1. **CALL TO ORDER AND ROLL CALL**  
   Page 1

2. **CITIZENS COMMENT**  
   Page 2

3. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**  
   Page 3

4. **CONSENT AGENDA**

   The items on the Consent Agenda require little or no deliberation by the Commission. Approval of the Consent Agenda authorizes the City Manager or her 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 Commissioner 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 August 10, 2017 Regular meeting.  
      Page 4

   B. Monthly financial report. (Finance Director)  
      Page 9

   C. Code Enforcement report. (Director of Planning and Development)  
      Page 13
D. Consider and act on a request to approve Change Order #2 for the 2017 Street Improvement Program, adding and deleting elements, resulting in a total cost increase of $11,557.90. (Public Services Director)

Page 15

5. **PUBLIC HEARING**

   A. Public Hearing on proposed budget for the 2018 fiscal year and action to adopt the budget or continue consideration of the budget to a future meeting. (City Manager)

   Page 19

6. **PRESENTATION**

   A. Presentation of a Proclamation supporting the Wiley College Denzel Washington Melvin Tolson Forensics Team and Coach Christopher Median in their efforts to form the first historically black college and university debate league in the nation. (Commissioner Beil)

   Page 21

7. **RESOLUTION**

   A. Consider approval of a Resolution announcing a proposed tax rate of $0.542160 per $100 of valuation and voting to place an action item to adopt the tax rate on a future Commission agenda. (City Manager)

   Page 24

   B. Consider approval of a Resolution scheduling two Public Hearings on the proposed tax rate of $0.542160 per $100 of valuation and tax increase. (City Manager)

   Page 27

8. **CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION**

   A. Consider appointments to the Marshall Downtown Development Corporation Board of Directors. (City Manager)

   Page 30

   B. Consideration of a request for assistance from Marshall Depot, Inc. (City Manager)

   Page 32
C. Consider approval of an agreement for EMS billing and claims management services. (Fire Chief)  
Page 34

D. Report regarding the status of the Memorial City Hall renovation project. (City Manager)  
Page 71

E. Discussion of potential location of an animal shelter facility. (Commissioner Calhoun)  
Page 74

F. Consider approval of appointments to the Animal Shelter Advisory Committee and role of the Animal Shelter Advisory Committee. (City Manager)  
Page 76

G. Discussion of trash, litter, and panhandling issues in the City of Marshall. (Commissioner Halliday)  
Page 78

9. CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA  
Page 87

10. ADJOURNMENT  
Page 88

BUDGET WORKSHOP–DISCUSSION OF 2018 DRAFT BUDGET  
Page 89

Posted: August 21, 2017  
5:00 p.m.  
Y. Graham

This meeting will be conducted in accordance with the Americans with Disabilities Act. The facility is wheelchair accessible and disabled parking is available. Requests for sign interpretive services will be available with at least 48 hour notice prior to the meeting. To make arrangements for these services, please call Elaine Altman at 903-935-4519.
ITEM 1

CALL TO ORDER AND ROLL CALL
ITEM 2

CITIZEN COMMENTS
ITEM 3

ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA
ITEM 4A

CONSENT AGENDA

APPROVAL OF MINUTES FROM THE AUGUST 10, 2017 REGULAR MEETING
Chairman Larry Hurta called the Regular meeting to order in the Commission Chambers, City Hall at 6:00 p.m.

PRESENT:

CHAIRMAN: Larry Hurta, District 6

COMMISSIONERS:

Gloria Moon, District 1  Gail Beil, District 2
William Halliday, District 4  Vernia Calhoun, District 5
Doug Lewis, District 7

ABSENT: Terri Brown, District 3

ADMINISTRATIVE STAFF PRESENT:

Lisa Agnor, City Manager  Todd Fitts, City Attorney
J.C. Hughes, Public Services Director  Reggie Cooper, Fire Chief
Jack Redmon, Support Services Director
Wes Morrison, Planning & Development Director
Elaine Altman, City Secretary/Finance Director
Carolyn Howard, Tourism & Promotions Director
Ron Davis, Interim Police Chief

INVOCATION & PLEDGE: Commissioner Calhoun

255. **CITIZEN COMMENTS**

There were no comments from citizens.

256. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**

There were no items withdrawn from the Consent Agenda.

257. **CONSENT AGENDA**

Commissioner Moon made a motion to approve the Consent Agenda. Commissioner Beil seconded the motion, which passed with a vote of 6:0.

A. Consider approval of the minutes from the July 27, 2017 Regular meeting.

B. Consider approval of revisions to Governance Policy.
PRESENTATIONS

258. PRESENTATION OF SENATE RESOLUTION NO. 6 COMMENDING THE MARSHALL FIRE DEPARTMENT ON ITS RECEIPT OF THE 2017 CREW OF THE YEAR AWARD FROM TEXAS EMERGENCY MEDICAL SERVICES FOR CHILDREN STATE PARTNERSHIP.

Chairman Hurta read Senate Resolution No. 6 which he presented to members of the Marshall Fire Department and thanked them for their service to the City of Marshall.

259. PRESENTATION BY HABITAT FOR HUMANITY LONGVIEW.

Lujuan Hollis, Executive Director of Habitat for Humanity Longview, presented information regarding the Critical Repair Program and Veterans Repair Program and explained how to apply for assistance.

260. PRESENTATION BY RAY ASSOCIATES, INC. REGARDING A COMPENSATION, CLASSIFICATION, AND BENEFIT STUDY FOR THE CITY OF MARSHALL.

Katherine Ray with Ray Associates, Inc. presented the final report regarding the Compensation, Classification, and Benefit Study for the City of Marshall.

Commissioners engaged in discussion with Katherine Ray and City Staff regarding this item.

ORDINANCE

261. CONSIDER APPROVAL OF AN ORDINANCE CALLING FOR A SPECIAL ELECTION FOR THE SUBMISSION OF THE QUESTION: “SHALL A COMMISSION BE CHOSEN TO FRAME A NEW CHARTER FOR THE CITY.”

Todd Fitts, City Attorney, recommended delaying the election until May and explained his reasons for this recommendation.

Commissioner Halliday made a motion to delay calling for a special election until May. Commissioner Moon seconded the motion.

Commissioners asked questions of Todd Fitts regarding this item.

This item passed with a vote of 6:0.

RESOLUTIONS

262. CONSIDER APPROVAL OF A RESOLUTION SETTING A DATE AND TIME FOR A PUBLIC HEARING ON THE FISCAL YEAR 2018 BUDGET.

Lisa Agnor, City Manager, asked for approval of a resolution setting the date and time for a Public Hearing on the fiscal year 2018 budget for August 24, 2017 at 6:00 p.m.

Commissioner Beil made a motion to approve the resolution setting a date and time for a Public Hearing on the fiscal year 2018 budget. Commissioner Lewis seconded the motion, which passed with a vote of 6:0.
CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION

263. DISCUSSION OF AND CONSIDERATION OF A REQUEST FOR ASSISTANCE FROM MARSHALL DEPOT, INC.

Commissioner Beil stated the air conditioning unit in the Marshall Depot is broken and they are asking for $5,000 to reimburse them for the purchase of the new unit.

Commissioner Moon made a motion to have City Staff present a recommendation at the next meeting regarding this request. Commissioner Beil seconded the motion which passed with a vote of 5:0.

Commissioner Lewis was not present for this vote.

264. REPORT REGARDING THE STATUS OF THE MEMORIAL CITY HALL RENOVATION PROJECT.

Lisa Agnor, City Manager, stated City Staff and Dr. Tom Webster, member of the Memorial City Hall Development Advisory Committee, are working with the representative of Webb Management Services, Inc. to negotiate a contract for professional services related to the development of a management, marketing and operations plan for the Memorial City Hall Performance Venue.

Jack Redmon, Support Services Director, presented a construction update.

265. DISCUSSION OF AND CONSIDERATION OF A PROPOSAL FROM SHELTER PLANNERS OF AMERICA FOR CONSULTING SERVICES REGARDING POTENTIAL LOCATION OF ANIMAL SHELTER FACILITY.

Lisa Agnor presented a proposal from Shelter Planners of America regarding a Needs Assessment Study of a potential location of an Animal Shelter in the Carver School Building. The proposed service will cost $9,500 and reimbursable expenses total approximately $500.

Commissioners engaged in discussion regarding this item.

Commissioner Beil made a motion to table this item. Commissioner Halliday seconded the motion, which passed with a vote of 6:0.

266. CONSIDER APPROVAL OF APPOINTMENTS TO ANIMAL SHELTER ADVISORY COMMITTEE AND ROLE OF ANIMAL SHELTER COMMITTEE.

Lisa Agnor summarized previous appointments, nominations, and applicants requesting consideration for appointment to the committee.

Commissioners added to the list of nominations.

The Commission engaged in discussion regarding this item.

Chairman Hurta made a motion to have a list of potential members for the committee and what they bring to the project ready for the next meeting. Commissioner Moon seconded the motion, which passed with a vote of 6:0.
267. DISCUSSION OF AND CONSIDERATION OF THE SALE OF UNUSED CITY PROPERTIES.

Commissioner Halliday stated that 804 S. Callum is owned by the City and not being used; he would like to see the property sold.

Todd Fitts explained the background of this property.

Commissioners engaged in discussion regarding this item.

Commissioner Bell made a motion to not place 804 S. Callum St. on the sale list. Commissioner Moon seconded the motion, which passed with the following vote:

Ayes: 4, Commissioners Beil, Moon, Calhoun and Lewis
Noes: 2, Chairman Hurta and Commissioner Halliday

Todd Fitts presented the Commission with information regarding the potential sale of 1104 Elbert Wells.

Commissioner Halliday made a motion to set the reserve price for 1104 Elbert Wells at $250. Commissioner Calhoun seconded the motion, which passed with a vote of 6:0.

268. CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA

There were no items withdrawn from the Consent Agenda.

269. ADJOURNMENT

Commissioner Lewis made a motion for adjournment. Chairman Hurta seconded the motion, which passed with a vote of 6:0.

APPROVED:

_______________________________
Chairman of the City Commission
of the City of Marshall, Texas

ATTEST:

_______________________________
City Secretary

Resolution: R-17-11

BUDGET WORKSHOP – REVIEW OF 2018 DRAFT BUDGET
ITEM 4B

CONSENT AGENDA

MONTHLY FINANCIAL REPORT
MEMORANDUM

To: Lisa Agnor, City Manager

From: Elaine Altman, Finance Director

Date: August 15, 2017

Subject: July Revenue and Expense Report Summaries – General Fund and Water and Sewer Enterprise Fund

Attached is the Revenue and Expense Report Summaries for July. This report provides current month, year to date, and budgeted amounts for major revenue categories and expenditures by department. The report also provides a percent of current budget. On average, a department will expend approximately 8.33% of its budget on a monthly basis and this can be used as a benchmark when reviewing this report.
### General Fund

#### Revenues:

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Month</th>
<th>Current YTD</th>
<th>Prior YTD</th>
<th>Revised Adopted Budget</th>
<th>Adopted Budget</th>
<th>7/12 Of Adopted Budget</th>
<th>Percent Of Adopted Budget</th>
<th>Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>704,316</td>
<td>6,546,767</td>
<td>6,296,261</td>
<td>11,561,575</td>
<td>11,561,575</td>
<td>6,744,252</td>
<td>56.63</td>
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<td>Licenses &amp; Permits</td>
<td>11,918</td>
<td>86,257</td>
<td>75,756</td>
<td>117,200</td>
<td>117,200</td>
<td>68,367</td>
<td>73.60</td>
<td>30,943</td>
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<td>Intergovernmental Revenue</td>
<td>16,854</td>
<td>77,139</td>
<td>72,991</td>
<td>131,375</td>
<td>131,375</td>
<td>76,635</td>
<td>58.72</td>
<td>54,236</td>
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<tr>
<td>Fees</td>
<td>309,571</td>
<td>2,189,353</td>
<td>2,350,989</td>
<td>3,921,030</td>
<td>3,921,030</td>
<td>2,287,268</td>
<td>55.84</td>
<td>1,731,767</td>
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<tr>
<td>Fines &amp; Forfeitures</td>
<td>92,677</td>
<td>587,696</td>
<td>519,863</td>
<td>625,000</td>
<td>625,000</td>
<td>364,583</td>
<td>94.03</td>
<td>37,304</td>
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<td>Miscellaneous Revenue</td>
<td>441,279</td>
<td>1,057,386</td>
<td>1,124,450</td>
<td>1,698,026</td>
<td>1,698,026</td>
<td>990,515</td>
<td>62.27</td>
<td>640,640</td>
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</table>

**Total General Fund Revenue**

1,576,616

10,544,598

10,440,311

18,054,206

18,054,206

10,531,620

58.41

7,509,608

#### Expenses:

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<tr>
<th>Description</th>
<th>Current Month</th>
<th>Current YTD</th>
<th>Prior YTD</th>
<th>Revised Adopted Budget</th>
<th>Adopted Budget</th>
<th>7/12 Of Adopted Budget</th>
<th>Percent Of Adopted Budget</th>
<th>Remaining Budget</th>
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<tbody>
<tr>
<td>General Government</td>
<td>28,031</td>
<td>228,242</td>
<td>217,817</td>
<td>394,772</td>
<td>394,772</td>
<td>230,284</td>
<td>57.82</td>
<td>166,530</td>
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<td>Finance</td>
<td>41,606</td>
<td>312,301</td>
<td>266,990</td>
<td>568,208</td>
<td>568,208</td>
<td>331,455</td>
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<td>255,907</td>
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<td>Police</td>
<td>375,602</td>
<td>2,628,618</td>
<td>2,426,920</td>
<td>4,481,463</td>
<td>4,481,463</td>
<td>2,614,187</td>
<td>58.66</td>
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<td>Fire</td>
<td>354,138</td>
<td>2,597,194</td>
<td>2,196,350</td>
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<td>2,169,008</td>
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<td>3,034,539</td>
<td>3,830,293</td>
<td>3,830,293</td>
<td>2,234,338</td>
<td>53.69</td>
<td>1,773,650</td>
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<td>Planning</td>
<td>45,505</td>
<td>268,303</td>
<td>293,662</td>
<td>432,792</td>
<td>432,792</td>
<td>252,462</td>
<td>61.99</td>
<td>164,489</td>
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<td>Support Services</td>
<td>175,037</td>
<td>1,358,640</td>
<td>1,134,944</td>
<td>1,566,706</td>
<td>1,566,706</td>
<td>913,912</td>
<td>86.72</td>
<td>208,066</td>
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<tr>
<td>Tourism &amp; Promotions</td>
<td>411</td>
<td>337,199</td>
<td>282,781</td>
<td>496,250</td>
<td>496,250</td>
<td>289,479</td>
<td>67.95</td>
<td>159,051</td>
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<tr>
<td>Parks &amp; Recreation</td>
<td>79,131</td>
<td>571,113</td>
<td>491,174</td>
<td>756,302</td>
<td>756,302</td>
<td>441,176</td>
<td>75.51</td>
<td>185,189</td>
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<tr>
<td>Non Departmental</td>
<td>145,006</td>
<td>993,725</td>
<td>1,139,356</td>
<td>1,520,497</td>
<td>1,520,497</td>
<td>886,957</td>
<td>65.36</td>
<td>526,772</td>
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<td>Appraisal District</td>
<td>22,126</td>
<td>66,379</td>
<td>71,372</td>
<td>88,505</td>
<td>88,505</td>
<td>51,628</td>
<td>75.00</td>
<td>22,126</td>
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<tr>
<td>Capital Outlay</td>
<td>4,540</td>
<td>4,540</td>
<td>200,000</td>
<td>200,000</td>
<td>200,000</td>
<td>116,667</td>
<td>2.27</td>
<td>195,460</td>
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</table>

**Total General Fund Expenses**

1,625,593

11,422,899

11,555,906

18,054,088

18,054,088

10,531,551

63.27

6,631,189

**Total General Fund**

(48,977)

(878,300)

(1,115,595)

118

118

69

878,418
# CITY OF MARSHALL

**REV/EXP/BUD - SHORT REPORT - NEW**  
**PERIOD ENDING: JULY 2017**

<table>
<thead>
<tr>
<th>WATER &amp; SEWER ENTERPRISE FUND</th>
<th></th>
<th></th>
<th></th>
<th></th>
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<tbody>
<tr>
<td><strong>CURRENT</strong></td>
<td><strong>CURRENT</strong></td>
<td><strong>PRIOR</strong></td>
<td><strong>REVISED</strong></td>
<td><strong>ADOPTED</strong></td>
<td><strong>7/12</strong></td>
<td><strong>PERCENT</strong></td>
<td><strong>REMAINING</strong></td>
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<td>MONTH YTD</td>
<td>YEAR END</td>
<td>YEAR END</td>
<td>BUDGET</td>
<td>BUDGET</td>
<td>BUDGET</td>
<td>BUDGET</td>
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<td>WATERS &amp; SEWER ENTERPRISE FUND</td>
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## REVENUES:

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<tr>
<th>Category</th>
<th>Current YTD</th>
<th>Prior YTD</th>
<th>Revised BUDGET</th>
<th>Adopted BUDGET</th>
<th>7/12 OF BUDGET</th>
<th>Percent of Adopted</th>
<th>Remaining Budget</th>
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</thead>
<tbody>
<tr>
<td>PERMITS &amp; FEES</td>
<td>2,247</td>
<td>8,675</td>
<td>11,234</td>
<td>16,500</td>
<td>16,500</td>
<td>9,625</td>
<td>52.58</td>
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<tr>
<td>WATER &amp; SEWER CHARGES</td>
<td>722,254</td>
<td>5,606,699</td>
<td>5,369,294</td>
<td>10,028,000</td>
<td>10,028,000</td>
<td>5,849,667</td>
<td>55.91</td>
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<tr>
<td>MISCELLANEOUS REVENUES</td>
<td>3,017</td>
<td>15,945</td>
<td>8,815</td>
<td>51,000</td>
<td>51,000</td>
<td>29,750</td>
<td>31.26</td>
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<tr>
<td><strong>TOTAL W&amp;S REVENUE</strong></td>
<td><strong>727,518</strong></td>
<td><strong>5,631,319</strong></td>
<td><strong>5,389,344</strong></td>
<td><strong>10,095,500</strong></td>
<td><strong>10,095,500</strong></td>
<td><strong>5,889,042</strong></td>
<td><strong>55.78</strong></td>
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## EXPENSES:

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<tr>
<th>Category</th>
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<th>Prior YTD</th>
<th>Revised BUDGET</th>
<th>Adopted BUDGET</th>
<th>7/12 OF BUDGET</th>
<th>Percent of Adopted</th>
<th>Remaining Budget</th>
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<tbody>
<tr>
<td>ADMINISTRATION</td>
<td>28,117</td>
<td>205,611</td>
<td>198,811</td>
<td>356,918</td>
<td>356,918</td>
<td>208,202</td>
<td>57.61</td>
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<tr>
<td>WATER PRODUCTION</td>
<td>127,768</td>
<td>703,680</td>
<td>720,355</td>
<td>1,297,241</td>
<td>1,297,241</td>
<td>756,724</td>
<td>54.24</td>
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<tr>
<td>DISTRIBUTION/COLLECTION</td>
<td>119,761</td>
<td>958,751</td>
<td>821,155</td>
<td>1,974,830</td>
<td>1,974,830</td>
<td>1,151,984</td>
<td>48.55</td>
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<tr>
<td>WASTEWATER TREATMENT</td>
<td>127,083</td>
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<td>688,332</td>
<td>1,347,439</td>
<td>1,347,439</td>
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<td>35,260</td>
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<td>62,327</td>
<td>62,327</td>
<td>36,357</td>
<td>56.17</td>
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<tr>
<td>NON DEPARTMENTAL</td>
<td>114,156</td>
<td>542,739</td>
<td>490,901</td>
<td>793,680</td>
<td>793,680</td>
<td>462,980</td>
<td>68.38</td>
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<tr>
<td>INTERFUND TRANSFERS</td>
<td>288,465</td>
<td>3,204,333</td>
<td>3,160,812</td>
<td>3,735,504</td>
<td>3,735,504</td>
<td>2,179,044</td>
<td>54.78</td>
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<tr>
<td><strong>TOTAL W&amp;S EXPENSES</strong></td>
<td><strong>840,713</strong></td>
<td><strong>6,665,472</strong></td>
<td><strong>6,412,333</strong></td>
<td><strong>10,095,415</strong></td>
<td><strong>10,095,415</strong></td>
<td><strong>5,888,992</strong></td>
<td><strong>66.03</strong></td>
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## TOTAL WATER & SEWER FUND

<table>
<thead>
<tr>
<th>Current YTD</th>
<th>Current Month</th>
<th>Prior Month</th>
<th>Rev/Exp/Bud - Short Report - New</th>
<th>Adopted Bud</th>
<th>7/12 of Adopted Bud</th>
<th>Percent of Adopted Bud</th>
<th>Remaining Bud</th>
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</thead>
<tbody>
<tr>
<td>(113,195)</td>
<td>(1,034,153)</td>
<td>(1,022,989)</td>
<td>85</td>
<td>85</td>
<td>50</td>
<td>1,034,238</td>
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ITEM 4C

CONSENT AGENDA

CODE ENFORCEMENT REPORT
July 2017
Code Enforcement

Case Volume

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<th>July 2017</th>
<th>June 2017</th>
<th>July 2016</th>
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<tr>
<td>Cases Opened</td>
<td>151</td>
<td>212</td>
<td>224</td>
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<tr>
<td>Property Owner Abatement</td>
<td>106</td>
<td>137</td>
<td>92</td>
</tr>
<tr>
<td>Citations Issued</td>
<td>3</td>
<td>0</td>
<td>0</td>
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<tr>
<td>City Abatement</td>
<td>8</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>Unresolved Cases</td>
<td>34</td>
<td>54</td>
<td>123</td>
</tr>
<tr>
<td>Door Hangers</td>
<td>164</td>
<td>184</td>
<td>84</td>
</tr>
</tbody>
</table>

Breakdown of Code Violations for July

- Junk Vehicles
- Grass/Weeds
- Signs
- Trash/Debris
- Substandard Structure
- Nuisance
- Miscellaneous
- Zoning Violations
ITEM 4D

CONSENT AGENDA

APPROVAL OF CHANGE ORDER #2 FOR THE 2017 STREET IMPROVEMENT PROGRAM
CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET:

MEETING DATE: August 24, 2017

PROJECT: Consider and act on a request to approve Change Order #2 for the 2017 Street Improvement Program, adding and deleting elements, resulting in a total cost increase of $11,557.90. (Public Services Director)

DESCRIPTION: Attached is Change Order #2 for the 2017 Street Improvement Program that addresses needed changes in work elements. We had small quantity changes (both plus and minus) on Tiger Drive, Woodall, 3rd Street, Carter Street RR Crossing, and Yvonne; larger quantity changes and elements were necessary (also plus and minus) on Poplar, Fern Lake Cut-off, Memorial, and Wingwood Terrace. We also needed to respond to a large base failure that developed and was deteriorating very fast on Wright Street near its intersection with North Grove, requiring a full depth base repair and overlay of approximately 119 feet of road surface as soon as possible.

All total, Change Order #2 results in a net contract increase of $11,557.90 and will increase the contract total with East Texas Bridge, Inc. to $1,334,162.10.

Funds are available from the existing General Fund, Street Sales Tax Funds ($1,347,520.00).

COST:
$11,557.90

FUNDING:

<table>
<thead>
<tr>
<th>Acct. Name &amp; No</th>
<th>Original Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>01-0408-05-02</td>
<td>$1,035,270.00</td>
</tr>
<tr>
<td>85-0408-00-00</td>
<td>$506,250.00</td>
</tr>
<tr>
<td></td>
<td>$1,541,520.00</td>
</tr>
<tr>
<td>Less engineering and in-house repair</td>
<td>- 194,000.00</td>
</tr>
<tr>
<td></td>
<td>$1,347,520.00</td>
</tr>
</tbody>
</table>
RECOMMENDED ACTION:
Approve a staff request approve Change Order #2 for the 2017 Street Improvement Program, adding and deleting elements, resulting in a total cost increase of $11,557.90. (Public Services Director)

CITY CONTACT: J. C. Hughes, Public Services Director 903-503-4503

ATTACHMENTS:
- Change Order #2

cc: Lisa Agnor, City Manager
    File
You are hereby requested to comply with the following changes from the contract plans and specifications:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION OF CHANGE</th>
<th>QTY</th>
<th>UM</th>
<th>COST</th>
<th>DECREASE IN CONTRACT PRICE</th>
<th>INCREASE IN CONTRACT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2017 OVERCAYS - NEW PROGRAM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>ONE TIGER DR. from Fronton St. northward to Rainey St.</td>
<td>15</td>
<td>LF</td>
<td>$3.00</td>
<td>$45.00</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>MILL EDGE AT CURB &amp; GUTTER &amp; BUTT JOINTS &amp; REMOVE EXISTING PAVEMENT</td>
<td>10</td>
<td>LF</td>
<td>$10.00</td>
<td>$100.00</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>WOODALL - from South Washington eastward to Garrett South</td>
<td>65</td>
<td>LF</td>
<td>$40.00</td>
<td>$2,600.00</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>GRADE DITCH TO DRAIN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>YVONNE - from South Washington eastward to deadend</td>
<td>77</td>
<td>SY</td>
<td>$120.00</td>
<td>$9,240.00</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>FURNISH &amp; INSTALL STANDARD CURB &amp; GUTTER</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>WRIGHT ST.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>1. FURNISH &amp; INSTALL FULL DEPTH PATCH</td>
<td>228</td>
<td>SY</td>
<td>$3.00</td>
<td>$714.00</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>2. MILL EDGE AT CURB &amp; GUTTER &amp; BUTT JOINTS &amp; REMOVE EXISTING PAVEMENT</td>
<td>304</td>
<td>SY</td>
<td>$9.40</td>
<td>$2,857.60</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>3. FURNISH &amp; INSTALL STANDARD 1 1/2&quot; THICK (MIN.) HMAC TYPE D&quot; OVERLAY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>COURSE, INCLUDING ASPHALT TACK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>4. SAWCUT EXISTING ASPHALT PAVEMENT</td>
<td>46</td>
<td>LF</td>
<td>$5.00</td>
<td>$230.00</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>2017 OVERCAYS - STREET MAINTENANCE TAX PROGRAM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>MAPLE ST. - from Fulshear eastward to Dee Mulkey</td>
<td>8</td>
<td>LF</td>
<td>$5.00</td>
<td>$40.00</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>ADD. ALT. #2: CARTER ST. PH. 2: from RR Xing northward to College St.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>MANGOLE ADJUSTMENT TO GRADE</td>
<td>1</td>
<td>EA</td>
<td>$300.00</td>
<td>$300.00</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>VALVE BOX ADJUSTMENT TO GRADE</td>
<td>1</td>
<td>EA</td>
<td>$200.00</td>
<td>$200.00</td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>ADD. ALT. #3: SPERM LAKE OUTLET</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td>1. FURNISH &amp; INSTALL STANDARD 1 1/2&quot; THICK (MIN.) HMAC TYPE D&quot; OVERLAY</td>
<td>-770</td>
<td>SY</td>
<td>$9.40</td>
<td>$(7,298.00)</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>COURSE, INCLUDING ASPHALT TACK</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>5. SAWCUT EXISTING ASPHALT PAVEMENT</td>
<td>22</td>
<td>SY</td>
<td>$120.00</td>
<td>$(10,00)</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>6. FURNISH &amp; INSTALL FULL DEPTH PATCH</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>2017 RECONSTRUCTS - ASPHALT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>3RD STREET - from State St. northward to Popular</td>
<td>2</td>
<td>LF</td>
<td>$5.00</td>
<td>$10.00</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>4. SAWCUT EXISTING ASPHALT PAVEMENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>MEMORIAL DRIVE - from Memorial Dr. to near Country Club Dr.</td>
<td>19.63</td>
<td>TONS</td>
<td>$110.00</td>
<td>$2,159.30</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>5. PULVERIZE, BLADE MIX, CEMENT STABILIZE &amp; RESHAPE SUBGRADE</td>
<td>-170</td>
<td>SY</td>
<td>$13.00</td>
<td>$(2,210.00)</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>6. FURNISH &amp; INSTALL STANDARD CURB &amp; GUTTER</td>
<td>5</td>
<td>LF</td>
<td>$40.00</td>
<td>$200.00</td>
<td></td>
</tr>
<tr>
<td>30.</td>
<td>7. FURNISH &amp; INSTALL STANDARD 1 1/2&quot; THICK (MIN.) HMAC TYPE D&quot; DRIVEWAY TRANSITION</td>
<td>22</td>
<td>SY</td>
<td>$15.00</td>
<td>$330.00</td>
<td></td>
</tr>
<tr>
<td>31.</td>
<td>WINWOOD TERRACE - from Hulme to Winwood Drive</td>
<td>-990</td>
<td>LF</td>
<td>$3.00</td>
<td>$(2,970.00)</td>
<td></td>
</tr>
<tr>
<td>32.</td>
<td>4. MILL EDGE AT CURB &amp; GUTTER &amp; BUTT JOINTS &amp; REMOVE EXISTING PAVEMENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33.</td>
<td>2017 RAILROAD CROSSING REMOVAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34.</td>
<td>CARTER ST. (RR)- Remove RR crossing, patching, match curb, road overlay</td>
<td>13</td>
<td>LF</td>
<td>$40.00</td>
<td>$520.00</td>
<td></td>
</tr>
<tr>
<td>35.</td>
<td>5. CONSTRUCT 4&quot; CONCRETE SIDEWALK</td>
<td>30</td>
<td>SY</td>
<td>$60.00</td>
<td>$1,800.00</td>
<td></td>
</tr>
</tbody>
</table>

Change in contract price due to this change order:

| Total (Decreases) Increases: | $12,428.00 | $23,965.90 | $11,537.90 |

The sum of $11,537.90 is hereby ADDED TO the total contract price, and the contract price to date thereby is:

$1,334,162.10

The time for construction completion is increased by ___-___ additional calendar days.

This document shall become an amendment to the contract and all provisions of the contract will apply hereto.

RECOMMENDED BY (Engineer):

ACCEPTED BY (Contractor):

APPROVED BY (Owner):
ITEM 5A

PUBLIC HEARING

PUBLIC HEARING ON PROPOSED BUDGET FOR THE 2018 FISCAL YEAR AND ACTION TO ADOPT THE BUDGET OR CONTINUE CONSIDERATION OF THE BUDGET TO A FUTURE MEETING
MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 15, 2017

Subject: Public Hearing on Proposed Budget for the 2018 Fiscal Year and Action to Adopt the Budget or Continue Consideration of the Budget to a Future Meeting

Both the City Charter and the Local Government Code of the State of Texas require that a Public Hearing is held on the proposed budget for the upcoming fiscal year. This hearing has been placed on the agenda to comply with this requirement.

The Local Government Code also requires the Commission to take action on the budget at the conclusion of the Public Hearing. The action that should be taken is to continue consideration of the budget to a future meeting. This will give the Commission more time to consider the requests from the public. This action will also allow the staff and Commission to follow the schedule to adopt the budget by Ordinance on Thursday, September 14, 2017, with the second reading of the Ordinance on Friday, September 15, 2017.
ITEM 6A

PRESENTATION

PRESENTATION OF A PROCLAMATION
TO THE WILEY COLLEGE DEBATE TEAM
MEMORANDUM

To: Members of the City Commission
From: Lisa Agnor, City Manager
Date: August 18, 2017
Subject: Presentation of a Proclamation Supporting the Wiley College Denzel Washington Melvin Tolson Forensics Team and Coach Christopher Median in Their Efforts to Form the First Historically Black College and University Debate League in the Nation

This item has been placed on the agenda by Commissioner Beil for presentation of the attached Proclamation to the Wiley College Denzel Washington Melvin Tolson Forensics Team and Coach Median.
PROCLAMATION

Whereas, in 1934, the Wiley College debate team, led by great English professor and debate coach, Melvin Tolson, defeated that year’s Pi Kappa Delta national champions, the University of Southern California; and

Whereas, in 2007, Denzel Washington made a film called “The Great Debaters” based on the saga of that team and its most famous member, James Farmer, Jr.; and

Whereas, Denzel Washington then endowed Wiley College with the funds to re-create a debate program on campus; and

Whereas, by 2017, the Wiley College Great Debaters had won the Pi Kappa Delta National Tournament twice, come in second another time, and generally leaves every debate tournament it enters with a first, second, or third place; and

Whereas, the Koch Foundation has granted Wiley Coach Christopher Medina’s Great Debaters the funding to create an HBCU (historically black colleges and universities) league among the 40 colleges and universities who are part of the HBCU; and

Whereas, plans are to hold a national tournament in Marshall that could bring as many as 500 participants to Marshall for three to five days every year.

Now therefore, the Marshall City Commission congratulates Wiley College Great Debaters and welcomes this new league and particularly the tournament to Marshall.

_____________________________
Larry Hurta, Chairman
City of Marshall, Texas
ITEM 7A

RESOLUTION

APPROVAL OF A RESOLUTION ANNOUNCING A PROPOSED TAX RATE OF $0.542160 PER $100 OF VALUATION AND VOTING TO PLACE AN ACTION ITEM TO ADOPT THE TAX RATE ON A FUTURE COMMISSION AGENDA
When a proposed tax rate exceeds the rollback tax rate or the effective tax rate, the City Commission must take certain actions as required by the Texas Tax Code. The City’s proposed tax rate for the 2018 Budget exceeds the effective tax rate, but is below the rollback tax rate.

The tax rates are as follows:

- Proposed 2017 Tax Rate for 2018 Budget: $0.542160/$100 Valuation

- Effective Tax Rate: $0.532841
  This is the total tax rate needed to raise the same amount of property tax revenue for the City of Marshall from the same properties in both the 2017 tax year and the 2018 tax year.

- Rollback Rate: $0.563673
  The rollback rate is the highest tax rate that the City of Marshall may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate.

If this Resolution passes, then the Commission must schedule two Public Hearings on the proposed tax rate. The Resolution following this agenda item will schedule the Public Hearings.
RESOLUTION NO. ______________

A RESOLUTION OF THE COMMISSION OF THE CITY OF MARSHALL, TEXAS
ANNOUNCING A PROPOSED TAX RATE OF $0.542160 PER $100 VALUATION AND VOTING TO PLACE AN ACTION ITEM TO ADOPT THE TAX RATE ON A FUTURE COMMISSION AGENDA

WHEREAS, the Tax Code of the State of Texas requires the governing body to announce a tax rate and schedule and announce the date and time to adopt a tax rate if the tax rate exceeds the effective tax rate or rollback rate, whichever is lower; and,

WHEREAS, the Commission of the City of Marshall proposes to adopt a tax rate of $0.542160 per $100 valuation for the City’s 2018 Budget which exceeds the effective tax rate; and,

WHEREAS, since the proposed tax rate will exceed the effective tax rate; now, therefore

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MARSHALL, TEXAS:

That the City Commission will on Thursday, September 14, 2014 at 6:00 p.m. and Friday, September 15, 2014 at 8:00 a.m. in the City Commission Chambers, Marshall City Hall, 401 South Alamo, adopt the proposed tax rate of $0.542160 per $100 of valuation for the City’s 2018 Budget for the fiscal period January 1, 2018 through December 31, 2018.

PASSED, APPROVED, AND ADOPTED this 24th day of August, 2017.

YEA: __________
NAY: __________
ABSTAIN: _____

___________________________
Chairman of the Commission
City of Marshall, Texas

ATTEST:

Elaine Altman, City Secretary
ITEM 7B

RESOLUTION

APPROVAL OF A RESOLUTION
SCHEDULING TWO PUBLIC HEARINGS
ON THE PROPOSED TAX RATE OF
$0.542160 PER $100 OF VALUATION AND
TAX INCREASE
Memorandum

To: Lisa Agnor, City Manager
From: Elaine Altman, Finance Director
Date: August 16, 2017
Subject: Resolution scheduling two Public Hearings on the proposed tax rate of $0.542160 per $100 of valuation

When a governing body proposes to adopt a tax rate that exceeds the lower of the effective tax rate or rollback tax rate, two Public Hearings on the proposed tax rate must be held. These hearings give taxpayers an opportunity to voice their opinion about the proposed tax rate.

The dates of our Public Hearings on the proposed tax rate are as follows:

- Thursday, September 7, 2017, Commission Chambers, City Hall, 6:00 p.m. (Special-Called Meeting)
- Monday, September 11, 2017, Commission Chambers, City Hall, 6:00 p.m. (Special-Called Meeting)

Notice of these Public Hearings will be published in a local newspaper.

We are asking approval of a Resolution scheduling Public Hearings on a proposed tax rate of $0.542160 per $100 valuation.
RESOLUTION NO. ______________

A RESOLUTION OF THE COMMISSION OF THE CITY OF MARSHALL, TEXAS SCHEDULING PUBLIC HEARINGS ON A PROPOSED TAX RATE OF $0.542160 PER $100 VALUATION

WHEREAS, the Local Government Code of the State of Texas requires the governing body to conduct two public hearings if the tax rate exceeds the lower of the effective tax rate or rollback rate; and

WHEREAS, the Commission of the City of Marshall proposes to adopt a tax rate of $0.542160 per $100 valuation for the City’s 2018 Budget; and

WHEREAS, the proposed tax rate will exceed the effective tax rate; now, therefore

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MARSHALL, TEXAS:

That the City Commission will on Thursday, September 7, 2017 at 6:00 p.m. and Monday, September 11, 2017 at 6:00 pm. in the City Commission Chambers, Marshall City Hall, 401 South Alamo, conduct public hearings on the tax rate and the increase in total tax revenue.

PASSED, APPROVED, AND ADOPTED this 24th day of August, 2017.

AYE: __________
NAY: __________
ABSTAIN: ______

___________________________
Chairman of the Commission
City of Marshall, Texas

ATTEST:

___________________________
Elaine Altman, City Secretary
ITEM 8A

APPOINTMENTS TO THE MARSHALL DOWNTOWN DEVELOPMENT CORPORATION BOARD OF DIRECTORS
MEMORANDUM

To: Lisa Agnor, City Manager  
From: Elaine Altman, Finance Director/City Secretary  
Date: August 15, 2017  
Subject: Appointments to the Marshall Downtown Development Corporation Board of Directors

The Marshall Downtown Development Corporation currently has three (3) vacant Board of Director positions. The Committee is requesting the approval of the following appointments:

• Colin Brady
• Kat Evans
ITEM 8B

CONSIDERATION OF A REQUEST FOR ASSISTANCE FROM MARSHALL DEPOT, INC.
MEMORANDUM

To: Members of the City Commission
From: Lisa Agnor, City Manager
Date: August 18, 2017
Subject: Consideration of a Request for Assistance from Marshall Depot, Inc.

This item was placed on the agenda and discussed at the August 10th meeting at the request of Commissioner Beil. She asked for the Commission to consider additional funding for the Depot of $5000 for replacement of an air conditioning unit.

Staff was asked to provide recommendation regarding funding available for the Depot request.

Currently, Marshall Depot, Inc. is receiving quarterly payments of $3,375 from City HOT Funds totaling $13,500 annually. If you chose to cover this expenditure, the Commission can consider additional funding from 2017 HOT Funds or an advancement of funding from 2018 HOT Funds allocated for the Marshall Depot, Inc.
ITEM 8C

APPROVAL OF AN AGREEMENT FOR EMS BILLING AND CLAIMS MANAGEMENT SERVICES
August 24, 2017

Marshall City Commission
City of Marshall
401 S. Alamo Street
Marshall, Texas 75670

Dear City Manager and Commissioners:

After consulting with our City Manager, City Attorney and Finance Director, the Marshall Fire Department has given notice of our intent to terminate its contract with Municipal Computing Services, Inc. Per our contractual agreement with MCS, a 60 day notice of our intent to terminate the City of Marshall’s contract was provided, as referenced in section 11 (Termination) of the current contract.

Our termination will be effective October 15, 2017. The termination was for the following causes:

1. Significant downward trend in performance in collections

2. Lack of communication from MCS in regard to significant increases in denied claims.

3. Continued issues in either software or hardware freezing up and losing data. Reporting devices have not been replaced with “new” or “factory refurbished” as specified.

The Marshall Fire Department requests permission to enter into a new contract agreement with Emergicon LLC as our new EMS Medical Coding and Billing Agency. Extensive research has been conducted on this company and we feel confident in their ability to significantly increase our collections revenue.

Respectfully,

Chief Cooper, EFO
AGREEMENT FOR SPECIALIZED PROFESSIONAL AMBULANCE BILLING SERVICES

This Agreement is entered into this _________ day of _____________________, 2017, by and between Emergicon, LLC, a Texas business corporation, and the City of Marshall, a Texas municipal corporation (“Client”).

RECITALS

WHEREAS, Client provides emergency and/or non-emergency ambulance services for which it is eligible for payment or reimbursement by patients, insurance carriers, governmental agencies, employers and others;

WHEREAS, Emergicon is engaged in the business of providing third-party billing and accounts receivable management specialized professional services for ambulance and emergency medical service organizations;

WHEREAS, Client desires to utilize Emergicon for billing and claims management services for its organization; and

WHEREAS, Emergicon is willing to provide such specialized professional services upon the terms and conditions provided in this Agreement;

THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged, the parties, intending to be legally bound, agree as follows:

1. Appointment. Client hereby engages Emergicon to exclusively perform the Specialized Professional Services set described in Paragraph 2 of this Agreement and Emergicon accepts such exclusive appointment and agrees to provide Specialized Professional Services in accordance with the terms of this Agreement. Client agrees that it will not enter into any contract, agreement, arrangement or understanding with any other person or entity, the purpose of which is to provide for the same or substantially similar specialized professional services during the term of the Agreement, unless the parties agree otherwise as set forth in writing in an Addendum to this Agreement. For purposes of the appointment, the recitals set forth above are incorporated by reference and made a part of this Agreement as if set forth in their entirety.

2. Specialized Professional Services. Emergicon agrees to perform the following duties (collectively referred to as the “Services”) on behalf of Client:

   a. Provide Client with instructions for the submission of Required Documentation to Emergicon. For purposes of this Agreement, “Required Documentation” shall consist of prehospital patient care reports (PCRs) (also referred to as “trip sheets” or “run reports”), physician certification statements (PCSs) (required for non-emergency transports), patient authorization signatures (sometimes referred to as “assignment of benefits form” or “signature form”), Advance Beneficiary Notices of Non-coverage (ABNs) and other documentation necessary for Emergicon to perform the Specialized Professional Services under this Agreement. All Required Documentation must be signed in accordance with applicable laws, regulations and payer guidelines.
b. Review the Required Documentation, based on the information supplied by Client, for completeness and eligibility for submission to request reimbursement and to verify compliance under applicable laws, regulations or payer rules, based upon Emergicon’s understanding of said laws, regulations or payer rules applicable to the date the ambulance services were rendered. If any Required Documentation is missing, Emergicon will request necessary documentation from Client.

c. Promptly prepare and submit claims deemed complete and eligible for submission by Emergicon in conformance with this Agreement for electronic or paper submission to the appropriate party or payer based on the information supplied by Client. In the event that Emergicon deems the Required Documentation to be incomplete or inconsistent, Emergicon will notify Client that additional information may be required to process the claim, and Emergicon will return any or all of the Required Documentation to Client that Emergicon determines may be incomplete or inaccurate and will not be responsible to submit any claims with insufficient documentation. Emergicon will make a decision regarding the appropriate coding and payer for submission of the claim based on the information supplied by Client. Client understands and acknowledges that not all accounts will satisfy the eligibility requirements of all payers, and that it might not be possible to obtain reimbursement in all cases. Emergicon makes no representation or warranty that all claims are payable or will be paid, and Client agrees to abide by Emergicon’s decisions with regard to proper coding and payer based on the information provided to Emergicon by Client.

d. Promptly post payments made on Client’s behalf by patients, insurers and others.

e. Unless otherwise directed by Client, make reasonable efforts for the collection of co-payments, deductibles or other patient balances, to include the preparation of invoices and a maximum of three contact attempts to patients, supplemental insurers or other financially responsible parties at industry-appropriate intervals.

f. Perform follow-up for a commercially reasonable period of time following the initial billing date on all open accounts. After this follow-up period, Emergicon will either return the accounts to Client or forward the accounts to a collection agency of Client’s choosing. Client and/or its designated collection agency shall bear all costs and liabilities of collections activities and collection agency charges.

g. Provide monthly reports to Client, which include, at a minimum, cash received, accounts receivable and balance summary. Emergicon shall furnish those reports to Client.

h. Notify Client of any potential overpayments and/or credit balances of which Emergicon becomes aware that may be required to be refunded. Client bears sole responsibility for the refund of any overpayments or credit balances to Medicare, Medicaid, patients, or other payers or insurers, and agrees to make such refunds when and within the time frames required by law. Emergicon may, at its option, assist Client in processing such refunds, but all refunds are to be made solely with Client’s funds, and Emergicon has no responsibility to make such refunds unless and until Client transfers such funds to Emergicon for this purpose. Emergicon shall not
advance funds on behalf of Client for this purpose. Client acknowledges that federal law requires that any overpayments made by Medicare or any other federal health care program be refunded within 60 days of the identification of any such overpayments.

i. If Client desires that its patients be able to pay their accounts utilizing credit cards, establish a credit card merchant account and related capabilities to permit Client’s patients to pay via any major credit card. Emergicon shall in its sole discretion determine which credit cards it will accept.

3. Specifically Excluded Duties of Emergicon. Notwithstanding any provisions of this Agreement to the contrary, Emergicon shall not be responsible to:

a. Initiate or pursue litigation for the collection of past due accounts.

b. Invoice for Client’s non-ambulance medical transportation services, including but not limited to mobile integrated health programs, paratransit services, wheelchair van, invalid coach services, litter vans and stretcher cars, unless specific arrangements are made otherwise.

c. Negotiate any checks made payable to Client, though Emergicon may receive funds as an agent of Client for transmittal to Client where permitted by Client;

d. Accept reassignment of any benefits payable to Client;

e. Provide legal advice or legal services to Client, any of Client's patients or payers, or anyone acting on Client's behalf;

f. Obtain any prior authorizations on behalf of Client, or obtain a Physician Certification Statement or other Certificate of Medical Necessity on behalf of Client.

g. Assist Client in preparing, filing and updating the information on its Medicare, Medicaid or other insurer provider enrollment forms, as well as responding to required revalidations of Client’s provider enrollment status. Client bears the sole responsibility to ensure that its Medicare, Medicaid or other insurer provider enrollment forms are submitted and updated in accordance with federal and state law, regulations and policies. Client bears the exclusive responsibility for the submission of such form and any fees that may be associated with the submission of such forms. Upon specific written request from Client, Emergicon may agree to assist with such form submission and/or revalidation of Medicare, Medicaid or other insurer provider enrollment forms, provided that the responsibility for actual submission and all fees associated with the forms shall be borne exclusively by Client and paid prior to submission of these forms by Emergicon.

4. Responsibilities of Client. Client agrees to do the following, at its sole cost and expense:

a. Provide Emergicon with all Required Documentation, as set forth in Paragraph 2(a), above, as well as the following data: Patient Name and Address, Date of Birth,
Date of Service, Patient Medical Condition, Reason for Transport, Services Rendered (including assessments, interventions and other care), Origin and Destination with accompanying Zip Code, Transport Destination with accompanying Zip Code, Odometer Reading/Loaded Mileage (to the nearest tenth of a mile), and all relevant insurer or payer information, including identity of payer, group or plan numbers, patient’s Insurance/Medicare/Medicaid Number, and all other relevant information and ensure that this data and the information contained on the Required Documentation is complete and accurate. Emergicon reserves the right to modify any Required Documentation or data at any time in accordance with new or revised payer requirements, and will provide a copy of any such revisions to Client in writing. Client acknowledges that Emergicon must rely upon the accuracy and completeness of the forms, signatures and other documentation provided to it by Client to allow Emergicon to perform the Specialized Professional Services specified in this Agreement. Emergicon is not in a position to verify the accuracy or completeness of the Required Documentation provided by Client. By forwarding any such documentation to Emergicon, Client expressly represents and warrants that any such documentation is complete and accurate, and that Emergicon may rely upon the completeness and accuracy of any such documentation in performing its Services under this Agreement. Client acknowledges that if Emergicon submits incorrect documentation Emergicon will be noncompliant with Federal and State healthcare regulations and commercial insurance obligations and may be subject to causes of action, costs, claims, losses, damages, liabilities, expenses, judgments, and penalties. Client bears sole responsibility for the claim submissions made by Emergicon on its behalf based upon the aforementioned documentation submitted to Emergicon by Client.

b. Maintain its qualifications to provide ambulance services, including any required local, state and/or federal licenses, permits, certificates or enrollments (collectively, “Licenses”), and to remain in good standing with Medicare, Medicaid and all other state and federal health care programs. Client shall provide copies of all current Licenses, including renewals, to Emergicon. Client shall be responsible to maintain a National Provider Identifier (NPI) number and to update the information associated with its NPI. Client expressly represents and warrants that it will not forward accounts for processing by Emergicon if the account is ineligible for payment or reimbursement, or if Client is ineligible for payment by any payers or insurers as a result of its licensure status, exclusion or other sanction with such payer or insurer, or other legal impediment, and that it will promptly notify Emergicon of any suspension or revocation of any required license, permit, certification or enrollment, or exclusion from any state or federal health care program or any change in ownership or management of Client.

c. Provide Emergicon with a copy of all required Licenses, permits, certificates and enrollments as referenced in Paragraph 4(b), and forward updates of these documents to Emergicon as they are renewed.

d. Provide Emergicon with odometer readings or other documentation of mileage accepted by the payer on all calls reflecting loaded mileage (from the point of patient pickup to the destination) recorded in tenths of a mile as required by Medicare guidelines.

g. In accordance with appropriate payer guidelines, obtain the signature of the patient or other authorized representative of the patient or otherwise meet the ambulance signature requirements set forth at 42 C.F.R. § 424.36 on each call and forward to Emergicon as part of the
Required Documentation.

f. In the event that Client operates a subscription or membership program, client represents and warrants that its program is actuarially sound in accordance with the guidance of the Office of Inspector General (OIG) and operated in accordance with any applicable state laws, regulations or guidelines. Emergicon will bill in accordance with the terms of such program, provided that Client furnishes those terms to Emergicon in writing. Client is responsible to inform Emergicon of its patients who are members or subscribers of Client’s membership or subscription program.

g. If Client is a party to any ALS-BLS “joint billing” or “bundle billing” agreement, Client shall be responsible to provide Emergicon with a copy of such agreement. Client also agrees to submit a PCR from the other party to the joint billing agreement along with the Required Documentation.

h. Obtain a completed and valid PCS form on all trips where required by law and provide copies of all PCS forms to Emergicon as part of the Required Documentation.

i. Provide Emergicon with a copy of all Client rate schedules, contracts or agreements which pertain to Client’s billing or charges for services.

j. Notify Emergicon of any or all changes in billing charges for service or changes in any of Client’s billing policies or contracts not later than thirty (30) days prior to the effective date of said changes.

k. Report all payments made directly to Client within twenty-four (24) hours of Client’s receipt of same.

l. Cooperate reasonably with Emergicon so as to enable Emergicon to meet its obligations under this Agreement. In the event that Client’s approval is required in order for Emergicon to fulfill any obligations it may have under this Agreement, Client shall not unreasonably withhold, condition or delay its approval.

m. In writing, notify Emergicon of any customized needs (reporting, scheduling, etc.). Client understands that the processing of customized needs may entail additional charges to Client by Emergicon.

n. Designate a contact person, authorized to transact business on behalf of Client, who can promptly respond to any questions raised by Emergicon, or who can execute required forms and other documents necessary to the provision of Services by Emergicon under this Agreement.

o. Agree to permit Emergicon to provide training to Client personnel in the event that Emergicon deems such training to be necessary and/or desirable at a cost to be mutually agreed upon by the parties and paid by Client.
p. Provide electronic transfer of PCR data in an acceptable NEMSIS format to Emergicon, Client agrees to bear all cost of the development and implementation of the electronic software “bridge” as agreed upon by and in conjunction with Emergicon information technology personnel, representatives or contractors.

q. Client will defend and hold harmless Emergicon and each of its officers, directors, employees, attorneys, and agents, to the extent allowed by applicable law, from and against any and all costs, claims, losses, damages, liabilities, expenses, judgments, penalties, fines and causes of action which arise or result from:

i. Any breach or violation of covenant, obligation or agreement of Client set forth in this agreement and any breach or inaccuracy of any of the representations or warranties made by Client in this agreement or in performing its responsibilities under this agreement.

ii. Both parties agree that defense of breach or violation of the agreement by Client under this Section 4.q. does not constitute the Client’s incurrence of a debt in violation of Article XI Section 7 A. of the Texas Constitution and defined by the Supreme Court in Tex. & New Orleans R.R. Co. v. Galveston County, 169 S.W.2d 713, 715 (Tex. 1943).

5. Record Ownership and Access.

a. Client understands that all documentation provided to Emergicon by Client, whether in paper and/or electronic form, is for the sole and express purpose of permitting Emergicon to provide Specialized Professional Services under this Agreement. It is Client’s responsibility to maintain all of its documents and business records, including copies of any documents or records provided to Emergicon (“Client-Provided Records”). Emergicon does not act as Client’s records custodian.

b. As a convenience to Client, Emergicon will, during the term of this Agreement, produce patient care reports in response to routine attorney requests (with appropriate patient authorization) for such documentation, if those records are in Emergicon’s possession at the time it receives such attorney request. For subpoenas, as well as any requests beyond those deemed by Emergicon to be routine attorney requests, Emergicon shall forward such requests to Client for disposition.

c. During the term of this Agreement, Emergicon shall, upon Client’s written request, provide to Client, in electronic format and within 14 days of receipt of such written request, copies of any Client-Provided Records furnished to Emergicon by Client, and to any Claim Adjudication Documents generated by and received from insurers or payers in response to claims submitted by Emergicon on Client’s behalf. “Claim Adjudication Documents” shall consist of the documents generated secondary to claim submission in the normal course of claim processing by payers and insurers, including Explanation of Benefits (EOB) documents, Remittance Advice (RA) documents, Medicare Summary Notice (MSN) documents, denials and other documents of a similar type or nature.
d. Any documents, data, records or information compiled in the course of Emergicon’s provision of Specialized Professional Services under this Agreement, other than those Client-Provided Records and Claim Adjudication Records defined in Paragraphs 5(a) and (c) above, shall be the sole and exclusive property of Emergicon and shall be considered the business and/or proprietary records of Emergicon. Emergicon shall have no obligation to furnish any such business or proprietary records of Emergicon to Client, and Client shall have a right of access only to the Client-Provided Records and Claim Adjudication Documents as defined in Paragraphs 5(a) and (c), above.

e. If Client or a third party requests any documents or records to which Client or the third party has a right of access under Paragraphs 5(a) and (c) of this Agreement, and such documents cannot be provided to Client in electronic form, Emergicon may charge Client the per-copy amount for medical records permitted under applicable law at the time of Client’s request.

f. Should this Agreement be terminated for any reason, all documents and records to which Client has a right of access under Paragraphs 5(a) and (c) of this Agreement shall be maintained in electronic format at a site convenient to Emergicon for a reasonable amount of time for follow-up of all open claims, but in any event not to exceed ninety (90) days following the effective date of termination of this Agreement. Electronic or paper copies, as per Paragraph 5(e) hereof, of the records to which Client has a right of access under Paragraphs 5(a) and (c) will be made available to Client, at Client’s sole cost and expense, in a format acceptable to Emergicon at the Client’s written request provided that Client makes such request within thirty (30) days following termination of the Agreement, and provided that Client has no outstanding invoices due to Emergicon at the time of the request. Emergicon shall have absolutely no responsibility whatsoever after termination of this Agreement to provide any monthly reports or other such Emergicon-generated reports to Client.

g. Upon termination of this Agreement, Client is responsible to notify all payers, patients, and other correspondents of its new address, phone and/or fax numbers for billing or payment purposes. Notwithstanding any other provisions of this Agreement to the contrary, Emergicon will not be responsible for mail, deliveries, faxes, messages or other communications sent in Client’s name to Emergicon after the effective termination date of this Agreement, and Emergicon shall have no duty to accept, maintain, copy, deliver or forward any such communications to Client following termination of this Agreement.

h. Costs for copies of documents required and/or requested by Client beyond the requirement of the normal daily claim handling requirements will be invoiced to Client by Emergicon at a per copy price to be established by Emergicon from time to time.

6. Client Accounting and Auditing Requirements. If Client requires Emergicon’s assistance in Client’s accounting or other internal audits, Emergicon will charge client for said audit support services at its customary rates, to be established by Emergicon from time to time. Upon written request of Client for same, Emergicon shall furnish said rates to Client in writing prior to undertaking any work pursuant to this Paragraph.
7. **Term and Termination.**

   a. This Agreement is for an initial term of three years, commencing upon the execution of this Agreement, and will automatically renew under the terms herein unless otherwise mutually agreed to in writing, for successive like terms unless terminated hereunder.

   b. This Agreement may be terminated upon the expiration of its then-current term, with or without cause, by either party, upon written notice to the other party, given no later than thirty (30) days prior to the expiration of the then-current term.

   c. This Agreement may be terminated by Emergicon immediately upon written notice to Client for any of the following reasons:

      i. If Client makes an assignment for the benefit of creditors, files a voluntary or involuntary petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for the appointment of any receiver of any trustee over its assets or properties, commences any proceeding under any reorganization, arrangement, readjustment of debt or similar law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the other party any such proceeding which remains un-dismissed, un-stayed, or the other party by any act or any omission to act indicated its consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver or of any trustee, or suffers any such receivership or trusteeship to continue undischarged, un-stayed, or un-vacated for a period of thirty (30) days.

      ii. If Client loses its license, permit or certification necessary to do business, or is excluded from any state or federal health care program.

      iii. If Client fails to perform any of its responsibilities as set forth in this Agreement, fails to pay Emergicon for its specialized professional services within thirty (30) days of the date such payment becomes due, takes any actions which Emergicon, in its sole discretion, determines to be unethical, illegal, immoral or non-compliant, or fails to cooperate with Emergicon in any way that prevents, impedes, obstructs or delays Emergicon in the performance of the Specialized Professional Services set forth in this Agreement.

   d. Upon termination for any reason, Emergicon shall perform follow-up on any open accounts submitted by Emergicon on Client’s behalf for a period not to exceed ninety (90) days from the date of termination. Emergicon shall have no responsibility to perform such follow-up in the event Client takes any actions which prevent Emergicon from engaging in such follow-up, or in the event that Client has any unpaid balances due to Emergicon on the date of termination of this Agreement.

   e. Upon termination for any reason, Client shall be responsible to pay the fees set forth in Paragraph 10 below, for all revenues collected by Emergicon on Client’s behalf during the 90-day follow-up period set forth in Paragraph 7(d) above. After notice of termination is given, all Emergicon invoices are due and payable by Client within five (5) days of same. In the event that Client does not remit payment on any such invoice within five (5) days of the invoice,
Emergicon shall have no responsibility to perform any further follow-up on open accounts, notwithstanding the provisions of Paragraph 7(d) above.

8. External and Internal Audits.
   a. Client shall immediately notify Emergicon if there has been any prepayment audit or review, post payment audit or review, or any investigation or other formal inquiry into the billing practices of Client and/or Emergicon, or claims submitted by Emergicon on behalf of Client, where such audit or investigation is or appears to have been initiated by any governmental agency, insurer, payer, carrier, Medicare Administrative Contractor, Recovery Audit Contract, Zone Program Integrity Contractor, Medicaid Fraud Control Unit, other Medicare or Medicaid contractor or other agency or entity authorized to carry out any such audit or investigation. This obligation shall survive termination of this Agreement for any reason.

   b. The Client bears sole responsibility for obtaining and paying for any legal or consulting assistance necessary in defending itself in any such audit or investigation. Emergicon shall assist Client in producing any records, reports or documents in its possession which pertain to the audit or investigation and may charge Client a reasonable fee for copying, preparation, assembly or retrieval of such documents or reports. Emergicon shall have no obligation to perform any duties under this Paragraph 8(b) following termination of this Agreement for any reason.

   c. Client is solely responsible for repaying any overpayments or recoupments sought or imposed by any insurer, carrier, payer or governmental agency or contractor, including interest, civil monetary penalties, fines or other such assessments.

   d. Client understands and acknowledges that Emergicon, as part of its compliance program, may on occasion, and at its sole discretion, perform or contract for the performance of periodic, random, internal audits of its coding, billing and other business practices. These voluntary, internal compliance audits may reveal the existence of Client overpayments, and Client agrees that any such overpayments identified by Emergicon in its internal auditing process will be refunded by Client as described in more detail in Paragraph 2(h) of this Agreement.

9. Disposition of Funds.
   a. All funds Emergicon receives from third party payers, patients or other sources for ambulance services provided by Client shall be made in the name of Client and forwarded monthly to Client or deposited into a Client account as directed by Client.

   b. If Client desires that its patients be able to pay their accounts utilizing credit cards, then Emergicon shall accept credit card payments on behalf of Client’s patients in a manner that is secure and agreed upon by the parties, and only to the extent possible and feasible, without making Emergicon a collection agency and responsible for compliance with the federal Fair Debt Collection Practices Act and other state or federal debt collection laws.
c. Emergicon shall not accept a reassignment of any benefits where prohibited by law.

10. **Compensation.**

a. In exchange for the Specialized Professional Services described in this Agreement, Client shall pay Emergicon a fee equivalent to nine percent (9%) of all revenues collected by Emergicon on behalf of Client. Credit card payments accepted by Emergicon will be charged an additional two percent (2.0%).

b. If Client instructs Emergicon to collect on an account(s) initially billed by another Contractor, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Twenty-two Percent (22%) of the total amount collected on the account.

c. If Client instructs Emergicon to continue to pursue Patient Pay accounts with balances beyond 120 days from the date of transport, Emergicon shall be compensated and paid for the collection efforts on said account in accordance with the following schedule: Eighteen Percent (18%) of the total amount collected on the account.

d. The fees payable by Client to Emergicon shall be calculated and invoiced to Client on a periodic basis established by Emergicon in accordance with the receipts report generated by Emergicon.

e. Emergicon shall submit invoices to Client on a periodic basis established by Emergicon. Invoices are to be paid by Client within thirty (30) days of the invoice date. Emergicon reserves the right to add simple interest at an annual rate of 18%, compounded daily, on all where Emergicon has not received payment within thirty (30) days of the date of its invoice.

f. In the event that Client is obligated to refund any overpayment or credit balance as set forth in Paragraph 2(h), fees paid to Emergicon by Client for such refunded overpayment or credit balance shall not be credited or refunded to Client.

g. The rates set forth by Emergicon to be charged to Client for Specialized Professional Services rendered are subject to change by Emergicon upon thirty (30) days written notice to Client.

h. In the event that Client does business in a jurisdiction in which applicable law prohibits the compensation of a billing agent on a percentage-of-collections basis, Client shall pay Emergicon a flat fee of $_______ per trip, to be invoiced at the time of billing. This flat fee shall apply only to those accounts for which applicable law prohibits payment on a percentage-of-collections basis.

i. Client agrees to reimburse Emergicon for any and all sales tax liabilities that may arise as a result of this Agreement.
11. **Indemnification and Insurance.**

   a. In addition to any specific indemnification provisions set forth in this Agreement, Emergicon shall hold harmless, indemnify and defend Client and/or its employees, officers, directors and agents from and against any and all costs, claims, losses, damages, liabilities, expenses, judgments, penalties, fines and causes of action to the extent caused by any willful or grossly negligent misconduct of any Emergicon agent, servant, contractor or employee and which relate to the Specialized Professional Services performed by Emergicon under this Agreement.

   b. Emergicon shall maintain errors and omissions insurance coverage in an amount not less than $1,000,000. Emergicon shall provide proof of such coverage to Client upon reasonable written request for same.

   c. Notwithstanding any other provision of this Agreement, Emergicon shall not be liable for any damages, including but not limited to loss in profits, or for any special, incidental, indirect, consequential or other similar damages suffered in whole, or in part, in connection with this Agreement. Any liability of Emergicon shall not exceed any amounts paid to Emergicon by Client under this Agreement for any disputed billing performed by Emergicon on behalf of Client.

12. **Confidentiality.** Neither Emergicon nor Client shall, during the term of this Agreement or for any extension hereof, for any reason, disclose to any third parties any proprietary information regarding the other party unless required to do so by law, regulation or subpoena. For purposes of this Agreement, “proprietary information” shall include, but not be limited to, pricing or rate information, information pertaining to contracts with payers, insurers, facilities, ambulance providers, health care systems, or other such parties, audit requests, audit results, billing processes, client lists or other such information.

13. **HIPAA Business Associate Assurances.** Emergicon agrees to appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Client in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

   a. General Provisions

      i. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.

      ii. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
iii. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

b. Obligations of Emergicon

Emergicon agrees that it will:

i. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;

ii. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;

iii. Report to Client any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Client without unreasonable delay but in no case later than 60 days after discovery of the breach;

iv. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Emergicon agree to the same restrictions, conditions, and requirements that apply to Emergicon with respect to such information;

v. Make PHI in a designated record set available to Client and to an individual who has a right of access in a manner that satisfies Client’s obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;

vi. Make any amendment(s) to PHI in a designated record set as directed by Client, or take other measures necessary to satisfy Client’s obligations under 45 CFR §164.526;

vii. Maintain and make available information required to provide an accounting of disclosures to Client or an individual who has a right to an accounting within 60 days and as necessary to satisfy Client’s obligations under 45 CFR §164.528;

viii. To the extent that Emergicon is to carry out any of Client’s obligations under the HIPAA Privacy Rule, Emergicon shall comply with the requirements of the Privacy Rule that apply to Client when it carries out that obligation;

ix. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Emergicon on behalf of Client, available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon and Client’s compliance with HIPAA and the HITECH Act;
x. Restrict the use or disclosure of PHI if Client notifies Emergicon of any restriction on the use or disclosure of PHI that Client has agreed to or is required to abide by under 45 CFR §164.522; and

xi. If Client is subject to the Red Flags Rule (found at 16 CFR §681.1 et seq.), Emergicon agrees to assist Client in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Client’s Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Client agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Client of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Client of any threat of identity theft as a result of the incident.

c. Permitted Uses and Disclosures by Emergicon

The specific uses and disclosures of PHI that Emergicon may make on behalf of Client include:

i. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the Services provided by Client to its patients, as set forth in this Agreement;

ii. Preparation of reminder notices and documents pertaining to collections of overdue accounts;

iii. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by Client to its patients or to appeal denials of payment for the same; and

iv. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the Services that Emergicon has been agreed to perform on behalf of Client, as set forth in this Agreement.

d. Termination

i. Notwithstanding the termination provisions set forth in Paragraph 7 of this Agreement, Client may terminate this Agreement if Client determines that Emergicon has violated a material term of the HIPAA Business Associate Assurances set forth in this Paragraph 13.

ii. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party’s obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate this Agreement, according to the provisions set forth in Paragraph 7 of this Agreement, if feasible.
iii. Upon termination of this Agreement for any reason and upon the written request of Client and pursuant to the other terms and conditions set forth in this Agreement, Emergicon shall return to Client or destroy all PHI received from Client, or created, maintained, or received by Emergicon on behalf of Client that Emergicon still maintains in any form. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.


   a. Emergicon will conduct its activities and operations in compliance with all state and federal statutes, rules and regulations applicable to billing activities.

   b. Client shall conduct its activities, operations and documentation in compliance with all applicable state and federal statutes, rules and regulations. Client expressly represents and warrants that it is under no legal impediment to billing or receiving reimbursement for its services, and that all of Client’s personnel are appropriately licensed and/or certified to furnish the services provided by Client.

   c. Each party is responsible for monitoring and ensuring its own compliance with all applicable state and federal laws and regulations pertaining to billing and reimbursement for its services. However, either party which becomes aware of a violation of any such state or federal laws or regulations or of a questionable claim or claim practice agrees to notify the other party in writing within fifteen (15) days so the other party may appropriately address the matter.

   d. The parties represent that they are not the subject of any actions or investigations pertaining to its participation in or standing with any state or federal health care program, are not subject to exclusion from any state and/or federal health care program, and that no persons providing services for which reimbursement is sought were at the time such services were rendered excluded from any state or Federal health care program.

   e. The parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws and shall be construed accordingly. The parties further recognize that this Agreement may become subject to or be affected by amendments in such laws and regulations or to new legislation or regulations. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement. In the event that any such laws or regulations affecting this Agreement are enacted, amended or promulgated, either party may propose to the other a written amendment to this Agreement to be consistent with the provisions of such laws or regulations. In the event that the parties do not agree on such written amendments within thirty (30) days of receipt of the proposed written amendments, then either party may terminate this Agreement without further notice, unless this Agreement would expire earlier by its terms.
f. Non-Engagement of Individuals on the OIG Exclusion List. The parties further warrant that each will take all reasonable steps as set forth by the Office of Inspector General, United States Department of Health and Human Service, to ensure that it does not employ or otherwise engage individuals who have been excluded from participation in federal health care programs. The parties agree to periodically check the OIG exclusion website to ensure that employees, volunteers and all others providing services for each respective organization are not excluded. The website is: http://exclusions.oig.hhs.gov.

15. Independent Contractor Relationship. Emergicon and Client stand in an independent contractor relationship to one another and shall not be considered as joint venturers or partners, and nothing herein shall be construed to authorize either party to act as general agent for the other. There is no liability on the part of Emergicon to any entity for any debts, liabilities or obligations incurred by or on behalf of the Client.

16. Prevention of Performance. If a party’s obligation to perform any duty hereunder is rendered impossible of performance due to any cause beyond such party’s control, including, without limitation, an act of God, war, civil disturbance, fire or casualty, labor dispute, hardware or software failures beyond the party’s control, or governmental rule, such party, for so long as such condition exists, shall be excused from such performance, provided it promptly provides the other party with written notice of its inability to perform stating the reasons for such inability and provided that the party takes all appropriate steps as soon as reasonably practicable upon the termination of such condition to recommence performance.

17. Assignment. This Agreement may be assigned by Emergicon to any successors or assigns of Emergicon. This Agreement may not be assigned by Client without the express written consent of Emergicon. This Agreement shall be binding upon all successors and assigns.

18. Notices. Notices required to be given under this Agreement shall be made to the parties at the following addresses and shall be presumed to have been received by the other party (i) three days after mailing by the party when notices are sent by First Class mail, postage prepaid; (ii) upon transmission (if sent via facsimile with a confirmed transmission report); or (iii) upon receipt (if sent by hand delivery or courier service).

Emergicon: Emergicon LLC.
PO Box 180446
Dallas, TX 75218
Fax: (469) 602-5542

Client: The City of Marshall
601 S Grove St.
Marshall, TX 75670
Fax:

19. Non-Competition and Non-Solicitation Clause. Without prior, written authorization from Emergicon, Client shall not:

a. During the term of this Agreement, or for two (2) years following its expiration or termination for any reason, employ, retain as an independent contractor, or otherwise
in any way hire any personnel currently employed or employed at any time during the term of this Agreement by Emergicon. Client expressly agrees that in the event of a breach of this provision, Emergicon shall be entitled to a placement fee of two times the annual salary paid by Emergicon to such employee at the time such employee left employment of Emergicon.

b. During the term of this Agreement, or for a period of two (2) years following its expiration or termination for any reason, engage in the provision of billing services for any other ambulance service, medical transportation organization, fire department, or emergency medical services organization. Nothing in this Paragraph shall be interpreted to prohibit Client from performing its own in-house billing and/or accounts receivable management following the expiration or proper termination of this Agreement.

20. Governing Law and Forum Selection Clause. This Agreement shall be deemed to have been made and entered into in Texas and shall be interpreted in accordance with the laws thereof, without regard to conflicts of laws principles. The parties expressly agree that the exclusive forum for resolving any legal disputes under this Agreement shall be the state or federal courts serving Dallas, Texas. Client expressly agrees to personal jurisdiction and venue in any such court.

IN WITNESS WHEREOF, the parties have executed this Agreement to commence on the date first above written. Client represents that the individual who has executed this Agreement on behalf of the Client is authorized by Client and by law to do so.

EMERGICON, LLC.

By:

__________________________  __________________________
Signature                  Date

__________________________
Print Name

__________________________
Title

CLIENT

By:

__________________________  __________________________
Signature                  Date

__________________________
Print Name

__________________________
Title
Business Associate Agreement  
Between  
City of Marshall  
and Emergicon, LLC

This Business Associate Agreement (“Agreement”) between City of Marshall and Emergicon, LLC is executed to ensure that Emergicon, LLC will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of City of Marshall in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, et seq., as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, et seq., the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.

2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.

3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Emergicon, LLC, agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;

2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;

3. Report to City of Marshall any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to City of Marshall without unreasonable delay but in no case later than 60 days after discovery of the breach;

4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Emergicon, LLC agree to the same restrictions, conditions, and requirements that apply to Emergicon, LLC with respect to such information;
5. Make PHI in a designated record set available to City of Marshall and to an individual who has a right of access in a manner that satisfies City of Marshall’s obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;

6. Make any amendment(s) to PHI in a designated record set as directed by City of Marshall, or take other measures necessary to satisfy City of Marshall’s obligations under 45 CFR §164.526;

7. Maintain and make available information required to provide an accounting of disclosures to City of Marshall or an individual who has a right to an accounting within 60 days and as necessary to satisfy City of Marshall’s obligations under 45 CFR §164.528;

8. To the extent that Emergicon, LLC is to carry out any of City of Marshall’s obligations under the HIPAA Privacy Rule, Emergicon, LLC shall comply with the requirements of the Privacy Rule that apply to City of Marshall when it carries out that obligation;

9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Emergicon, LLC on behalf of City of Marshall, available to the Secretary of the Department of Health and Human Services for purposes of determining Emergicon, LLC and City of Marshall’s compliance with HIPAA and the HITECH Act;

10. Restrict the use or disclosure of PHI if City of Marshall notifies Emergicon, LLC of any restriction on the use or disclosure of PHI that City of Marshall has agreed to or is required to abide by under 45 CFR §164.522; and

11. If City of Marshall is subject to the Red Flags Rule (found at 16 CFR §681.1 et seq.), Emergicon, LLC agrees to assist City of Marshall in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of City of Marshall’s Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of City of Marshall agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting City of Marshall of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to City of Marshall of any threat of identity theft as a result of the incident.
C. **Permitted Uses and Disclosures by Business Associate**

The specific uses and disclosures of PHI that may be made by Emergicon, LLC on behalf of City of Marshall include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by City of Marshall to its patients;
2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by City of Marshall to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Emergicon, LLC has been engaged to perform on behalf of City of Marshall.

D. **Termination**

1. City of Marshall may terminate this Agreement if City of Marshall determines that Emergicon, LLC has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party’s obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Emergicon, LLC shall return to City of Marshall or destroy all PHI received from City of Marshall, or created, maintained, or received by Emergicon, LLC on behalf of City of Marshall that Emergicon, LLC still maintains in any form. Emergicon, LLC shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

  Agreed to this______day of_______, 2017

City of Marshall                                          Emergicon, LLC

Signature:____________________________________     Signature: ____________________________
# ORDER INSTRUCTIONS

1. **Fill in Contact Info Below**

<table>
<thead>
<tr>
<th>Contact</th>
<th>Name</th>
<th>Email</th>
<th>Phone</th>
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<tbody>
<tr>
<td>Primary Business Contact</td>
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<td>Invoicing Contact</td>
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<td>Legal Contact</td>
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<td>Software Administrator Contact</td>
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<td>Privacy/HIPAA Contact</td>
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<tr>
<th>Tax Exempt?</th>
<th>YES OR NO</th>
<th>If YES, return Exempt Certificate with Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Order Required?</td>
<td>YES OR NO</td>
<td>If YES, return PO with Agreement</td>
</tr>
</tbody>
</table>

2. **Sign page 8 & the last page.**

3. **Email entire contract to legal@esosolutions.com and your sales representative.**

4. **Enjoy your ESO Software**
This Master Subscription and License Agreement (the “Agreement”) is entered into as of ___________________ ("Effective Date"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 9020 North Capital of Texas Highway, Building II-300, Austin, TX 78759 ("ESO") and Marshall Fire Department ("Customer") having its principal place of business at 601 South Grove Street, Marshall, TX 75670. This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer with certain technology products and/or services and that Customer will pay to ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as set forth in the pages that follow.

**GENERAL TERMS AND CONDITIONS**

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the meanings below:

   1.1. “Add-On Software” means any complementary software components or reporting service(s) that ESO makes available to customer through its Licensed Software, Interoperability Software or SaaS.

   1.2. “Addendum” or “Addenda” means a writing addressing an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be (a) a Software Schedule (see Exhibit A1 – A4), (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.

   1.3. “Customer Data” means data in electronic form managed or stored by ESO, which is entered into or transmitted through the Software.

   1.4. “Deliverable” means software, report, or other work product created pursuant to a Statement of Work.

   1.5. “Documentation” means user guides, operating manuals, and specifications regarding the Software covered by this Agreement.

   1.6. “Feedback” refers to any suggestion or idea for improving or otherwise modifying ESO’s products or services.

   1.7. “Intellectual Property” means trade secrets, copyrightable subject matter, patents, and patent applications and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

   1.8. “Interoperability Software” means software-as-a-service that ESO hosts (directly or indirectly) for Customer to exchange healthcare data with others. Some of ESO’s Reporting Services may be made available to Customer via the Interoperability Software. For the avoidance of doubt, Interoperability Software does not include Add-on Software, Licensed Software or SaaS.

   1.9. “Licensed Software” means on premise software that ESO provides to Customer for its reproduction and use. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.

   1.10. “Professional Services” means professional services that a Statement of Work calls on ESO to provide.

   1.11. “Protected Health Information” or “PHI” shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

   1.12. “Reporting Services” means collectively the different programs or tools ESO provides for Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

   1.13. “SaaS” means software-as-a-service that ESO hosts (directly or indirectly) for Customer’s use. For the avoidance of doubt, SaaS does not include Licensed Software, but does include Add-on Software and Interoperability Software.

   1.14. “Software” means any computer program, programming or modules specified in each Software Schedule or SOW. For the avoidance of doubt, Add-on Software, SaaS, Interoperability Software; and Licensed Software shall collectively be referred to as Software.

   1.15. “Software Schedule” refers to an Addendum in which Customer has ordered either Add-on Software, Licensed Software, Interoperability Software or SaaS, collectively Software. See Exhibits A1 – A4.

   1.16. “Statement of Work” or “SOW” refers to an Addendum in which Customer has ordered Professional Services or a Deliverable from ESO.

   1.17. “Support Services” means those services described in Exhibit B.

   1.18. “User” means any individual who uses the Software on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

2. **SOFTWARE SCHEDULES.** During the Term of this Agreement, Customer may order Software from ESO by signing a Software Schedule. Customer’s license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule, Exhibits A-1, A-2, A-3, and A-4, are incorporated herein by reference.

3. **LICENSE/SUBSCRIPTION TO SOFTWARE**

   3.1. **Grant of License.** In the case of Licensed Software, during the Term of this Agreement ESO hereby grants Customer a
limited, non-exclusive, non-transferable, non-assignable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Software Schedule and as necessary for Customer’s internal business purposes; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations and obligations contained in this Agreement. Such internal business purposes do not include reproduction or use by any parent, subsidiary, or affiliate of Customer, or any other third party, and Customer shall not permit any such use.

3.2. **Grant of Subscription.** In the case of SaaS, during the term of this Agreement Customer may access and use the SaaS, in such quantities as are set forth on the applicable Software Schedule; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations contained in this Agreement.

3.3. **Restrictions on Use.** Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer’s rights to access, use, or copy the Software during the Term of this Agreement. Customer recognizes that the Software and its components are protected by copyright and other laws.

3.4. **Delivery.** In the case of Licensed Software, ESO shall provide the Licensed Software to Customer through a reasonable system of electronic download. In the case of SaaS, ESO shall grant Customer access to SaaS promptly after the Effective Date.

3.5. **Third-Party Software.** Software may incorporate software and other technology owned and controlled by third parties ("Third-Party Software"). ESO is licensed to sublicense and distribute Third-Party Software. All Third-Party Software falls under the scope of this Agreement. Moreover, ESO neither accepts liability, nor warrants the functionality, reliability or accuracy of Third-Party Software, including but not limited to third-party mapping applications.

4. **HOSTING, SLA & SUPPORT SERVICES**

4.1. **Hosting & Management.** Customer shall be solely responsible for hosting and managing the Licensed Software. ESO shall be responsible for hosting and managing the SaaS.

4.2. **Service Level Agreement.** No credits shall be given in the event Customer’s access to SaaS is delayed, impaired or otherwise disrupted (collectively, an “Outage”). If such Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three consecutive months or three months in any rolling twelve-month period (collectively, “Uptime Commitment”), then Customer shall have the option to immediately terminate this Agreement; and ESO will refund any prepaid, unearned Fees to Customer. This is Customer’s sole remedy for ESO’s breach of the Uptime Commitment.

4.3. **Scheduled Downtime.** In the event ESO determines that it is necessary to intentionally interrupt the SaaS or that there is a potential for the SaaS to be interrupted for the performance of system maintenance (collectively, “Scheduled Downtime”), ESO will use good-faith efforts to notify Customer of such Scheduled Downtime at least 72 hours in advance and will ensure Scheduled Downtime occurs during non-peak hours (midnight to 6 a.m. Central Time). In no event shall Scheduled Downtime constitute a failure of performance by ESO.

4.4. **Support and Updates.** During the Term of this Agreement, ESO shall provide to Customer the Support Services, in accordance with Exhibit B. Exhibit B is incorporated herein by reference.

5. **FEES**

5.1. **Fees.** In consideration of the rights granted and except in the event there is a Third-Party Payer (as defined below), Customer agrees to pay ESO the fees for the Software and/or Professional Services as set forth in the Software Schedule(s) or SOW(s) (collectively, “Fees”). The Fees are non-cancelable and non-refundable. Customer shall pay all invoices within thirty (30) days of receipt. In the event a third-party is paying some or all of the Fees on behalf of Customer ("Third-Party Payer"), the Software Schedule will state that payment obligation. The parties agree that Customer may replace the Third-Party Payer by submitting to ESO written notice memorializing the change. However, no such change shall be made until the then-current Term’s renewal. Moreover, Customer is responsible for payment in the event the Third-Party Payer does not pay the Fees and Customer continues using the Software. For the avoidance of doubt, any such Addenda will become part of this Agreement.

5.2. **Uplift on Renewal.** Except in the instance of Overages (as defined below), Fees for Software, which recur annually, shall increase by three percent (3%) each year this Agreement is in effect.

5.3. **Taxes and Fees.** This Agreement is exclusive of all taxes and credit card processing fees, if applicable. Customer is responsible for and will remit (or will reimburse ESO upon ESO’s request) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO’s income) related to this Agreement.

5.4. ** Appropriation of Funds.** If Customer is a city, county or other government entity, the parties accept and agree that Customer has the right to terminate the Agreement at the end of the Customer’s fiscal term for a failure by Customer’s governing body to appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this...
provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid. Moreover, Customer agrees to provide ESO reasonable documentation evidencing such non-appropriation of funds.

5.5. Audit Rights. ESO may regularly audit Customer’s use of the Software and charge Customer a higher annual Fee if Customer’s usage has increased beyond the tier contracted for in the current Software Schedule or otherwise assess additional fees (for example, Customer is uploading more records into the Software than it has previously contracted for) (collectively, “Overages”). ESO may invoice for Overages immediately. Notwithstanding the foregoing, it is solely Customer’s responsibility to report Overages to ESO in a timely manner.

6. TERM AND TERMINATION

6.1. Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and continue for the period set forth in the applicable Software Schedule or, if none, for one year. Thereafter, the Term will renew for successive one-year periods, unless either party opts out of such renewal by providing at least sixty days’ written notice before the scheduled renewal date. The license period or subscription period shall begin on the date specified in the applicable Software Schedule, and this Agreement shall automatically be extended to ensure that the contract Term is coterminous with the subscription period or license period, as applicable.

6.2. Termination for Cause. Either party may terminate this Agreement or any individual Software Schedule for the other party’s material breach by providing written notice. The breaching party shall have thirty days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.

6.3. Bankruptcy/Insolvency. This Agreement and any applicable Software Schedule may be terminated immediately upon the following: (a) the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) the making of an assignment for the benefit of creditors by the other party; or (c) the dissolution of the other party.

6.4. Effect of Termination.

6.4.1. If this Agreement or any Software Schedule is terminated by Customer prior to the expiration of its then-current term, for any reason other than ESO’s breach, Customer agrees to immediately remit all unpaid Fees as set forth on the applicable Software Schedule equal to the Fees that will become due during the remaining Term.

6.4.2. If Customer terminates this Agreement or any Software Schedule as a result of ESO’s breach, then to the extent that Customer has prepaid any Fees, ESO shall refund to Customer any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the termination date.

6.4.3. Upon termination of this Agreement or any Software Schedule, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law.

6.4.4. Termination of this Agreement is without prejudice to any other right or remedy of the parties and shall not release either party from any liability (a) which at the time of termination, has already accrued to the other party, (b) which may accrue in respect of any act or omission prior to termination, or (c) from any obligation which is intended to survive termination.

6.5. Delivery of Data. If Customer requests its data within sixty (60) days of expiration or termination of this Agreement, ESO will provide Customer access to Customer Data in a searchable .pdf format within a reasonable time frame thereafter. ESO is under no obligation to retain Customer Data more than sixty (60) days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. Material Performance of Software. ESO warrants and represents that the Software will materially perform in accordance with the Documentation provided by ESO, if any.

7.2. Warranty of Services. ESO warrants that its personnel are adequately trained and competent to perform Professional Services and/or Support Services and that each will be performed in a professional and workmanlike manner.

7.3. Due Authority. Each party’s execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement has been duly authorized by all necessary corporate or government action.

7.4. Customer Cooperation. Customer agrees to reasonably and timely cooperate with ESO, including but not limited to providing ESO with reasonable access to its equipment, software, data and using current operating system(s).

8. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE. CUSTOMER THEREFORE ACCEPTS THE SOFTWARE “AS-IS” AND “AS AVAILABLE.”

9. CONFIDENTIALITY

9.1. “Confidential Information” refers to the following items: (a) any document marked “Confidential”; (b) any information orally designated as “Confidential” at the time of disclosure,
provided the disclosing party confirms such designation in writing within five (5) business days; (c) the Software and Documentation, whether or not designated confidential; and (d) any other nonpublic, sensitive information reasonably considered a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party’s possession at the time of disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of a party’s improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) is required to be disclosed by law; or (vi) PHI, which shall be governed by the Business Associate Agreement rather than this Section.

9.2. Nondisclosure. The parties shall not use Confidential Information for any purpose other than to fulfill the terms of this Agreement (the “Purpose”). Each party: (a) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein and (b) shall not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. Disclosure of ESO’s Security Policies. Customer acknowledges that any information provided by ESO pertaining to ESO’s security controls, policies, procedures, audits, or other information concerning ESO’s internal security posture are considered Confidential Information and shall be treated by Customer in accordance with the terms and conditions of this Agreement.

9.4. Injuction. Customer agrees that breach of this Section would cause ESO irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, ESO will be entitled to injunctive relief against such breach or threatened breach, without ESO proving actual damage or posting a bond or other security.

9.5. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three (3) years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO’s trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify, in writing, the destruction thereof.

9.6. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.7. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. INSURANCE. Throughout the term of this Agreement, and for a period of at least three (3) years thereafter for any insurance written on a claims-made form, ESO shall maintain in effect the insurance coverage described below:

10.1. Commercial general liability insurance with a minimum of $1 million per occurrence and $1 million aggregate;

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of $1 million for bodily injury and property damage liability;

10.3. Worker’s compensation insurance and employer’s liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer’s liability limit of $1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (“Technology Errors and Omissions”) covering the liability for financial loss due to error, omission or negligence of ESO, and Privacy and Network Security insurance (“Cyber”) covering losses arising from a disclosure of confidential information, with a combined aggregate amount of $3 million.

11. INDEMNIFICATION

11.1. IP Infringement. ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable and actual attorney’s fees) (“Damages”) actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party’s patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each an “Indemnified Claim”). If an Indemnified Claim under this Section occurs or if ESO determines that an Indemnified Claim is likely to occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably available, either party may, at its option, terminate this Agreement and/or relevant Software Schedule. ESO will refund any pre-paid Fees on a pro-rata basis for the allegedly infringing Software provided. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer’s breach of this Agreement; (y) modifications made to the Software that were not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer or anyone acting on Customer’s behalf of the Software in connection with a third-party product or service (the combination of which causes the infringement). This Section 11 states ESO’s sole obligation and liability, and Customer’s sole remedy, for potential or actual intellectual property infringement by the Software.
11.2. **Indemnification Procedures.** Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), the party seeking indemnification (the "Indemnifying Party") must give prompt written notice of such Claim to the other party (the "Indemnified Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party’s prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at the Indemnifying Party’s expense.

12. **LIMITATION OF LIABILITY**

12.1. **LIMITATION OF DAMAGES.** UNDER NO CIRCUMSTANCES SHALL ESO OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS.

12.2. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF SECTION 12.3 (EXCEPTIONS TO THE LIMITATION OF LIABILITY), ESO’S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER OR ON BEHALF OF CUSTOMER IN THE CASE OF A THIRD-PARTY PAYER UNDER THE APPLICABLE SOFTWARE SCHEDULE OR SOW GIVING RISE TO THE CLAIM WITHIN THE PRECEDING 12-MONTH PERIOD.

12.3. **EXCEPTIONS TO LIMITATION OF LIABILITY.** NOTWITHSTANDING SECTION 12.2, A PARTY’S LIABILITY FOR CLAIMS INVOLVING A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, SHALL BE LIMITED TO $250,000. IN ADDITION, AND NOTWITHSTANDING SECTION 12.2, A PARTY’S LIABILITY SHALL BE LIMITED TO THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY SECTION 10 FOR THE FOLLOWING TYPES OF CLAIMS: (I) CLAIMS ARISING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (II) CLAIMS ARISING FROM A BREACH OF CONFIDENTIAL INFORMATION, INCLUDING A BREACH OF PROTECTED HEALTH INFORMATION.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. IN SO FAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW.

THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO’S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. **CUSTOMER DATA & PRIVACY**

13.1. **Ownership of Data & Reports.** As between ESO and Customer, all Customer Data shall be owned by Customer. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property in any aggregated and de-identified reports, summaries, analyses or other information made available through ESO’s Reporting Services. If subscribed to by Customer, ESO may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority.

13.2. **Use of Customer Data.** Unless it receives Customer’s prior written consent, ESO: (a) shall not access, process, or otherwise use Customer Data; and (b) shall not intentionally grant any third-party access to Customer Data, including without limitation ESO’s other customers, except subcontractors that are subject to a reasonable nondisclosure agreement or authorized participants in the case of Interoperability Software. Notwithstanding the foregoing, ESO may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority.

13.3. **Anonymized Data.** Notwithstanding any provision herein, ESO may use, reproduce, license, or otherwise exploit Anonymized Data; provided that Anonymized Data does not contain and is not PHI. (“Anonymized Data” refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users and/or Customer’s clients.)

13.4. **Risk of Exposure.** Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet. ESO makes no representations...
14. FEEDBACK RIGHTS & WORK PRODUCT

14.1. Feedback Rights. ESO does not agree to treat as confidential any Feedback that Customer provides to ESO. Nothing in this Agreement will restrict ESO’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Section 9 (Confidential Information).

14.2. Work Product Ownership. In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate SOW gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

15. GOVERNMENT PROVISIONS

15.1. Compliance with Laws. Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.

15.2. Business Associate Addendum. The parties agree to the terms of the Business Associate Addendum attached hereto as Exhibit C and incorporated herein by reference.

15.3. Equal Opportunity. The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

15.4. Excluded Parties List. ESO agrees to immediately report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. PHI ACCURACY & COMPLETENESS

16.1. ESO provides the Software to allow Customer (and its respective Users) to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software.

16.2. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

17. MISCELLANEOUS

17.1. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other’s behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.

17.2. Notices. Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party’s principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a “Transmission Confirmed” acknowledgment, (d) e-mail, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.

17.3. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer’s internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

17.5. Assignment & Successors. Neither party may assign, subcontracts, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party’s prior written consent. Except that either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a “Change in Control”); provided however, that the non-assigning party is given notice of the Change in Control.

17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party.

17.7. Force Majeure. No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature.
17.8. Marketing. Customer hereby grants ESO a license to include Customer’s primary logo in any customer list or press release announcing this Agreement; provided ESO first submits each such press release or customer list to Customer and receives written approval, which approval shall not be unreasonably withheld. Goodwill associated with the logo inures solely to Customer, and ESO shall take no action to damage the goodwill associated with the logo or with Customer.

17.9. Waiver & Breach. Neither party will be deemed to have waived any of its rights under this Agreement unless it is an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

17.10. Survival of Terms. Unless otherwise stated, all of ESO’s and Customer’s respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.

17.11. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.

17.12. Governing Law. This Agreement, any related Addenda, and any CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ESO, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a “Dispute”) will be governed by the laws of the State of Texas, without regard to conflicts of law. Notwithstanding the foregoing, in the event Customer is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute will be governed by the law of the State of Texas, without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys’ fees and costs and expressly waives any statutory right to attorneys’ fees under § 38.001 of the Texas Civil Practices and Remedies Code.

17.13. Venue. The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Travis County, Texas. The parties agree to submit to the personal jurisdiction of such courts. Notwithstanding the foregoing, in the event Customer is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute shall be brought exclusively in the state or federal courts located in the county where Customer is located.

17.14. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

17.15. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST THE OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

17.16. Limitation Period. NEITHER PARTY, shall be liable for any claim brought more than 2 years after the cause of action for such claim first arose.

17.17. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within thirty (30) days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

17.18. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).

17.19. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Software Schedule or SOW, with most recent Software Schedule or SOW taking precedence over earlier ones; and (3) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.

17.20. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.

17.21. Signatures. Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

<table>
<thead>
<tr>
<th>ESO Solutions, Inc.</th>
<th>Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Printed Name]</td>
<td>[Printed Name]</td>
</tr>
<tr>
<td>[Title]</td>
<td>[Title]</td>
</tr>
</tbody>
</table>
EXHIBIT A-1

SAAS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM)

1. The General Terms & Conditions are incorporated herein by reference. The SaaS subscription term shall begin fifteen (15) calendar days after the Effective Date (“SaaS Subscription Start Date”). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is live on the SaaS as quickly as possible, and in no event will the SaaS Subscription Start Date be modified for implementation delays.

2. The following SaaS may be ordered under this Exhibit:

   2.1. ESO Electronic Health Record (“EHR”) is a SaaS software application for prehospital patient documentation (http://www.esosolutions.com/software/ehr).

   2.2. ESO Personnel Management (“PM”) is a SaaS software application for tracking personnel records, training courses and education history (http://www.esosolutions.com/software/personnel-management).

   2.3. ESO Fire is a SaaS software application for NFIRS reporting (http://www.esosolutions.com/software/fire).

3. Third-Party Payer is responsible for the following products and Fees:

<table>
<thead>
<tr>
<th>Product</th>
<th>Quantity</th>
<th>Discounts</th>
<th>Total Price</th>
<th>Line Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>EHR Suite w/ QM &amp; Mobile 3,750 - 5,000 Calls</td>
<td>1.00</td>
<td>$919.00</td>
<td>$8,271.00</td>
<td>Annual Recurring Fee.</td>
</tr>
<tr>
<td>Billing Standard Interface 3,750 - 6,000 Incidents</td>
<td>1.00</td>
<td>$659.00</td>
<td>$895.00</td>
<td>Annual Recurring Fee. Waived for ESO Billing Customer-Emergicon</td>
</tr>
<tr>
<td>Cardiac Monitor 3,760 - 6,000 Incidents</td>
<td>1.00</td>
<td>$99.50</td>
<td>$895.50</td>
<td>Annual Recurring Fee.</td>
</tr>
<tr>
<td>Fax 2,500 - 3,750 Incidents</td>
<td>1.00</td>
<td>$33.80</td>
<td>$304.20</td>
<td>Annual Recurring Fee.</td>
</tr>
<tr>
<td>Training - EHR</td>
<td>1.00</td>
<td>$0.00</td>
<td>$995.00</td>
<td>1 day of Onsite EHR Training. One Time Fee.</td>
</tr>
<tr>
<td>Training Travel Costs - EHR</td>
<td>1.00</td>
<td>$250.00</td>
<td>$500.00</td>
<td>1 day of trainer travel costs. One Time Fee.</td>
</tr>
</tbody>
</table>

4. Customer hereby agrees to timely pay for the following products according to the schedule below:

5. All the Fees above will be invoiced by ESO as follows:

   5.1. Training and Training Travel Fees shall be invoiced on the Effective Date.

   5.2. During the first year, 100% of the recurring Fees shall be invoiced on the Subscription Start Date.

   5.3. During the second year and any renewal years thereafter, 100% of the Fees shall due on the anniversary of the SaaS Subscription Start Date.
EXHIBIT B
SUPPORT SERVICES ADDENDUM

1. **DEFINITIONS.** Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

1.1. “Enhancement” means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.

1.2. “E-mail Support” means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

1.3. “Error” means an error in the Software, which significantly degrades performance of such Software as compared to ESO’s then-published Documentation.

1.4. “Error Correction” means the use of reasonable commercial efforts to correct Errors.

1.5. “Fix” means the repair or replacement of object code for the Software or Documentation to remedy an Error.

1.6. “Initial Response” means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.

1.7. “Management Escalation” means, if the initial workaround or fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

1.8. “Severity 1 Error” means an Error which renders the Software completely inoperative (e.g. a User cannot access the Software due to unscheduled downtime or an Outage).

1.9. “Severity 2 Error” means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g. a User cannot access a core component of the Software).

1.10. “Severity 3 Error” means any other error that does not prevent a User from accessing a significant feature of the Software (e.g. User is experiencing latency in reports).

1.11. “Severity 4 Error” means any error related to Documentation or a Customer Enhancement request.

1.12. “Status Update” means if the initial workaround or fix cannot resolve the Error, notification of the Customer regarding the progress of the workaround or fix.

1.13. “Online Support” means information available through ESO’s website ([www.esosolutions.com](http://www.esosolutions.com)), including frequently asked questions and bug reporting via Live Chat.

1.14. “Support Representative” shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer’s Administrator has been unable to resolve.

1.15. “Update” means an update or revision to Software, typically for Error Correction.

1.16. “Upgrade” means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

1.17. “Workaround” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of the Software.

2. **SUPPORT SERVICES.**

2.1. Customer will provide at least one administrative employee (the “Administrator” or “Administrators”) who will handle all requests for first-level support from Customer’s employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to Customer’s Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer’s Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.

2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer,
excluding but not limited to, messages in the Software, messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3. ESO’s support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer’s applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4. Normal business hours for ESO’s support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3. ERROR PRIORITY LEVELS. Customer will report all Errors to ESO via e-mail (support@esosolutions.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

3.1. Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

3.2. Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within forty-eight hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

3.3. Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

3.4. Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.

4. CONSULTING SERVICES. If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer’s expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO’s then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5. EXCLUSIONS.

5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer’s repairs, maintenance or modifications to the Software (if permitted); (ii) Customer’s misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer’s breach of the Agreement; and (vii) any other causes beyond the ESO’s reasonable control.

5.2. ESO shall have no liability for any changes in Customer’s hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.

5.3. ESO is not responsible for any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer’s software and hardware.

5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.

6. MISCELLANEOUS. The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO’s website or otherwise notifying Customer of such updates. Customer will accept updates to ESO’s support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSede ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.
EXHIBIT C

HIPAA BUSINESS ASSOCIATE ADDENDUM

Customer and ESO Solutions, Inc. ("Business Associate") agree that (1) this HIPAA Business Associate Addendum is entered into for the benefit of Customer, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Agreement, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions set forth in this HIPAA Business Associate Addendum ("Addendum").

1. Scope. This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.

2. Definitions. For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").

3. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.

4. Permissible Use and Disclosure of PHI. Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

5. Limitations on Use and Disclosure of PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. Required Safeguards to Protect PHI. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. Reporting to Covered Entity. Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.

9. Agreements by Third Parties. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. Access to PHI. Within five (5) business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

11. Amendment of PHI. Within five (5) business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set),
Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

12. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures.** Within five (5) business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.

14. **Other Obligations.** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.

15. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate’s compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven (7) business days of receipt of such request.

16. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. **Breach of Contract by Business Associate.** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party’s option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party’s option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.

19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

21. **Data Usage Provision.** Business Associate may aggregate and de-identify PHI and/or create limited data sets for use in research, evaluation and for publication or presentation of patient care quality improvement practices and outcomes. The Parties understand and agree that such aggregated and de-identified data is no longer PHI subject to the provisions of HIPAA and agree that Business Associate may retain such limited data sets indefinitely thereafter. Business Associate agrees that it will comply with all terms of this Agreement with respect to the limited data sets and that it shall not re-identify or attempt to re-identify the information contained in the limited data set, nor contact any of the individuals whose information is contained in the limited data set.

22. **Safeguards and Appropriate Use of Protected Health Information.** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity’s obligation to:

   22.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO’s Software over the public Internet; and

   22.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO’s Software.

23. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

<table>
<thead>
<tr>
<th>ESO Solutions, Inc.</th>
<th>Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>[Signature]</td>
</tr>
<tr>
<td>[Printed Name]</td>
<td>[Printed Name]</td>
</tr>
<tr>
<td>[Title]</td>
<td>[Title]</td>
</tr>
</tbody>
</table>
This document is an addendum to the Service Agreement between Emergicon, L.L.C. and City of Marshall. It is understood that the following software is being purchased from ESO Solutions by City of Marshall through a Service Agreement with Emergicon, L.L.C.

<table>
<thead>
<tr>
<th>QUOTE LINE ITEMS</th>
<th>Product</th>
<th>Quantity</th>
<th>Discounts</th>
<th>Total Price</th>
<th>Line Item Description</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>EHR Suite w/ QM &amp; Mobile 3,750 - 5,000 Calls</td>
<td>1.00</td>
<td>$919.00</td>
<td>88,271.00</td>
<td>Annual Recurring Fee.</td>
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<tr>
<td></td>
<td>Billing Standard Interface 3,750 - 5,000 Incidents</td>
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<td>$895.00</td>
<td>$0.00</td>
<td>Annual Recurring Fee. Waived for ESO Billing Customer-Emergicon</td>
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<td></td>
<td>Cardiac Monitor 3,750 - 5,000 Incidents</td>
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<td>Fax 2,500 - 3,750 Incidents</td>
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<td>$33.80</td>
<td>$304.20</td>
<td>Annual Recurring Fee.</td>
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<td>$995.00</td>
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</tr>
<tr>
<td></td>
<td>Training Travel Costs - EHR</td>
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<td>$250.00</td>
<td>$500.00</td>
<td>1 day of trainer travel costs, One Time Fee.</td>
</tr>
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Grand Total: $10,965.70

NOTES

1. The subscription rate is based on volume and will be re-evaluated on an annual basis.
2. Further terms and conditions apply as defined in the ESO Subscription Agreement.
3. If your organization is not tax exempt, sales tax will be added where applicable.
4. Additional charges from your billing and/or CAD vendor may apply and should be discussed with that vendor.

Emergicon agrees to pay the above-mentioned software and recurring fees to ESO Solutions for City of Marshall.

Emergicon shall purchase for the City of Marshall ten (10) hardware devices deemed acceptable by both parties. Emergicon shall recoup the cost of the hardware, plus all applicable shipping, taxes or associated costs in three (3) equal installments from the first three month end invoices.

The contract between ESO Solutions and City of Marshall will automatically renew annually according to the ESO Solutions Software License Agreement. Emergicon will pay ESO Solutions on the contract renewal date for the full annual subscription fee.

Cancellation fees
Should City of Marshall terminate Emergicon’s Service Agreement within twelve (12) months of the date of this Addendum, City of Marshall will be responsible for full payment to Emergicon of a cancellation fee equal to the total cost ($10,965.70). Emergicon will invoice City of Marshall upon written notice of cancellation and payment will be due 30 days from cancellation date.

EMERGICON, L.L.C.                     City of Marshall
By: _______________________________    By: _______________________________
Name: Christopher Turner               Name: _______________________________
Title: President & CEO                  Title: _______________________________
Date: _______________________________  Date: _______________________________
MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 18, 2017

Subject: Report on the Status of the Memorial City Hall Renovation Project

This report is being provided to update the Commission on various aspects of the Memorial City Hall renovation project.

Construction Update
A report regarding project construction is attached.

Management, Marketing, and Operations
City staff and Dr. Tom Webster, member of the Memorial City Hall Development Advisory Committee, have a meeting scheduled Monday, August 21, 2017, to continue discussions regarding a management, marketing, and operations plan for Memorial City Hall. Additional information will be provided early next week.
August 18, 2017

To: Marshall City Commission

From: Jack Redmon
Director of Support Services

RE: Memorial City Hall Update

We have had meetings with most of our contractors and are developing a time line of construction. The following items are under construction now:

- Steel is finished for second floor restrooms
- Building has been power washed
- Steel is finished for 3rd floor storage area over Kitchen
- Elevator steel is nearing completion
- Roof is being prepared for roofer to commence work
- Dog house for elevator is under construction
- Basement rough plumbing is compete
- Concrete will be poured in the next two weeks in the basement area
- Main electrical conduit has been installed
- A/C Ducts and electrical is being installed on stage
ITEM 8E

DISCUSSION OF POTENTIAL LOCATION OF AN ANIMAL SHELTER FACILITY
MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 16, 2017

Subject: Discussion of Potential Location of an Animal Shelter Facility

This item has been placed on the agenda at the request of Commissioner Calhoun to discuss a potential location of an animal shelter facility.
ITEM 8F

APPOINTMENTS TO THE ANIMAL SHELTER ADVISORY COMMITTEE AND ROLE OF THE ANIMAL SHELTER COMMITTEE
MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 16, 2017

Subject: Consider Approval of Appointments to the Animal Shelter Advisory Committee and Role of
the Animal Shelter Advisory Committee

At the August 8, 2017 meeting, the Commission discussed recommendations for appointments to the seven
member Animal Shelter Advisory Committee comprised of three City staff members, one Commissioner, and
three additional members appointed by the Commission.

Staff recommendations to fill the three staff appointments include the City Manager, Police Chief, and
Support Services Director. Chairman Hurta nominated Commissioner Beil to fill the Commissioner
appointment. Nominations discussed for the three additional appointments are as follows:

- Gary Closkey
  Contractor
  Nominated by Commissioner Lewis

- Ed Smith
  Local business person
  Nominated by Chairman Hurta and Commissioner Beil

- Dr. Darlene Wehr
  Doctor of Veterinary Medicine
  Nominated by Commissioner Beil

- Julie Jameson
  Local business person
  Nominated by Commissioner Beil

- Nancy Stone
  Local resident
  Request consideration for appointment

We have been made aware that all nominees are willing to serve if appointed.

This agenda item gives you the opportunity to make additional nominations if you chose to do so and consider
approval of appointments to the committee. It also gives the Commission opportunity to approve the role of the
Animal Shelter Advisory Committee. The following outlines the role presented at the July 13th and August 8th
meetings:

1) Review needs assessment and provides input as to wants and needs of the shelter.

2) After City Commission presents a budget for construction of an Animal Shelter, consult with City staff and
architect regarding proposed schematic design and offer input as to best utilization of committed funding
to ensure the basic shelter design meets the needs as established.

3) Offer input as to any grant funding opportunities from outside sources that may be available and/or
fundraising commitments that could be utilized for construction and/or operation of a shelter.

4) Work with City staff to coordinate a volunteer program that could benefit the shelter, foster adoptions, and
potentially reduce operational cost of the shelter.
ITEM 8G

DISCUSSION OF TRASH, LITTER, AND PANHANDLING ISSUES
MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: August 17, 2017

Subject: Discussion of Trash, Litter, and Panhandling Issues in the City of Marshall

This item has been placed on the agenda at the request of Commissioner Halliday for discussion of trash, litter, and panhandling issues in the City of Marshall.

We are providing sections of Chapter 14 and Chapter 22 of the City of Marshall Code of Ordinances that address these issues.
ARTICLE IA. - GARBAGE AND WEEDS REGULATIONS

Sec. 14-11. - Prohibited accumulations.

(a) It shall be unlawful for any person to place, deposit or throw, or permit or cause to be placed, deposited or thrown, any garbage, brush, loose waste or refuse of any kind on public or private property outside of any house, building, flat or tenement in the city unless the same has been deposited in accordance with the provisions of this chapter.

(b) The following acts, among others, are declared to be unlawful and in violation of this section and are declared to be trespasses and subject to the penalties of this chapter, but such enumeration shall not be deemed to be exclusive:

1. The throwing, placing, dumping or depositing of any lawn trimmings, hedge trimmings or any other cuttings or trimmings of weeds, flowers, or other vegetation on lots, vacant or occupied, driveways or any other private property.

2. The throwing, placing, dumping or depositing of any lawn trimmings, hedge trimmings or other cuttings or trimmings of weeds, flowers, or other vegetation on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city.

3. The throwing, placing, dumping, or depositing of any garbage, refuse, or animal or vegetable waste matter of any kind on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city or in or on any lot, vacant or occupied, driveway, or other private property in the city.

(c) It shall be unlawful for any person to cause or permit to be or remain in or upon any premises, private or public, any animal, vegetable or mineral matter, or any composition or residue thereof, which is in an unsanitary condition or injurious to public health.


Sec. 14-12. - Throwing trash on streets.

It shall be unlawful for any person to throw any trash, waste or other such matter or material on the streets or sidewalks in the city.


Sec. 14-13. - Burning trash on streets.

It shall be unlawful for any person to burn any trash, waste or other material of any kind on the streets or sidewalks of the city.


Sec. 14-14. - Holes, etc. on property where water may accumulate prohibited.

It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the city, to permit or allow holes or places on said lots where water may accumulate and become stagnant, or to permit same to remain.

Sec. 14-15. - Accumulation of stagnant water prohibited.

It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the city, to permit or allow the accumulation of stagnant water thereon, or to permit same to remain.


Sec. 14-16. - Accumulation of carrion, filth, etc., prohibited.

It shall be unlawful for any person, firm or corporation who shall own or occupy any house, building, establishment, lot or yard in the city to permit or allow any carrion, filth or other impure or unwholesome matter to accumulate or remain thereon.


Sec. 14-17. - Accumulation of rubbish and other material prohibited.

It shall be unlawful for any person, firm or corporation who shall own, occupy or control any lot, lots, or tract of land in the city to allow rubbish, trash or any other unsightly, objectionable, or unsanitary matter to accumulate or remain on said lot, lots, or tract of land.


Sec. 14-18. - Failure of owner, after notice, to remove stagnant water, etc.; action by city; assessment of real property for expense incurred by city.

Should any owner of such lot or lots that have places thereon where stagnant water may accumulate and/or which are not properly drained or the owner of any premises or building upon which carrion, filth or other impure or unwholesome matter may be, fail and/or refuse to drain and/or fill the said lot or lots, or remove such filth, carrion or other impure or unwholesome matter as the case may be, within ten (10) days after notice to said owner to do so, in writing, or by letter addressed to such owner at the owner's address as recorded in the Harrison County Appraisal District records, or if personal service may not be obtained then by publication at least once, or by posting the notice on or near the front door of each building on the property; or by posting the notice on a placard attached to a stake driven into the ground on the property; then in that event, the city may do such filling or draining or removal of filth, carrion, etc., or any other unsightly, objectionable or unsanitary matter, or cause the same to be done and may pay therefore and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots or real estate, and if such work is done or improvements made at the expense of the city then such expense or expenses shall be assessed on the real estate, or lots upon which such expense was incurred.


Sec. 14-19. - Weeds, grass, etc.; growth prohibited.

(a) It shall be unlawful for any owner, tenant, lessee, agent or occupant, of any premises to permit any weeds or grass or other vegetation to grow or remain upon any premises owned or controlled by them, or any of them, so as to become offensive or emit foul and noxious odors, or become a breeding place for flies or insects, or to become in any way injurious to the public health.

(b) It shall be unlawful for any owner, lessee, agent, tenant or occupant of any premises to permit any weeds, grass or other vegetation to grow or remain upon any sidewalk, gutter or unpaved street
right-of-way abutting upon any premises owned or controlled by them, or any of them, so as to become offensive or emit foul and noxious odors, or become a breeding place for insects, or to become in any way injurious to the public health.

(c) Trees, shrubs, or plants shall not create a hazard or an obstruction and shall be maintained within the following minimum clearances:

<table>
<thead>
<tr>
<th>1. Overhead clearances of public sidewalks and other public pathways</th>
<th>Seven (7) feet vertical clearance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Lateral clearance of public sidewalks and other public pathways</td>
<td>Six (6) inches from each edge of sidewalk or pathway.</td>
</tr>
<tr>
<td>3. Overhead clearance of streets</td>
<td>Thirteen (13) feet vertical clearance.</td>
</tr>
<tr>
<td>4. Lateral clearance of streets</td>
<td>No encroachment over or above the back of curb or edge of pavement.</td>
</tr>
<tr>
<td>5. Sight clearance at intersections of city streets</td>
<td>Unobstructed sight distance of two hundred (200) feet.</td>
</tr>
</tbody>
</table>

It shall be the responsibility of the property owner to maintain the above stated clearances, including right-of-way abutting private property.


Sec. 14-20. - Excessive growth of brush, weeds, grass or other vegetation prohibited.

(a) It shall be unlawful for any person, firm or corporation who shall own, occupy or control any individual lot or tract of land of an area of one hundred thirty thousand and six hundred eighty (130,680) square feet or less, as shown by the records in the county clerk of Harrison County, Texas, to allow weeds, brush, grass or other vegetation in excess of twelve (12) inches in height to grow, accumulate, or remain on said lot.

(b) It shall be unlawful for any person, firm or corporation who shall own, occupy or control any lot, lots or tracts of land, which exceed one hundred thirty thousand six hundred eighty (130,680) square feet in area to allow weeds, brush, grass or other vegetation in excess of twelve (12) inches in height to grow, accumulate or remain on said lot, lots or tract of land within twenty-five (25) feet of any part of an abutting property line which is within two hundred (200) feet of a residence or a commercial or industrial building.


Sec. 14-21. - Failure of lot owner, after notice to remove weeds, filth, etc.; action by city; assessment of real estate for expense incurred by city.
Should any owner of any lot or lots or tract of land within the city allow weeds, rubbish, brush, or any other unsightly, objectionable or unsanitary matter to grow or accumulate thereon, in violation of the provisions of this chapter, or fail to cut down and remove such weeds, rubbish, brush or other unsightly, objectionable or unsanitary matter, as the case may be, within ten (10) days after notice to said owner to do so, in writing, or by letter addressed to such owner at the owner's address as recorded in the Harrison County Appraisal District records, or if personal service may not be obtained then by publication at least once, or by posting the notice on or near the front door of each building on the property; or by posting the notice on a placard attached to a stake driven into the ground on the property; then, in that event, the city may do such cutting down and/or removing such weeds, rubbish, brush or any other unsightly, objectionable or unsanitary matter, or cause the same to be done and may pay for the work done or improvements made and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots or real estate; and, if such work is done or improvements made at the expense of the city then such expense or expenses shall be assessed on the real estate, or lot or lots upon which such expense was incurred.


Sec. 14-22. - Statement of expense; city's lien for expenses, foreclosure of lien.

The city manager or the city's manager designee shall file a statement of such expenses incurred under section 14-18 or under section 14-21, as the case may be, giving the amount of such expenses, the date on which said work was done or improvements made, with the county clerk of Harrison County, Texas; and the city shall have a privileged lien on such lot or lots or real estate upon which said work was done or improvements made to secure the expenditures so made, in accordance with the provisions of section 342 of the Texas Health and Safety Code, which said lien shall be second only to tax liens and liens for street improvements; and said amount shall bear ten (10) per cent interest from the date said statement was filed. It is further provided that for any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the city; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.


Sec. 14-23. - Penalty for violation of sections 14-11 through 14-22.

Any person, firm or individual who shall violate any of the provisions of sections 14-11 through 14-22 shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding two thousand dollars ($2,000.00), and each and every day's violation shall constitute a separate and distinct offense. In case the owner or occupant of any lot, lots or premises under the provisions of sections 14-11 through 14-22 shall be a corporation, and shall violate any provision of said sections, the president, vice-president, secretary, treasurer of such corporation, or any manager, agent or employee of such corporation shall be also severally liable for the penalties herein provided.


ARTICLE II. - LITTER REGULATIONS

Footnotes:
--- (2) ---

Editor's note—Ord. No. O-84-73, § 1, adopted Sept. 27, 1984, amended Ch. 14, but did not specify the manner of inclusion of these provisions. Therefore, at the editor's discretion, the provisions of Ord. No. O-84-73 have been codified as Art. II, §§ 14-40—14-48.

Sec. 14-40. - Litter defined.

As used in this article, the term "litter" shall mean any garbage, refuse, rubbish and all waste material which, if not deposited in an authorized receptacle, creates a potential danger to public health, safety and welfare.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-41. - General prohibitions.

It shall be unlawful for any person, firm or corporation to deposit litter in or upon any public or private property within the city except in public or authorized private receptacles for collections. It shall be unlawful for any person, firm or corporation to place litter in a public or authorized private receptacle in such a manner as to allow that litter be carried by natural elements or animals on any street, sidewalk, public or private property.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-42. - Requirements for business, industrial commercial establishments.

All persons owning or occupying a place of business, industry or commercial establishment shall have litter receptacles in such numbers and such sizes as to comply with this section of this Code. The receptacles shall provide customers, agents, employees, and clients with a receptacle within which to deposit litter. All such receptacles will be kept clean. A lid is required on all receptacles and the lid shall be kept closed at all times, other than for deposit or removal of litter. It shall be unlawful for any person, firm or corporation to permit litter receptacles to overflow in any manner.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-43. - Requirements for residential and commercial construction sites.

Property owners and the general contractor in charge of a construction site shall furnish authorized private receptacles for construction, building materials and workers' litter. All litter from construction or any related activity shall be properly placed or deposited in the authorized private receptacles at the end of each work day.

(Ord. No. O-84-73, § 1, 9-27-84)
Sec. 14-44. - Removal of trapped litter.

It shall be unlawful for the owner, occupant or lessee of private property to permit any trapped litter to remain on said property. Trapped litter is that litter which has been deposited upon the property of another by natural or unnatural means and remains on that property.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-45. - Litter from trucks.

It shall be unlawful for any person, firm or corporation to operate any truck or other vehicle within the city unless said truck or vehicle is constructed or loaded in a manner that prevents any of the contents from being blown or deposited on any street, alley or other public or private property.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-46. - Procedure for removing litter.

When it has been determined that litter exists upon and has been allowed to accumulate upon private property the owner of said property according to the tax rolls of the city shall be given written notice by certified mail, return receipt requested, that litter is present on his property. Notice shall specifically state that he has five (5) days after receipt of said letter to remove that litter from his property, after which period the city shall clean the property and that a privilege lien will be filed against the property for the cost incurred for cleaning litter from the property; the cost shall bear interest at the rate of ten (10) per cent per annum from the date said lien is filed.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-47. - Procedure when property owner unknown or unable to locate.

Where the owner of the property is unknown or can not be located, notice shall be published in a newspaper of general circulation within the city three (3) times within a consecutive ten-day period describing the property on which the litter exists and has accumulated, stating the names of the owners which can not be located or that the owners of said property are unknown, stating that the property shall be cleaned within five (5) days after the tenth day following the first day of publication in the newspaper, stating that if the property is not cleaned within such time period the city shall clean the property and stating that a privilege lien will be filed against the property for the cost incurred for cleaning litter from the property. The cost shall bear interest at the rate of ten (10) per cent per annum from the date said lien is filed.

(Ord. No. O-84-73, § 1, 9-27-84)

Sec. 14-48. - Penalty for violation.

Any person, firm or corporation violating the terms of any section of this article shall be guilty of a misdemeanor and, upon conviction in the municipal court of the city, shall be fined not less than fifteen dollars ($15.00) nor more than one thousand dollars ($1,000.00) for each offense. Each day that a violation of the provisions of this article exists shall constitute a separate offense.

(Ord. No. O-84-73, § 1, 9-27-84; Ord. No. O-86-10, § 1, 3-13-86)
Sec. 22-5. - Acts prohibited.

(a) Notwithstanding the other provisions of this chapter, it shall be unlawful for any person to approach occupied automobiles, trucks or vehicles of any kind located on the public streets or public places of the city and to solicit from the occupant or occupants of such vehicle orders, contributions or donations of any and all types; or to distribute circulars or material of any kind; or to seek support of religion, political candidates or causes of any kind from such occupant or occupants.

(b) Any person who shall violate the provisions of this section shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500.00).

(Ord. No. O-79-6, §§ 1, 2, 2-22-79; Ord. No. O-02-12, § 4, 4-25-2002)
ITEM 9

ITEMS WITHDRAWN FROM THE CONSENT AGENDA
ITEM 10

ADJOURNMENT
BUDGET WORKSHOP –
DISCUSSION OF 2018 DRAFT BUDGET