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
REGULAR CITY COUNCIL MEETING

June 12, 2025
6:00 PM

1. **Call to Order and Roll Call**
2. **Invocation and Pledges**
3. **Presentations & Proclamations**
   A. Presentation of the Employee of the Month - June. (Employee Engagement Committee)
   B. Presentation of the Employee of the 2nd Quarter 2025. (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 **Items to be Withdrawn From Consent Agenda**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 May 22, 2025, Regular Council meeting. (City Secretary)
7. **Consideration of Items Withdrawn From the Consent Agenda**
8. **Public Hearing & Ordinance**
   A. **O-25-14** Consider approval of an ordinance regarding a rezone request (**P&Z Item Z-25-02)** - 3801 Karnack Hwy. (Public Works)
9. **Action Items for City Council Consideration**
   A. Consider the approval of a renewal for FY2025 for the annual Street Improvement Program - Rayford Truck & Tractor. (Public Works)

B. Discussion and action concerning the modification requested by AT&T on the AT&T cell site lease located at 3219 Karnack Highway. (City Attorney)

C. Consider approval of consultant agreement to develop a strategic plan for Marshall Economic Development at a cost not to exceed $98,470. (Marshall EDC)

D. Consider approval of a contract for Grant Management Services for Traylor & Associates (HMGP Generator Project $126,215.30). (Public Works)

E. Consider approval of Engagement with Foster & Foster for Actuarial Services. (Finance)

10. Adjournment

Posted: June 9, 2025
5:00 PM
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.

TO:	City Council
DATE:	June 12, 2025
ITEM #:	3.A
SUBJECT:	Presentation of the Employee of the Month - June. (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.

Focus Area(s):

Budget Cost:

Staff Contact:

Attachments: None

TO:	City Council
DATE:	June 12, 2025
ITEM #:	3.B
SUBJECT:	Presentation of the Employee of the 2nd Quarter 2025. (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.

Focus Area(s):

Budget Cost:

Staff Contact: Christol Hall, HR Director

Attachments: None

	TO:	City Council
	DATE:	June 12, 2025
	ITEM #:	6.A
	SUBJECT:	Consider approval of the minutes from the May 22, 2025, Regular Council meeting. (City Secretary)

Recommendation for Action: Consider approval of the minutes from the May 22, 2025, Regular Council meeting.

Executive Summary: Minutes from the May 22, 2025, Regular Council meeting.

Focus Area(s): Improving Communication

Budget Cost: N/A

Staff Contact: Nikki Smith, City Secretary

Attachments: 1. 5-22-25 minutes

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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
May 22, 2025
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 Micah Fenton
Councilmember Dathaniel Campbell
Councilmember Amanda Abraham

ABSENT: Councilmember Jordan-Anderson **Motion to Excuse: Councilmember Campbell Second: Councilmember Morris Vote: 5:0**

ADMINISTRATIVE STAFF PRESENT:
Cliff Carruth, Police Chief
Scott Rectenwald, City Attorney
Eric Powell, Public Works Director
Randy Pritchard, Support Services Director
Nikki Smith, City Secretary/Payroll Accountant
Marina Garcia-Heredia, Parks & Recreation Director
Alex Agnor, Asst. City Manager/Econ. Dev. & Strat. Init. Director

2. Invocation and Pledges

Mayor Ware

3. Presentations & Proclamations

A. Recognition of Christina Anderson's work on writing of the All American Cities Hall of Fame Application.
Mayor Ware read a certificate recognizing the hard work Christina Anderson put forth for the All American Cities Hall of Fame Application.
Alex Agnor, Assistant City Manager, thanked Christina Anderson for her dedication and continuous hard work for the City of Marshall.

Christina Anderson thanked the Council for their recognition of her work on the All American Cities Hall of Fame Application.

B. Proclamation declaring May 18-24 Annual Public Works Week for 2025.

Mayor Ware read the proclamation and the Council presented it to the Public Works Department.
Eric Powell, Public Works Director, stated the employees deserve the recognition and expressed his appreciation for this proclamation.

Councilmember Abraham joined the meeting remotely at 6:13 PM.

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.

Pamela Dunn, 2500 Scotts Quarter Road, asked the council how to go about getting Scotts Quarter Road paved all the way down, and Ward Street and Hudson Street, and Scotts Addition included in the FY25 Street Improvement Program for paving.
Priscilla Williams, 1702 Rainey, stated she has lived on Rainey Street for 32 years with the only improvement on the street being a pothole filled in occasionally. She would like to see improvement in her area.
Michael Stephens, 1109 Longmeadow, DeSoto, TX, stated he is a contractor building 32 family homes for a project located at 2518 Cooper Street. He is requesting the council assist with this project by working on the infrastructure in the area.
Tony Thomas, 117 Fisher Drive, stated he has lived on Fisher Drive for over 25 years and the street has never been paved completely, just patched. He stated it has water standing for days after it rains, so it needs to be repaved.
Bridget Knighten, 2600 Norwood Street, stated she has lived on Norwood Street for 20 years and the street has only been patched. She would like it to be paved as she feels this would help stop or reduce litter.
Marvin Rhodes, 2304 Palato Drive, stated he has lived on Palato Drive for 30 years and the street has not had proper maintenance in over 30 years. He stated he knows the workload and budget are strained, but asked council to consider paving Palato Drive.
Samuel Knighten, 2600 Norwood Street, stated he has lived on Norwood Street for over 30 years and the street was paved when the school was added, but only that section was addressed. He asked the council to consider paving the rest of Norwood and possibly widening the street.
Boris Nesbitt, 1003 Henry Street, stated that recently that while driving on Henry Street he hit a pothole and cracked his rim. He asked the council to consider having Henry Street repaired.
Amanda Durden, 1606 Ward Street, stated she has lived on Ward Street for 20 years and the street has a section that has never been repaired. She asked the council to consider paving Ward Street because of the wear and tear on cars caused by the bumps.

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 Morris made a motion to approve the Consent Agenda. Mayor Ware seconded the motion, which passed by a vote of 6:0.

A. Consider approval of the minutes from the April 28, 2025, Special-Called Council meeting. (City Secretary)

B. Consider approval of the minutes from the May 8, 2025, Regular Council meeting. (City Secretary)

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

There were no items withdrawn from the Consent Agenda.

8. **Action Items for City Council Consideration**

A. Consider approval to enter into a professional services agreement with Hayes Engineering - T&P Stormwater Project - $522,300. (Public Works)

Eric Powell stated this project has been ongoing, the city has been working with Hayes Engineering and a design task order with a scope of work has been developed. This project will be funded out of a grant and loan from the Texas Water Development Board Flood Infrastructure Fund. A background on the storm water retention project was provided showing this project will help to reduce or eliminate flooding in the Highway 59 and Highway 80 intersection area. This is a good project that will benefit the city. It is one of many drainage projects that have been discussed. Eric Powell stated the hope is to show the state board that the city is a good partner to do work with, which will hopefully open doors for additional funding for other projects. The total cost of the project is $3,159,000, with 33-35% of the money received as a grant and the rest paid back at a low interest rate.

Eric Powell asked the council to approve an engineering design work order (W.O. No. MA-25-01) with Hayes Engineering at a cost of $522,300.

Mayor Ware highlighted the funding breakdown of $1,105,650 being the grant amount that does not need to be paid back, and the $2,050,000 is a 0% interest loan to be paid back to the Texas Water Development Board. Mayor Ware also stated the Water Fund and Drainage Utility Fund are separate from the General Fund and the $82,000 per year payment will come from the Water and Drainage Utility Funds.

Councilmember Abraham's remote connection was lost at 6:37 PM.

Councilmember Fenton made a motion to approve entering into a professional services agreement with Hayes Engineering for the T&P Stormwater Project at a

cost of $522,300. Councilmember Morris seconded the motion, which passed by a vote of 5:0.

B. Consider approval of an expenditure for an emergency water main repair on Young St, in the amount of $79,548 performed by Koppl Pipeline Services. (Public Works)

Eric Powell stated that in late January, a call was received from residents on Young Street about a leak. The staff went out and found the leak and tried to put a clamp on it, but it didn't work. A call was made to Koppl to come in to fix the leak.

Eric Powell asked the council to approve emergency expenditures after the fact in the amount of $79,548.

Councilmember Fenton made a motion to approve an expenditure for an emergency water main repair on Young St, in the amount of $79,548 performed by Koppl Pipeline Services. Councilmember Campbell seconded the motion, which passed by a vote of 5:0.

C. Consider an Amendment to an existing KSA agreement for design services related to utility relocations along I20 and SL390 in the amount of $162,903. (Public Works)

Eric Powell stated the I-369 TxDOT project requires the City to get temporary construction easements needed. Eric Poweel reached out to get prices for negotiating temporary construction easements for the two sections which have multiple properties. The price from the companies was received as $34,103 for the I-20 Section and $128,100 for the State Loop 390/Highway 80 Section. This work is beyond the scope of current staff. The funding will come from the TxDOT SIB Loan and attached to the KSA design services agreement.

Councilmember Campbell made a motion to approve an amendment to an existing KSA agreement for design services related to utility relocations along I20 and SL390 in the amount of $162,903. Councilmember Morris seconded the motion, which passed by a vote of 5:0.

D. Consider approval of an expenditure for network equipment to CDW in the amount of $121,421.00. (Support Services)

Randy Pritchard, Support Services Director, stated the budget amendment that was approved at the last meeting addressed items that were not budgeted to be replaced but needed to be replaced. Randy Pritchard asked for approval to purchase and install network equipment for enhancements to the firewall and multiple switches for the facilities from CDW at a cost of $121,421.00.

Randy Pritchard stated this will help with necessary upgrades, the conversion to the .gov, and be more efficient.

Councilmember Campbell made a motion to approve an expenditure for network equipment to CDW in the amount of $121,421.00. Councilmember Fenton seconded the motion, which passed by a vote of 5:0.

E. Consider approval of an Interlocal Agreement for radio services with Harris County Universal Services at a cost of approximately $12,000 annually. (Support Services)

Randy Pritchard stated that Councilmember Abraham was spot on with her points about the previous agreement. It was the wrong agreement. It was a user agreement instead of a partner agreement. The correct agreement has been provided and there are no user fees. Background information about the system and information regarding equipment installation was provided by Randy Pritchard. The radio system covers 43 counties, and once approved CORE in Harris County will grant the City rights to the system. The next steps are for the Harris County Commission to approve the agreement, then assign, program, install and provide training on the radios. There are also pending agreements, tower construction with possible remediation, configuration and installation of network and Wi-Fi, and finally testing and training. The anticipated timeframe for completion is this summer. Randy Pritchard asked council to approve and execute the Interlocal Agreement for radio services with Harris County Universal Services.

Councilmember Abraham's remote connection resumed at 6:58 PM.

Councilmember Abraham stated she is comfortable with the new agreement.

Mayor Ware stated that Harrison County is updating their system at the same time as this is a public safety issue and will help eliminate the loss of communication.

Randy Pritchard stated this system will allow for interoperability, allow operations to continue working together, and gives options to continue functioning in case of multiple levels of failure or disruption.

Councilmember Morris made a motion to approve an Interlocal Agreement for radio services with Harris County Universal Services. Councilmember Campbell seconded the motion, which passed by a vote of 6:0.

F. Consider approval of a fuel contract renewal with Pete McArty Oil Company for approximately $346,500. (Support Services)

Randy Pritchard provided background information regarding the contract with Pete McArty Oil Company and stated it allows for a 0.10¢ per gallon profit margin on the wholesale price of fuel. Options with Enterprise were reviewed, but the local option was cheaper. Randy Pritchard noted that fuel usage has been reduced because of the newer and more fuel-efficient vehicles.

Mayor Ware made a motion to approve a fuel contract renewal with Pete McArty Oil Company. Councilmember Campbell seconded the motion, which passed by a vote of 6:0.

G. Consider approval of the updated Marshall Vision Statement, Mission Statement and FY26 Budget Priorities and Reaffirmation of Marshall's Core Values. (City Manager)

Alex Agnor thanked the council for their engagement and enthusiasm during the pre-planning budget sessions. Alex Agnor stated the sessions allowed council to have the priorities for the upcoming year and the budget discussed. The discussion with Ron Cox started with revisions to the vision statement, then the Mission Statement was updated, followed by the reaffirmation of the core values. Alex Agnor listed the priorities/focus areas: Improve Infrastructure, Improve Community Appearance, Invest in our Workforce, Improve Customer Services and Improve Communication. Alex Agnor asked for approval of and formal adoption of the updated vision, mission, core values and priorities/focus areas.

Councilmember Godfrey asked if this would repeal and sever ordinance O-19-03, adopted February 28, 2019, regarding the 2043 comprehensive plan. If the plan addresses the items, they would be updated in the document, but the ordinance would not be repealed since this item is not an ordinance.

Alex Agnor stated the ordinance would be reviewed to see if any updates need to be brought back to council.

Councilmember Godfrey made a motion to approve the updated Marshall Vision Statement, Mission Statement and FY26 Budget Priorities and Reaffirmation of Marshall's Core Values. Councilmember Morris seconded the motion, which passed by a vote of 6:0.

H. Discussion and action, if appropriate, on the FY2025 Street Improvement Program ($1,500,000). (Public Works)

Eric Powell stated this item was presented at the request of the council to discuss the selection process for the Street Improvement Program. A sample selection criteria model was provided to give some points of discussion. Streets are the largest, most expensive asset and are costly to maintain and repair. There are underlying issues to consider regarding street selection, including, but not limited to, underground infrastructure, drainage, connectivity, accessibility, and sidewalks. Funding for streets has to be planned for, and staff members are looking at various funding mechanisms.

Mayor Ware thanked Eric Powell for providing the requested maps and lists, which he informed the council were based on the original method, using only the Pavement Condition Index (PCI) for ranking. The top five to six streets on the list had a water line/main replaced in 2024, and the process and methodology in place were to reconstruct and overlay the street the following year.

The newest PCI data should be available in mid-June. Eric Powell explained the process of analysis for PCI, which gives a ranking of the roads from zero to 100 after they are studied foot by foot.

Councilmember Campbell asked how many linear miles we have in the City, which would be approximately 202 center lane miles, or about 410 lane miles.

Mayor Ware verified this item is on the agenda to discuss how to proceed, what to include and how to value the pieces for the street list.

Councilmember Godfrey asked for the location to be considered as the process that has been used previously for the streets has resulted in only one side of town being addressed. Councilmember Godfrey asked Eric Poweel how he does the PCI.

Mayor Ware stated PCI only started in 2020.

Eric Powell stated that the PCI scan done in 2020 is used to list the ranking. Currently, he does not use location. What is used is the PCI, then there is consideration of what is under the street. A filter can be processed to include hydrants, pressure, volume & delivery, 0-100 ranking, A-Z, and/or undersized water mains to create the list for each year. Then the department can take what streets the budget can accomplish from the list. If there was a tiebreaker needed, another filter to be used could be the location of critical facilities. Other ranking criteria to use could include whether the street has a park, transportation hub, city facility, school, etc. on it.

Councilmember Campbell thanked citizens for expressing their concerns and frustrations. The council's number one goal is infrastructure, but in the past basic upkeep has been avoided or neglected. Councilmember Campbell stated that based on the linear feet there is a 42-year turnaround for roads in general, which would cost approximately $63 million to replace all roads. The life of a road is about 35 years without a lot of traffic. A road with a lot of traffic would last about 28–30 years, and the city can only do about 4 miles per year at this time.

Eric Powell said the city has to add preventative maintenance and overlays which will reduce the amount available for full reconstruction.

Councilmember Godfrey stated her concern is that streets have been done and money has been spent mainly on one location and the other streets have been neglected or not paved. If streets have the same PCI number, how are they chosen? The method of alphabetical order is not working, whatever criteria we are using is not working. Councilmember Godfrey noted that the 2043 comprehensive plan left out Scott's Addition. Councilmember Godfrey said it was shared with her that the city addresses small streets in some areas and larger streets in other areas. In the past four years, money has been spent on part of a street, and then we go back the next year and do another part instead of trying to cover other areas.

Councilmember Abraham stated PCI should be the starting place, then use judgment calls on traffic flows. The huge problem is that $1 million doesn't make a dent, at some point we might have to take out a bond. Suggested that each councilmember gets to recommend/assign 1 or 2 streets each year.

Councilmember Fenton said that it needs to be taken into consideration that underground infrastructure can hinder a project.

Mayor Ware stated that several areas don't have water mains for hydrants. There are a total of 68 miles of undersized water mains. Mayor Ware agreed that the worst streets should be fixed first, it doesn't matter what district the streets are in. The council will need to make sure there is money set aside for an item, if the item is not budgeted, it's not a priority.

Councilmember Godfrey stated most money shouldn't be spent in one area and another area neglected. Eighteen of the 34 streets listed in the preliminary list have been worked on for the last four years in a row. Councilmember Godfrey named several streets that are bad and can hardly be driven on and are almost impassable.

Councilmember Abraham asked how many streets can be done in a year, which was determined to depend on linear feet, which changes each year, but the average is about four miles each year.

Councilmember Campbell offered to cultivate work based on the future. The PCI is scientific data. Use that data and start at zero. If there is no residence or driven on, put it on the backburner. Look at all the districts and see where streets are ranked as zero, divide the budget by seven and start from there. Councilmember Campbell pointed out that the city has a full-time crew working on patching and pothole repairs.

Councilmember Godfrey stated if you drive the streets, the places with the lowest numbers are the streets mentioned in the citizen comments.

Councilmember Campbell stated the data should be used, and start at streets with a zero ranking, not looking at the district.

Alex Agnor stated the proposal of Councilmember Campbell could be used. Frustrations and concerns have been heard regarding the preliminary list having issues that were unknown and then trying to find a suitable alternative street that is similar in linear feet without consideration to which district it is located. The suggestion could be that the section of street, or entire street, that has to be removed from the list for whatever reason, is to be replaced with a street within the same district that meets all the criteria of the initial street.

Mayor Ware asked to consider if the water main is not scheduled to be replaced within so many years to go ahead and fix the road.

Councilmember Campbell stated he would like to see that if there are waterlines that are under a road that are a zero, then those waterlines should be repaired first.

Councilmember Morris thanked the citizens for lending their voice. It seems citizens have voiced their concerns regarding areas of neglect to no avail in most instances. Councilmember Morris gave an example of a conversation he had with a citizen who said he was told a machine was broken, but Councilmember Morris saw staff with the machine the next day. Many citizens are calling with their concerns, and Councilmember Morris expressed concern that they are being brushed off or lied to. On Carolanne, the pavement was done in two ways on two sides of the street. The total equals a long street, so other short streets were not able to be done. Councilmember Morris questioned why streets are being done in certain areas but not in others. It is understood that not all streets need to be repaired.

Councilmember Abraham stated she liked Councilmember Campbell's proposal.

Councilmember Godfrey stated she would like to have the lowest streets, regardless of the district they are in, to take priority.

Councilmember Abraham reaffirmed that the lowest streets, with zero rankings, in all districts would be divided by seven equally. It was further clarified that if a district had no streets with a zero ranking, the funding would be yielded to other districts.

Alex Agnor stated it seems the consensus is for staff to go with the lowest level PCI score, and move forward with that in mind. Once the updated PCI data is received, staff will compile it and come back at a future meeting to present the preliminary list. It is understood that if a street is removed, the street replacing it is the next one on the list with the lowest score that matches the length, volume, linear feet, etc.

Mayor Ware asked Eric Powell to provide council members with the new list once it is available for them to have time to drive the roads.

Eric Powell said he would bring a list of the worst-rated streets in subsections. Eric Powell asked how the council would like to break a tie. It was suggested to have the street be looked at in person or let the council member of that district decide.

Councilmember Abraham asked if the PCI rating was for the entire street or if it was in sections. The rating is broken down into segments, but as the roads are repaired, the sections become one segment. If a road has a section with a zero rating and the next section is a one, go ahead and address it so it is not piecemealed.

Councilmember Campbell suggested color-coding the streets on a map to see a 1-5-year plan.

Eric Powell stated that for roads that are in bad shape, but are scheduled for late in year two or three, a thin layer of asphalt can be placed on the road to smooth it out and make it more drivable or passable.

9. Discussion and Reports for City Council Consideration and Direction

A. Presentation on Work Completed / Work Not Funded - 2” Water Line Replacement Program (Councilwoman Godfrey, Councilman Morris)

Eric Powell provided a summary of year one of a 20-year program to replace undersized watermains throughout the City. The initial program started in the area of Lions Parks and used ARPA funds. This item is a review of a completion report to see what was done, where, and the total cost. A discussion can be held to determine where to go next, what it looks like and funding issues, as no funding is provided for this year's budget. Eric Powell stated efforts are being made to do some of the work in-house to try to keep moving forward.

Councilmember Godfrey asked if PCI was used to choose the waterline replacement, and it was not. Councilmember Godfrey asked which streets were complete, and it was stated they were provided on the list in the packet highlighted in blue. Councilmember Godfrey stated East Wright was not done and asked about the process of payment for the project.

Councilmember Campbell asked if the waterline is replaced and the street needs to be replaced, is money used from the street funding, which was explained that no, the funds are kept separate.
Efforts are made for street improvement money to not be used for water main repairs. In future projects, money will be set aside for street repairs within the waterline repair funds.

Councilmember Godfrey asked for East Wright to be double-checked as it may have been abandoned.

10. Executive Session

Councilmember Godfrey made a motion to convene in Executive Session. Councilmember Morris seconded the motion, which by a vote of 6:0. The time was 8:59 PM.

A. An executive session pursuant to Texas Govt. Code Section 551.071 to consult with the City Attorney to seek advice on pending or contemplated litigation and on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter: Lawsuit filed by Garnett Johnson against the City of Marshall.

B. An executive session pursuant to Texas Govt. Code Section 551.071 to consult with the City Attorney to seek advice on pending or contemplated litigation and on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter: Settlement agreement with Alan Ritchey, Inc.
Councilmember Campbell made a motion to reconvene from the Executive Session. Councilmember Godfrey seconded the motion, which by a vote of 6:0. The time was 9:53 PM.

11. Action Item Following Executive Session

A. Consider action regarding discussion from the executive session item regarding a settlement agreement with Alan Ritchey, Inc.
Mayor Ware made a motion to permit the City Attorney, Scott Rectenwald, to negotiate a modification of the settlement with Alan Ritchey, Inc. for the property to be left in a condition deemed acceptable to the City, subject to the Council's approval. Councilmember Godfrey seconded the motion, which passed by the following vote:

Ayes: 5, Mayor Ware, Councilmembers Godfrey, Campbell, Abraham and Fenton
Nays: 1, Councilmember Morris

12. Adjournment

Councilmember Godfrey made a motion to adjourn. Councilmember Morris seconded the motion, which passed by a vote of 6:0.

TO:	City Council
DATE:	June 12, 2025
ITEM #:	8.A
SUBJECT:	**O-25-14** Consider approval of an ordinance regarding a rezone request (**P&Z Item Z-25-02)** - 3801 Karnack Hwy. (Public Works)

Recommendation for Action: Approve the requested zone change and issue an ordinance.

Executive Summary: On May 19, 2025, the City Planning and Zoning Commission conducted a public hearing to consider and make a recommendation to the City Council regarding a rezoning request of a 0.66-acre tract of land from A-E (Agriculture and Estate) to R-1 or R-2 (Residential – Single Family Home Detached). The property is located at 3801 Karnack Hwy and Dee Mullikin.

Focus Area(s): This item aligns with the following council-adopted focus area(s):

Budget Cost: $0

Staff Contact: Eric Powell, PE Director

Attachments:
1. ORD_Rezone R18291_DeeMullikinfromAEtoR1
2. Z-25-02_3801KarnackHwy_Rezone_06122025Council

ORDINANCE NO ________

An Ordinance Amending Ordinance No. 0-87-13 To Rezone an approximately 0.685-acre tract of land, in the James Harris survey and as indicated in Exhibit A from AE (Agriculture and Estate) to R-1 (Residential, Single Family Detached). Located at Karnack Hwy and Dee Mullikin.

WHEREAS, the City of Marshall enacted zoning on December 13, 1951 and amended said ordinance on July 7, 1963 and on March 26, 1987 repealed and replaced all ordinance with Ordinance No. 0-87-13 amending the Code of Ordinances of the City of Marshall to add Chapter 32 regarding Zoning; and

WHEREAS, a Zoning District Map was adopted as a part of Ordinance No. 0-87-13; and

WHEREAS, Chapter 32, Section 14 of the Code of Ordinances established a procedure for a property owner, his agent, or the City to request zoning district map amendments; and

WHEREAS, the Planning & Zoning Commission, after due and proper notice in the manner and for the length of time required by law, held a public hearing for the purpose of considering proposed changes to the Zoning District Map; and

WHEREAS, after the close of said public hearing and pursuant thereto, the Planning &Zoning Commission filed a written report with the City Council, recommending changes in the Zoning District Map; and

WHEREAS, pursuant to said report and after notice in the manner and for the length of time required by law, the City Council held a public hearing in Marshall, Texas at City Hall on the 12th day of June, 2025 at 6:00pm for the purpose of considering the requested Zoning Map change, and at which hearing all property owners, interested parties, and interested citizens had an opportunity to be heard; and

WHEREAS, the City Council, after considering the proposed changes and after hearing all parties and citizens desiring to be heard, deems that the following changes are necessary and for the best interest of the general welfare of the citizens of the City of Marshall, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS THAT:

Section l. The facts and opinions in the preamble of this ordinance are true and correct.

Section 2. THAT THE ZONING MAP ESTABLISHED BY ORDINANCE NO. O87-13 IS HEREBY AMENDED TO REZONE THAT CERTAIN To Rezone an approximately 0.685-acre tract of land, James Harris survey, From

AE (Agriculture and Estate) to R2 (Residential, Single Family Detached). Located on Dee Mullikin Rd, Marshall, Texas.

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

PASSED on the 12th day of June, 2025.

AYES:
NOES:
ABSTAINED:

MAYOR OF THE CITY COUNCIL
OF THE CITY OF MARSHALL,
TEXAS

ATTEST:

CITY SECRETARY

City Council Agenda Information Sheet

June 12, 2025

A. **<u>P&Z Item Z-25-02</u>** – On May 19, 2025, the City Planning and Zoning Commission conducted a public hearing to consider and make a recommendation to the City Council regarding a rezoning request of a 0.66-acre tract of land from A-E (Agriculture and Estate) to R-1 or R-2 (Residential – Single Family Home Detached). Property is located at 3801 Karnack Hwy and Dee Mullikin.

Applicant:	Wells Enterprise Unlimited 5140 Harris Lake Rd, Marshall, TX 75672
Property Owner	Henry Wells 5140 Harris Lake Rd, Marshall, TX 75672
Surrounding Property Notices	9 Notices Sent within 200 ft. of the Site 0 Responses back
Location Map:	

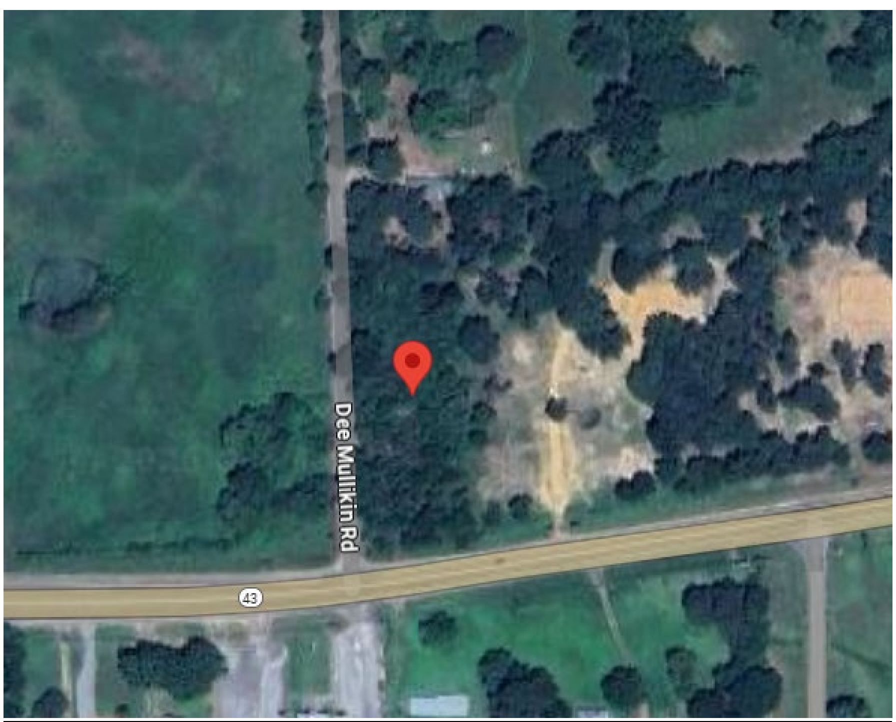


Figure 1: Z-25-02

Background & Summary of Request:

The applicant is requesting the zoning be changed from A-E (Agriculture and Estate) to R-1 or R-2 (Residential – Single Family Detached). The Applicant is proposing to develop and construct two single family homes with on two lots with lot sizes of 0.33 acres each.

Picture of the Site:

Figure 2: Looking North on Dee Mullikin

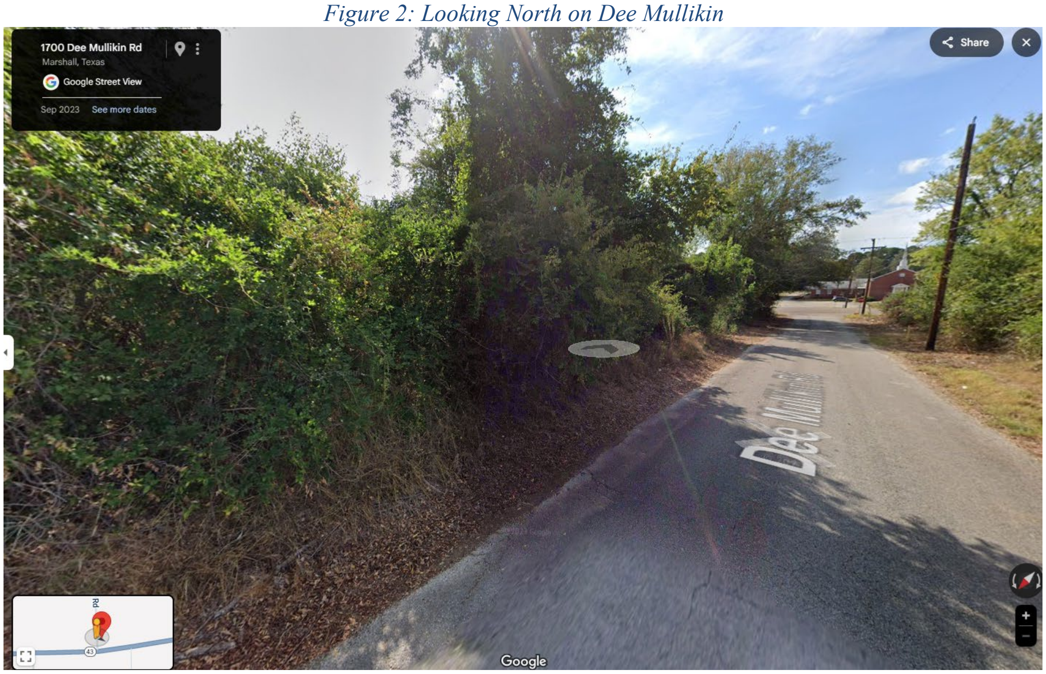


Figure 3: Looking South on Dee Mullikin

Existing Conditions:

The property is currently vacant and wooded, gently slopes to the southwest.

The table below outlines the surrounding zoning and land uses:

	Zoning Classification	Land Use
North of the Property	A-E (Agriculture and Estate)	Single Family Home
East of the Property	A-E (Agriculture and Estate)	Vacant
South of the Property	A-E (Agriculture and Estate)	Church
West of the Property	A-E (Agriculture and Estate)	Vacant

Water service is provided to the site by an existing 8" water main along the right-of-way of Dee Mullikin Rd. There is an existing 6" sewer main located on the north side Karnack Hwy. An extension will need to be made going north on Dee Mullikin to service the proposed homes.

Zoning Classification Analysis:

The applicant is requesting a zoning change from A-E (Agriculture and Estate) to R-1 or R-2 (Residential – Single Family Detached). The main difference between R-1 and R-2 is the minimum lot size. The applicant has indicated on their application that the proposed lots are to be 0.33 acres which fits in both zones. The Applicant is proposing to construct a new single family detached homes.

Comprehensive Plan and Future Land Use Map Analysis:

The Future Land Use map identifies this property as Agriculture and Estate along with future residential properties.

The following questions should be answered when determining if a zoning change is appropriate:

1. Will the proposed change be in compliance with the goals of the Comprehensive Plan?

   The request of R-1 or R-2 (Residential – single family detached) will be consistent with the Comprehensive Plan since it is going from one form of residential to a better utilized residential zone (allowing smaller lot sizes than A-E).

2. Will there be an adverse impact on surrounding property if the request is approved? In evaluating this question, consideration should be given to all permitted uses in the proposed new zoning and the impact it could have on surrounding property.

   The surrounding property is currently zoned A-E with an existing church to the south of Karnack Highway which is an existing residential zone requiring larger lot sizes and this requested change would not be a significant change in zoning as it is remaining a residential zone just allowing more appropriate lot sizes.

3. Is the property suitable for use as it is currently zoned or does the zoning need to be changed to allow the property to be put to use in a way that is in keeping with the surrounding activities.

   As already stated, the property is currently surrounded by residential uses so changing the zoning would be a consistent use of the zoning district. It is anticipated that there will be additional rezoning request within the overall A-E zone as the City experiences growth requiring different types of housing stock.

4. What is the relationship of the proposed change to the health, safety and welfare of the general community? In other words, will the change make the community better or is it merely for the convenience of the owner? Will surrounding property owners suffer or lose

any enjoyment in the area of their property as a result of this change? Does the proposed change seem to be a logical extension of similar types of development?

Based on existing conditions the proposed change/use will not have an immediate negative effect on the community.

Suggested Motions:

1. Motion to recommend approval of case number Z-25-02 was made and seconded and an all in favor vote of 5 – 0 was cast.

Attachments:

1. Preliminary Plat
2. Aerial of Site
3. 200 Foot Notification Map
4. P&Z May 19, 2025 Minutes

TO:	City Council
DATE:	June 12, 2025
ITEM #:	9.A
SUBJECT:	Consider the approval of a renewal for FY2025 for the annual Street Improvement Program - Rayford Truck & Tractor. (Public Works)

Recommendation for Action: Approve the renewal of the FY2025 Street Improvement Program with Rayford Truck & Tractor for one year based on the 2024-PW-01 Bid Specifications.

Executive Summary:

Focus Area(s): This item aligns with the following council adopted focus area(s): Improvements to Infrastructure (Streets)

Budget Cost: $1,500,000

Staff Contact: Eric G. Powell, PE Director

Attachments: 1. Contract Renewal Eric Powell Rayford's Truck Tractor 6.4.25

City of Marshall
Department of Public Works

Eric G. Powell, PE
Director\City Engineer

PO Box 698
Marshall, TX 75671
(903) 935-4489

May 30, 2025

Rayford Truck and Tractor
Attn: Bud McCracken

To Whom It May Concern:

The City of Marshall wishes to extend the contract no: 2024-PW-01 for the fiscal year 2025 as referenced in the bid specification entitled "2024 Street Improvement Program 2024-PW-01" on page PF-5 of the Proposal Forms. The allowable increase in unit prices is 4% or the DFW CPI for the previous year whichever is lower.

If you are in agreement with this request to renew please complete the attached proposal form and sign this letter and return to my attention. Thank you for your continued interest in performing this work as we collectively improve the City's infrastructure. We look forward to another successful year of street improvements.

Respectfully Submitted,

Eric G. Powell, City Engineer

Rayford Truck & Tractor   6/4/25
Date

CONTRACT RENEWAL #1: PRICE SHEET
CITY OF MARSHALL, TEXAS
2025 STREET IMPROVEMENT PROGRAM
PROPOSAL FORM

(ALL QUANTITIES ARE ESTIMATES ONLY FOR CONTRACT RENEWAL PURPOSES ONLY)

ITEM NO.	DESCRIPTION	QTY/UNIT	UNIT PRICE	AMOUNT
1	FURNISH, INSTALL, MAINTAIN & REMOVE BARRICADES, SIGNS & TRAFFIC CONTROL	1 LS	$ 12,840.00	$ 12,480.00
2	RECONSTRUCTION\PULVERIZATION	40,000 SY	$ 7.85	$ 314,000.00
3	FURNISH AND INSTALL HMAC TYPE "D" SURFACE COURSE, INCLUDING ASPHALT PRIME	6,750 TONS	$ 147.16	$ 993,330.00
4	ADJUST VALVE BOX TO OVERLAY GRADE	30 EA	$ 312.00	$ 9360.00
5	ADJUST MANHOLE TO OVERLAY GRADE	30 EA	$ 312.00	$ 9360.00
6	4" DOUBLE YELLOW STRIPING, TYPE II	8,700 LF	$ 1.40	$ 12,180.00
7	24" WIDE STOP BARS TYPE II	5 EA	$ 124.80	$ 624.00
8	SCHOOL ZONES LINES TYPE II	1 EA	$ 182.00	$ 182.00
9	CROSSWALKS TYPE II	10 EA	$ 166.40	$ 1664.00

TOTAL AMOUNT – "BASE BID": $ 1,353,180.00

NOTE: Quantities are estimates only. Streets may be added or deleted contingent upon available funding with no change in unit cost.

CONTRACTOR'S SIGNATURE: ______________________

TO:	City Council
DATE:	June 12, 2025
ITEM #:	9.B
SUBJECT:	Discussion and action concerning the modification requested by AT&T on the AT&T cell site lease located at 3219 Karnack Highway. (City Attorney)

Recommendation for Action: Requesting approval of modifications requested.

Executive Summary: Please see attached memo.

Focus Area(s):

Budget Cost:

Staff Contact: Scott Rectenwald, City Attorney

Attachments:
1. AT&T Cell Site Memorandum
2. 12773700_170817_First Amendment_DRAFT_02.20.2025 (002)

MEMORANDUM

Date: May 1, 2025

To: City Council

From: Scott Rectenwald

Re: Requested modification of AT&T cell site lease located at 3219 Karnack Highway.

Discussion:

AT&T leases a cell site located at 3219 Karnack Highway from the City pursuant to that Option and Site Lease dated May 20, 2014 (Exhibit 1 included with this memorandum). Recently AT&T sent a request to modify the lease (Exhibit 2) offering several different options, including long term exclusive easements for large lump sum payments, or modification by reducing the existing lease payments by AT&T. Because of problems with prior City agreements granting long term easements, staff requested that AT&T provide what they propose with regard to option 3, and AT&T has delivered the "First Amendment to Option and Structure Lease Agreement" (attached hereto as Exhibit 3).

The First Amendment does a couple things - The original lease has rent set at $2000 per month which increases by 15% every five years during an extension term. The amendment proposes to reduce the rent to $1900 and reduce the extension term adjustments to 10%

I queried the AT&T representative, John Lockhart, about why AT&T has requested a modification, and why we would want to agree to a reduction in rent, and his response was this:

> "Now, as for why AT&T is requesting a reduction has to do with advancements in technology. The fact of the matter is, technology in the telecom industry has advanced faster than anyone had expected, and carriers no longer have a need for as many sites as they used to, mainly due to small cell and satellite technology. That being said, AT&T still has a need for some large Macro cell sites such as this one, but are only willing to keep around the ones that make sense economically. And as I am sure you are aware, AT&T does have the ability to terminate the lease with 60 days notice. My hope is to prevent that from happening, and get the site to a place economically that AT&T can continue to operate there for the long term."

The implication is that AT&T would need to terminate its lease for economic reasons if we can not agree to a modification

Market: Central Region / North Texas
Cell Site Number: DX2982
Cell Site Name: Karnack Hwy / Baffo Rd
Fixed Asset Number: 12773700

OPTION AND STRUCTURE LEASE AGREEMENT

THIS OPTION AND STRUCTURE LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by City of Marshall, Texas, having a mailing address of 605 East End Blvd, Marshall, TX 75670 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr. NE, Suite 13-F West Tower, Atlanta, GA 30324 ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit** 1, improved with a structure (the "**Structure**"), together with all rights and privileges arising in connection therewith, located at 3219 Karnack Highway, Marshall, Texas 75672, in the County of Harrison, State of Texas (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. <u>OPTION TO LEASE</u>.

(a) Landlord grants to Tenant an option (the "**Option**") to lease a portion of the Property consisting of:

(i) approximately 900 square feet including the air space above such rooftop/basement/ground space, as described on attached **Exhibit 1,** for the placement of Tenant's Communication Facility;

(ii) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (i) and (ii) is the "**Equipment Space**");

(iii) that certain space on the building's rooftop and/or façades, as generally depicted on **Exhibit 1** annexed hereto and made a part hereof, where Tenant shall have the right to install its antennas and other equipment (collectively, the "**Antenna Space**"); and

(iv) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "**Connection Space**"). Landlord agrees that Tenant shall have the right to install connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. Notwithstanding the foregoing, Tenant, to the extent feasible, shall locate all lines, wires, conduits and cables on existing poles extending from the roadway into Landlord's Property. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the **"Premises."**

(b) During the Option Term, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Two Thousand and No/100 Dollars ($2,000.00) within thirty (30) business days of the Effective Date. The Option will be for an initial term of one (1) year commencing on the Effective Date (the "**Initial Option Term**") and may be renewed by Tenant for an additional one (1) year (the "**Renewal Option Term**") upon written notification to Landlord and the payment of an additional Two Thousand and No/100 Dollars ($2,000.00) no later than five (5) days prior to the expiration date of the Initial Option Term. The Initial Option Term and any Renewal Option Term are collectively referred to as the "**Option Term**."

(d) The Option may be sold, assigned or transferred at any time by Tenant to an Affiliate of Tenant or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to an Affiliate or a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Initial Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option, then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

(f) If during the Initial Option Term, or during the term of this Agreement the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**," which includes without limitation the remainder of the Structure) or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

2. <u>PERMITTED USE.</u> Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communication fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right, but not the obligation, to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or Surrounding Property as described in **Exhibit 1** as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises at the Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

3. TERM.

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the fifth (5^{th}) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Initial Term or then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the expiration of the final Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be fifteen percent (15%) higher than the Rent paid in the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and the Holdover Term are collectively referred to as the Term (the "**Term**").

4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5^{th}) day of each calendar month in advance Two Thousand and No/100 Dollars ($2,000.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) In year one (1) of each Extension Term, the monthly Rent will increase by fifteen percent (15%) over the Rent paid during the previous five (5) year term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement including the following: 5 Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 6(d) Termination, 11(d) Environmental, 18 Condemnation or 19 Casualty.

7. **INSURANCE.**

(a) During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to Three Million Dollars ($3,000,000) per occurrence and Six Million Dollars ($6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

(b) Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverages required in subsection (a). In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

(i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and

(iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

8. INTERFERENCE.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant shall not use the Premises in any way that interferes with the use of the Property by Landlord, or tenants or licensees of Landlord, with rights to the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including non-interference). Such interference shall be deemed a material breach, Landlord shall provide notice to Tenant and Tenant shall be responsible for terminating said interference. In the event any such interference does not cease within 72 hours, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, Landlord shall have the right, in addition to any rights that it may have at law or in equity, to bring action to enjoin such interference and/or to terminate this Lease within a 45 day cure period. Landlord makes no warranty or representation, express or implied that the airspace used by Tenant will be free of electronic or other interference.

9. INDEMNIFICATION.

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

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

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the structure; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property while owned by Landlord, has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree, to the extent allowed by law, to hold harmless and indemnify the other from, and to assume all duties, responsibilities, and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**") to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omission of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous substances on the Property, or any environmental, health or safety condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Section 12, such failure shall be a default under this Agreement. Landlord reserves the right to temporarily deny Tenant's Access to the Premises due to exigent circumstances that may be encountered by Landlord in its capacity as a governmental entity i.e., the carrying out of emergency duties in connection with police and fire activities and other public safety activities, etc., but only to the extent necessary and not to exceed twenty-four (24) hours.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Structure, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within forty-five (45) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Landlord hereby grants to any company providing utility or similar services, including electric power, fiber, and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or the service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

(d) The Landlord reserves the right, at any time, to perform any type of maintenance and/or repair on the Property; provided however, except in emergency situations, if any maintenance and/or repair work will substantially affect Tenant's permitted uses of the Premises, Landlord will use its best efforts to provide Tenant with at least six (6) months prior written notice of the intended repair and/or maintenance work, along with a schedule showing dates and duration of such repair and/or maintenance work. Landlord shall also provide Tenant with the opportunity, at Tenant's cost and expense, to temporarily relocate and continue to operate its antennas, or otherwise to secure the antennas or the Communication Facilities generally, to protect them from damage. Tenant shall be permitted to install temporary facilities necessary to keep its Communication Facilities operational, subject to Landlord's prior written consent, which consent shall not be unreasonably withheld. Further, any maintenance will be conducted by Landlord as diligently and expeditiously as possible. If any temporary facilities are installed as a result of this paragraph, Tenant shall remove said temporary facilities immediately upon Landlord's completion of any maintenance and/or repair work.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 of this Agreement within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. **ASSIGNMENT/SUBLEASE.** Tenant may assign or sublease this Lease, in whole or in part, without Landlord's consent, to the Tenant's principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity that acquires all or substantially all of the Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization. Tenant may not otherwise assign or sublease this Lease without the prior written approval of Landlord, which approval shall not be unreasonably withheld.

17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: DX2982; Cell Site Name: Karnack Hwy / Baffo Rd (TX)
Fixed Asset No: 12773700
575 Morosgo Dr. NE
Suite 13-F West Tower
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: DX2982; Cell Site Name: Karnack Hwy / Baffo Rd (TX)
Fixed Asset No: 12773700
208 S. Akard Street
Dallas, Texas, 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Marshall, Texas
605 East End Blvd
Marshall, TX 75670
Attn: J.C. Hughes, Public Works Director

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorate basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole

determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of the Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant, and Tenant decides not to terminate under this Section, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord, including any such taxes that may be calculated by the taxing authority using any method, including the income method. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant within such time period, Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 and, in addition, of a copy of any such notices shall be sent to the following address. Promptly after the Effective Date of this Agreement, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax addresses changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration -- Taxes
Re: Cell Site #: DX2982; Cell Site Name: Karnack Hwy / Baffo Rd (TX)
Fixed Asset No: 12773700
575 Morosgo Dr. NE
Suite 13-F West Tower
Atlanta, GA 30324

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property except as provided below.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

i. Old deed to Property
ii. New deed to Property
iii. Bill of Sale or Transfer
iv. Copy of current Tax Bill

v. New IRS Form W-9
vi. Completed and Signed AT&T Payment Direction Form
vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. **RENTAL STREAM OFFER.** If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment or transfer of Rent payments associated with this Agreement ("**Rental Stream Offer**"), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within twenty (20) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the twenty (20) day period, Landlord may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section.

24. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit 24b**. Either party may record this Memorandum or Short Form Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease.

(c) **Limitation and Liability**. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law**. Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in this Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates**. All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival**. Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including, any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

"LANDLORD"

City of Marshall, Texas

By: ____________________
Print Name: KENNETH J SNYDER
Its: City Manager
Date: 7/16/14

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ____________________
Print Name: Paul Baumgardner III
Its: Area Manager RE3C
Date: 5/20/14

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF DALLAS

On the 20 day of May, 2014, before me personally appeared Paul S. Baumgardner, III, and acknowledged under oath that he/she is the Area Manager RE&C, NTX Network Ops of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

KATHLEEN MEZA
MY COMMISSION EXPIRES
February 21, 2018

Kathleen Meza
Notary Public: Kathleen Meza
My Commission Expires: 2-21-18

LANDLORD ACKNOWLEDGMENT

STATE OF Texas)
) ss:
COUNTY OF Harrison)

I CERTIFY that on July 16, 2014, Kenneth J. Snyder [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the City Manager [title] of the City of Marshall, Texas, the municipal corporation named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Laurie Thompson
Notary Public: Laurie Thompson
My Commission Expires: March 14, 2015

LAURIE THOMPSON
Notary Public, State of Texas
My Commission Expires
March 14, 2015

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1 of 2

to the Option and Structure Agreement dated July 16, 2014, by and between City of Marshall, Texas, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

TRACT ONE:

All that certain lot, tract or parcel of land situated in Harrison County, Texas, about 2 miles Northeast from the Courthouse in the City of Marshall, being a part of the JAMES HARRIS SURVEY, A-12, (in conflict with the Thomas Iden Survey, A-354),

Being within the Corporate Limits of the City of Marshall, and being more particularly described as follows:

BEGINNING at an iron pin in the North margin of the Lower Marshall and Port Caddo Road and at William Prestons Southeast corner;

THENCE North 5 1/2 East, along Prestons East boundary line, 228 varas, an iron pin at said Prestons Northeast corner;

THENCE East, along my North boundary line of, 150 varas, an iron pin in my boundary line;

Thence South 19 East, 238 1/2 varas, an iron pin in the North margin of said Port Caddo Road;

THENCE West, along said road, 250 varas, to the Place of Beginning, containing 8 acres of land, more or less.

TRACT TWO:

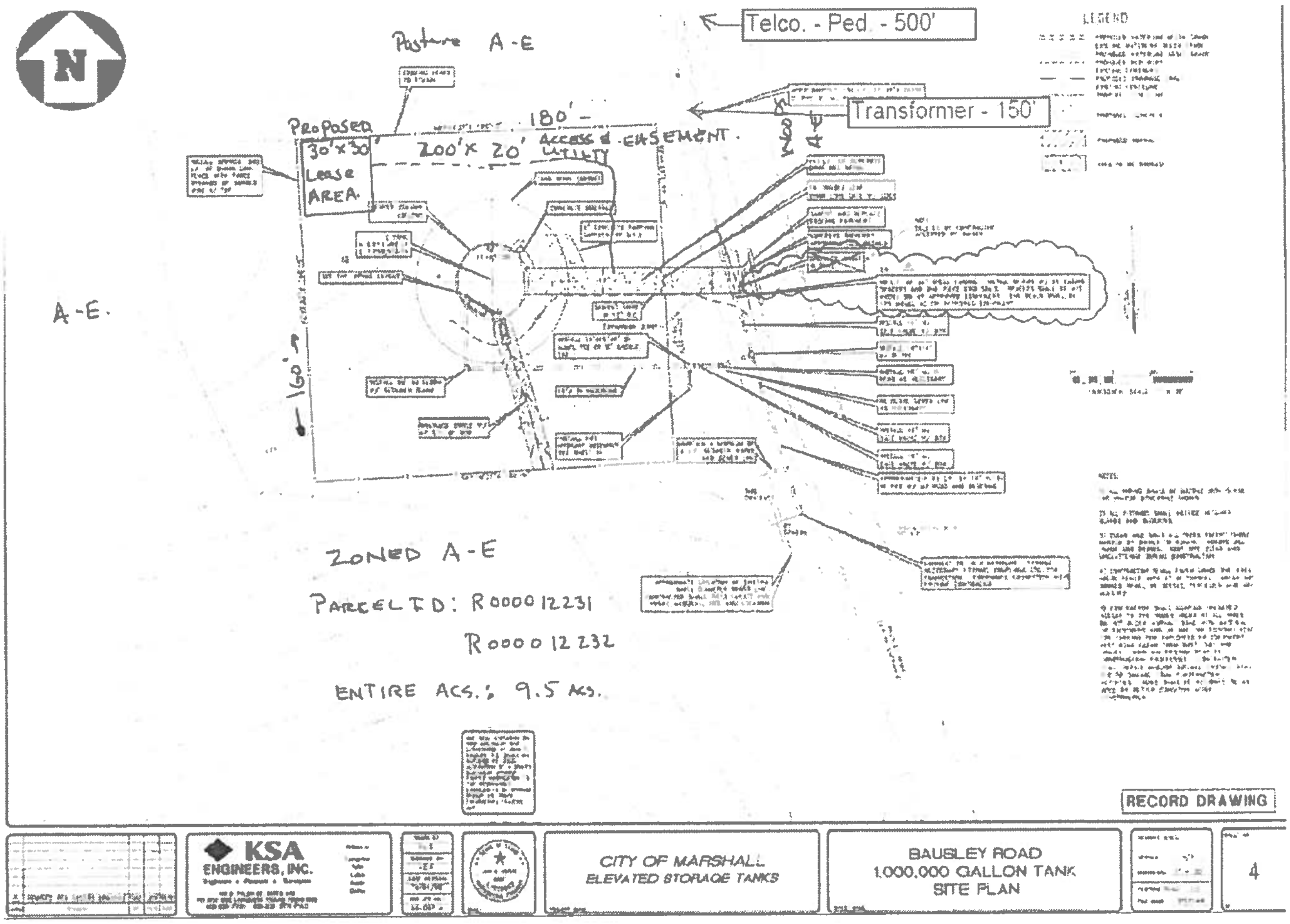
All that certain lot, tract or parcel of land situated in Harrison County, Texas, within the Corporate Limits of the City of Marshall, about 2 miles Northeast from the Courthouse in the City of Marshall, being a part of the JAMES HARRIS SURVEY, A-12, (in conflict with the Thomas Iden Survey, A354), and being more particularly described as follows:

BEGINNING at an iron pin in the North margin of the Lower Marshall and Port Caddo Road and being the Southeast corner of a lot sold by S.H. Ellis
to the said Winzy Graves;

THENCE South 19 deg. East, 238 varas, an iron pin on said Marshall and Port Caddo Road;

THENCE West, 37 1/2 varas, to the Place of Beginning, containing 1 ½ acres of land, more or less

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

EXHIBIT 12

STANDARD ACCESS LETTER

[FOLLOWS ON NEXT PAGE]

CITY OF Marshall
P.O. Box 698 • Texas 75671-0698
www.marshalltexas.net

Mayor & City Commission (903) 935-4421
City Manager (903) 935-4418
Assistant City Manager (903) 935-4419
City Secretary (903) 935-4450
Engineering (903) 935-4401
Event Facilities (903) 935-4423
Finance (903) 935-4445
Fire Chief (903) 935-4580
Human Resources (903) 935-4425
Library (903) 935-4465
Parks and Recreation (903) 935-4470
Planning and Community Development (903) 935-4459
Police Chief (903) 935-4520
Public Works (903) 935-4485
Purchasing (903) 935-4423
Water/Waste Water Utilities (903) 935-4485

July 15, 2014

Building Staff/Security Staff
Landlord, Lessee, Licensee
P. O. Box 698
Marshall, Texas 75671

Re: Authorized Access granted to AT&T

Dear Building and Security Staff,

Please be advised that we have signed a lease with AT&T permitting AT&T to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant AT&T and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, AT&T representatives may be seeking access to the property outside of normal business hours. AT&T representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature J. C. HUGHES
PUBLIC SERVICES DIR.

EXHIBIT 24b

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

MEMORANDUM OF LEASE

Prepared by:
Crafton Communications
1870 Crown Drive, Suite 1500
Dallas, TX 75234

Return to:
Crafton Communications
1870 Crown Drive, Suite 1500
Dallas, TX 75234

Cell Site #: DX2982
Cell Site Name: Karnack Hwy / Baffo Rd
Fixed Asset #: 12773700
State: Texas
County: Harrison

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this 16TH day of July, 2014, by and between City of Marshall, Texas, having a mailing address of 605 East End Blvd., Marshall, TX 75670 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr. NE, Suite 13-F West Tower, Atlanta, GA 30324 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Option and Structure Lease Agreement ("**Agreement**") on the 16TH day of July, 2014, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be five (5) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of its option, with four (4) successive automatic five (5) year options to renew.

3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.

4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

"LANDLORD"

City of Marshall, Texas

By: Kenneth J. Snyder
Name: KENNETH J. SNYDER
Its: City Manager
Date: 7/16/14

"TENANT"

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By:
Name: Paul Baumgardner III
Its: Area Manager RE&C
Date: 5/20/14

TENANT ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF DALLAS

On the 20 day of May, 2014, before me personally appeared Paul S. Baumgardner, III, and acknowledged under oath that he/she is the Area Manager RE&C, NTX Network Ops of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

KATHLEEN MEZA
MY COMMISSION EXPIRES
February 21, 2018

Kathleen Meza

Notary Public: Kathleen Meza

My Commission Expires: 2-21-18

LANDLORD ACKNOWLEDGMENT

STATE OF Texas }

COUNTY OF Harrison }

I CERTIFY that on July 16 ____, 2014, Kenneth J. Snyder [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the City Manager [title] of the City of Marshall, Texas, the municipal corporation named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Laurie Thompson

Notary Public: Laurie Thompson

My Commission Expires: March 14, 2015

LAURIE THOMPSON
Notary Public, State of Texas
My Commission Expires
March 14, 2015

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1 of 2

to the Memorandum of Lease dated July 16, 2014, by and between City of Marshall, Texas, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property owned by Landlord is legally described as follows:

TRACT ONE:

All that certain lot, tract or parcel of land situated in Harrison County, Texas, about 2 miles Northeast from the Courthouse in the City of Marshall, being a part of the JAMES HARRIS SURVEY, A-12, (in conflict with the Thomas Iden Survey, A-354),

Being within the Corporate Limits of the City of Marshall, and being more particularly described as follows:

BEGINNING at an iron pin in the North margin of the Lower Marshall and Port Caddo Road and at William Prestons Southeast corner;

THENCE North 5 1/2 East, along Prestons East boundary line, 228 varas, an iron pin at said Prestons Northeast corner;

THENCE East, along my North boundary line of, 150 varas, an iron pin in my boundary line;

Thence South 19 East, 238 1/2 varas, an iron pin in the North margin of said Port Caddo Road;

THENCE West, along said road, 250 varas, to the Place of Beginning, containing 8 acres of land, more or less.

TRACT TWO:

All that certain lot, tract or parcel of land situated in Harrison County, Texas, within the Corporate Limits of the City of Marshall, about 2 miles Northeast from the Courthouse in the City of Marshall, being a part of the JAMES HARRIS SURVEY, A-12, (in conflict with the Thomas Iden Survey, A354), and being more particularly described as follows:

BEGINNING at an iron pin in the North margin of the Lower Marshall and Port Caddo Road and being the Southeast corner of a lot sold by S.H. Ellis
to the said Winzy Graves;

THENCE South 19 deg. East, 238 varas, an iron pin on said Marshall and Port Caddo Road;

THENCE West, 37 1/2 varas, to the Place of Beginning, containing 1 ½ acres of land, more or less

The Premises leased to Tenant are described and/or depicted as follows:

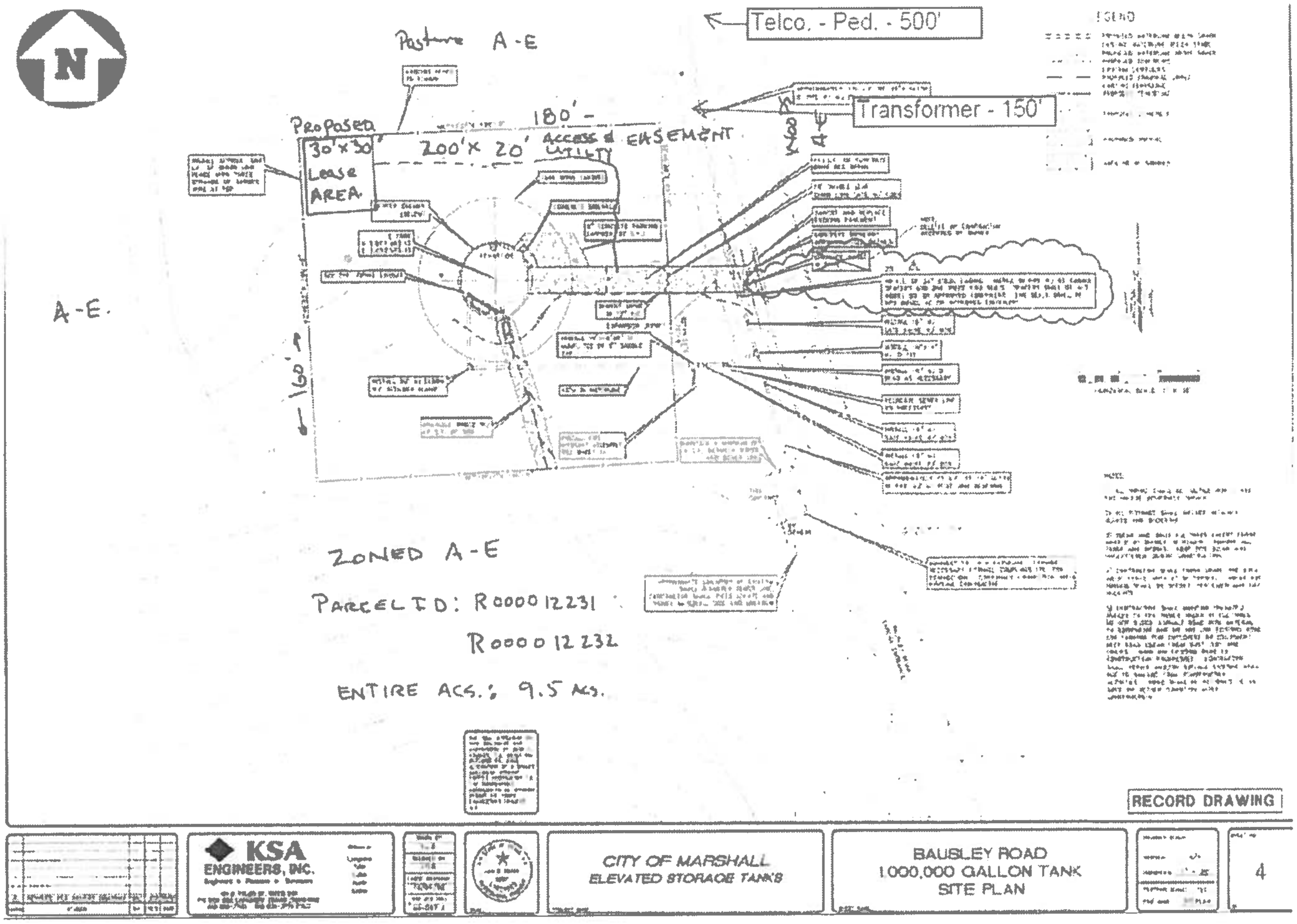


Exhibit 2

MD7

April 1, 2025

Re: Communications Facility located at 3219 Karnack Highway, Marshall, TX 75672

Contract #: 170817 / FA#: 12773700

Dear Landlord,

As you are aware, AT&T Mobility ("AT&T") has partnered with MD7 to work with you to facilitate certain modifications to the cell site lease on your property. These modifications will allow AT&T to meet current business requirements and enhance your site's value to the network.

Changes in the Wireless Industry
Recent industry developments are changing how wireless telecommunications carriers operate. In the past, carriers focused on rapidly building out their networks in order to provide the best coverage. Today, while consumers are enjoying greater services and better coverage than ever before, operating costs continue to escalate. As a result, the wireless industry is also focusing on operating networks as efficiently as possible.

Eliminating Risk and Increasing Value
AT&T is addressing this shift by reviewing its cell site portfolio. AT&T has partnered with MD7 to offer selected landlords like you the opportunity to minimize the business risks associated with industry uncertainties and to increase the value of your cell site lease.

Criteria for Cellular Site Retention/Rent Guarantee Period

Option 1:

- Lump Sum Payment Option: Provide a one-time lump sum payment of **$490,000.00**. In return, you will grant a ninety-nine (99) year easement on your property and assign the lease rights and rental income under your lease with AT&T to MD7 or an affiliate of MD7.

Option 2:

- Lump Sum Payment Option: Provide a one-time lump sum payment of **$475,000.00**. In return, you will grant a fifty (50) year easement on your property and assign the lease rights and rental income under your lease with AT&T to MD7 or an affiliate of MD7.

  It is important for you to know that the pre-payment does not change the ownership or control of the rest of your property in any manner.

Option 3:

AT&T is willing to offer the following option to secure a longer-term lease with you:
- **$1,900.00** per month, commencing **April 1, 2025**
- **10%** rent increase every 5 years, commencing **June 1, 2030**
- Extension of Lease through **May 31, 2050**

In order to maintain its long-term flexibility, AT&T will also require the following lease provisions to address future technological and network changes:

- Termination

  "In addition to any rights that may exist in the Agreement, Tenant may terminate the Agreement at any time with thirty (30) days prior written notice to Landlord for any or no reason."

- Right of First Refusal

  "Notwithstanding any other provisions contained in the Agreement, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises ("Offer"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer, but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of the Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this paragraph, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Landlord complies with this paragraph. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this paragraph with respect to any future proposed conveyances as described herein."

This letter of understanding is subject in all respects to the preparation, execution and delivery of a definitive amendment in form and substance mutually agreeable to each of us. This letter will not be legally binding between us with respect to the proposed business relationship, but instead serves as a statement of our mutual intent to work toward entering into such an amendment.

AT&T values its affiliation with you and hopes to continue a long and mutually profitable relationship in the years to come. After having reviewed these options, please contact me prior to January 5, 2024.

Thank you for your consideration.

Sincerely,

Gregory D. Ohmer

Gregory D. Ohmer

Director-Network Planning, AT&T Mobility

at&t

cc:

MD7

John Lockhart

Lease Consultant

d: (469) 854-0313
a: 950 W Bethany Dr., Suite 700
Allen, TX 75013
e: jlockhart@md7.com

Authorized Agent for AT&T Mobility

Market: N. TX
Cell Site Number: DX2982
Cell Site Name: KARNACK HWY / BAFFO RD
Fixed Asset Number: 12773700

FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT ("**Amendment**") dated as of the later date below is by and between City of Marshall, Texas, having a mailing address at 605 East End Boulevard South, Marshall, TX 75670 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address at 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

WHEREAS, Landlord and Tenant entered into an Option and Structure Lease Agreement dated July 16, 2014, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 3219 Karnack Highway, Marshall, TX 75672 (the "**Agreement**"); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the Term of the Agreement; and

WHEREAS, Landlord and Tenant desire to adjust the Rent in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Landlord and Tenant, desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

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

1. **Term**. The Term of the Agreement shall be amended to provide that the current term, which commenced on June 1, 2020, shall expire on May 31, 2025 ("**Current Term**"), and commencing on June 1, 2025, will be automatically renewed, upon the same terms and conditions of the Agreement, for five (5) additional five (5) year terms (each an "**Extension Term**"). Hereafter, "**Term**" shall include the Current Term and any applicable Extension Term. The Term will automatically renew without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or any Extension Term. Landlord agrees and acknowledges that, except as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Agreement as permitted prior to the first Extension Term.

2. **Modification of Rent**. Commencing on April 1, 2025, the current Rent payable under the Agreement shall be One Thousand Nine Hundred and No/100 Dollars ($1,900.00) per month (the "**Rent**"), and shall continue during the Term, subject to adjustment, if any, as provided below. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

3. **Future Rent Increase / Extension Term Increase**. The Agreement is amended to provide that commencing on June 1, 2030, Rent shall increase by ten percent (10%) and at the beginning of each Extension Term, as applicable.

4. **Acknowledgement**. Landlord acknowledges that: 1) this Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this Amendment and the underlying Agreement and, prior to execution of this Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this Amendment and to have counsel review the terms and conditions of this Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

5. **Notices**. Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, payments of rent, demands, and other communications required or permitted hereunder shall be given as follows:

For Notices of Default to Tenant:

a) To Tenant's Lease Administration Department at NoticeIntake@att.com; and

b) To Tenant's Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: DX2982; Cell Site Name: KARNACK HWY / BAFFO RD (**TX**)
Fixed Asset #: 12773700
208 Akard Street
Dallas, TX 75202-4206

For Notices of Default to Landlord:

a) To Landlord at powell.eric@marshalltexas.net; and

b) To Landlord's Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

City of Marshall, Texas
605 East End Boulevard South
Marshall, TX 75670

All other Notices will be sent:

a) To Tenant's Lease Administration Department at NoticeIntake@att.com; and

b) To Landlord at:

City of Marshall, Texas
Attn: Public Works Director
605 East End Boulevard South
Marshall, TX 75670

Notices by email will be effective on the first calendar day after it was sent unless the sender receives an automated message that the email has not been delivered. Electronic mail shall be sent with a read receipt, but a read receipt shall not be required to establish that notice was given and received. All other Notices shall be effective when received unless returned undelivered. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

1. **Right of First Refusal**. Notwithstanding any other provisions contained in the Agreement, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer, but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of the Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 6, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Landlord complies with this Section 6. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 6 with respect to any future proposed conveyances as described herein.

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

3. **Capitalized Terms**. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be effective as of the last date written below.

LANDLORD: City of Marshall, Texas	**TENANT**: New Cingular Wireless PCS, LLC, a Delaware limited liability company By: AT&T Mobility Corporation Its: Manager
By: [NOT FOR EXECUTION]_____	By: [NOT FOR EXECUTION]_____
Print Name: ____________________	Print Name: ____________________
Its: ___________________________	Its: ___________________________
Date: _________________________	Date: _________________________

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGEMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ________________________________ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the __________________________________ of **City of Marshall, Texas**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
____
My appointment expires: ________________

TENANT ACKNOWLEDGEMENT

STATE OF _______________)
) SS.
COUNTY OF _____________)

I certify that I know or have satisfactory evidence that __________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ___________________________ of **AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
____
My appointment expires: ________________

Market:	N. TX
Cell Site Number:	DX2982
Cell Site Name:	KARNACK HWY / BAFFO RD
Fixed Asset Number:	12773700

FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT ("**Amendment**") dated as of the later date below is by and between City of Marshall, Texas, having a mailing address at 605 East End Boulevard South, Marshall, TX 75670 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address at 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

WHEREAS, Landlord and Tenant entered into an Option and Structure Lease Agreement dated July 16, 2014, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 3219 Karnack Highway, Marshall, TX 75672 (the "**Agreement**"); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the Term of the Agreement; and

WHEREAS, Landlord and Tenant desire to adjust the Rent in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Landlord and Tenant, desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

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

1. **Term**. The Term of the Agreement shall be amended to provide that the current term, which commenced on June 1, 2020, shall expire on May 31, 2025 ("**Current Term**"), and commencing on June 1, 2025, will be automatically renewed, upon the same terms and conditions of the Agreement, for five (5) additional five (5) year terms (each an "**Extension Term**"). Hereafter, "**Term**" shall include the Current Term and any applicable Extension Term. The Term will automatically renew without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or any Extension Term. Landlord agrees and acknowledges that, except as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Agreement as permitted prior to the first Extension Term.

2. **Modification of Rent**. Commencing on August 1, 2025, the current Rent payable under the Agreement shall be One Thousand Nine Hundred Twenty-Five and No/100 Dollars ($1,925.00) per month (the "**Rent**"), and shall continue during the Term, subject to adjustment, if any, as provided below. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

3. **Future Rent Increase / Extension Term Increase**. The Agreement is amended to provide that commencing on June 1, 2030, Rent shall increase by ten percent (10%) and at the beginning of each Extension Term, as applicable.

4. **Acknowledgement**. Landlord acknowledges that: 1) this Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this Amendment and the underlying Agreement and, prior to execution of this Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this Amendment and to have counsel review the terms and conditions of this Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

5. **Notices**. Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, payments of rent, demands, and other communications required or permitted hereunder shall be given as follows:

For Notices of Default to Tenant:

a) To Tenant's Lease Administration Department at NoticeIntake@att.com; and

b) To Tenant's Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: DX2982; Cell Site Name: KARNACK HWY / BAFFO RD (**TX**)
Fixed Asset #: 12773700
208 Akard Street
Dallas, TX 75202-4206

For Notices of Default to Landlord:

a) To Landlord at powell.eric@marshalltexas.net; and

b) To Landlord's Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

City of Marshall, Texas
605 East End Boulevard South
Marshall, TX 75670

All other Notices will be sent:

a) To Tenant's Lease Administration Department at NoticeIntake@att.com; and

b) To Landlord at:

City of Marshall, Texas
Attn: Public Works Director
605 East End Boulevard South
Marshall, TX 75670

Notices by email will be effective on the first calendar day after it was sent unless the sender receives an automated message that the email has not been delivered. Electronic mail shall be sent with a read receipt, but a read receipt shall not be required to establish that notice was given and received. All other Notices shall be effective when received unless returned undelivered. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

6. **Right of First Refusal**. Notwithstanding any other provisions contained in the Agreement, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer, but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of the Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 6, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Landlord complies with this Section 6. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 6 with respect to any future proposed conveyances as described herein.

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

8. **Capitalized Terms**. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be effective as of the last date written below.

LANDLORD:
City of Marshall, Texas

By: [NOT FOR EXECUTION]_____

Print Name: ____________________

Its: ____________________________

Date: __________________________

TENANT:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: [NOT FOR EXECUTION]_____

Print Name: ____________________

Its: ____________________________

Date: __________________________

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGEMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ________________________________ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the __________________________________ of **City of Marshall, Texas**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

____
(Signature of Notary)
____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
____
My appointment expires: ________________

TENANT ACKNOWLEDGEMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ____________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ____________________________ of **AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ________________

City of MARSHALL TEXAS	TO:	City Council
	DATE:	June 12, 2025
	ITEM #:	9.C
	SUBJECT:	Consider approval of consultant agreement to develop a strategic plan for Marshall Economic Development at a cost not to exceed $98,470. (Marshall EDC)

Recommendation for Action: Requesting approval of a consultant agreement between Boyette Strategic Advisors and Marshall Economic Development to develop a strategic plan for the EDC.

Executive Summary: Marshall Economic Development respectfully requests approval and funding for a consultant agreement with Boyette Strategic Advisors to develop a comprehensive strategic plan that will guide the City of Marshall's economic development efforts over the next five years.

Following the issuance of a formal Request for Proposals (RFP), MED received submissions from four highly regarded firms. After thorough review and evaluation, Boyette Strategic Advisors emerged as the most qualified firm based on their extensive experience with similar Texas communities (including Tyler, Longview, and Troup), a well-defined and data-driven methodology, competitive pricing, and a clear understanding of Marshall's economic landscape.

The strategic plan will serve as a roadmap to strengthen business retention and expansion, attract targeted industries, improve site readiness, and align workforce development initiatives with future market demands. Community and stakeholder input will be a key part of the process to ensure that the plan reflects local priorities and builds consensus.

Funding Request:

- Total Contract Amount: $98,470
- Source of Funds: MED Budget
- Required Approvals: MED Board (Approved), City Council (Requested)

We believe that a strategic plan developed by Boyette will provide the foundation to accelerate growth, increase regional competitiveness, and align resources to deliver maximum impact for the citizens of Marshall.

Focus Area(s): This item aligns with the following council adopted focus area(s):

Budget Cost: $98,470

Staff Contact: Felecia Herndon, Vice President, Marshall Economic Development

Attachments: 1. Request to approve Strategic Planning Agreement

Boyette

Strategic Planning Qualifications

Boyette Strategic Advisors

3.10.2025

BOYETTE QUALIFICATIONS AND EXPERIENCE

Overview

Boyette Strategic Advisors (Boyette) has been in business for **20 years** and focuses its services on providing economic development strategic planning, economic impact evaluation and analysis, workforce assessments and planning, feasibility studies, and corporate location analysis to clients in more than 20 states. The firm began in Atlanta, Georgia, in 2005, and in 2011 moved its **headquarters back home to Little Rock**. Today, Boyette maintains offices in Little Rock and Atlanta and has a total of seven professionals doing client work.

Boyette has completed nearly 100 strategic economic development plans for more than 40 clients across the United States. Included in this document is a list of sample clients with whom we have completed strategic plans.

A Boyette economic development strategic plan considers **all aspects** of economic development, whether at the local, regional, or state level. With a deep knowledge of high-performing economic development organizations (EDOs) across the United States, combined with our knowledge of Arkansas's economic development assets, Boyette offers the appropriate approach to develop a results-driven, regionally focused plan.

While Boyette is considered a small firm, we operate as a much larger business with errors and omissions and professional liability insurance, as well as a portfolio of clients that have stretched our knowledge and work product resulting in **thought-leading, dynamic strategies.** Our team works diligently to maintain excellent relationships with our clients, resulting in many repeat engagements.

The **Boyette team**, with proven track records of generating measurable results for clients, have diverse backgrounds working for EDOs, Big Four accounting firms, electric utilities, and marketing organizations. Our unique experience includes working with companies seeking and evaluating new locations throughout the country, as well as aiding EDOs, including local, regional, and state organizations, with strategic planning and other services.

More information about each Boyette team member may be found in the "Our Team" section of this proposal. As you will see, Boyette brings an incomparable combination of skills, background, and understanding that consistently results in realistic strategic plans to ensure the continued and **future competitiveness** of the region in which we work. The following table shows a **sampling** of the strategic planning clients we've worked with over the years.

Strategic Planning Clients

Client	Client
Arkadelphia Regional Economic Development Alliance (AR)	Little Rock Regional Chamber of Commerce
Bradenton Area Economic Development Corporation (FL)	Longview Economic Development Corporation (TX)
Cherokee Office of Economic Development (GA)	Marion County (SC)
City of Bentonville (AR)	New Boston Special Industrial Development Corporation (TX)
City of Fayetteville (AR)	Northeast Arkansas Intermodal Authority
City of Hilliard (OH)	Oklahoma Department of Commerce
City of Upper Arlington (OH)	Port of Little Rock
City of Westerville (OH)	Salt River Project
Clarksville Economic Development Alliance (AR)	Searcy (AR) Regional Economic Development Corporation
Clarksville Economic Development Council (TN)	South Carolina Department of Agriculture
Economic Development Partnership of Alabama	South Carolina Power Team
Electric Cooperatives of Arkansas	Southwestern Kentucky Economic Development Council
Florida Power & Light	Statesboro/Bulloch County (GA)
Greater Fort Lauderdale Alliance	Team Volusia
Hudson Alpha	The Shoals Economic Development Authority (AL)
Kentucky Cabinet for Economic Development	Troup Strategy Center
Knoxville/Oak Ridge Innovation Valley	TVA Tap Program
Lake City (SC)	Tyler Economic Development Council

Representative Clients

Below is a representative client list for Boyette, which includes development of economic development strategic plans and incentive policies, as well as corporate services, workforce analytics, and impact evaluation and analysis. Boyette can provide additional information on client qualifications and references upon request.

TYLER Economic Development Council

City of Dunwoody Georgia

STATESBORO BULLOCH COUNTY DEVELOPMENT AUTHORITY OF BULLOCH COUNTY

www.effinghamindustry.com EFFINGHAM COUNTY industrial development authority

SAVANNAH Economic Development Authority

DEVELOPMENT AUTHORITY OF BRYAN COUNTY Where industry feels at home.

Wichita Falls CHAMBER OF COMMERCE

KNOXVILLE OAK RIDGE INNOVATION VALLEY

CEDAR HILL, TX ECONOMIC DEVELOPMENT WHERE OPPORTUNITIES GROW NATURALLY

TROUP COUNTY CENTER FOR STRATEGIC PLANNING, INC.

CHEROKEE OFFICE OF ECONOMIC DEVELOPMENT

greater fort lauderdale alliance broward county Life. Less taxing.

IRON MOUNTAIN INCORPORATED

Nashville AREA CHAMBER of COMMERCE belong engage lead prosper

HUDSONALPHA INSTITUTE FOR BIOTECHNOLOGY

GREATER MEMPHIS CHAMBER

BRADENTON AREA ECONOMIC DEVELOPMENT CORPORATION

SCPOWERTEAM

FAYETTEVILLE FIRST

WESTERVILLE

BENTONVILLE ECONOMIC DEVELOPMENT

chico'sFAS INC

PEPSICO

SRP

FPL

TEAMVOLUSIA GREATER DAYTONA REGION

South Carolina Department of Commerce Just right for business.

POWERSOUTH ENERGY COOPERATIVE

PHILIPS

TVA

BUSINESS DEVELOPMENT BOARD PALM BEACH COUNTY'S Economic Development Resource

Akamai

JPMORGAN CHASE & CO.

Real East Texas LONGVIEW ECONOMIC DEVELOPMENT CORPORATION

Approach

Boyette and its approach to successful economic development strategies can work in several different ways to meet client needs. No matter our approach, however, the end result consists of a thorough **assessment** of key economic development resources, tools, and strategies, followed by a **creative, but realistic,** strategic direction to address any needs and enhance available assets.

Boyette provides clients with our best thinking to recommend the appropriate strategies to ensure the region is prepared for the future. Additionally, Boyette approaches strategic planning with a commitment that each strategy should be **implementable, or "doable,"** and established to create places where people want to live and companies want to invest.

The Boyette team is committed to providing clients with a comprehensive economic development plan that is both creative and realistic. The following topics frame the typical process as we assess a community's unique characteristics and assets that contribute to its overall competitiveness and success.

- Demographics
- Business Support
- Infrastructure
- Buildings & Sites
- Workforce
- Livability
- Public Policy
- Marketing & Communications
- Target Sectors
- Organizational Effectiveness

A significant component of developing a strategic plan involves gathering community-wide stakeholder input through a series of interviews and facilitated group discussions with key local individuals or groups to be identified. Online surveys might also be utilized to gather input from broader audiences. Boyette will plan to conduct stakeholder engagement exercises during the launch process, as well as by Zoom later in the process. Additionally, Boyette will provide an analysis of a series of benchmark communities. These benchmarks will serve as aspirations or comparisons that go far beyond comparisons of traditional data sets. The analysis of these benchmark communities will uncover the successes that have led to those community's overall economic health.

Data Resources

Data sources to which Boyette subscribes that are used for strategic planning include Lightcast (formerly EMSI), Esri Business Analytics Online, Claritas Retail Gap Analysis, IMPLAN, and other proprietary and public data sources as needed.

Boyette Team

Founded to address economic development and location analysis, the firm has transitioned into a comprehensive economic development organization with regional strategic planning services as an integral part of its diverse economic development services.

Del Boyette

President & CEO

Del's thoughts, passion, sincerity, and client relationships are hallmarks of his way of life. Whether representing a corporate client, an economic development organization, or a public/private partnership, his boldness, commitment, opinions, and team approach have made Boyette Strategic Advisors one of the nation's foremost economic development consulting firms.

His career includes working and leading state economic development agencies and consulting services at **KPMG and Deloitte**, where he started and led the **Comprehensive Incentives Management Services** practice before launching Boyette in 2005. Prior to the consulting business, Del was Executive Director of the **Arkansas Economic Development Commission** and Deputy Commissioner for Economic Development of the **Georgia Department of Industry, Trade and Tourism**.

With deep relationships ranging from **CoreNet Global** members to leading economic development practitioners, Del's hands-on involvement with all clients produces tailored creative approaches that generate desired outcomes.

Del serves as president of the Central Arkansas Library System Foundation Board; Vice Chair of the Arkansas Repertory Theatre Board of Directors; and is a member of the University of Arkansas Walton College of Business Executive Forum. He was an inaugural board member of CoreNet Global and is affiliated with the CoreNet Global New England Chapter. In 2023 Del was honored as the *Hero of Hope* by The Centers for Youth and Families.

Kay Stebbins

Director of Research & Analytics

Kay, who joined Boyette shortly after the firm was founded, is a seasoned research analyst, economic impact analysis lead, and strategic planning and communications professional. With a unique combination of creativity and analytical skill, she builds community and corporate strategies rooted in **extensive data-mining techniques**.

Naturally curious, Kay dissects qualitative and quantitative research to discover emerging targets, understand workforce assets, and evaluate project impacts for both public and private sector clients. Her ability to build consensus during stakeholder engagements is at the core of Boyette's qualitative research efforts to define cohesive strategies and develop implementable plans. Additionally, Kay has led **strategic planning projects most recently for several cities in Ohio, for Tyler and Longview, Texas, and the Northeast Arkansas Intermodal Authority** and many more.

Kay led her own public relations consulting firm, and she also served as Information Services Director for the **Arkansas Economic Development Commission** prior to joining Boyette.

Kay is an accredited member and past president of the Public Relations Society of America (PRSA), Arkansas Chapter. She has received the chapter's Crystal Award for lifetime achievement in public relations and the PRSA President's Award for outstanding service to the organization. Kay is a member of the Board of Directors of Ronald McDonald House Charities of Arkansas and North Louisiana. A native of Little Rock, Kay received a Bachelor's degree in journalism from Southern Methodist University.

Brock Hyland

Research Associate

Brock Hyland is a native Texan who grew up in Crawford, TX, population 705 and home of President George W. Bush.

While a graduate student at the Clinton School of Public Service, Brock combined his Texas upbringing and love of barbecue with his desire to support small businesses across the state. He developed the Arkansas Barbecue Trail, which features 25 barbecue restaurants representing every region of the state. This culinary tourism effort is a sustainable creative approach to respond to the impacts of COVID-19 on the restaurant industry.

Brock also worked with the **University of Arkansas Cooperative Extension Service** to study transportation infrastructure and policy and how those topics **impact the economic stability of rural communities**. Additionally, Brock completed the Governor's internship in the Office of Governor Asa Hutchinson, where he worked on public policy research and economic development initiatives.

Brock has a Master's degree in public service from the University of Arkansas Clinton School of Public Service and a Bachelor's degree from the University of Arkansas Fulbright College. In his downtime he enjoys playing banjo, eating barbecue, and traveling rural Arkansas. He lives and works in Little Rock.

Riley McCorstin

Consultant

Influenced by living in Europe, Asia. and visiting more than **60 countries**, Riley became interested in city and urban planning. It was while attending high school in Singapore that Riley saw the importance of proper planning. There he found a safe, efficient, clean, and diverse city that offered a unique quality of life for residents and visitors. Riley's travels have also given him a deep respect for cultural differences and diversity and an understanding of their role in creating dynamic communities.

After graduate school, Riley served as Program Manager for Good 360, a non-profit organization focused on **non-profit and community development**. He has also written articles for E-Trade 2 China and The Wire, an Indian news platform, and has produced a short documentary on cross-cultural currents.

Riley has a **master's degree in city planning**, with certificates in **Urban Policy and Applied Sustainability** from **Boston University**. He earned his bachelor's degree in political science and international relations from Auburn University and also studied at East China Normal University where he analyzed economic development and urbanization. Riley lives in Atlanta.

Mallory Newbern

Research Associate

Mallory Newbern is curious, artsy, passionate, tenacious, committed, and smart as a whip. At age 20, she produced a full body of work for her first solo art show and got great reviews (and sales). At the same time, Mallory pursued her studies in Spain and graduated in May 2022 with honors from Rice University with a Bachelor's degree in political science and a certificate in Spanish. She is a graduate of Little Rock Central High School.

Since 2020, Mallory has worked with Boyette: first as an intern and then for project work until her graduation. She also worked as a Research Associate, using her analytical and research skills on client projects across the spectrum. In January 2024, she returned to work full time with Boyette.

Prior to her return to Boyette, Mallory was engaged in post-graduate work before applying to law school. She received the Wagoner Foreign Study Scholarship to conduct her own research project in Argentina. Mallory loves her work at Boyette, and the team learns from her every day. She is the talent that so many companies are desiring, and her knowledge and approach make our work better.

Marshall
ECONOMIC DEVELOPMENT

Agreement for Services to Develop an Economic Development Strategic Plan

Boyette

Agreement for Services

This Agreement is made this ____ day of April 2025 by and between the Marshall Economic Development Corporation ("Client") and Boyette Strategic Advisors LLC, an Arkansas company ("Boyette").

1. Boyette will provide consulting services, as set forth on <u>Exhibit A</u> (the "Services").

2. Client agrees to pay Boyette for the performance of the Services. The total fee will be $90,200, plus expenses capped at 10 percent of the total fee. The fee will be payable as follows: $30,066 due at project launch, $30,067 due at project midpoint/update meeting, and $30,067 due at project delivery.

   If the scope of the Services changes, Boyette reserves the right to increase the budget upon written approval by both parties.

3. Client shall pay properly invoiced amounts within 30 days of invoice date. All invoices are net 30 days. Any amounts not paid within 30 days of invoice date accrue interest at 1.5 percent per month. Any invoice disputes must be presented in writing within 30 days of invoice date or such dispute shall be deemed waived. Client shall pay all costs of collection including fifteen (15) percent of principal and interest as reasonable attorney's fees for amounts collected by or through an attorney.

4. Either party may terminate the Agreement with 30 days' advance written notice. Notwithstanding anything herein to the contrary, all fees and expenses incurred during this 30-day period will be due and payable on the final day of the 30-day notice period.

5. This Agreement shall be governed by the laws of the State of Arkansas and will be construed accordingly. This Agreement constitutes the entire understanding between Boyette and Client. All previous representations and undertakings, whether oral or written, have been merged herein. Time is of the essence in this Agreement.

BOYETTE STRATEGIC ADVISORS LLC

By: Del Boyette

Name: Del Boyette

Title: President & CEO

MARSHALL ECONOMIC DEVELOPMENT CORPORATION

By: ____________________

Name: ____________________

Title: ____________________

Exhibit A
Services

The Marshall Economic Development Corporation (MEDC) has engaged Boyette Strategic Advisors (Boyette) to develop a strategic economic development plan to guide economic development efforts and enhance Marshall's competitiveness. The strategy will focus on maximizing the Marshall area's assets, while exploring new opportunities to take Marshall's economic development efforts to the next level.

Process

This strategic plan will explore Marshall from various angles. It will include considerations for aging workforce issues; talent attraction and retention; support for legacy industries; targeted business sectors; industry opportunities; sustainability; and the ideals of Millennials and GenZ.

Following is an overview of the project components by phase.

Project Launch & Market Analysis

Pre-Launch Zoom Meeting

Boyette will conduct a pre-launch planning call with the MEDC team. This meeting will provide an opportunity to plan for stakeholder engagement, as well as to review and confirm the project scope, milestones, timeline, and communications framework.

Project Launch Workshop

The project launch workshop will include exploring Marshall's assets and challenges; discussion of goals and objectives for the project; and a facilitated discussion with the MEDC staff and leadership. This facilitated discussion will be focused on the assets of the Marshall region, the gaps or areas that need additional focus and attention, current ideas related to existing and potential new target sectors, the most active industry sectors, and MEDC's vision and overall goals for the next five years.

Preliminary Market Analysis

In preparation for the Project Launch Workshop, Boyette will begin compiling and analyzing data as part of a competitive evaluation of Marshall. This analysis will include the following:

- Demographic and socioeconomic data
- Gross regional product
- Business base (top employers, projected growth sectors, and project announcements)
- Labor force characteristics
- Educational institutions
- Transportation infrastructure
- Available product (sites and buildings)
- Business climate
- Regional assets
- Entrepreneurial/innovation environment
- Quality of place

From this analysis, Boyette will identify key demographic trends and forecasts, as well as social, economic, and financial indicators that will be considered in developing the plan.

Existing Plan/Reports Review and Summary

As part of this process, Boyette will review and analyze any and all pertinent previous or existing plans related to Marshall's economic development efforts. After the review process, Boyette will summarize the findings in a table format that includes the key trends, goals, objectives, or actions of each plan.

Livability Index

Boyette's proprietary Livability Index will be utilized to assess Marshall's livability characteristics. This livability assessment will be important in exploring, attracting, and retaining talent, as well as the overall role of quality of place considerations in location decisions. This tool will consider important livability factors, including:

- Accessibility/Transportation
- Arts & Culture
- Cost of Living
- Crime Rates
- Educational Attainment
- Poverty
- Health & Wellness
- Housing Availability
- Population Diversity
- Sustainability

Stakeholder Engagement

Both to generate a sense of ownership and to nurture engagement among MEDC stakeholders, an important component of the strategic planning process will involve gathering stakeholder input through facilitated group discussions, one-on-one interviews, and one or more online surveys targeted to key stakeholders of MEDC to be identified during the project launch workshop.

Stakeholder groups that may be engaged through this process include the following:

- MEDC Staff, Board and Stakeholders
- Utility Partners
- Elected Leadership
- Education Officials
- Major Employers
- Millennial and GenZ Audiences
- Other to be Determined

Additional stakeholder input may be obtained through online surveys with targeted stakeholder groups. Boyette will work with the MEDC team to determine the correct approach to engagement for these stakeholders.

For scheduling these dynamic conversations/facilitated discussions and other interviews, Boyette will provide the MEDC team with tools and messaging to reach out to stakeholders. The interviews will be conducted in person during Boyette's visit to Marshall for the launch meeting, and possibly during another visit fairly early in the process. Additional conversations may be conducted via Zoom.

For online surveys, Boyette will develop questions in the Alchemer online survey tool. MEDC will then email each group of stakeholders with a link to the survey. Throughout the process, Boyette will monitor responses, provide updates to MEDC, and analyze results.

Discovery & Findings

Benchmarking & Best Practices

After discussing and selecting benchmark communities with the project team during the Pre-Launch Meeting, Boyette will provide an analysis of three to five peer and aspirational communities. Focused on the baseline economic indicators and quality of life factors referenced above, the benchmarking research will uncover the successes behind those data sets that have led to each community's overall economic health.

This analysis will include reviewing demographic and socioeconomic data, economic performance measures, labor force characteristics, educational institutions, healthcare services, entrepreneurial/innovation ecosystems, sustainability, and cultural assets, as well as an inventory analysis of available sites and other real estate.

While reviewing best practices and scalable programs in each of the benchmark communities, ranging from talent attraction and retention initiatives to innovative entrepreneurial support systems, this research will examine cutting-edge economic development practices and competitive business intelligence that will be used to determine potential recommendations for Marshall.

Further, Boyette will examine the identified target sectors for the benchmark communities to determine if there are any significant assets, infrastructure, or ecosystems that have aided in the market's success in those respective industries.

Target Sector Identification

In order to identify the targeted sectors that may be the best fit for Marshall for the next five years, Boyette will review MEDC's existing targets and existing business base in the region, as well as project locations or expansions during the past five years. Boyette will then review data related to these and other identified sectors, including emerging sectors that may have come to light through the stakeholder engagement process. This data will include, but is not limited to, information on total employment by sector, sector growth (last five years and projected), as well as average wages in Marshall, as compared to state and national averages. Additionally, projected national growth sectors and supply chain sectors will be explored.

A high level exploration of workforce characteristics will include exploration of issues such as automation, remote work, and other workplace trends that are likely to impact Marshall's labor market area. Boyette will also collect relevant information about the education and workforce training landscape in Marshall. All of this research will be done in relation to making Marshall more competitive for the identified target sectors.

Strategic Goals Development

Utilizing all information collected to inform development of the strategic recommendations, Boyette will establish overarching strategic goals for the plan focused on the objectives outlined in the Request for Proposals. These strategic goals will aid in developing the plan recommendations and ensuring that each recommendation supports the strategic goals and enhances Marshall's competitiveness for economic success.

Project Update Meeting

The final step in the Discovery & Findings component of this planning approach will be to review all research and summarized findings with the MEDC project team. This update meeting will include both qualitative and quantitative research from the following:

- Baseline Economic Indicator Analysis
- Livability Index
- Benchmarking and Best Practices Research
- Target Sector Data
- High-level Observations from Stakeholder Engagement

This update meeting will also include a discussion related to proposed strategic goals and the specific strategies associated with each.

Strategy & Implementation

Strategic Recommendation Development

With those goals and objectives in mind, Boyette will recommend strategic initiatives for MEDC to ensure that it continues to be a driver of economic development success. The focus will be on recommendations that allow the MEDC team to be most competitive and effective over the next five years. Additionally, Boyette will provide specific strategies to strengthen Marshall's competitive position for each sector that will be incorporated into the strategic recommendations.

Target Sector Profiles

Boyette will develop a visual profile for each identified sector, which will be included as a component of the strategic plan report.

Draft Strategic Plan Review

Boyette will present the MEDC team with a draft of the strategic plan at a meeting of the project team. Once the draft is finalized, an Executive Summary will be prepared.

If desired, Boyette will present a summary of the Economic Development Strategic Plan to the MEDC leadership or another audience of its choosing, which may include the various stakeholders and partners that participated in the development of the plan.

Boyette will also develop an Implementation Matrix, which will include the overall strategies and the action items designed to achieve the overall goals, assignment of responsibilities, timing, resources, potential costs, and funding sources. The Implementation Matrix will be reviewed with the project team and modified as needed. It will serve as the **ongoing working document for the project team** in the implementation of the plan over the next five years.

Deliverables

Following are deliverables that will result from the strategic planning process for MEDC:

- Preliminary Market Analysis
- Discovery & Findings Report to include:
    - Summary of Stakeholder Input Findings
    - Summary of Qualitative & Quantitative Research Findings
    - Results of Benchmarking & Best Practice Research
- Target Sector Profiles & Associated Data
- Strategic Recommendations & Associated Action Items
- Implementation Matrix
- Presentation of Strategy, if needed

Marshall
ECONOMIC DEVELOPMENT

TO:	City Council
DATE:	June 12, 2025
ITEM #:	9.D
SUBJECT:	Consider approval of a contract for Grant Management Services for Traylor & Associates (HMGP Generator Project $126,215.30). (Public Works)

Recommendation for Action: Council to review and approve the contract for Grant Management Services with Traylor and Associates (HMGP Generator Project) in the amount of $126,215.30.

Executive Summary: Executive Summary to City Council

Subject: Execution of Professional Services Agreement for TDEM Program Management

The City of Marshall is prepared to enter into a professional services contract with Traylor and Associates to render certain professional/administration services in connection with the following HMGP Projects:
DR 4485-0017 - Convention Center Generator ($40,492.80)
DR 4485-0107 - West End Lift Station Generator ($12,823.00)
DR 4485-0108 - Wastewater Treatment Plant (WWTP) Generator ($72,899.50)

This agreement will be for the management and implementation of services associated with the Texas Division of Emergency Management (TDEM) and FEMA programs as listed above. This agreement outlines a comprehensive scope of services critical to the City's ongoing disaster recovery and infrastructure improvement efforts, and hardening of critical facilities supported by FEMA and related federal entities.

Key Components of the Agreement:

Scope & Duration
The Contractor will perform all services defined in Part II of the agreement. Work will commence the day after execution and must be completed no later than May 26, 2027, unless extended by FEMA.

Local Program Liaison
The City's Finance Director will serve as the Local Program Liaison, acting as the primary contact for all project-related communications and progress reporting.

Access and Retention of Records
In accordance with federal requirements, all project documentation must be accessible to FEMA, DHS, the Texas Water Development Board, TDEM, and other oversight agencies. Records must be retained for a minimum of three years from the date of final reporting, with provisions for longer retention under specific conditions (e.g., ongoing litigation or property acquisitions).

Compensation & Payment
The total contract value shall not exceed $126,215.30. Payments will be milestone-based, as detailed in the agreement's Payment Schedule (Part III), and contingent upon the satisfactory completion of each phase.

Indemnification
The Contractor assumes full responsibility for compliance with applicable laws and regulations and agrees to indemnify the City against any liabilities or claims arising from the execution of this agreement.

Legal & Miscellaneous Provisions
The agreement is governed by Texas law and is enforceable in Harrison County.
Provisions for amendment, severability, and attorney fees in case of legal action are included.
The contract represents the entire agreement and supersedes all prior communications.

Focus Area(s): This item aligns with the following council-adopted focus area(s): Improving Infrastructure/

Budget Cost: $126,215.30 (100% paid through the HMGP grants)

Staff Contact: Eric Powell, PE

Attachments: 1. Marshall DR4485 - HMGP GRT Contract - 6.3.25

ADMINISTRATION/PROFESSIONAL SERVICES
for
Project Nos.
DR 4485-0017 / DR 4485-0107 / DR 4485-0108

PART I
AGREEMENT

THIS AGREEMENT, entered into this ______ day of ______________________, 2025 by and between the CITY OF MARSHALL hereinafter called the "CITY," acting herein by Amy Ware, Mayor hereunto duly authorized, and Traylor & Associates, Inc. hereinafter called "the Contractor," acting herein by Mark Taylor, President.

WITNESSETH THAT:

WHEREAS, the City desires to seek grant funding under the general direction of the Hazard Mitigation Grant Program (hereinafter called "HMGP") administered by the Texas Division of Emergency Management (hereinafter called "TDEM");

WHEREAS, the City has an interest in 2022 TDEM-HMGP for available funding under DR-4485 COVID-19 Pandemic; and,

WHEREAS, the City desires to engage Traylor & Associates, Inc. to render certain professional /administration services in connection with these HMGP Projects.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services
   The Contractor will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the Contractor shall commence on the day following the execution of this contract. In any event, all of the services required and performed hereunder shall be completed no later than May 26, 2027, or the period of Performance as stated in approved FEMA extensions.
3. Local Program Liaison - For purposes of this Contract, the Finance Director or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the City. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - Records of non-Federal entities. FEMA, Department of Homeland Security (DHS, Inspector General, the Comptroller General of the United States, the Texas Division of Emergency Management (TDEM) or Texas Water Development Board (TWDB) as the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
5. Retention of Records - Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

b. When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

c. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

d. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

e. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

f. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

   1. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

   2. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

6. <u>Compensation and Method of Payment</u> - The maximum amount of compensation and reimbursement to be paid shall not exceed ***One Hundred Twenty-six Thousand Two Hundred Fifteen and 30/100 Dollars ($126,215.30)***. Payment to the Contractor shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.

7. <u>Indemnification</u> – The Contractor shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against any and all claims, costs, suits, and damages, including attorneys' fees, arising out of the Contractor's performance or nonperformance of the activities, services or subject matter called for in this agreement or in connection with the management and administration of the TDEM contract, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

8. <u>Miscellaneous Provisions</u>

a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Harrison County, Texas.

b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to and incorporated into this Agreement.

9. Extent of Agreement
This Agreement, which includes Parts I-IV, and all exhibits and attachments, represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and Contractor.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: ______________________________

(City's Authorized Representative)

Amy Ware

(Printed Name)

Mayor

(Title)

BY: ______________________________

(Contractor's Authorized Representative)

Mark Taylor

(Printed Name)

President

(Title)

PART II

SCOPE OF SERVICES

The Contractor shall provide the following scope of services, if requested and assigned by the City:

a. Mitigation Projects-Construction (other than Property Acquisition/Structure Demolition, Structure Elevation, and Reconstruction)

Pre-Award*--(services associated with developing and requesting Federal disaster assistance), including:

- Application Development including Scope of Work (SOW), budget, and schedule
- Coordinate Responses to FEMA/State requests for information (RFI)
- Provide assistance regarding feasibility and effectiveness
- Coordinate Benefit-Cost Analysis (BCA) with engineer or local staff
- Gather preliminary Environmental and Historic Preservation Review (EHP) data
- Workshops and meetings related to the development and submission of the application
- Public outreach, if applicable (e.g. advertising, public meetings)

Management Activities - (services associated with administering Federal disaster assistance), including but not limited to:

- Record keeping and financial management
- Geocoding mitigation projects identified for further review by FEMA
- Delivery of technical assistance (e.g., plan reviews, BCA reviews, EHP data gathering, appraisal coordination, outreach, training) to support the implementation of mitigation activities
- Managing awards (e.g., quarterly reporting, reimbursement requests, closeout)
- Technical monitoring (e.g., site visits, technical meetings)
- Project Monitoring: monitor and evaluate the progress of the mitigation activity in accordance with the approved SOW and budget, administrative requirements of 2 CFR Part 200, applicable State requirements
- Project closeout in accordance with 2 CFR Sections 200.343 and 200.344. The project file should document that:
    - The approved SOW was fully implemented
    - All obligated funds were liquidated and in a manner consistent with the approved SOW
    - All EHP compliance grant conditions were implemented and documented as required
    - The project was implemented in a manner consistent with the Federal award or subaward agreement
    - The pass-through entity submitted the required quarterly financial and performance reports
    - The Federal award and subaward were closed out in accordance with the provisions outlined in Part VI, E and F (subaward and Federal award closeout)

PART III
PAYMENT SCHEDULE**

The City shall reimburse Contractor for management/administrative services provided for completion of the following project milestones in the amount not to exceed ***One Hundred Twenty-six Thousand Two Hundred Fifteen and 30/100 Dollars ($126,215.30).***

FEE SCHEDULE

Civic Center Generator (4485-0017)				
	1	Establish Record Keeping and Financial Management System	15%	$ 6,073.92
	2	Coordinate implementation approved activities to include delivery of technical assistance, submittal of documentation in system of record	15%	$ 6,073.92
	3	Manage awards (e.g., quarterly reporting, reimbursement requests)	25%	$ 10,123.20
	4	Project Monitoring (evaluate progress of the mitigation activity, adhere to approved SOW and budget, compliance with program requirements	25%	$ 10,123.20
	5	Project closeout	10%	$ 4,049.28
	6	Program closeout per TDEM/FEMA requirements	10%	$ 4,049.28
		Sub Total		**$ 40,492.80**
West End Lift Station & Portable Generators (4485-0107)				
	1	Establish Record Keeping and Financial Management System	15%	$ 1,923.45
	2	Coordinate implementation approved activities to include delivery of technical assistance, submittal of documentation in system of record	15%	$ 1,923.45
	3	Manage awards (e.g., quarterly reporting, reimbursement requests)	25%	$ 3,205.75
	4	Project Monitoring (evaluate progress of the mitigation activity, adhere to approved SOW and budget, compliance with program requirements	25%	$ 3,205.75
	5	Project closeout	10%	$ 1,282.30
	6	Program closeout per TDEM/FEMA requirements	10%	$ 1,282.30
		Sub Total		**$ 12,823.00**

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WWTP Generator (4485-0108)				
	1	Establish Record Keeping and Financial Management System	15%	$ 10,934.92
	2	Coordinate implementation approved activities to include delivery of technical assistance, submittal of documentation in system of record	15%	$ 10,934.92
	3	Manage awards (e.g., quarterly reporting, reimbursement requests)	25%	$ 18,224.88
	4	Project Monitoring (evaluate progress of the mitigation activity, adhere to approved SOW and budget, compliance with program requirements	25%	$ 18,224.88
	5	Project closeout	10%	$ 7,289.95
	6	Program closeout per TDEM/FEMA requirements	10%	$ 7,289.95
		Sub Total		**$ 72,899.50**
		CONTRACT TOTAL		***$ 126,215.30***

*****Payment of the fees associated with Part III – Payment Schedule of this agreement, shall be contingent upon funding. In the event grant funds are not awarded to the City by TDEM through the Hazard Mitigation Grant Program, this agreement shall be terminated by the City.***

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PART IV
TERMS AND CONDITIONS

1. Termination for Cause. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

   Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of contract by the Contractor, and the City may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

2. Termination for Convenience of the City.
   City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

   Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City for any additional compensation or damages in the event of such termination and payment.

3. Changes. The City may, from time to time, request changes in the services the Contractor will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.

4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or FEMA program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. Personnel.
    a. The Contractor represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
    b. All of the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
    c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

7. Reports and Information. The Contractor, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Records and Audits. The Contractor shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, and this Agreement. City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

11. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of interest.
    a. Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of the award between TDEM and/or TWDB and the City shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.

    b. Other Local Public Officials. No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the award between TDEM and/or TWDB and the City shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.

c. Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the award between TDEM and/or TWDB and the City or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the award between TDEM and/or TWDB and the City or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

13. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

14. Debarment and Suspension (Executive Orders 12549 and 12689). The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Federal Civil Rights Compliance.

15. Equal Employment Opportunity. During the performance of this contract, the Contractor agrees as follows:

    1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

    2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

    3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, “Equal Employment Opportunity,” and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

   Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

   The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

   The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

   The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

16. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

17. Age Discrimination Act of 1975. The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

18. Small and Minority Businesses. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

    a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

    b. Affirmative steps must include:

        1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

        2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

        3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

        4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

        5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

        6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

19. DHS Seal. Firm shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

20. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). As amended – Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds

that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

22. Solid Waste Disposal Act. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

    [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

23. Energy Policy and Conservation Act. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

24. Use of Products Containing Recovered Materials. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
    a. Competitively within a timeframe providing for compliance with the contract performance schedule;
    b. Meeting contract performance requirements; or
    c. At a reasonable price

    The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

25. Prohibition on Contracting for Covered Telecommunications Equipment or Services

    a. *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause –

    b. *Prohibitions.*

        1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

        2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

            i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

            ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. *Exceptions.*

1) This clause does not prohibit contractors from providing –

i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

2) By necessary implication and regulation, the prohibitions also do not apply to:

i. Covered telecommunications equipment or services that:

(i) Are *not used* as a substantial or essential component of any system, and

(ii) Are *not used* as critical technology of any system.

ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d. *Reporting requirement.*

1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e. *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph €, in all subcontracts and other contractual instruments.

26. Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

    For purposes of this clause:
    Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

    Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

27. FEMA Financial Assistance Acknowledgement. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

28. Federal Government – No Party to Contract. The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

29. Contractor Acknowledgement. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

TO:	City Council
DATE:	June 12, 2025
ITEM #:	9.E
SUBJECT:	Consider approval of Engagement with Foster & Foster for Actuarial Services. (Finance)

Recommendation for Action: Approve the Letter of Engagement with Foster & Foster to provide actuarial services for the City of Marshall in support of the joint effort between the City of Marshall and the Marshall Firemen's Relief and Retirement Fund Board of Trustees to develop a TLFFRA-compliant Funding Soundness Restoration Plan (FSRP).

Executive Summary:

This memo seeks formal approval of a Letter of Engagement between the City of Marshall and Brad Heinrichs of Foster & Foster to provide actuarial services in support of the development of a Funding Soundness Restoration Plan (FSRP) for the Marshall Firemen's Relief and Retirement Fund, a TLFFRA plan.

The Texas Pension Review Board (PRB) requires submission of a compliant FSRP no later than **September 1, 2025**, due to the fund's current amortization period exceeding the statutory threshold. Timely development and submission of this plan is necessary to ensure compliance with state law and to help restore the long-term financial sustainability of the fund.

It is important to note that Mr. Heinrichs is being engaged by the City of Marshall—not at the request of the Firemen's Pension Board of Trustees. His role is to represent the City's interests and to provide an independent, supplemental review of the current actuarial valuation. This will include the development of additional funding and benefit scenarios to help the City evaluate options for compliance with the FSRP mandate.

Specifically, Foster & Foster will assist the City in:

- Conducting a detailed review of the existing actuarial report;
- Providing comparative analysis of Marshall's current TLFFRA benefits versus those offered by similar systems across Texas;
- Modeling the impact of potential changes to existing benefit structures; and
- Exploring the feasibility and long-term implications of enrolling future firefighter hires into TMRS rather than the current TLFFRA system.

Brad Heinrichs has significant experience with TLFFRA plans and has a strong understanding of the PRB's expectations. His independent actuarial insight will provide the City with objective guidance as we work toward a compliant and sustainable funding strategy.

Approval of this engagement will allow work to begin immediately to meet the state's September 1 deadline.

Focus Area(s): This item aligns with the following City Council adopted focus area of investing in our City workforce.

Budget Cost: Because each decision we make can influence spending, the budget is shaped by numerous choices—each carrying potential financial implications. Foster & Foster has provided a scope of services within their engagement letter and includes hourly rates for their employees should we need services beyond those that are specified.

Staff Contact: Kristina Hamilton, Interim Finance Director

Attachments: 1. Foster & Foster Engagement Letter

FOSTER & FOSTER
ACTUARIES AND CONSULTANTS

June 6, 2025

VIA EMAIL

Ms. Kristina Hamilton
Interim Director of Finance
City of Marshall

Re: Actuarial Scope of Services

Dear Kristina:

In response to a conference call with City Management this week, below is a brief description of the scope of services we are prepared to provide for the City of Marshall for purposes of evaluating the Marshall Firemen's Relief and Retirement Fund (Fund). It is our understanding the services are being requested by the City and not the Firemen's Pension Board of Trustees.

Scope of Services

As requested, we will replicate the December 31, 2024 actuarial valuation prepared by Definiti LLC within an acceptable range under actuarial standards. Next, we will provide the City with an analysis which shows the relative richness of the benefits/contribution rates relative to other TLFFRA systems. Next, we will separately analyze up to ten (10) possible benefit changes/combinations that would bring the program into compliance with the Texas Pension Review Board's standards. Finally, we will show the impact of moving future hires into he TMRS system.

A. Replication of December 31, 2024 Actuarial Valuation - **Fee = $22,500**
B. Calculation of up to ten (10) benefit changes/combinations - **Fee = $1,500 per calculation**
C. Provide comparison of Fund to other TLFFRA funds - **Fee = $3,000**
D. Provide analysis on the estimated impact of moving new hires into TMRS – **Fee = $5,000**
E. Any additional work will be performed at our hourly rates set forth below:
    a. Senior Actuarial Consultant = $400/hr
    b. Actuarial Consultant = $300/hr
    c. Junior Actuarial Consultant = $250/hr
    d. Administrative = $125/hr

If you have any questions or concerns regarding the above, please do not hesitate to contact us.

Sincerely,

Bradley R. Heinrichs, FSA, EA, MAAA

13420 Parker Commons Blvd., Suite 104 Fort Myers, FL 33912 · (239) 433-5500 · Fax (239) 481-0634 · www.foster-foster.com