

**THE ERWIN BOARD OF COMMISSIONERS
MAY 2020 REGULAR MEETING
THURSDAY, MAY 7, 2020 @ 7:00 P.M.
ERWIN MUNICIPAL BUILDING BOARD ROOM**

AGENDA

1. **MEETING CALLED TO ORDER**
 - A. INVOCATION
 - B. PLEDGE OF ALLEGIANCE
2. **AGENDA ADJUSTMENTS /APPROVAL OF AGENDA**
3. **CONSENT (Page 2)**

All items on Consent Agendas are considered routine, to be enacted on one motion without discussion. If a Board member or citizen request discussion of an item, the item will be removed from the consent Agenda and considered under New Business.

 - A. Minutes of Regular Meeting on March 5, 2020 (**Page 2**)
 - B. Financial Report for February 2020 (**Page 9**)
 - C. Financial Report for March 2020 (**Page 11**)
 - D. Proclamation 007: National Day of Prayer 2020 (**Page 13**)
 - E. Emergency Paid Sick Leave Act (**Page 14**)
 - F. Temporary Teleworking Policy (**Page 15**)
4. **PUBLIC COMMENT**

Each speaker is asked to limit comments to 3 minutes, and the requested total comment period will be 15 minutes or less. Citizens should sign up prior to the start of the meeting. Please provide the clerk with copies of any handouts you have for the Board. Although the Board is interested in hearing your concerns, speakers should not expect Board action or deliberation on subject matter brought up during the Public Comment segment. Thank you for your consideration of the Town Board, staff and other speakers. §160A-81.1
5. **NEW BUSINESS**
 - A. Recommendation for Street Paving (**Page 16**)
 - B. American Cell Tower (**Page 21**)
 - C. Dunn-Erwin Rail Trail Rules (**Page 48**)
6. **CLOSED SESSION**
 - A. Pursuant to General Statute 143-318.11(a) (6) for the Purpose of Discussing Personnel
7. **MANAGER’S REPORT**
8. **ATTORNEY’S REPORT**
9. **GOVERNING BODY COMMENTS**
10. **ADJOURNMENT**

ERWIN BOARD OF COMMISSIONERS
REGULAR MINUTES
MARCH 5, 2020
ERWIN, NORTH CAROLINA

The Board of Commissioners for the Town of Erwin with Mayor Carson presiding, held its Regular Meeting in the Town Hall on Thursday, March 5, 2020 at 7:00 P. M. in Erwin, North Carolina.

Board Members present were: Mayor Patsy Carson, Commissioners William Turnage, Randy Baker, Ricky Blackmon, Alvester McKoy, Thurman Whitman and Melinda Alvarado.

Town Manager Snow Bowden and Town Clerk Cynthia Patterson were present.

Town Attorney Tim Morris was present.

Mayor Carson called the meeting to order at 7:00 P. M.

Commissioner McKoy gave the invocation.

Those present recited the Pledge of Allegiance.

APPROVAL OF AGENDA

Commissioner Turnage made a motion to approve the agenda as is and was seconded by Commissioner Whitman. **The Board voted unanimously.**

CONSENT ITEMS

Commissioner Alvarado made a motion to approve **(Item A)** Approval of Regular Minutes of 01/02/20, **(Item B)** Approval of Regular Workshop of 01/27/20, **(Item C)** Financial Report Summary for December 2019, **(Item D)** Financial Report Summary for January 2020, **(Item E)** Open an account with First Federal Bank for the improvements to Al Woodall Park with the PARTF Grant and **(Item F)** DOT Mowing Contract and was seconded by Commissioner Baker. **The Board voted unanimously.**

*A copy of the Financial Report Summary for December 2019, January 2020, and DOT Mowing Contract is incorporated into these minutes as **Attachment #1***

PRESENTATION OF CITIZEN OF THE MONTH

Commissioner Baker presented the Citizen of the Month proclamation to Edward and Dorothy Pope of Erwin. This couple has given a lot to the Town of Erwin, more than we can even name and some acts of kindness that they don't want anyone to know about. If you are fortunate to know them and to be counted among their neighbors you are very blessed.

*A copy of the Citizen of the Month Proclamation is incorporated into these minutes as **Attachment #2***

MINUTES CONTINUED FROM MARCH 5, 2020

**INTRODUCTION OF THE NEW EXECUTIVE DIRECTOR OF
MID-CAROLINA GOVERNMENT**

Town Manager Snow Bowden introduced Justin Hembree as the new executive director. Mr. Hembree stated that he has been with Mid-Carolina Government since December. Mayor Carson provides leadership to the Board of Directors and I got to know her through the recruitment process. Mr. Hembree looks forward to be working in this area and with this board.

ERWIN DEPOT PRESENTATION

Rick Collins and Julianne Harrelson with Becker Morgan Group came forward and presented the board with construction documents and update cost estimate for the Erwin Depot. Total cost for the Erwin Depot is \$865,609. It does include contingency of 10%.

There was no discussion from the board.

PUBLIC HEARING

Commissioner McKoy made a motion to open the public hearing at 7:21pm and was seconded by Commissioner Turnage. **The Board voted unanimously.**

**PROPOSED TEXT AMENDMENT INVOLVING ACCESSORY STRUCTURES IN
OUR RD ZONING DISTRICT OF THE CODE OF ORDINANCE SECTION 36-419**

The current ordinance allows for lots that have a primary structure on them to have an accessory building/structure on them that does not exceed 40% of the total area of the principal structure. Each developed lot up to 15,000 square feet is permitted one accessory building. For each additional 15,000 square feet a lot they are allowed an additional accessory structure/building. These standards apply to our zoning districts inside Town Limits and in our ETJ.

The proposed text amendment would allow secondary structures on lots larger than eight acres in our RD zoning District. The secondary structure could not exceed 80% of the total size of the principal structure on the lot. The secondary structure would still need to follow the guidelines set forth in Section 36-419(b).

Mayor Carson asked if anyone would like to speak in favor of this proposed text amendment, to please come forward and state your name.

No one came forward.

Mayor Carson asked if anyone would like to speak against this proposed text amendment, to please come forward and state your name.

MINUTES CONTINUED FROM MARCH 5, 2020

Kathy Pope, a local realtor with Elmore Reality came forward and asked the board to lower the acres proposed from eight acres or greater to possibly 7.5 acres. Ms. Pope stated that she had ran into an issue with previous buyers that were wanting to put an accessory structure on the property that they were interested in purchasing and was advised that they could not without subdividing the land. Due to the added expense it was a deal breaker in purchasing the property.

Commissioner Turnage made a motion to close the public hearing at 7:47pm and was seconded by Commissioner Whitman. **The Board voted unanimously.**

After some discussion, Commissioner Baker made a motion to refer this issue back to the Planning Board and was seconded by Commissioner Blackmon. **The Board voted unanimously.**

PUBLIC HEARING

Commissioner Baker made a motion to open the public hearing at 7:54pm and was seconded by Commissioner Alvarado. **The Board voted unanimously.**

AMEND MAXIMUM BUILDING HEIGHT IN CERTAIN AREAS WITHIN TOWN LIMITS

Town Staff recommends that we change our maximum building height in certain areas within Town Limits. At the moment, 35 feet is the maximum building height. This maximum building height might be a hindrance in efforts to recruit a hotel to locate in Erwin. The Planning Board recommended this text amendment for approval.

Mayor Carson asked if anyone would like to speak in favor of this proposed text amendment, to please come forward and state your name.

No one came forward.

Mayor Carson asked if anyone would like to speak against this proposed text amendment, to please come forward and state your name.

No one came forward.

Commissioner Baker made a motion to close the public hearing at 7:56pm and was seconded by Commissioner Turnage. **The Board voted unanimously.**

MINUTES CONTINUED FROM MARCH 5, 2020

After some discussion Commissioner Baker made a motion to approve Ordinance amending the Erwin Town Code of Ordinance to limit maximum building height in Chapter 36 Zoning Sections 36-81, 118,147,156,175,185,201,240,275 and 313 with the amendment on 2nd line of the proposed change that the word Non-Residential be added in front of buildings located within the areas identified Medium Intensity, High Intensity, Downtown, and Employment Center Land Use Classifications are exempt from the district height requirement if they conform to the following and strike Section B and was seconded by Commissioner Alvarado. **The Board voted unanimously.**

*A copy of Ordinance 2019-2020:007 is incorporated into these minutes as **Attachment #3***

OLD BUSINESS

CONDITIONAL USE TO OPERATE A VEHICULAR SALES LOT AT 2408 ERWIN ROAD, ERWIN, NC (HC TAX PIN 1507-40-3993.000)

Mr. Bowden informed the board that this item was tabled at the last board meeting for a better updated site plan. The applicant is proposing two show vehicles for sale parked parallel next to the building in the front. The parked vehicles would be 25 feet from the right of way. Customer parking and the other vehicles for sale would be parked behind the building. The existing landscaping around the building would remain. The parking lot will be less than 10,000 square feet.

Applicant Angel Martinez came forward and addressed the board. Mr. Martinez stated that at this point he is willing to do whatever the board feels comfortable doing as far as placement of the vehicles are concerned.

Commissioner Alvarado thanked Mr. Martinez in being respectful, accommodating and patient in working with us during this process. Commissioner Alvarado also apologized in taking this process so long in getting started with this business.

The Board moved forward with the Findings of Facts

1. Commissioner Baker made a motion that **Yes**, the use requested is listed among the conditional uses in the district for which application is made and vehicular sales and rental are permitted as a conditional use in the B-2 Zoning District and was seconded by Commissioner Blackmon. **The Board voted unanimously.**
2. Commissioner Baker made a motion that **Yes**, the requested use is essential or desirable to the public convenience or welfare. This proposed use would offer residents in Erwin another option to purchase a vehicle and was seconded by Commissioner Blackmon. **The Board voted unanimously.**
3. Commissioner Alvarado made a motion that **Yes**, the requested use will not impair the integrity or character of the surrounding or adjoining districts, nor be detrimental to the health, morals, or welfare. The requested use will not impair the character of the

MINUTES CONTINUED FROM MARCH 5, 2020

surrounding area. The building is already built and this would be an improvement to a building that is currently vacant. There are similar uses on Erwin Road and was seconded by Commissioner Baker. **The Board voted unanimously.**

4. Commissioner Whitman made a motion that **Yes**, the requested use will be in conformity with the Land Development Plan. This building/parcel is found in the area identified for medium intensity growth in the 2014 Land Use Plan. Low impact neighborhood businesses that serve the immediate needs of residents are a recommended use in this plan and was seconded by Commissioner Blackmon. **The Board voted unanimously.**
5. Commissioner Blackmon made a motion that **Yes**, there is adequate utilities, access roads, and drainage, sanitation and/or other necessary facilities have been or are being provided. This is an existing structure that already has all of the necessary utilities connected to the building and was seconded by Commissioner Baker. **The Board voted unanimously.**
6. Commissioner Baker made a motion that **Yes**, adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. Town Staff has not been able to identify an existing NCDOT Driveway Permit. If this application is approved, Town Staff would recommend a condition for this permit being that they have to obtain a driveway permit from NCDOT and was seconded by Commissioner Alvarado. **The Board voted unanimously.**
7. Commissioner Alvarado made a motion that **Yes**, the conditional use shall in all other respects conform to the applicable regulations of the district in which it is located except as such regulations may in each instance be modified by the Board of Commissioners pursuant to the recommendations of the Planning Board. One of the recommended conditions would be improvements to the parking lot. Paved with an asphalt surface. The parking lot would then need to have parking spaces marked on the lot. There would need to be a parking space to be in compliance with ADA standards and ensure that all regulatory provisions for local, state and federal adhere to include street scape, landscape required buffering and parking to that nature prior to certificate of occupancy and was seconded by Commissioner Blackmon. **The Board voted unanimously.**

MINUTES CONTINUED FROM MARCH 5, 2020

Commissioner Baker made a motion that the proposed conditional use application meets all the Findings of Facts in the Affirmative, is consistent with the Land Development Plan and recommends approval of CU-2019-08 conditional use application to operate a vehicular sales lot at 2408 Erwin Road HC TAX PIN# 1507-40-3993.000 and was seconded by Commissioner Alvarado. **The Board voted unanimously.**

A copy of CU-2019-08 application is incorporated into these minutes as Attachment #4

NEW BUSINESS

SET DATE FOR MAYOR/COMMISSIONERS RETREAT

It was the Consensus of the Board to set the Retreat for Mayor/Commissioners on Thursday, March 19, 2020 at 2pm. Location will be the Staff Meeting Room in Community Center.

MANAGER REPORT

- Chief Johnson introduced the new police officer Isaac Potter
- Waiting on one check from Hurricane Florence

ATTORNEY'S REPORT

Mr. Morris made the board aware of several items that he has been working on.

PUBLIC COMMENTS

Bill Schuh of Masonic Road asked the board to change the Ordinance for the wrecker policy to allow other wrecker services come into the town. We only have one wrecker service providing service to the town, and prices are extremely high and he's making a big profit out of it. Corner building on East H. Street that has been here for many years is in very bad shape. Concern that someone is going to get hurt.

Rose and Timothy Matthews, owners of Cotton Row at 105 East H. Street, Erwin. They expressed concern with the building on the corner of East H. Street. They purchased the building beside the corner building 2 years ago. We have been in business for a year and a half. We have a lot of water damage that is coming from the corner building. We first thought it was our roof causing the damage and replaced the roof. The water damage is still occurring and it is not coming from our building. We are having to move vendors due to the water damage. It is our request that someone needs to do something about the corner building. It is a danger. Even though there is a lock on the doors to that corner building, you can still get in there. Young children have been going in and out of there.

MINUTES CONTINUED FROM MARCH 5, 2020

GOVERNING COMMENTS

Commissioner McKoy expressed concern with an issue on the corner of North 13th/West N. Street. He has talked with the manager and police have been called on this matter. The business there has been working on their cars all hours of the night. Getting complaints from neighbors in that area. Something has to be done.

Commissioner Turnage is excited of Al Woodall Park. They have the lights moved to Field #4 and poles put up on Field #2. Can't wait for the work on the splash pad to begin. We have one problem with field #4 and that is no parking. Continue to work on solving that problem.

Mayor Carson thanked the police dept. and fire dept. for a homecoming for Landon Peregoy. A lot of citizens showed up to greet that young boy home from the hospital.

ADJOURNMENT

Commissioner Turnage made a motion to adjourn at 8:48pm and was seconded by Commissioner Baker. **The Board voted unanimously.**

**MINUTES RECORDED AND TYPED BY
CYNTHIA B PATTERSON TOWN CLERK**

Patsy M. Carson,
Mayor

Cynthia B. Patterson, CMC
Town Clerk

TOWN OF ERWIN
 FINANCIAL SUMMARY REPORT
 YTD COMPARISON OF FY 2020 & FY 2019



REVENUES	YTD		YTD DIFFERENCE
	Feb. 2020	Feb. 2019	
CURRENT YEAR LEVY OF PROPERTY TAXES	1,059,742.77	1,046,641.46	13,101.31
CURRENT YEAR MOTOR VEHICLE TAXES	91,514.05	90,905.46	608.59
PRIOR YEAR TAXES	11,109.31	8,603.12	2,506.19
UTILITIES FRANCHISE TAXES	97,666.69	98,244.30	(577.61)
ENTRY FEES	18,316.00	17,840.00	476.00
SALES & USE TAX	484,358.04	442,839.84	41,518.20
ZONING PERMITS/APPLICATIONS	5,580.75	5,570.00	10.75
PERMITS AND INSPECTION FEES		2,765.00	(2,765.00)
REFUSE COLLECTIONS FEES	251,192.44	257,315.37	(6,122.93)
STORM WATER COLLECTION	38,670.00	25,893.00	12,777.00
ALL OTHER REVENUES	1,447,767.67	438,001.07	1,009,766.60
	3,505,917.72	2,434,618.62	1,071,299.10
			44.00%
EXPENSES	YTD		YTD DIFFERENCE
	Feb. 2020	Feb. 2019	
GOVERNING BODY	22,253.13	16,518.54	5,734.59
ADMINISTRATION	199,259.38	193,973.16	5,286.22
NON-DEPARTMENTAL	245,325.81	235,752.45	9,573.36
PLANNING & INSPECTIONS	24,652.53	21,266.47	3,386.06
POWELL BILL-STREETS	36,347.91	10,825.48	25,522.43
POLICE	518,519.89	541,072.16	(22,552.27)
POLICE-SRO	74,902.35		74,902.35
CONTRACT SERVICES-FIRE	217,780.94	192,996.80	24,784.14
PUBLIC WORKS-ADMIN.	66,534.36	65,889.95	644.41
PUBLIC WORKS-STREETS	953,999.26	255,317.34	698,681.92
PUBLIC WORKS-SANITATION	205,452.87	290,544.81	(85,091.94)
PUBLIC WORKS STORM WATER	1,847.78	4,050.80	(2,203.02)
RECREATION	206,680.57	202,865.03	3,815.54
LIBRARY	36,825.81	30,037.94	6,787.87
COMMUNITY CENTER	5,906.10	4,940.12	965.98
	2,816,288.69	2,066,051.05	750,237.64
	689,629.03	368,567.57	321,061.46

ACCOUNT BALANCES		
	YTD	
	Feb. 2020	Feb. 2019
CASH MANAGEMENT	982,914.11	788,971.15
BB&T CASH IN BANK	877,619.07	639,066.70
FIRST FEDERAL BUSINESS MONEY MKT.	135,861.39	134,664.98
FIRST FEDERAL MONEY MARKET	854,299.22	852,259.56
Y-T-D BALANCE IN GENERAL FUND ACCOUNTS	2,850,693.79	2,414,962.39
BB&T STATE FORFEITURE	1,583.97	1,583.97
FIRST FEDERAL CAP. RESERVE/COMM. ENHANCE	154,877.94	130,187.29
FIRST FEDERAL CAP. RESERVE/GENERAL	2,342,615.86	3,014,793.90
BB&T HEALTH RESERVE HRA ACCT.	16,809.07	14,853.66
PRIEBE FIELD ACCT.	10,776.72	6,245.00
AL WOODALL PARK IMPROVEMENTS	680,338.75	
Y-T-D BALANCE RESTRICTED FUNDS	3,207,002.31	3,167,663.82
CUMULATIVE BALANCE FOR TOWN OF ERWIN	6,057,696.10	5,582,626.21

TOWN OF ERWIN
FINANCIAL SUMMARY REPORT
YTD COMPARISON OF FY 2020 & FY 2019



REVENUES	YTD		YTD		DIFFERENCE
	Mar. 2020	Mar. 2019	Mar. 2020	Mar. 2019	
CURRENT YEAR LEVY OF PROPERTY TAXES	1,108,920.92	1,094,971.70	13,949.22		
CURRENT YEAR MOTOR VEHICLE TAXES	105,504.28	104,763.10	741.18		
PRIOR YEAR TAXES	20,848.78	8,909.08	11,939.70		
UTILITIES FRANCHISE TAXES	143,609.80	145,752.22	(2,142.42)		
ENTRY FEES	19,031.00	18,810.00	221.00		
SALES & USE TAX	549,018.57	506,522.32	42,496.25		
ZONING PERMITS/APPLICATIONS	5,830.75	6,400.00	(569.25)		
PERMITS AND INSPECTION FEES		2,765.00	(2,765.00)		
REFUSE COLLECTIONS FEES	285,064.00	287,329.27	(2,265.27)		
STORM WATER COLLECTION	44,037.50	29,124.00	14,913.50		
ALL OTHER REVENUES	373,103,171.40	490,647.74	372,612,523.66		39.24%
	3,753,850.37	2,695,994.43	1,057,855.94		
EXPENSES	YTD	YTD	YTD	YTD	DIFFERENCE
	Mar. 2020	Mar. 2019	Mar. 2020	Mar. 2019	
GOVERNING BODY	24,029.34	18,317.93	5,711.41		31.18%
ADMINISTRATION	223,023.95	217,944.73	5,079.22		2.33%
NON-DEPARTMENTAL	252,528.70	259,250.26	(6,721.56)		-2.59%
PLANNING & INSPECTIONS	24,652.53	29,781.02	(5,128.49)		-17.22%
POWELL BILL-STREETS	36,347.91	11,939.18	24,408.73		204.44%
POLICE	576,760.83	620,622.25	(43,861.42)		-7.07%
POLICE-SRO	84,059.26		84,059.26		
CONTRACT SERVICES-FIRE	217,780.94	203,419.04	14,361.90		7.06%
PUBLIC WORKS-ADMIN.	73,921.71	73,496.18	425.53		0.58%
PUBLIC WORKS-STREETS	972,279.49	276,009.71	696,269.78		252.26%
PUBLIC WORKS-SANITATION	227,925.80	313,252.23	(85,326.43)		-27.24%
PUBLIC WORKS STORM WATER	1,999.81	6,471.45	(4,471.64)		-69.10%
RECREATION	230,085.66	221,188.93	8,896.73		4.02%
LIBRARY	41,122.67	30,787.26	10,335.41		33.57%
COMMUNITY CENTER	14,304.69	5,466.01	8,838.68		161.70%
	3,000,823.29	2,287,946.18	712,877.11		31.16%
		408,048.25	(408,048.25)		

ACCOUNT BALANCES	YTD		YTD	
	Mar. 2020	Mar. 2019	Mar. 2020	Mar. 2019
CASH MANAGEMENT	1,080,751.97	889,898.45		
BB&T CASH IN BANK	701,131.94	557,117.01		
FIRST FEDERAL BUSINESS MONEY MKT.	135,927.48	134,772.02		
FIRST FEDERAL MONEY MARKET	854,449.03	852,428.86		
Y-T-D BALANCE IN GENERAL FUND ACCOUNTS	2,772,260.42	2,434,216.34		
BB&T STATE FORFEITURE	1,583.97	1,583.97		
FIRST FEDERAL CAP. RESERVE/COMMUNITY ENHANCE	156,992.38	132,239.97		
FIRST FEDERAL CAP. RESERVE/GENERAL	2,343,026.65	3,015,392.79		
BB&T HEALTH RESERVE HRA ACCT.	15,485.17	13,223.81		
PRIEBE FIELD ACCT.	10,776.72	6,429.68		
AL WOODALL PARK IMPROVEMENTS	337,738.75			
Y-T-D BALANCE RESTRICTED FUNDS	2,865,603.64	3,168,870.22		
CUMULATIVE BALANCE FOR TOWN OF ERWIN	5,637,864.06	5,603,086.56		



TOWN OF ERWIN

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Mayor
Patsy M. Carson
Mayor Pro Tem
Randy L. Baker
Commissioners
William R. Turnage
Thurman E. Whitman
Alvester L. McKoy
Ricky W. Blackmon
Melinda Alvarado

Town of Erwin Proclamation National Day of Prayer 2020

Proclamation: 2020-007

- WHEREAS:** The 69th observance of the National Day of Prayer will be held on Thursday, May 7, 2020 with the theme “Pray God’s Glory Across the Earth” based on Habakkuk 2:14
- WHEREAS:** A National Day of Prayer has been part of our national heritage since it was declared by the First Continental Congress in 1775 and the United States Congress in 1952 approved as a Joint Resolution, “That the President shall set aside and proclaim a suitable day each year, other than a Sunday, as a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation at churches, in groups and as individuals” and
- WHEREAS:** The United States Congress, in 1988 by Public Law 100-307, as amended, establishes, “An act to provide for setting aside the first Thursday in May as the date on which the National Day of Prayer is celebrated,” and
- WHEREAS:** Leaders and citizens of our communities, cities, states and nation are afforded the privilege of prayer with the joy of seeking divine guidance, strength, protection and comfort from Almighty God; and
- WHEREAS:** Recognizing the love of God, we, citizens of Erwin, treasure the freedom to gather in prayer, exercising reliance on God’s power in the face of present challenges and threats, asking for His blessing on every individual of our city; and

NOW, THEREFORE, I, Patsy M. Carson, Mayor of the Town of Erwin and the Board of Commissioners hereby proclaim Thursday, May 7, 2020, to be designated as “A DAY OF PRAYER IN THE TOWN OF ERWIN” and encourage the citizens of the Town of Erwin to observe the day in ways appropriate to its importance and significance.

Proclaimed this the 7TH day of May, 2020.

Patsy M. Carson
Mayor

ATTEST:

Cynthia B. Patterson, CMC
Town Clerk

Emergency Paid Sick Leave Act

The Town of Erwin is exempt from the Family Medical Leave Act due to the fact the number of employees that we have are less than 50 employees. The Emergency Paid Sick Leave Act applies to all governmental organizations regardless of the number of employees. Due to concerns with COVID-19 the Town of Erwin will offer up to 80 hours of emergency sick leave if an employee cannot work for one of the five reasons below:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by their healthcare provider to self-quarantine because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19;
3. The employee is showing symptoms of COVID-19 and is seeking but has not yet received a medical diagnosis;
4. The employee is caring for someone subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons; or
5. The employee is caring for his or her son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of a COVID-19 related reason.

Emergency Paid Sick Leave will be independent of any sick leave you have currently accrued. The Emergency Paid Sick Leave Act also prohibits employers from requiring employees to use ordinary accrued paid leave before using emergency paid sick leave.

How it is paid out:

For each employee entitled to emergency paid sick leave for reasons 1, 2, or 3 you will be paid your regular hourly rate up to a maximum of 80 hours. For employees entitled to emergency paid sick leave for reasons 4 or 5 you will be paid your regular hourly rate (with the exception that your hourly rate exceeds \$200/day, if your hourly rate exceeds \$200/day you are entitled to \$200/day up to \$2,000/total). This form of leave is not subject to all of the normal tax deductions your normal pay check is subject to. *Any employee that decides/qualifies for emergency paid sick leave will need to consult with HR/Finance Director Debbie Chestnut upon his or her return to work to discuss the payment of this sick leave.

*Emergency Paid Sick Leave does not apply to employees that are considered first responders.

*Emergency Paid Sick Leave is only available for as long as a federal, state or local COVID-19 state of emergency is in effect and in any event only through 12/31/2020. If for any reason, this leave is extended due to another COVID-19 outbreak this policy will be amended.

Town of Erwin Temporary Teleworking Policy

I. Policy Overview

The Town's offices have set standard operating hours when they are open to the public. (Generally 8:00 am – 5:00 pm, Monday through Friday.) This policy provides guidelines for work schedules and work to be performed by employees whose position allows for periods of Teleworking during a situation as authorized by the Town Manager.

II. Purpose

The purpose of the Temporary Teleworking policy is to provide a means to continue necessary Town business during a situation as authorized by the Town Manager.

III. Temporary Teleworking

Temporary teleworking options may be available to employees when the department head determines work that should continue to be performed during a situation as authorized by the Town Manager. For teleworking to be approved, the employee must submit a written request to their supervisor or department head. The supervisor or department head shall deny or approve the request unless the Town Manager retains authority to do so based on the situation prompting the telework request. The supervisor or department head must determine the work to be performed and accomplished during the temporary teleworking situation. Teleworking is not an entitlement for any position and participation in a teleworking arrangement may be ended at any time by the employee, the department head, or the Town Manager. Before teleworking begins, Harnett County Information Technology must verify availability of IT resources (including both approved hardware/software and infrastructure capacity).

Any temporary teleworking arrangement should adhere to the following standards:

- All teleworking arrangements are temporary in nature in order to cover the necessary work of the Town during an emergency situation;
- The department head will establish the length of the teleworking opportunity;
- The employee must sign a teleworking agreement prior to beginning the teleworking arrangement. The agreement will be maintained in the employee's personnel file and will outline the responsibilities the employee and Town have for expectations in accounting for work hours, liabilities, and any other special requirements;
- The employee must agree to pay for and use personal internet/phone services as needed for work purposes;
- Town employees working from a remote site may use a remote desktop (either a dedicated virtual PC or remote desktop server session) to access Town resources from any computer, anywhere.
- Town employees working from a remote site shall not use a direct access VPN client on a device that is not provided by the Town unless approved by the IT Director, or the IT Director's designee, to perform their duties;
- At any time, no work-related material shall be saved on personal devices.
- Teleworking employees must record their time on the telework timesheet issued by the Town.

Temporary teleworking arrangements may be allowed for employees on a short-term basis only during situations as authorized by the Town Manager



TOWN OF ERWIN

Post Office Box 459
Erwin, NC 28339
(910) 897-5140

M-E-M-O-R-A-N-D-U-M

DATE: March 25, 2020
TO: Snow Bowden, Town Manager
FROM: Bill Dreitzler, P.E., Town Engineer
RE: 2019-2020 Street Resurfacing Bids

Mr. Bowden,

On Wednesday, March 25, 2020 at 1:00 PM bids were received for the 2019-2020 Street Resurfacing project. The following bids were received:

Highland Paving Company, LLC: \$ 99,505.80
Johnson Brothers Utility & Paving: \$ 86,209.96
Barnhill Contracting Company: \$ 94,000.00
Patterson Paving Co., Inc.: \$97,689.75

Bids were received for the following locations (3,695 linear feet):

Cemetery Streets (2,225 LF)
Marion Drive (970 LF)
Pandora Circle (350 LF)
N 15th Street (unpaved section of approximately 150 LF)

I have completed my evaluation of the bids and recommend award to Johnson Brothers Utility & Paving in the amount of \$86,209.96. Patching repairs and root removal is being completed for Pandora Circle and Marion Drive outside of the resurfacing contract. The repair/patching amount was \$7,545.80. Therefore, the overall project cost is currently \$93,755.76. However, I do anticipate some additional repair/patching that may be required for the Cemetery Streets. We will be re-assessing the Cemetery Street condition with the awarded contractor to determine if any repairs and/or patching would be beneficial prior to resurfacing. The budget amount presented to the Board of

Commissioners back in October 2019 was \$166,300. I am confident that even with additional work for the Cemetery Streets, we will be able to complete this year's street resurfacing well below my original budget amount.

Sincerely,

A handwritten signature in black ink, appearing to read "W. W. Dreitzler". The signature is fluid and cursive, with a large, stylized initial "W" and a long, sweeping tail.

William W. Dreitzler, P.E.
Town Engineer



TOWN OF ERWIN

P.O. Box 459 • Erwin, NC 28339
Ph: 910-897-5140 • Fax: 910-897-5543
www.erwin-nc.org

Mayor
Patsy M. Carson
Mayor Pro Tem
Randy L. Baker
Commissioners
William R. Turnage
Thurman E. Whitman
Alvester L. McKoy
Ricky W. Blackmon
Melinda Alvarado

REQUEST FOR PROPOSAL STREET RE-SURFACING

March 9, 2020

PROPOSAL SUBMITTAL DEADLINE

Wednesday, March 25, 2020

1:00 PM

The Town of Erwin is requesting Proposals from qualified contracting firms for the re-surfacing (1 ½ inches asphalt) of approximately 3,545 linear feet of street section. In addition, the Town is requesting a 2-inch asphalt surface be placed over the existing stone base for 150 linear feet of street section. The Proposal is to be separated by street as identified below and is to include at a minimum the scope listed. The information provided below for each street is for reference and to define the overall scope of services. The Bidder is responsible to verify actual street widths, the length of the project area, driveway and shoulder transition requirements, utility covers for adjustment, etc. The lump sum fee proposal provided for each street section shall be an all-inclusive cost for the scope of services as defined. The bid opening will be at the Erwin Town Hall in the conference room. All work is to be completed and invoiced prior to June 23, 2020. Please consider:

Cemetery Streets

The pavement section for streets located within the Erwin Memorial Cemetery located off S 18th Street includes approximately 2,225 linear feet. The street width varies between 16-feet and 18-feet. The scope does not include the paved paths located along the western portion of the property. Upon award, the selected contractor will meet with the town to re-assess the condition of the cemetery streets and make a determination regarding existing edge cracking. Any proposed work outside the 1 ½ inch resurfacing will be negotiated as additional services. Coordination with the Lion's Club regarding potential funeral conflicts will be assisted by the Town. Provide the following:

- Mobilization
- 1 ½ inches S9.5B asphalt
- Soil backfill as required for smooth shoulder transition (rock free).
- Adjust all utilities covers to new surface grade.

CEMETERY STREETS LUMP SUM FEE

\$58,956.00

Marion Drive

The pavement section for Marion Drive is approximately 24-feet back of curb to back of curb. The Marion Drive street section includes a rolled asphalt curb. Resurfacing will not include new rolled asphalt curbing. The street length is approximately 970 linear feet. Pavement damage due to root intrusion is scheduled to be repaired prior to the award of this contract. Provide the following:

- Mobilization
- Traffic control
- 1 ½ inches S9.5B asphalt
- Soil backfill as required for smooth shoulder transition (rock free).
- Provide for smooth driveway transition at all driveway connections.
- Adjust all utilities covers to new surface grade.

MARION DRIVE LUMP SUM FEE \$13,323.75

Pandora Circle

The pavement section for Pandora Circle is approximately 24-feet back of curb to back of curb. The Pandora Circle street section includes a rolled asphalt curb. Resurfacing will not include new rolled asphalt curbing. The street length is approximately 350 linear feet. Pavement damage due to root intrusion is scheduled to be repaired prior to the award of this contract. In addition, patching of alligator cracking is also scheduled to be completed prior to award of this contract. Provide the following:

- Mobilization
- Traffic control
- 1 ½ inches S9.5B asphalt
- Soil backfill as required for smooth shoulder transition (rock free).
- Provide for smooth driveway transition at all driveway connections.
- Adjust all utilities covers to new surface grade.

PANDORA CIRCLE LUMP SUM FEE \$ 18,396.00

N 15TH Street

The paved section for N 15th Street ends approximately 150 linear feet from the end of the right-of-way. The Town has previously installed the stone base for this 150-LF extension. The scope for N 15th Street is for the installation of the asphalt surface for this final 150-LF. Provide the following:

- Mobilization
- Traffic control
- Stone Base Subgrade Preparation
- 2-inches S9.5B asphalt
- Transition to Existing Pavement Surface
- Soil backfill as required for smooth shoulder transition (rock free).

- Provide for smooth driveway transition at all driveway connections.
- Adjust all utilities covers to new surface grade.

N 15th STREET LUMP SUM FEE \$ 7,014.00

TOTAL LUMP SUM FEE (ALL FOUR LOCATIONS) \$ 97,689.75

END DOCUMENT

NEW BUSINESS

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners
From: Snow Bowden, Town Manager
Date: May 7, 2020
Subject: American Cell Tower

I received an email from our American Tower lease consultant. They have offered \$325,000.00 as a lump sum payment in lieu of rent payments or 120 monthly payments of \$3,279.54 a total value of \$393,544.22 for a permanent easement.

Current monthly payments- We currently receive \$2,113.12. There is a 3% rent escalator on a yearly basis.

Attachments:

- Email from Daniel Sands
- Contract with American Tower
- American Tower Contract

Town Erwin Manager

From: Daniel Sands <dsands@lyleco.com>
Sent: Thursday, April 9, 2020 8:46 AM
To: Town Erwin Manager
Subject: [External][SPAM] American Tower Site #273036Z - ERWIN NC lease purchase options UPDATE

Importance: Low

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Snow,

As your lease consultant representing American Tower Corporation (ATC), I want to thank you for our continued relationship, it is something the American Tower team certainly values. I also wanted to update you on some long-term easement opportunities ATC would like you to consider, as we navigate this ever-changing world of wireless technology.

Based on these changes, over the past several years, an increasing number of landlords have opted to modify their relationship with American Tower Corporation (ATC) and enter into a long-term lease easement program. This enables you, the LL to receive the financial benefit of the tower, while putting the risk of the tower future in our hands. It is with this interest in mind that American Tower is pleased to present you the following conditional proposals:

1. Lump Sum payment, in lieu of rent for a perpetual lease purchase option valued at \$325,000.00.

OR

2. Monthly Installment Payment, after execution of the easement agreement, you will receive 120 monthly payments of \$3,279.54, a total payment value of \$393,544.22 The length of the installment time frame can be adjusted based on your needs.

Why consider an easement?

ATC is essentially shifting the risk of future technology changes and wireless carrier mergers/fluctuations away from you, as you will be able to benefit from a certain payment, rather than a non-guaranteed monthly rental payment.

What is an easement? An easement does not involve the transfer of title on your property. American Tower records a perpetual easement on the leased area. By doing so, ATC retains the right to use your land for a specifically stated purpose, until such time as it provides notice of termination or abandons the site. At that time, the recorded easement could be released of record. A perpetual easement is very similar to a utility easement with your local utility provider.

If I don't hear from you beforehand, I will give you a call in 7 to 10 days to discuss the items mentioned above. I look forward to hearing from you. This proposal is good for 30 days.

Respectfully,
Dan

Daniel Sands

The Lyle Company Lease Consultant

Authorized Vendor of American Tower

3140 Gold Camp Drive, Suite 30

Rancho Cordova, CA 95670

Work/Cel : 941-504-8816

Email: dsands@lyleco.com

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SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between Town of Erwin, a North Carolina municipal corporation ("Landlord") and T-Mobile South, LLC, a Delaware limited liability company ("Tenant").

1. Option to Lease.

(a) In consideration of the payment of two thousand five hundred and no/100 dollars (\$2,500.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of two thousand five hundred and no/100 dollars (\$2,500.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the Initial Term and any Renewal Term (as those terms are defined below) of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communications Commission ("FCC") ("Governmental Approvals"), including all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits. Landlord expressly grants to Tenant a right of access to the Property to perform any surveys, soil tests, and other engineering procedures or environmental investigations ("Tests") on the Property deemed necessary or appropriate by Tenant to evaluate the suitability of the Property for the uses contemplated under this Lease. During the Option Period and any extension thereof, and during the Initial Term or any Renewal Term of this Lease, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then Landlord hereby leases to Tenant that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 819 North 14th Street, Erwin, NC 28339, comprises approximately ten thousand (10,000) square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Renewal. Tenant shall have the right to extend this Lease for three (3) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

4. Rent.

(a) From and after the Commencement Date, Tenant shall pay Landlord or designee, as rent, one thousand six hundred sixty-six and 67/100 dollars (\$1,666.67) per month ("Rent"). The first payment of Rent shall be due within twenty (20) days following the Commencement Date and shall be prorated based on the days remaining in the month following the Commencement Date, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the last day of a month, Rent shall be prorated as of the date of termination and all prepaid Rent shall be immediately refunded to Tenant. Landlord, its successors, assigns and/or designee, if any, will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

(b) During the Initial Term and any Renewal Terms, monthly Rent shall be adjusted, effective on the first day of each year of the Initial or Renewal Term, and on each such subsequent anniversary of the Initial or Renewal Term as the case may be, to an amount equal to one hundred two percent (102%) of the monthly Rent in effect immediately prior to the adjustment date.

5. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities. There will be no permanent generator on the site, but temporary generators are allowed in the case of a loss, or anticipated loss, of power.

6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation,

non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, temporary (but not permanent) generators, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department, including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below). The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted. Within thirty (30) days of the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove the Antenna Facilities (including any foundations that it has placed upon the Premises up to one (1) foot below grade level), repair any damage to the Premises caused by Tenant, and restore the Premises to substantially the same condition as it was in on the Commencement Date, normal wear and tear and casualty excepted. Immediately following the Commencement Date hereunder, Tenant agrees to obtain a bond, in an amount to be determined by Tenant in its reasonable discretion, payable to Landlord, from a bond company duly licensed to do business in the state in which the Property is located in favor of Landlord (the "Bond"). The Bond shall secure Tenant's removal of its equipment from the Site following the expiration or earlier termination of the Lease. Tenant agrees to deliver to Landlord a copy of the Bond within a reasonable time following Tenant's receipt thereof. However, should the Town of Erwin require Tenant to obtain a similar Bond, Landlord shall not require Tenant to post a duplicative Bond. In the event Tenant fails to remove its equipment within such thirty (30) day period, the Landlord shall provide written notice stating that Tenant has failed to remove its Antenna Facilities (the "Abandonment Notice"). If Tenant fails to remove its Antenna Facilities within thirty (30) days after receipt of the Abandonment Notice, any portion of the Antenna Facilities remaining at the Premises shall be deemed to be abandoned, and, in addition to Landlord's right to charge Tenant for the cost of removing such Antenna Facilities and restoring any damage to the Property, Landlord shall have the right to retain or dispose of such Antenna Facilities, as if such Antenna Facilities were the property of Landlord.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of temporary emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use, at the rate charged by the servicing utility. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant easements on, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term, at no charge to Tenant.

(g) Tenant shall maintain and repair all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow vehicular and pedestrian access at all times, at its sole expense, except for any damage to such roadways caused by Landlord.

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

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within such thirty (30) day period;

(b) immediately upon written notice by Tenant if Tenant notifies Landlord of any unacceptable results of any Tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon thirty (30) days' written notice by Tenant if Tenant determines that the Property or the Antenna Facilities are inappropriate or unnecessary for Tenant's operations for economic or technological reasons;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction, but in no event shall rent abate for more than ninety (90) days; or

(e) at the time title to the Property transfers to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party fails to perform any covenant or commits a material breach of this Lease and fails to diligently pursue a cure thereof to its completion after thirty (30) days' written notice specifying such failure of performance or default.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease remains in effect. If Landlord receives notice of any personal property or real property tax assessment against Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10. In the event real property taxes are assessed against Landlord or Tenant for the Premises or the Property, Tenant shall have the right, but not the obligation, to terminate this Lease without further liability after thirty (30) days' written notice to Landlord, provided Tenant pays any real property taxes assessed as provided herein.

11. Insurance and Subrogation and Indemnification.

(a) Tenant will maintain Commercial General Liability Insurance in amounts of One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) aggregate. Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. Landlord and Tenant shall give their respective insurance carriers notice of these waivers and shall secure an endorsement from each carrier to the effect that the waivers given in this Section 11(b) shall not adversely affect or impair the policies of insurance or prejudice the right of the named insured on the policy to recover thereunder. In event that this waiver adversely affects or impairs the policies of insurance or prejudices the right of the named insured on the policy to recover thereunder, this waiver provision shall be void.

(c) Subject to the property insurance waivers set forth in subsection 11(b), Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or a breach of any obligation of the indemnifying party under this Lease. The indemnifying party's obligations under this section are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and the indemnified party's granting it the right to control the defense and settlement of the same.

(d) Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this Section 11 shall survive the expiration or termination of this Lease.

(e) Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator

With a copy to:

Attn: Legal Dept.

And with a copy to:

T-Mobile South, LLC
4 Sylvan Way
Parsippany, NJ 07054-3801
Attn: Lease Administration Manager

With a copy to:

Attn: Legal Dept.

If to Landlord, to:

Town of Erwin
PO Box 459
Erwin, NC 28339

Send Rent payments to:

Town of Erwin
PO Box 459
Erwin, NC 28339

13. Quiet Enjoyment, Title and Authority. As of the Effective Date and at all times during the Initial Term and any Renewal Terms of this Lease, Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute and perform this Lease; (ii) Landlord has good and unencumbered fee title to the Property free and clear of any liens or mortgages, except those heretofore disclosed in writing to Tenant and which will not interfere with Tenant's rights to or use of the Premises; (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord; and (iv) Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Tenant. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easements (as defined above) to any person or business entity which: (i) is FCC licensed to operate a wireless communications business; (ii) is a parent, subsidiary, or affiliate of Tenant or Tenant's parent; (iii) is merged or consolidated with Tenant; (iv) acquires more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located; and/or (v) upon written approval of landlord, to any entity or company whose primary business function is the management or operation of wireless communications real estate or leases, which approval shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.

Landlord shall have the right to assign or otherwise transfer this Lease and the Easements granted herein, upon written notice to Tenant except for the following; any assignment or transfer of this Lease which is separate and distinct from a transfer of Landlord's entire right, title and interest in the Property, shall require the prior written consent of Tenant which may be withheld in Tenant's sole discretion. Upon Tenant's receipt of (i) an executed deed or assignment and (ii) an IRS Form W-9 from assignee, and subject to Tenant's consent, if required, Landlord shall be relieved of all liabilities and obligations hereunder and Tenant shall look solely to the assignee for performance under this Lease and all obligations hereunder.

Additionally, notwithstanding anything to the contrary above, Landlord or Tenant may, upon notice to the other, grant a security interest in this Lease (and as regards the Tenant, in the Antenna Facilities), and may collaterally assign this Lease (and as regards the Tenant, in the Antenna Facilities) to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord or Tenant, as the case may be, shall execute such consent to leasehold financing as may reasonably be required by Secured Parties.

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Party's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease. Any amendments to this Lease must be in writing and executed by both parties.

(c) Landlord agrees to cooperate with Tenant in executing any documents necessary to protect Tenant's rights in or use of the Premises. A Memorandum of Lease in substantially the form attached hereto as Exhibit C may be recorded in place of this Lease by Tenant.

(d) In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant.

(e) Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is located, without regard to the conflicts of law principles of such state.

(g) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall not be interpreted against the drafter, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

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

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


(j) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibits A and B may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and/or B, as the case may be, may be replaced by Tenant with such final, more complete exhibit(s).

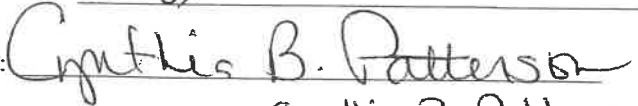
(k) If either party is represented by any broker or any other leasing agent, such party is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold the other party harmless from all claims by such broker or anyone claiming through such broker.


(l) Tenant will provide a landscape buffer on the Premises in accordance with the ordinances for the Town of Erwin.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

LANDLORD: Town of Erwin

By: 
Printed Name: Bryan Thompson
Title: Town Manager
Date: 3.3.09

ATTEST: 
Printed Name: ~~Ramona S. Addison~~ Cynthia B. Patterson
Title: Town Clerk

TENANT: T-Mobile South, LLC 

By: _____
Printed Name: Todd Wheeler
Title: Area Director, Network Engineering & Operations
Date: 2/20/09

T-Mobile Legal Approval

**EXHIBIT A
Legal Description**

The Property is legally described as follows:

All that certain lot or parcel of land located in Duke Township in the Town of Erwin, Harnett County, State of North Carolina and being more particularly described as follows:

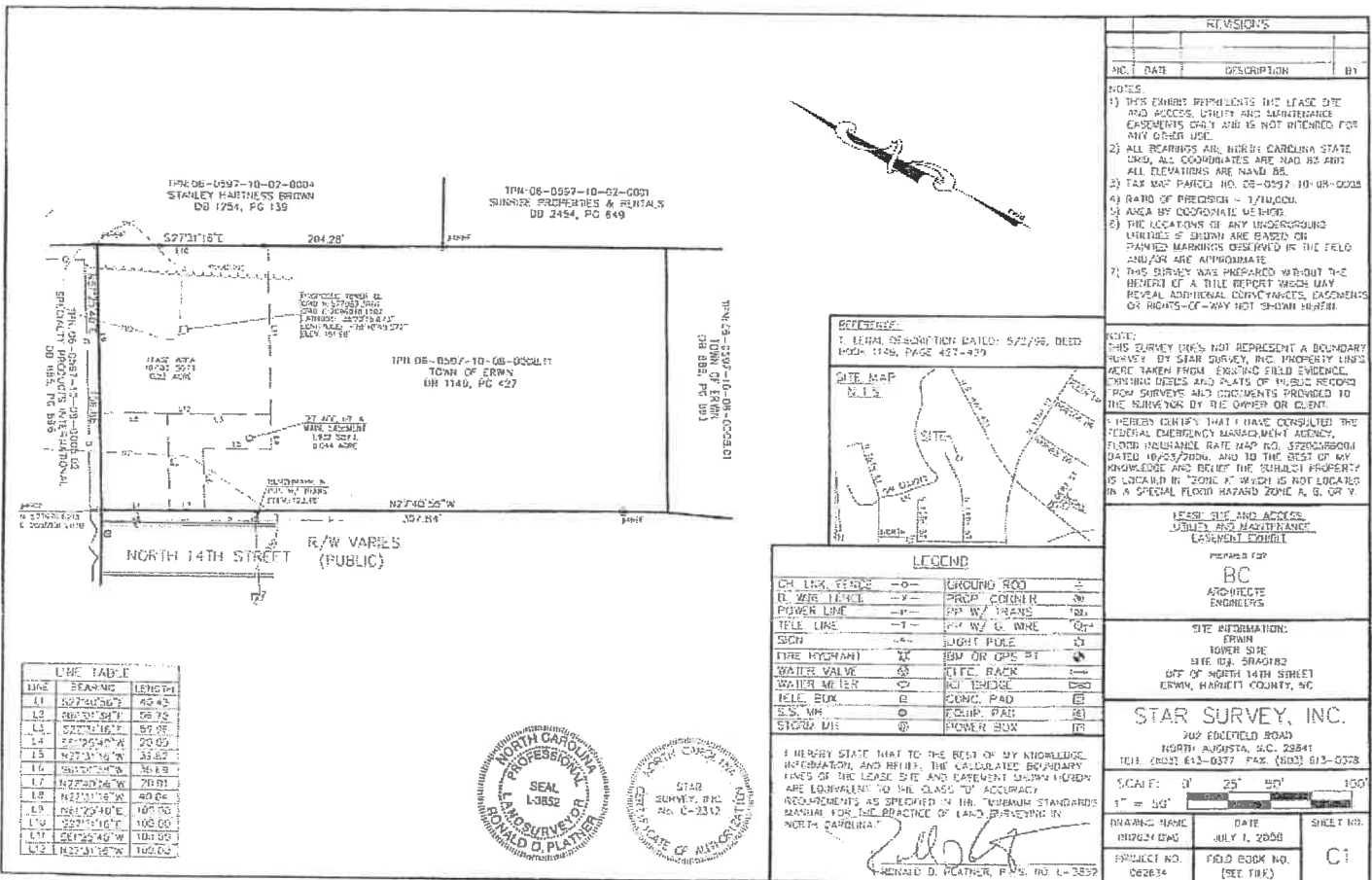
COMMENCING at an existing iron pipe at the Point of Intersection of the Northern R/W margin of West "N" Street, 60' R/W and the Eastern R/W margin of North 14th Street, 50' R/W in the Town of Erwin, North Carolina, said commencing point being the Southwest corner of Walter B. McNeill (Book 471, Page 22) now or formerly; thence leaving said point of intersection and running with the Eastern R/W margin of North 14th Street, North 03 deg. 02 min. 34 sec. East 468.58' to the Point of Curvature of a simple circular curve to the left having a radius distance of 491.76', an Arc Distance of 204.96' with a Chord Bearing and Distance of North 08 deg. 53 min. 50 sec. West, 203.48' to a point on the Eastern R/W margin

of North 14th Street, the Point of Beginning; thence continuing to run with said R/W margin a simple circular curve to the left having a radius distance of 491.76', an arc distance of 26.80' with a chord bearing and distance of North 22 deg. 23 min. 57 sec. West, 26.80' to the point of tangency on said R/W margin; thence continuing to run with said R/W margin North 23 deg. 57 min. 36 sec. West, 306.25' to the point of intersection of Eastern R/W margin of North 14th Street and the Southern boundary of Specialty Products International, Ltd. (Book 885, Page 896); thence leaving the Eastern R/W margin of North 14th Street and running with the Southern boundary of Specialty Products International, Ltd., North 65 deg. 04 min. 43 sec. East, 157.03' to an existing iron stake in the Western boundary of Register-Avery (739/482-485) now or formerly; thence running with said Western boundary South 23 deg. 57 min. 36 sec. East, 336.11' to a point in said Western boundary; thence leaving the Western boundary of Register-Avery and running with a Northern boundary of the Town of Erwin (885/893), South 66 deg. 11 min. 55 sec. West, 157.74' to the POINT OF BEGINNING and containing 1.2061 Acres (52,539 Square Feet)±.

And being the same property conveyed to the Town of Erwin in deed appearing of recording in Book 1149, at page 427 in the office of the Register of Deeds of Hamett County, North Carolina.

EXHIBIT B

The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:



Site Number: 5RA0182-A
 Site Name: Erwin
 Market: Raleigh

Site Lease - version 9.21.07

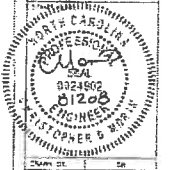
03/20/12

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architects
engineers

500 SOUTH MAIN STREET
RALEIGH, NC 27601
TEL: 336.782.1234
FAX: 336.782.1235
WWW.BCARCHITECTS.COM

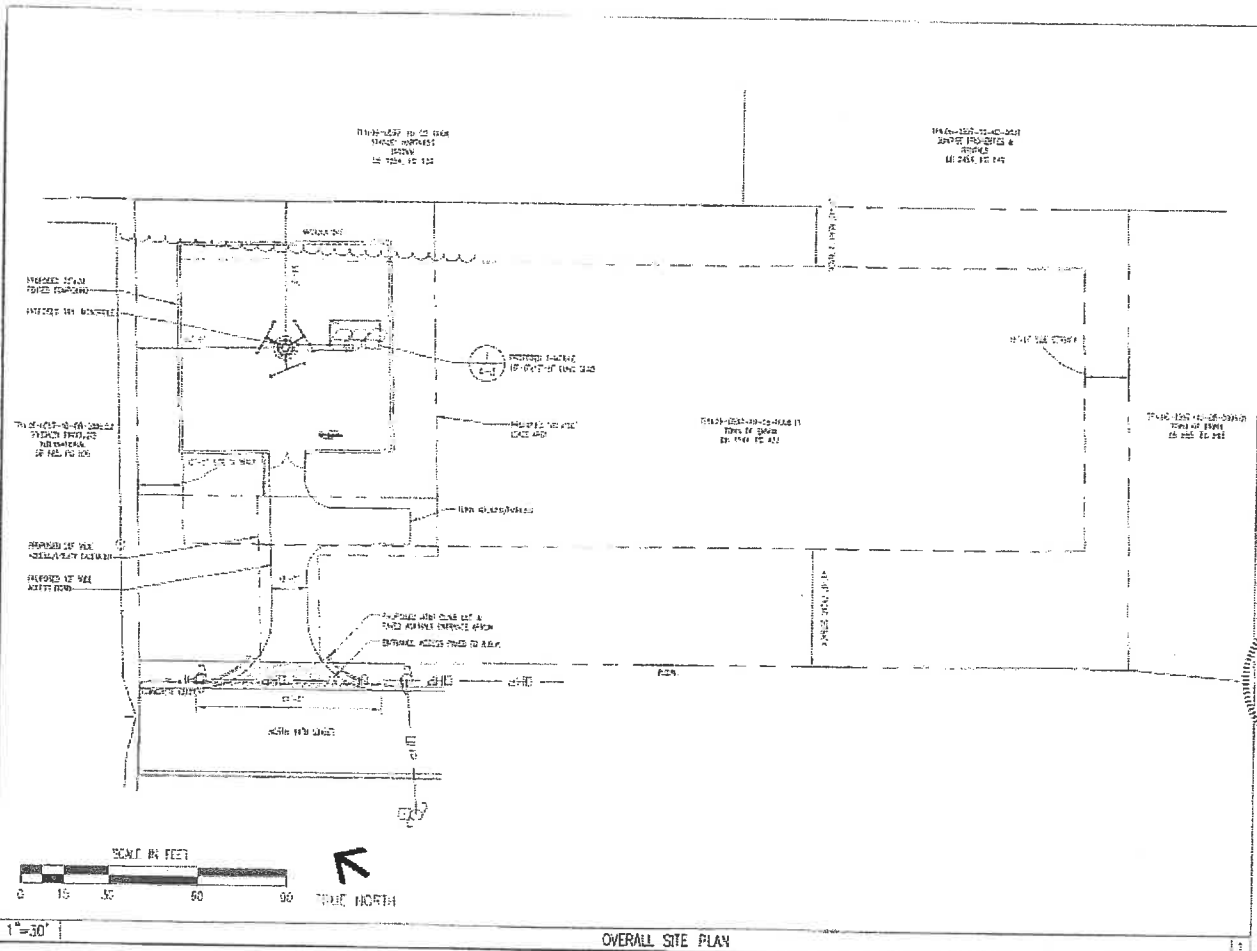
SITE OWNER
SRA0182-A
ERWIN
615 AVENUE
ERWIN, NC 28329



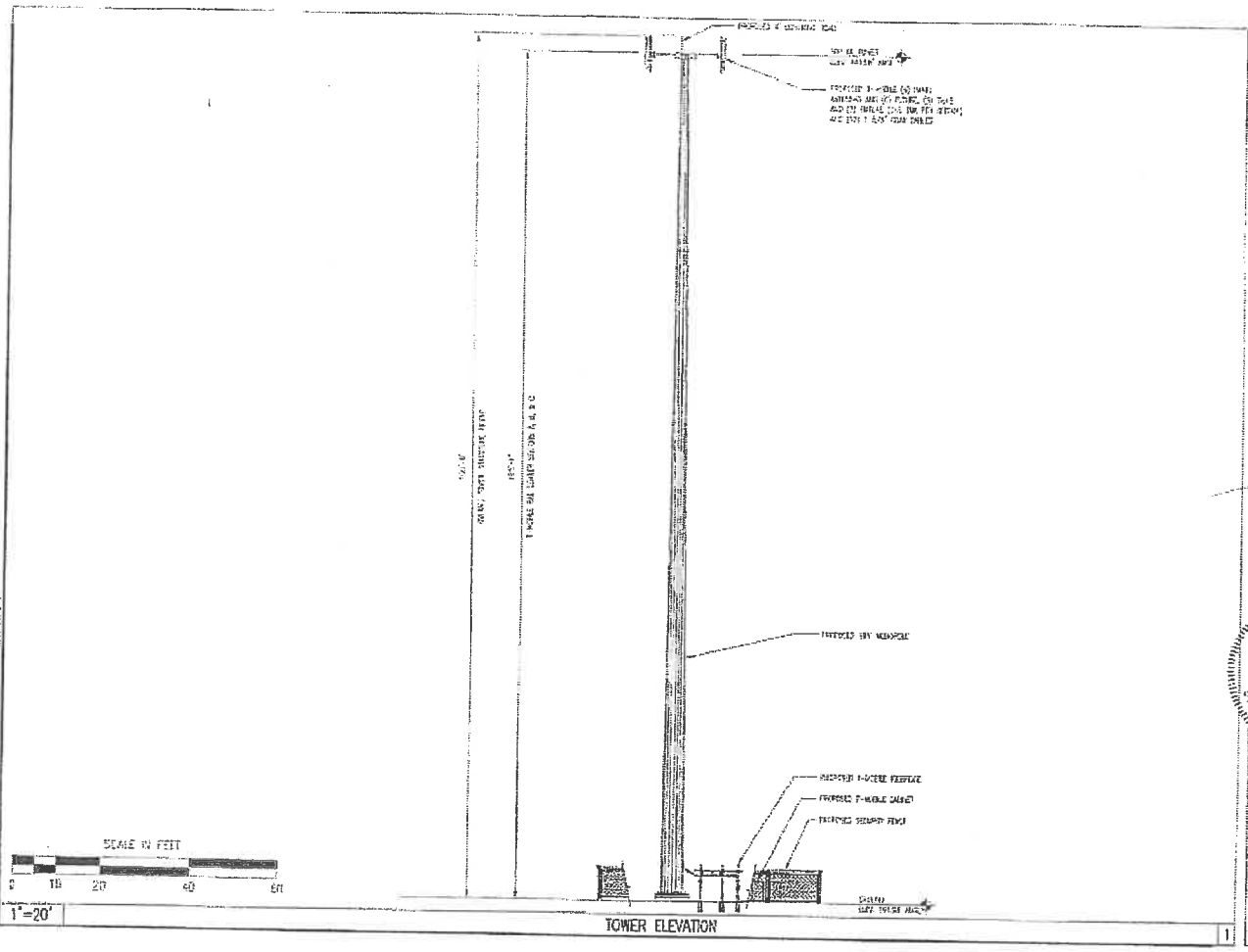
DATE OF ISSUE	03/20/12
DATE OF REVISION	03/20/12
DATE OF APPROVAL	03/20/12
DATE OF CLOSURE	03/20/12

OVERALL
SITE PLAN

SHEET NO.	A-0	TOTAL SHEETS	A
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Site Number: SRA0182-A
Site Name: Erwin
Market: Raleigh



T-Mobile

IS 440000 3
000000 1 2 3 4

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BC
architects
engineers

1000 BROADWAY, SUITE 100
ANN ARBOR, MI 48106
734.769.1234
www.bcarchitects.com

PROJECT NO. 5RA0182-A
DATE 02/28/08
DRAWN BY ERWIN
CHECKED BY [Signature]
DATE 02/28/08
SCALE 1"=20'

Professional Engineer Seal:
KARL H. CARL, P.E.
PROFESSIONAL ENGINEER
NO. 024362
2/28/08
STATE OF NORTH CAROLINA

TOWER ELEVATION

SHEET NUMBER: A-2
REV. 1: A

Site Number: 5RA0182-A
Site Name: Erwin
Market: Raleigh

EXHIBIT C

**Memorandum
of
Lease**

MEMORANDUM OF LEASE

Assessor's Parcel Number: 06-0597-10-08-0008.11

Between Town of Erwin ("Landlord") and T-Mobile South, LLC ("Tenant")

A Site Lease with Option (the "Lease") by and between Town of Erwin, a North Carolina municipal corporation, ("Landlord") and T-Mobile South, LLC, a Delaware Limited liability company ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of twelve (12) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional twelve (12) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for three (3) additional and successive five-(5) year terms. The Lease including all extensions shall expire on _____.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: Town of Erwin

By: _____
Printed Name: Bryan Thompson
Title: Town Manager
Date: _____

ATTEST: _____
Printed Name: Pamela S. Addison
Title: Town Clerk

TENANT: T-Mobile South, LLC

By: _____
Printed Name: Todd Wheeler
Title: Area Director, Network Engineering & Operations
Date: _____

[Notary block for Landlord]

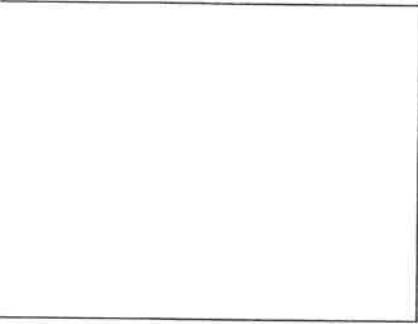
[Landlord Notary block for a Corporation, Partnership ,or Limited Liability Company]

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____ by Bryan Thompson, Town Manager of the Town of Erwin a North Carolina municipal corporation, and attested by Pamela S. Addison, its Town Clerk on behalf of said Town of Erwin.

Dated: _____

Notary Public
Print Name _____
My commission expires _____



(Use this space for notary stamp/seal)

[Notary block for Tenant]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Todd Wheeler is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Area Director, Network Engineering & Operations of T-Mobile South, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

**Memorandum of Lease Exhibit A
Legal Description**

The Property is legally described as follows:

Property description attached hereto and incorporated by reference.

THE FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Site Lease with Option (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **Town of Erwin NC**, a North Carolina municipal corporation, ("**Landlord**") and **American Towers LLC f/k/a American Towers, Inc.**, a Delaware limited liability company ("**Tenant**") (Landlord and Tenant being collectively referred to herein as the "**Parties**").

RECITALS

WHEREAS, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

WHEREAS, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Site Lease with Option dated March 3, 2009 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)**, payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before April 30, 2018; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
2. **Lease Term Extended.** Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on March 3, 2009 and, without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "**Existing Renewal Term**" and, collectively, the "**Existing Renewal Terms**"), the Lease is otherwise scheduled to expire on March 2, 2029. In addition to any Existing Renewal Term(s), the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of eight (8) additional five (5) year renewal terms (each a "**New Renewal Term**" and, collectively, the "**New Renewal Terms**"). Notwithstanding anything to the contrary contained in the Lease, (a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate this Lease only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary (beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "**Renewal Term**" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby agrees to execute and

Site No: 273036
Site Name: Erwin NC

OLLAMIDEI
39

return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** The Parties acknowledge and agree that the rent payable from Tenant to Landlord under the Lease is **One Thousand Nine Hundred Ninety-One and 82/100 Dollars (\$1,991.82.00)** per month (the "**Rent**"). Commencing on March 3, 2019 and on each successive annual anniversary thereof, Rent due under the Lease shall increase by an amount equal to **three percent (3%)** of the then current Rent. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to **Town of Erwin NC**. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and of no further force and effect.
4. **Deletions.** The Parties hereby acknowledge and agree that Section 15 of Lease is deleted in its entirety.
5. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in this Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense but without additional consideration owed to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
6. **Limited Right of First Refusal.** Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor (as herein defined). If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "**Third Party Competitor**") or (ii) assign

all or any portion of Landlord's interest in the Lease to a Third Party Competitor (any such offer, the "Offer"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; and (vi) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.
8. **Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential. Except with Landlord's family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.
9. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: Town of Erwin NC, Attn: Snow Bowden, Town Manager, PO Box 459, Erwin, NC 28339; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116.

Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
11. **Governing Law.** Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
12. **Waiver.** Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
13. **Tenant's Securitization Rights; Estoppel.** Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "**Security Interest**") in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("**Tenant's Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "**Holder**") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.
14. **Taxes.** The Parties hereby agree that Section 10 of the Lease is deleted in its entirety. During the term of the Lease, Landlord shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Parent Parcel, including the Leased Premises. Tenant hereby agrees to reimburse Landlord for any personal property taxes in addition to any increase in real property taxes levied against the Parent Parcel, to the extent both are directly attributable to Tenant's improvements on the Leased Premises (but not, however, taxes or other assessments attributable to periods prior to the Effective Date), provided, however, that Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of such personal property taxes or real property tax increase to Tenant along with proof of payment of same by Landlord. Anything to the contrary notwithstanding, Tenant shall not be obligated to reimburse Landlord for any applicable taxes unless Landlord requests such reimbursement within one (1) year after the date such taxes became due. Landlord shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from

Landlord. Tenant shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Tenant. If Landlord fails to pay when due any taxes affecting the Parent Parcel as required herein, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

LANDLORD:

Town of Erwin NC

a North Carolina municipal corporation,

Signature: *Snow Bowden*

Print Name: **Snow Bowden**


Title: **Town Manager**

Date: 3/19/2018

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TENANT:

American Towers LLC f/k/a American Towers, Inc.
a Delaware limited liability company

Signature: 
Print Name: Shawn Lanier
Title: Vice President - Legal
Date: 3-29-2018

Site No: 273036
Site Name: Erwin NC

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below.

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

SITUATE IN THE CITY OF HARNETT, TOWNSHIP OF DUKE, COUNTY OF HARNETT, STATE OF NORTH CAROLINA:

COMMENCING AT AN EXISTING IRON PIPE AT THE POINT OF INTERSECTION OF THE NORTHERN R/W MARGIN OF WEST "N" STREET, 60' R/W AND THE EASTERN R/W MARGIN OF NORTH 14TH STREET, 50' R/W IN THE TOWN OF ERWIN, NORTH CAROLINA, SAID COMMENCING POINT BEING THE SOUTHWEST CORNER OF WALTER B. MCNEIL (BOOK 471, PAGE 22) NOW OR FORMERLY; THENCE LEAVING SAID POINT OF INTERSECTION AND RUNNING WITH THE EASTERN R/W MARGIN OF NORTH 14TH STREET, NORTH 03 DEG. 02 MIN. 34 SEC. EAST 468.58' TO THE POINT OF CURVATURE OF A SIMPLE CIRCULAR CURVE TO THE LEFT HAVING A RADIUS DISTANCE OF 491.76', AN ARC DISTANCE OF 204.96' WITH A CHORD BEARING AND DISTANCE OF NORTH 08 DEG. 53 MIN. 50 SEC. WEST, 203.48' TO A POINT ON THE EASTERN R/W MARGIN OF NORTH 14TH STREET, THE POINT OF BEGINNING; THENCE CONTINUING TO RUN WITH SAID R/W MARGIN A SIMPLE CIRCULAR CURVE TO THE LEFT HAVING A RADIUS DISTANCE OF 491.76', AN ARC DISTANCE OF 26.80' WITH A CHORD BEARING AND DISTANCE OF NORTH 22 DEG. 23 MIN. 57 SEC. WEST, 26.80' TO THE POINT OF TANGENCY ON SAID R/W MARGIN; THENCE CONTINUING TO RUN WITH SAID R/W NORTH 23 DEG. 57 MIN. 36 SEC. WEST, 306.25' TO THE POINT OF INTERSECTION OF EASTERN R/W MARGIN OF NORTH 14TH STREET AND THE SOUTHERN BOUNDARY OF SPECIALTY PRODUCTS INTERNATIONAL, LTD. (BOOK 885, PAGE 896); THENCE LEAVING THE EASTERN R/W MARGIN OF NORTH 14TH STREET AND RUNNING WITH THE SOUTHERN BOUNDARY OF SPECIALTY PRODUCTS INTERNATIONAL, LTD., NORTH 65 DEG. 04 MIN. 43 SEC. EAST, 157.03' TO AN EXISTING IRON STAKE IN THE WESTERN BOUNDARY OF REGISTER-AVERY (739/482-485) NOW OR FORMERLY; THENCE RUNNING WITH SAID WESTERN BOUNDARY SOUTH 23 DEG. 57 MIN. 36 SEC. EAST, 336.11' TO A POINT IN SAID WESTERN BOUNDARY; THENCE LEAVING THE WESTERN BOUNDARY OF REGISTER-AVERY AND RUNNING WITH A NORTHERN BOUNDARY OF THE TOWN OF ERWIN (885/393), SOUTH 66 DEG. 11 MIN. 55 SEC. WEST, 157.74' TO THE POINT OF BEGINNING AND CONTAINING 1.2061 ACRES ± (52,539 SQUARE FEET)

Being situated in Harnett County, State of North Carolina, and being Parcel Number: 0605971008000811

EXHIBIT A (Continued)

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease (10,000 square feet); (ii) Tenant's (and Tenant's customers') existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way.

NEW BUSINESS

Erwin Board of Commissioners

REQUEST FOR CONSIDERATION

To: The Honorable Mayor and Board of Commissioners
From: Snow Bowden, Town Manager
Date: May 7, 2020
Subject: Dunn-Erwin Rail Trail Proposed Rules

The Dunn-Erwin Rail Trail Board has put together a list of rules for the trail. In order for them to be enforceable they require approval from the Erwin Board of Commissioners and the Dunn Board of Commissioners. They have already been approved by the Harnett County Board of County Commissioners. The main thing these rules address is ATV's on the trail. We have received numerous complaints on this matter. We will not be able to catch everyone but if these rules are approved it is something that could be enforced when necessary. To the best of my knowledge the Harnett County Recreation Department would be purchasing the signs and installing them. There could be a delay in obtaining the signs due to COVID-19.

Attachments:

- Dunn-Erwin Rail Trail Rules
- Letter from Dunn-Erwin Rail Trail Board Chair Patrick Riley

Action Recommended:

- Approve proposed rules for the Dunn-Erwin Trail



Carolina Sign & Service
 PO Box 127
 Angier, NC 27501
 Office: 919-639-3475
 Fax: 919-639-3035

6mm ACM Digitally Printed Graphics Matte Laminate



\$41 x 30 = \$1,230

Dunn-Erwin Rail Trail Rules and Regulations

- Trail and parking areas are open from dawn to dusk.
- Permitted uses of the trail: walking, jogging, running, bicycling, roller skating, and skateboarding.
- Motorized vehicles are prohibited unless authorized by the Dunn-Erwin Rail Trail Authority. Motorized vehicles include, but are not limited to, ATVs, golf carts, motorcycles, motorized bikes and scooters, mini bikes, go-karts, and hobby equipment such as cars, rockets, planes, helicopters, and drones.
- Bicyclists, skaters, and skateboarders must yield to pedestrians.
- Trail users should travel on the right and pass on the left.
- Do not block the trail or trail entrances.
- Bicyclists who are 16 years old or younger must wear a helmet. All bicyclists are encouraged to wear a helmet.
- Travel at a safe speed.
- No littering. All trash must be collected and placed in trash containers or removed from trail and parking areas.
- Pets must be on a leash no longer than 6 feet. Owners are responsible for removing pet waste and depositing it in a trash container.
- Collection, removal, or disturbance of any natural or cultural object is prohibited.
- Hunting is prohibited on the trail and parking areas.
- Use of tobacco products and the possession and/or consumption of alcoholic beverages is prohibited on the trail and parking areas.
- Horses are prohibited on the trail.
- Fireworks are prohibited on the trail and parking areas.
- Weapons are prohibited except concealed handguns, with proper permit, as allowed by ordinance and the North Carolina General Statutes.
- Abusive language and/or behavior is prohibited on the trail and parking areas.
- Soliciting and advertising of any kind is prohibited on the trail and parking areas.
- Loitering is prohibited on the trail.
- Please report any vandalism, storm damage, or unsafe conditions to the Dunn-Erwin Rail Trail Authority by calling 910-892-3232.
- For emergency situations, call 911. If you see suspicious activity along the trail, contact local law enforcement.

These Rules and Regulations may be enforced by any and all remedies authorized by law. In addition, any violations of these provisions may result in temporary or permanent expulsion and may subject violators to prosecution for trespassing. Park managers, designated officials, and law enforcement personnel are charged with enforcement of these Rules and Regulations.



\$154 x 6 = \$924

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Customer Approval: _____ Landlord Approval: _____



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 Fax: 919-639-3035

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24 in

18 in

Welcome to the Dunn-Erwin Rail Trail

- Trail open from Dawn to Dusk
- The following activities are prohibited on the trail
 - Littering
 - Smoking
 - Loitering
 - Horseback Riding
 - Camping
 - Hunting
 - Motorized Vehicle Use
 - Possession & Consumption of Alcohol
- Pets must be on a leash no greater than 6 ft.
- Please remove pet waste.

Violations of any Rules and Regulations may result in temporary or permanent expulsion and prosecution for trespassing.

Contact the Dunn-Erwin Rail Trail Authority at 910-892-3282 for complete set of rules. For emergency situations, call 911.

DUNN Harnett COUNTY

\$55 x 30 = \$1,650

18 in

18 in

Welcome to the Dunn-Erwin Rail Trail

- Trail open from Dawn to Dusk
- The following activities are prohibited on the trail
 - Littering
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DUNN Harnett COUNTY

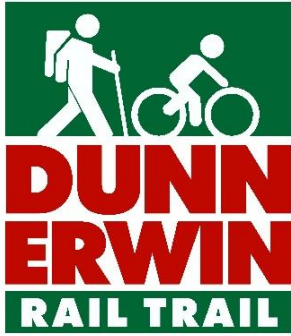
\$41 x 30 = \$1,230

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Note: Due to difference in font styles, certain letter sizes may vary accordingly.

Customer Approval: _____ Landlord Approval: _____

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Dunn Erwin Rail Trail, Inc.

PO Box 310

Dunn, North Carolina 28335

910-892-3282

910-893-7518

April 28, 2020

Snow Bowden
City Manager, Town of Erwin
PO Box 459
Erwin, North Carolina 28339

Mr. Bowden,

The Board of Directors of the Dunn Erwin Rail Trail would like for the Town of Erwin Board of Commissioners to review the new Rail Trail Rules and Regulations. They have been approved by the Harnett County Board of Commissioners and reviewed by the legal department of Harnett County. Once these rules have been approved by the Town of Erwin and the City of Dunn Councils, signs will be made and placed at every entrance along the trail.

The Board of Directors of the Dunn Erwin Rail Trail meets bi-monthly with members that are from both municipalities as well as representatives from Harnett County. The Erwin Parks and Recreation Department Staff has in cooperation with the City of Dunn's Public Works staff maintained the trail for the last several years. The Rail Trail board has just had a \$50,000 project done in replacing the granite fines along the trail. This was done through donations both in-kind and financially. Our mission is to offer the citizens of our communities a safe, well taken care of place to walk, run, exercise or bike with their families and friends.

We would like to see this partnership continue as well as ask for help from your Police Department in enforcing these rules in your jurisdiction along the trail.

Thank you for your time and support.

Sincerely,

A handwritten signature in cursive script that reads "Patrick Riley".

Patrick Riley
Dunn Erwin Rail Trail Inc.
Chair, Board of Directors