



22-0405

**TITLE:** Consider/Discuss/Act on a Resolution Authorizing the City Manager to Execute a Settlement Agreement and Mutual Release incident to Hemphill, LLC v. City of McKinney, Texas Civil Action No. 4:21-cv-00655, United States District Court, Eastern District of Texas (Sherman Division) and a related Land Option and Lease Agreement by and between Said Parties

**COUNCIL GOAL:** Direction for Strategic and Economic Growth  
(1C: Provide a strong city economy by facilitating a balance between industrial, commercial, residential and open space)

**MEETING DATE:** May 3, 2022

**DEPARTMENT:** Legal

**CONTACT:** Mark S. Houser, City Attorney

**RECOMMENDED CITY COUNCIL ACTION:** Approval of the Resolution

**ITEM SUMMARY:** The referenced litigation arose out of a land use denial in July 2021 relating to a cell tower application by Hemphill, LLC. The litigation parties recognized the benefits of pursuing alternative cell tower sites, and immediately commenced discussions on settling the litigation. A new site was identified on a parcel which was contractually obligated for conveyance to the City by the developer of the Custer West development. A special warranty deed to the parcel is currently being held in escrow by the City.

Over the next several months, the City Attorney's office and City staff worked on siting a new cell tower on the parcel to be conveyed, generally east of Furr Elementary school on Hidden Haven Dr. in McKinney. A lease was negotiated which allows the tenant to construct an 85' monopole cell tower structure with required screening and access drives. The lease will allow for 9 extensions totaling 50 years w/lease payments to the City, including rent escalation clauses. The approval of the Lease requires the sequential approval of the two (2) prior zoning/SUP items, as well. Since the parcel will ultimately be a City park, staff worked closely with the Park's Director to integrate the structures into the future park design. To that end, Mike Kowski has approved of the location and design of the cell tower.

The companion item is a Settlement Agreement and Mutual Release which, if approved, will settle all claims in the litigation. The litigation settlement will be effective only upon approval of the two (2) prior zoning/SUP companion items.

The Resolution authorizes the City Manager to execute both the Land Option and Lease Agreement and the Settlement Agreement and Mutual Release.

**ATTCHMENTS:** Land Option and Lease Agreement  
Settlement Agreement and Mutual Release

**SUPPORTING MATERIALS:**

[Resolution](#)

[Settlement Agreement](#)

[Land Option and Lease Agreement](#)