves can cost $70,000 each.
3. **Generator:**
    - **Current Status:** The existing generator can only run one pump at a time.
    - **Recommendation:** Upgrade to a generator capable of simultaneously powering two 500 HP pumps.
    - **Estimated Cost:** The cost will depend on the generator's specifications and installation requirements but an estimate is $625,000.
4. **Variable Frequency Drives (VFDs):**
    - **Current Status:** 2 out of 4 VFDs require replacement.
    - **Recommendation:** Replace the faulty VFDs to maintain precise motor speed control.
    - **Estimated Cost:** VFD prices vary based on capacity and features. Current estimate is $135,000 per VFD.
5. **Raw Water Sluice Gate:**
    - **Current Status:** Over 20 years old and at the end of its useful life.
    - **Recommendation:** Replace the sluice gate to prevent debris from entering the system.
    - **Estimated Cost:** The cost will depend on the sluice gate's size and material. Current estimate is $160,000
6. **Facility Building Upgrades:**
    - **Current Needs:** Upgrades include garage doors, entrance door, exhaust fans, HVAC system, fencing, lighting, and restroom installation.

- **Recommendation:** Address these upgrades to improve operational efficiency and employee comfort.
- **Estimated Cost:** Costs will vary based on specific requirements and local labor rates Current estimate is $150,000

TOTAL COST OF ALL UPGRADES: $4,670,000

Next Steps:

- **Consultation:** Engage with specialized engineers, contractors and suppliers to obtain detailed quotes tailored to our system's specifications.
- **Budgeting:** Develop a comprehensive budget that includes equipment costs, installation, and potential downtime during upgrades.
- **Planning:** Schedule replacements and upgrades to minimize operational disruptions.

Investing in these upgrades will significantly enhance the intake system's efficiency and reliability, leading to long-term operational savings and improved performance.

Water Production Facility:

The Water Treatment Plant is currently operating at 50-55% capacity, significantly below optimal levels, due to various mechanical failures and structural deficiencies. Additionally, several components are in violation of Texas Commission on Environmental Quality (TCEQ) regulations, necessitating immediate attention to ensure compliance and restore full operational capacity.

Key Issues Identified:

1. **Backwashing Filters:**
    - **Status:** 2 out of 8 filters are out of service; the remaining 6 are losing media due to underdrain issues.
    - **Recommendation:** Repair or replace underdrains and restore all filters to operational status to enhance filtration efficiency.
    - **Cost:** $4,800,000
2. **Clarifiers:**
    - **Status:** Both clarifiers require mechanical upgrades and recoating of weirs and baffles, currently constituting TCEQ violations.
    - **Recommendation:** Implement necessary mechanical upgrades and recoating to comply with TCEQ standards and improve water clarification processes.
    - **Cost:** $3,300,000 each
3. **Splitter Box:**
    - **Status:** In need of repair and recoating, currently a TCEQ violation.
    - **Recommendation:** Conduct repairs and apply protective coatings to meet regulatory requirements and ensure proper water distribution.
    - **Cost:** $200,000
4. **Ammonia Gas Lines:**
    - **Status:** Require relocation outside of the building, currently a TCEQ violation.
    - **Recommendation:** Relocate ammonia gas lines to an external location to enhance safety and comply with TCEQ regulations.
    - **Cost:** $75,000

5. **Clearwells:**
    - **Status:** Two 3-million-gallon clearwells need upgrades; the square clearwell has structural issues, including roof and side deterioration and exposed rebar.
    - **Recommendation:** Perform structural repairs and necessary upgrades to both clearwells to ensure water storage integrity and safety.
    - **Cost:** $3,350,000 for both
6. **High-Service Pump Station:**
    - **Status:** Only 4 out of 8 pumps are operational; the remaining 4 require new motors or replacement.
    - **Recommendation:** Replace or repair the non-operational pump motors to restore full pumping capacity and improve distribution efficiency.
    - **Cost:** $6,350,000 (includes replacing the generator)

TOTAL COST OF ALL UPGRADES: $31,425,000

Next Steps:

- **Regulatory Compliance:** Address TCEQ violations promptly to avoid potential penalties and ensure safe water treatment operations.
- **Detailed Assessment:** Engage with engineering consultants to conduct a comprehensive evaluation of the facility's infrastructure and develop a prioritized action plan.
- **Budgeting and Funding:** Prepare detailed cost estimates for the necessary repairs and upgrades, and explore funding options to facilitate timely project execution.
- **Project Implementation:** Develop a phased implementation schedule to carry out the required upgrades while minimizing operational disruptions.

Addressing these critical issues will enhance the plant's operational capacity, ensure compliance with regulatory standards, and safeguard public health by providing reliable and safe water treatment services.

Budget Cost: None at this time, future requests for use of fund balance to be requested at second meeting in January 2025.

Staff Contact: Cory Owen, Assistant Director of Public Works - Treatment Services.

Attachments: 1. Item11B_WaterUtilityUpdate

Public Works

WATER UTILITIES

Update the condition of the Raw Water Intake

And

Water Treatment Plant

Introduction to City Water Supply System

Our Water Supply System consists of Four major Subsystems/Components;

1. Supply/Intake: Cypress Bayou and Raw Water/Intake Structure and Pump Station
2. Raw Water Storage and Transmission: Raw Water Reservoir/Sedimentation Basin/Pond [Caddo Jr.] and Transmission Mains
3. Water Treatment Plant
4. Finished (Treated) Water Storage: [Clear Wells], Distribution System Pumping: [High Service Pumps], and Elevated Storage: [Water Towers].

Raw Water Intake System (Pump Station)

- The intake system overall is operating at about 30-35% capacity.
- Currently there are 2 out of 4 - 500hp vertical turbine pumps in place and operating (rebuilt/original).
- All 4 - 18” pump control valves (check valves) and 4 - 18” gate valves are in need of replacing. None of them are operating at full efficiency as the internal components are worn and have met their useful life.
- The generator is in need of replacing as it is only capable of running 1 pump at a time when in use. It needs to have the capablity to run 2 pumps when needed.
- 2 out of the 4 variable frequency drives (VFD) need replacing. These control the speed of the motor which turns the pumps to pull water.
- The raw water sluice gate needs replacing as it is over 20 years old and has met its useful life. This is used to keep large unwanted debris from entering the system from the river.
- Several building upgrades are needed to the 20 year old facility including - garage doors, entrance door, exhaust fans, air-conditioning/heating system, fencing, lighting, and restroom(currently doesn’t have).

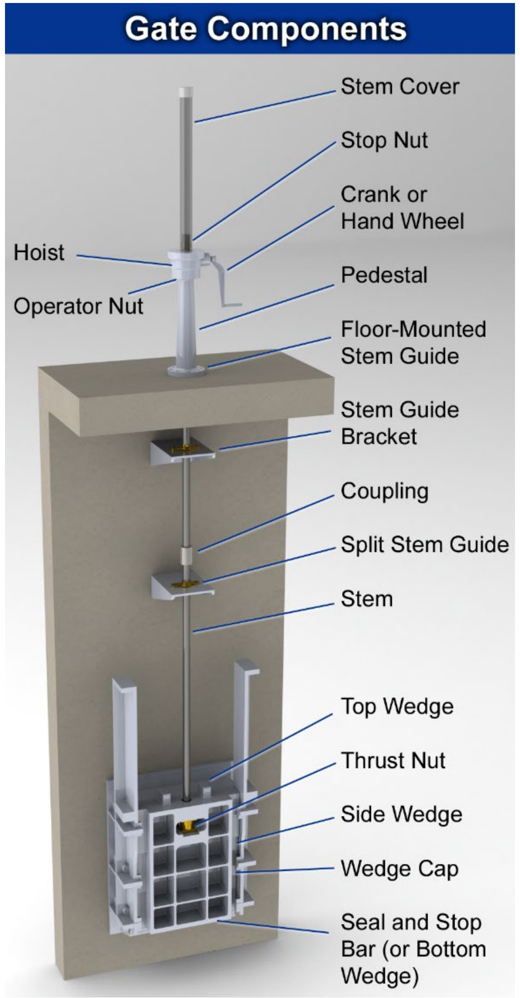
Intake Upgrades

- Raw Water Sluice Gate - $160,000
- Surge Valve - $50,000
- Raw Water Intake Bar Screen - $325,000 (Recommended to replace sluice gate)

TOTAL COST OF UPGRADES: $535,000

Bar Screen

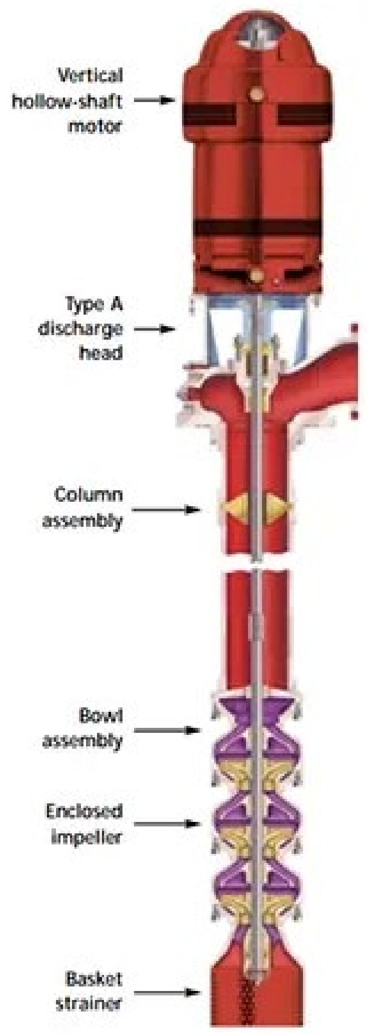
Sluice Gate



Pump Replacement Package
(Total of 4 pumps in Facility)

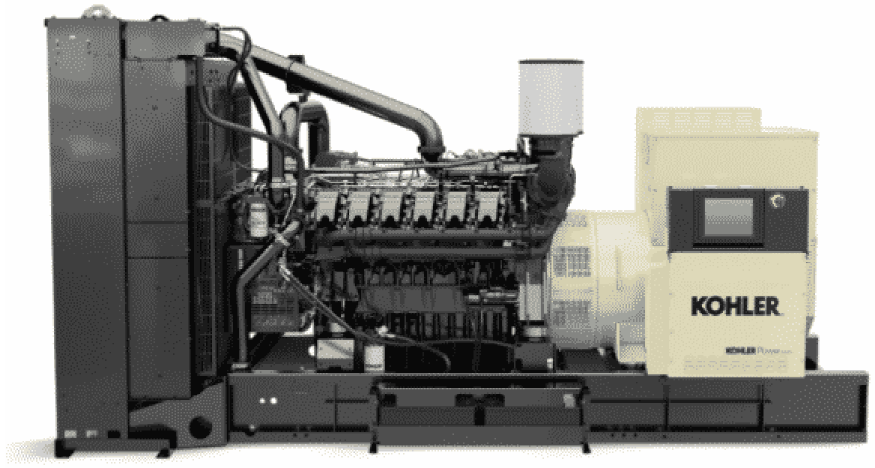
- 7 MGD Vertical Turbine Pump - $420,000 each (equipment and labor)
- 18” Pump Control Valve - $25,000 each
- 18” Gate Valve - $45,000 each
- 2” Air Release Valve - $6,000
- 3” Bypass Line Gate Valve - $12,000
- Variable Frequency Drive - $135,000
- Electric Conductor and Conduit - $21,000 each
    - 2RUN - 3#600, 1#1/0G, 4”C 480/277V
- All Package Upgrades - $30,000.00
- Testing and Startup - $3,000.00
- SUBTOTAL: $697,000

PUMP PACKAGE TOTAL (including contingency) - $840,000 per pump



Generator Replacement Package

- Diesel Generator - 1MW 480/277V - $470,000
- Concrete Slab - $45,000
- Generator Grounding - $5,000
- Testing and Startup - $5,000
- Generator Demolition - $15,000
- SCADA and Controls Generator - $12,000
- All Package Upgrades - $45,000
- Conductors\Conduits (4 RUN -4#600, 1#4/0G, 4"C) - $25,000



Package Total (including contingency) - $625,000

Building Improvements

- Lighting and Controls - $12,000
- HVAC Units\Heaters\Exhaust Fans\Vents - $12,000
- Pump Room A/C - $17,000
- All Package Upgrades - $45,000
- Electrical - $3,000
- Roofing - $20,000
- Exterior Garage and Entrance Doors - $10,000
- Fencing - $20,000

Total (Including contingencies) - $150,000

PUMP STATION UPGRADE TOTAL

- Intake Upgrades - $535,000
- Pump Replacement Package X 4 = $3,360,000
- Generator Upgrades - $625,000
- Building Improvements - $150,000

PROJECT TOTAL - $4,670,000

CADDO JR. (PRESEDIMENT BASIN\RESERVOIR) AND TRANSMISSION LINES

Caddo Jr.
(Presediment Basin)

- These two components are currently operating at about 65%-75% capacity with needed upgrades listed below.
  1. <u>Dredging of Reservoir</u> - Could range from $11.00 - $23.00 per cubic yard. Caddo Jr. capacity is about 9,000,000 gallons or 45,000 cubic yards, bringing the range to $495,000 to $1,035,000.
  2. <u>Landscaping\Vegetation Management</u> - needs many trees cut down and brush cleared around entire perimeter. $50,000 - $100,000. TCEQ Violation.
  3. <u>Transmission Lines</u> - Replacement of both 24" Transmission Lines from Pump Station to reservoir and from reservoir to treatment plant. - Estimated Cost $10,000,000.00.

Total for Reservoir + Transmission Lines - $11,135,000.00.

WATER TREATMENT

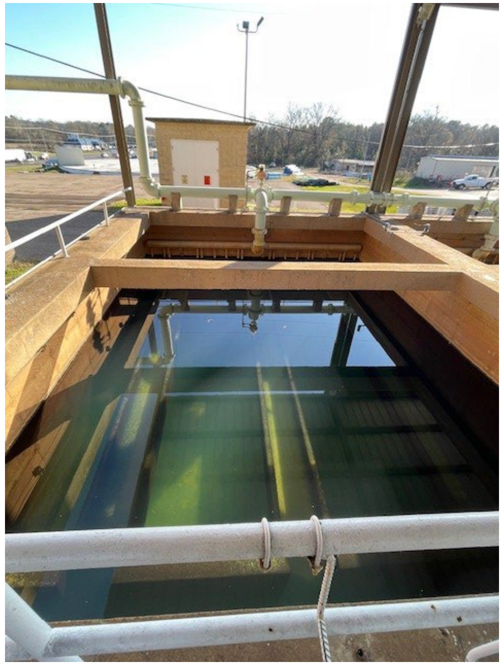
- The Water Treatment Plant is currently operating at 50-55% capacity.
- Currently we have 2 out of 8 backwashing filters out of service. The other remaining 6 filters are losing media due to underdrain issues.
- There are 2 clarifiers that are both in need of mechanical upgrades. Need recoating of the weirs and baffles too. TCEQ Violation.
- The Splitter Box is in need of repair/coatings. TCEQ Violation.
- Ammonia gas lines need relocating outside of the building. TCEQ Violation.
- The two-3 million gallon clearwells are in need of upgrades. The square clearwell has structural issues including deterioration of the roof and sides, exposed rebar, etc.
- The High-Service Pump Station has 4 out of 8 pumps currently in service with the other 4 pumps needing new motors/replacing.

BACKWASH FILTERS

- Replacement of the underdrain system, new piping, valves, fittings, recoating, and new media - $500,000.00 - $600,000.00 each.

Total cost - Ranges from $4,000,000 - $4,800,000.

Function Backwash Filer



Out of Service Backwash Filer

CLARIFIERS

Clarifiers circa 1986

- Rehabilitate mechanical drives, weirs, baffles, structural walls, etc. – Estimated cost $825,000 each or $1,650,000 for both.

OR

- Replacement of 100 foot diameter clarifier:
  - Construction cost estimate - $2,300,000
  - 30% contingency - $690,000
  - Engineering and Survey - $358,800

Total Replacement Cost - $3,300,000 each or $6,600,000 for both.

Clarifiers present day

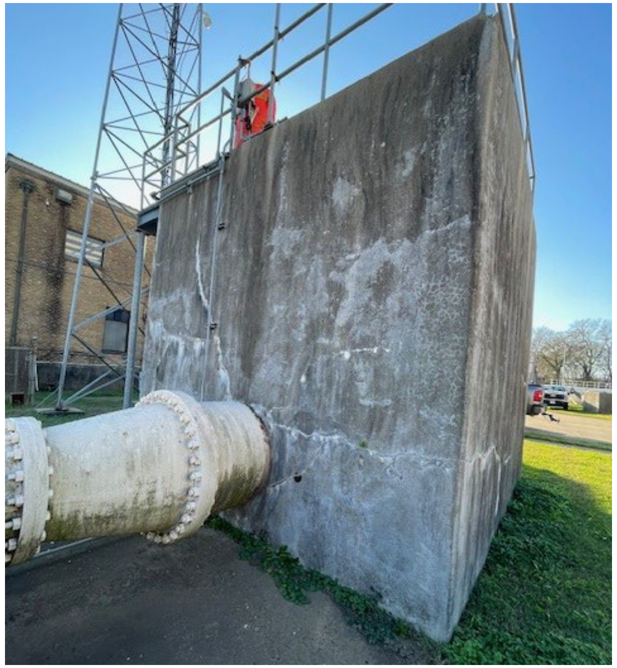
City of MARSHALL TEXAS

Item #11B – Public Works and Utilities

SPLITTER BOX

- Rehabilitation will consist of addressing/repairing all structural cracks and recoating. Current TCEQ violation.

Cost estimate could range from $100,000 - $200,000.



AMMONIA GAS LINE RELOCATIONS

- Current TCEQ Violation
- Construction Cost Estimate - $50,000
- 30% Contingency - $15,000
- Engineering and Survey – $10,000

Total Estimated Cost - $75,000

Clearwells circa 1986

3 MILLION GALLON CLEARWELLS

- <u>Replacement Costs:</u>
    - Construction Cost Estimate - $4,600,000
    - 30% Contingency - $1,380,000
    - Engineering and Surveying - $720,000

Total Replacement Cost - $6,700,000 each or $13,400,000.00 for both.

OR

Rehabilitation Cost: $1,675,000 for one or $3,350,000 for both.

Clearwells present day

Item #11B – Public Works and Utilities

HIGH SERVICE PUMP STATION AND GENERATOR

- Pump replacement packages could range anywhere from $500,000 to $750,000 each. Similar to pump station pump replacement packages with new pumps, motors, VFD's, electrical, valves, etc.

  Cost Ranges- $4,000,000.00 - $6,000,000.00 (8 pump packages)

- Generator – needs an automatic transfer switch – cost is $350,000.

  Existing generator is 20 plus years old and does not have an automatic transfer switch (ATS). Operators\maintenance staff must arrive at the plant to turn on the generator during power outages. Current pumps do not have VFD controls which means they run at 100% RPMs instead of starting slowly and ramping up to 100% based on distribution requirements. This would also extend the service life of the pumps.

TOTAL COST – up to $6,350,000.

WATER TREATMENT OVERVIEW

- Backwash Filter upgrades – up to $4,800,000
- Clarifiers - $1,650,000 for rehabilitation or $6,600,000 for replacement.
- Splitter Box – up to $200,000
- Ammonia Gas Lines – $75,000
- 3 MG Clearwells - $3,350,000 for rehabilitation or $13,400,000 for replacement.
- High Service Pump Station - up to $6,350,000.

TOTAL UPGRADE COSTS (MAXIMUM): $31,425,000.00

SUMMARY

- Pump Station Upgrade Total - **$4,670,000**
- Reservoir and Transmission Line Upgrade Total - **$11,135,000.**
- Water Treatment - **$31,425,000**

OVERALL TOTAL: $47,230,000

City of MARSHALL TEXAS	TO:	City Council
	DATE:	January 16, 2025
	ITEM #:	11.C
	SUBJECT:	Presentation of Code Enforcement Processes and Procedures. (Planning & Development)

Recommendation for Action: Report

Executive Summary: Overview of Code Enforcement Processes, Procedures, Work Service etc.

Budget Cost: N/A

Staff Contact: Reggie Cooper, Director of Planning & Development

Attachments: 1. Code Enforcement Powerpoint Info (002)

Code Enforcement Timeline

*Violations are identified:
1. By Code Enforcement staff during regular patrol (Proactive Enforcement)
2. By complaint (on-line, phone call, e-mail or walk-in) (Pragmatic Enforcement)

1. Violation identified and initial notice provided by door hanger, verbally or violation letter sent by standard mail to owner(s) of record according to HCAD.
   a. Fourteen (14) days after initial notice provided, property is re-inspected.
      i. If violation has not been resolved and property owner has not filed a plan of action with us, final notice is sent:
      ii. If violation is resolved – Case is Closed

b. For Building Maintenance/Substandard Structure/Vacant Property Registration Codes: Thirty (30) days after initial notice provided, property is re-inspected
    i. If violation has not been resolved and property owner has not filed a plan of action with us, second notice is sent:
    ii. If violation is resolved – Case is Closed

2. 2nd Notice of violation sent by standard mail to owner(s) of record according to HCAD
    a. Thirty (30) days after initial notice provided, property is re-inspected (this applies to Building Maintenance/Substandard Structure/Vacant Property Registration Codes)
        i. If violation has not been resolved and property owner has not filed a plan of action with us, final notice is sent by Certified Mail:
        ii. If violation is resolved – Case is Closed


3. Final Notice of violation is sent via certified mail, return receipt requested.
    a. Fourteen (14) days after final notice sent.
        i. If violation has not been resolved and property owner has not filed a plan of action with us – Citation Issued:
        ii. If violation is resolved – Case is Closed
    b. For Building Maintenance/Substandard Structure/Vacant Property Registration Codes: Thirty (30) days after initial notice provided, property is re-inspected
        i. If violation has not been resolved and property owner has not filed a plan of action with us – Citation Issued:
        ii. If violation is resolved – Case is Closed

4. For occupied properties or local property owners, Code Enforcement Staff will be accompanied by a police officer to the residence to obtain personal identifiers required by the Municipal Court to process the case (often times we encounter a situation where we show up to serve a citation and no one is home or they do not answer the door).

5. For non-local property owners (either out of town or out of state), Code Enforcement staff look-up personal identifiers for defendant(s) through use of an annual subscription to publicdata.com, fill out a citation, mail a copy of the citation to the defendant(s), create a case file and send the case file along with the original citation to Municipal Court

    a. Code Dockets are scheduled by the court, they are always on a Wednesday, no standing dates and typically occur bi-monthly.

6. When a case is heard during a Code Docket and a defendant pleads guilty or no-contest we are required to close the code case out and after 30 days if the violation(s) still exist we open a new code enforcement violation case on the property.

In an ideal world where we have enough Code Enforcement staff to reasonably cover initial inspections, re-inspections, sending notices, issuing citations and creating court files:

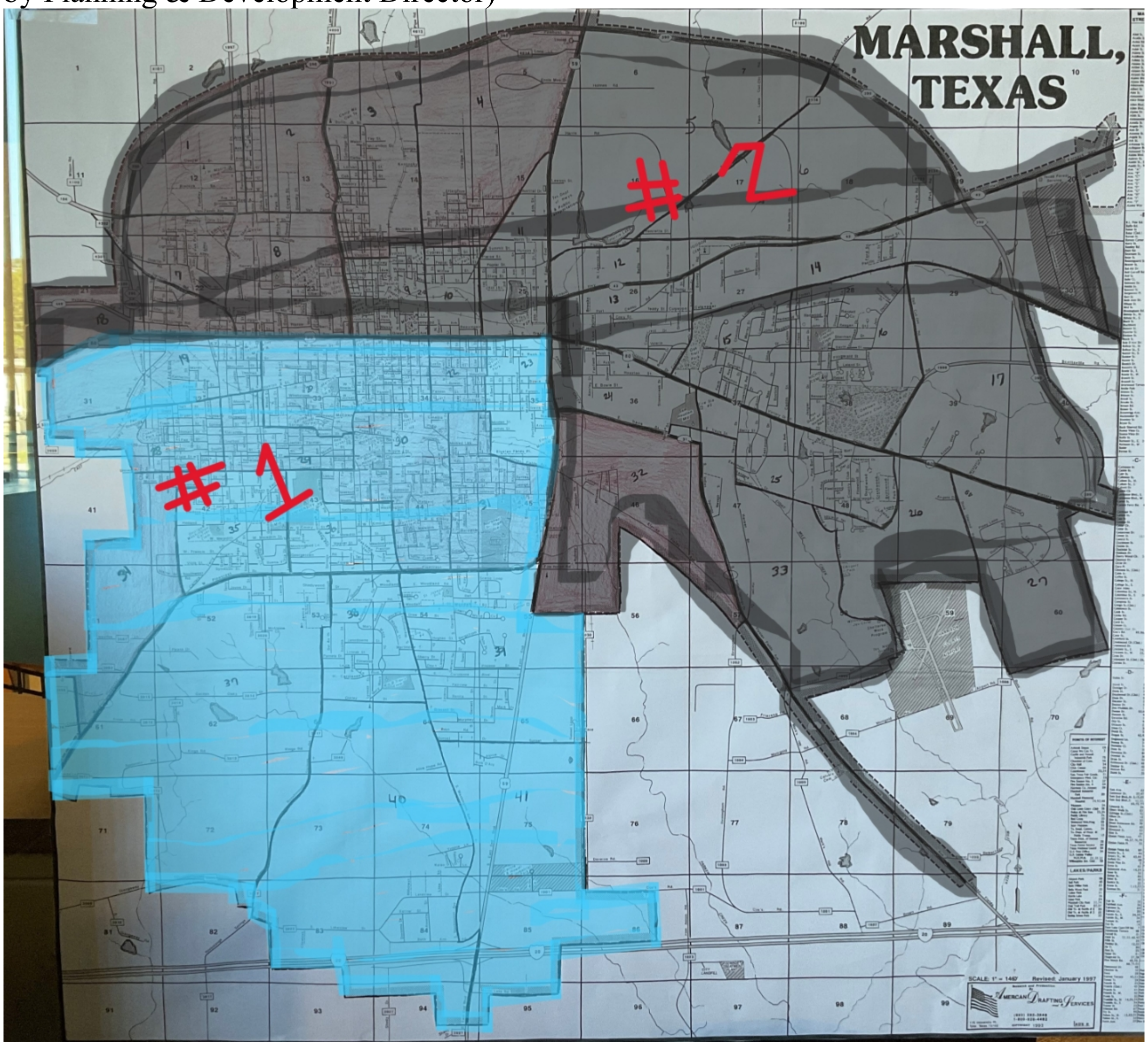
1. Substandard Structure / Building Maintenance / VPRO cases should take 90-120 days from being opened to being presented on a Municipal Court Code Docket.
2. All other Code Violation cases should take 45-60 days from being opened to being heard during a Municipal Court Code Docket.

*Cases where the property is behind on taxes:

1. We are able to submit 5 properties each month to MVBA (law firm) to initiate the process of delinquent tax foreclosure (this process takes several months at least and every property is different – once Code Enforcement hands the property off to the law firm, we have no further involvement other than checking roughly every 3 months to see if property condition and/or ownership has changed)

*Some of the bigger substandard structure cases (commercial properties or groups of properties owned by companies and corporations) end up being submitted by our office to Municipal Court and then the Municipal Court Prosecutor, Madison Hood, sends the cases on to the City Attorney, Scott Rectenwald, to pursue legal action against (our department/staff are not typically notified when cases are handed over to the City Attorney from the Municipal Court Prosecutor until the City Attorney reaches out to us inquiring about the current status or requesting our presence at a hearing).

City is divided into 2 sections currently – 1 Code Enforcement Staff works section 1 and the other works section 2 (Code Staff will switch between being designated to work section 1 & 2 every 6 months to 1 year – determined by Planning & Development Director)



*Issues we frequently encounter that inhibit our ability to pursue any legal action on a case:

a. Owner of record is deceased, but someone is paying the taxes so we cannot submit it for tax foreclosure and we cannot write a ticket to a dead person
b. There is an active tax deferral on the property so we cannot submit it for tax foreclosure and the property owner is not responding to our violation notices
c. There is no owner information attached to the property in HCAD
d. Owner of record is a company or corporation and our citations have to be made out to a specific individual (based on what we have been told by Municipal Court)
e. Owner of record is not a local City of Marshall resident, so obtaining a signed citation that includes personal identifiers is not possible – if we send a case to Municipal Court without a signed citation that includes personal identifiers, the case gets kicked back to us and we have no further course of action
f. Owner of record is a local individual, but any attempts to get a signed citation that includes personal identifiers have been unsuccessful – if we send a case to Municipal Court without a signed citation that includes personal identifiers, the case gets kicked back to us and we have no further course of action

7. Often times citizens will call our office repeatedly and either leave several messages in a day or do not leave any messages and then when we call them back or we return to the office and answer their next call they state "I've been calling all day and no one has been answering the phone" – that's because we are out in the field…not sitting in the office all day waiting to answer phone calls (Please understand we are typically only in the office from 8-9 and 4-5 daily)
    a. Another issue is citizens will file a complaint with our office and then the following week or two they will call and leave a message complaining that NOTHING has been done and they want to know what's going to get done about it
    b. Another issue is citizens will submit a complaint by email, online or voicemail and then call a few days later complaining that no one has called them back, but they never asked for a return call (we do not have the time or the staff to call every person that submits a complaint – If they ask for a return call then we will call them back at our earliest convenience)