

ABILENE CITY COMMISSION - STUDY SESSION AGENDA
ABILENE WATER TREATMENT PLANT - 2100 NW 8TH STREET
April 19, 2016 - 4:00 pm

NOTE: The Study Session time and location has been changed to allow the City Commission and general public an opportunity to tour the Abilene Water Treatment Plant. The tour will follow the study session. Anyone electing to participate in the tour should wear sturdy shoes and pants. The meeting will begin at 4:00 pm and will convene at the Water Treatment Plant located at 2100 NW 8th Street. Please call (785) 263-2550 for assistance.

1. **PUBLIC COMMENTS.** Persons who wish to address the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
2. **STRATEGIC DISCUSSION**
 - a. None
3. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
 - a. A Resolution approving Federal-Aid Fund Exchange Master Agreement No. 70-16 concerning the Federal Fund Exchange Program.
 - b. A Resolution approving KLINK Resurfacing Project Agreement No. 236-16 concerning the City's participating in the KLINK Resurfacing Program.
 - c. An Ordinance amending Chapter 4, Article 3 of the City Code of the City of Abilene, Kansas concerning nuisances.
 - d. An Ordinance amending Chapter 4, Article 5 of the City Code of the City of Abilene, Kansas concerning inoperable vehicles.
 - e. An Ordinance amending Section 1-810 of the City Code of the City of Abilene, Kansas concerning the Board of Zoning Appeals.
4. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
 - a. Meeting Minutes: April 11, 2016 regular meeting
 - b. A Resolution approving an Engagement Letter with Varney and Associates, CPAs, LLC for 2016 Financial Auditing Services.
5. **ITEMS FOR PRESENTATION AND DISCUSSION**
 - a. Park Lightning Alert System Proposal
 - b. Convention and Visitors Bureau Marketing Plan
 - c. First Quarter, 2016 Financials
6. **REPORTS**
 - a. City Manager's Report
7. **ANNOUNCEMENTS** (*Meetings at Abilene Public Library unless otherwise provided*)
 - Commission Meeting, April 25 at 4:00 pm
 - Convention and Visitors Bureau, April 26 at 2:00 pm (Civic Center)
 - Airport Advisory Committee, May 2 at 5:00 pm
 - VENUE/TIME CHANGE: Study Session, May 3 at 4:00 pm (Wastewater Treatment Plant)

RESOLUTION NO. 042516-1

A RESOLUTION APPROVING FEDERAL-AID EXCHANGE MASTER AGREEMENT NO. 70-16 CONCERNING THE FEDERAL FUND EXCHANGE PROGRAM

WHEREAS, the City Commission desires to enter into a Federal-Aid Master Agreement with the Kansas Department of Transportation (“KDOT”) for the purposes of exchanging federal highway funds with state transportation funds.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That Federal-Aid Master Agreement No. 70-16 is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

EXHIBIT A

Federal-Aid Master Agreement No. 70-16

April 25, 2016

FUND EXCHANGE MASTER
CITY OF ABILENE, KANSAS

**FEDERAL-AID
FUND EXCHANGE
MASTER AGREEMENT**

This MASTER AGREEMENT is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Abilene, Kansas** (the "City"), collectively, the "Parties."

RECITALS:

- A. The Secretary has authorized a Federal Fund Exchange Program under which local units of government may exchange some or all of the Federal Funds allotment by KDOT to the local unit in a specific federal fiscal year for State Funds allocated to the Secretary.
- B. The City desires to exchange all or a portion of the City's annual allotment of Federal Funds for State Funds at the Exchange Rate or to bank all or a portion of its annual allotment, such amount to be used in the future for either a Federal-Aid Project or exchanged for State Funds at the Exchange Rate.
- C. The Secretary and the City are empowered by the laws of Kansas to enter into agreements incident to the financing, construction, and maintenance of city roads utilizing federal or state funds.
- D. The Parties have determined the Federal Fund Exchange Program would be most efficiently administered under this Master Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. "**Agreement**" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. "**Banked Funds**" means the city's annual allotment of Federal Funds which the City has decided to use in the future for either a Federal-Aid Project or to be exchanged for State Funds.
3. "**City**" means the City of Abilene, Kansas.
4. "**Effective Date**" means the date this Agreement is signed by the Secretary or his designee.

5. **“Exchange Rate”** means the exchange of Federal Funds allotment for State Funds at a rate of ninety percent (90%) of State Funds for one hundred percent (100%) of local federal obligation authority for costs incurred pursuant to this Agreement, on a reimbursement basis.
6. **“Exchanged Funds”** means the funds from the City’s annual allotment of Federal Funds exchanged for State Funds at the Exchange Rate.
7. **“Exchanged Portion”** means a portion of funds from the City’s annual allotment of Federal Funds exchanged for State Funds.
8. **“Federal Funds”** means federal-aid transportation funds, including Surface Transportation Program funds, for use on state and local federal-aid transportation projects.
9. **“Fund Exchange Request”** means the attached form “Attachment A” which is submitted by the City to KDOT to request the exchange of Federal Funds for State Funds in any given year, and the terms of which are incorporated herein by reference.
10. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
11. **“Parties”** means the Secretary and KDOT, individually and collectively, and the City.
12. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
13. **“State Funds”** means State of Kansas transportation funds.

ARTICLE II

TERMS OF AGREEMENT:

1. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this exchange.
2. **Incorporation of Program Application.** The City will submit a Fund Exchange Request when it desires to exchange its Federal Funds. The Fund Exchange Request will be incorporated into and made a part of this Agreement for all purposes.
3. **Exchange of Funds.**
 - (a) When the City submits a Fund Exchange Request to use the Banked Funds for a Federal-Aid Project, the Secretary will apply one hundred percent (100%) of the requested amount to said project, up to the amount indicated on the Fund Exchange Request.

- (b) When the City submits a Fund Exchange Request, to use the Exchanged or Banked Funds pursuant to the Federal Fund Exchange Program, the following terms will apply to the exchange:
 - (i) The City authorizes the Secretary to retain and use the Exchanged Portion of the City's annual allotment of Federal Funds for the federal fiscal year indicated in the Fund Exchange Request in exchange for State Funds at the Exchange Rate.
 - (ii) The Secretary shall reimburse the City, with State Funds, for one hundred percent (100%) of costs incurred pursuant to this Agreement, up to ninety percent (90%) of the amount of funds as indicated on the Fund Exchange Request. All costs incurred in excess of the fund exchange amount will be the sole responsibility of the City.
 - (iii) Any State Funds exchanged pursuant to this Agreement may be carried over in the next federal fiscal year by the City. Banking of Exchanged Funds is limited to three (3) consecutive fiscal years, unless written approval is obtained from the Secretary.
 - (iv) The City understands that the Secretary may use the retained Federal Funds exchanged by the City for any federally eligible purpose or project within the State.
 - (v) The Secretary will make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing showing costs paid by the City and any reimbursement form required by KDOT.

4. Limitations on Use of State Funds.

- (a) The City shall not deposit the exchanged State Funds into the operating budget for the City.
- (b) The City shall use the State Funds exchanged pursuant to this Agreement for:
 - (i) transportation projects, as approved by the Secretary, which are eligible under KDOT's Federal Fund Exchange Guidelines; and
 - (ii) for all phases of approved transportation project(s) including, but not limited to preliminary engineering, right of way acquisition, utility relocation, construction and inspection.
- (c) Upon completion of the transportation project, the City shall notify Secretary and allow the Secretary to participate in a final review of the project. Reviews by the Secretary are not done for the benefit of the City or its contractors, or agents, or other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, surveys, and any necessary

investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the City.

5. **Availability of State Funds.** The total dollars exchanged under this Agreement are contingent upon the availability of State Funds. If, in the judgment of the Secretary, sufficient State Funds are not appropriated to continue the function performed in this Agreement, the Secretary may terminate this Agreement without further notice. The Secretary will not be responsible to the City for any reduction in State Funds.
6. **Availability of Federal Funds.** The total dollars exchanged under this Agreement are also contingent upon the availability of Federal Funds. If, due to Congressional funding restrictions, sufficient Federal Funds have not been allocated to the City, the Secretary shall exchange funds in the amount available.
7. **Audit.** The City will participate and cooperate with the Secretary in an audit which will occur either annually or by project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with State Funds to the City for items considered non-participating, the City shall promptly reimburse Secretary for such items upon notification by Secretary.
8. **Compliance with Federal and State Laws.** The City shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances governing the projects undertaken pursuant to this Agreement.
9. **Legal Authority.** The City shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.
10. **Indemnification.** To the extent permitted by law, the City agrees to defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City or the City's employees.

ARTICLE III

GENERAL PROVISIONS:

1. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
2. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

3. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.
4. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
5. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.
6. **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or his designee.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF ABILENE, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____ (Date)
Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the ____ day of _____, 20____.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

(Example Fund Exchange Request)



**KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF LOCAL PROJECTS
REQUEST TO EXCHANGE FEDERAL FUNDS UNDER THE FEDERAL-AID FUND
EXCHANGE MASTER AGREEMENT**

Date: _____

County/City: _____

Federal Funds to Be Exchanged: \$ _____

The Secretary of Transportation is hereby requested to make available to the city/county State Funds in exchange for the city's/county's allotment of Federal Funds in the amount stated above. The Exchange will be made under the Terms and Conditions as set forth in the city/county's Federal Fund Exchange Master Agreement previously executed between the city/county and the Secretary. This request shall be attached to and become a part of the city/county's Federal Funds Exchange Agreement.

Contact Person: _____ Title: _____

Address: _____

Phone: _____ Email: _____

*Signature** *Date*

Typed or Printed Name

Title

**The representative signing this request must be authorized by law to bind the city/county to an agreement.*

RESOLUTION NO. 042516-2

**A RESOLUTION APPROVING KLINK RESURFACING PROJECT AGREEMENT NO. 236-16
CONCERNING THE CITY'S PARTICIPATION IN THE KLINK RESURFACING PROGRAM**

WHEREAS, the City Commission desires to enter into a KLINK Resurfacing Agreement with the Kansas Department of Transportation ("KDOT") for the purposes of resurfacing a portion of Buckeye Avenue.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That KLINK Resurfacing Agreement No. 236-16 is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

EXHIBIT A

KLINK Resurfacing Agreement No. 236-16

April 25, 2016

PROJECT NO. 15-21 U-0594-01
KLINK RESURFACING PROJECT
CMS CONTRACT NO. _____
CITY OF ABILENE, KANSAS

AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation, Kansas Department of Transportation (KDOT)** (the “Secretary”) and the **City of Abilene, Kansas (“City”)**, collectively, the “Parties.”

RECITALS:

- A. The City has applied for and the Secretary has approved a KLINK Resurfacing Project.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct a street resurfacing Project on K-15, a city connecting link for the State Highway System, in the City.
- D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of State Highway funds.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. **City Connecting Link** - a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.

2. **KLINK Resurfacing Program** - a city connecting link (KLINK) resurfacing program that is a part of the KDOT Local Partnership Program with cities and counties. The state’s participation in the cost of construction and construction engineering will be seventy-five percent (75%) for cities with a population of less than 10,000 or fifty percent (50%) for cities with a population of 10,000 or greater, up to a maximum of \$300,000.00 per fiscal year of state funds. The KLINK Resurfacing Program is for contract maintenance only.

3. **Project** - mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the KLINK Resurfacing Program for **2” Mill and HMA overlay with thermoplastic pavement markings on K-15, from 21st Street to North City Limits.**

4. **Eligible/Participating Bid Items** - all bid items that pertain to Project resurfacing and striping along the connecting link only. Items eligible for KLINK funding include manhole adjustments, milling, overlays, aggregate or paved shoulders (if already existing), concrete pavement, thin bonded concrete overlays, joint repair, slurry seals, bituminous seals, ultra thin bonded overlay, concrete and asphalt pavement patching, subgrade improvement, reconstruction, traffic control, transporting of salvageable material (millings), striping, traffic signal loops on the state highway and that portion of the traffic signal loops that lie inside the return on side streets, and pavement marking on the connecting link. Video-detection systems are participating, except on side streets; however, such systems will require pre-approval, as well as additional details, and a bill of materials to be included in the final design plans. Resurfacing work is participating out to the curb returns on side streets.

5. **Non-Eligible/Non-Participating Bid Items** - items typically non-eligible for KLINK funding include but are not limited to: bridge deck patching, utility adjustments, curb and gutter, overlay of curb and gutter, adjustment or reestablishment of survey markers, drainage appurtenances, driveways, entrances, sidewalks, sidewalk ramps, construction warranties, traffic loop construction outside the return on a side street, video detection on side streets, and construction outside of the curb and gutter. Work performed outside the Project limits on side streets, or outside the city limits is non-eligible for state participation, items with unit price changes from the let price (other than items with price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.

6. **Fiscal Year (FY)** - the state's fiscal year begins July 1 and ends on June 30 of the following calendar year.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Reimbursement of Project Costs.** The Secretary agrees to reimburse the City seventy-five percent (75%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed \$300,000.00, as the Secretary's total share of the cost to construct the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceed \$400,000.00. The Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, or items not participating in the KLINK Resurfacing Program.

2. **Reimbursement Payments.** The Secretary will make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed by the City that the Project was constructed within substantial compliance of the final design plans and specifications.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Limited Scope.** The Project is limited to roadway resurfacing along the Project location. The Project roadway resurfacing may include all eligible items as defined above. Roadway resurfacing does not include such non-eligible items as defined above and any other items deemed non-eligible by the Secretary. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

2. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current KLINK Resurfacing Program for this Project.

3. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

4. **Indemnification by Contractors.** The City will require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act of omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

5. **Design, Letting, and Administration.** The City will prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, let the contract, and award the contract to the lowest responsible bidder. The City agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The City shall design the Project or contract to have the Project designed in conformity with the current version of Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual.

6. **Responsibility for Adequacy of Design.** The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, and estimates. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the City.

7. **Design Schedule and Submission to Secretary.** The City will follow a schedule for design and development of plans that will allow the Project to be let to contract in the programmed fiscal year; otherwise, the City agrees the Secretary has the right to withdraw the Secretary's participation in the Project. If the City's Project preliminary plans, specifications, and a cost estimate (PPS&E) are submitted to KDOT's Bureau of Local Projects later than May 1 of the programmed fiscal year, at the Secretary's discretion, the Project may be moved into a future fiscal year.

8. **Movement of Utilities.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipelines, meters, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in

accordance with the final design plans. The expense of the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the City.

9. **Future Encroachments.** The City will prohibit future erection, installation or construction of encroachments either on or above the right of way, and it will not in the future permit the erection of fuel dispensing pumps upon the right of way of the connecting link. The City further agrees it will require any fuel dispensing pumps erected, moved or installed along the connecting link be placed a distance from the right of way line no less than the distance permitted by the National Fire Code.

10. **Legal Authority.** The City will adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

11. **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the design plans, which includes the City's plan for handling multi-modal traffic during construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

12. **Permanent Traffic Control.** The City shall conform the location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by a public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference, and shall be subject to the approval of the Secretary.

13. **Access Control.** The City will maintain control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

14. **Final Design Plans.** The final design plans will depict the entire Project location. The eligible/participating bid items must be shown separated and listed apart from the non-eligible/non-participating bid items on the final design plans, bid documents, and on the detailed billing provided by the City. The City shall have the final design plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final design plans and specifications. The City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

15. **Program Administration.** In addition to complying with all requirements contained in Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, let, or award a contract for the Project, prior to receipt of notification from KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

(b) The City acknowledges that funding for the Project may be cancelled if the City awards the contract for the Project prior to its receipt of an "Authority to Award" notification from KDOT's Bureau of Local Projects.

(c) The City will provide to KDOT's Bureau of Local Projects an electronic copy of the executed contract, the completed tax exemption form (PR-76 or PR-74a) and the City's Notice of Award.

(d) After the contract for the Project is awarded, the City will promptly notify both the Project Manager of KDOT's Bureau of Local Projects and the KDOT Area Engineer to communicate the date the contractor is anticipated to begin work on the Project.

(e) The City acknowledges that any costs for work completed prior to receipt of a Notice of Actual Start Date from the KDOT Area Engineer are ineligible for participation in the Program, will be deemed non-participating costs, and shall be the responsibility of the City.

16. Discrimination Laws. The City will: (a) comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*)(ADA) and not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; and (d) include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated or suspended in whole or in part.

17. Inspections. The City will provide the construction engineering/inspection necessary to determine substantial compliance with the final design plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. Corrective Work. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the KLINK Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final design plans and specifications.

19. Attestation. Upon completion of the Project the City shall have a licensed professional engineer employed by the City attest in an email to the KDOT Area Engineer and the Project Manager for KDOT's Bureau of Local Projects, that the Project was completed in substantial compliance with the final design plans and specifications.

20. Final Acceptance. Prior to issuing final payment to the contractor, the City must obtain final acceptance of the Project from the KDOT Area Engineer.

21. Accounting. Upon request by the Secretary, the City will provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KLINK Master – City Let (Rev. 03-2016)

KDOT and costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

22. **Reimbursement Request.** The City will request payment from the Secretary after the City has paid the contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in conformance with the plans and specifications.

23. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

ARTICLE IV

GENERAL PROVISIONS:

1. **Existing Right of Way.** The Project will be constructed within the limits of the existing right of way.

2. **Incorporation of Final Plans.** The final design plans and specifications are by this reference made a part of this Agreement.

3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

4. **Project Modification.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be let
- b. Project length
- c. Project location
- d. Project scope

Items b, c, and d require an attached map to scale.

It is further mutually agreed during construction, the City shall notify the Secretary of any changes in the plans and specifications.

5. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

6. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

7. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

8. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement are binding upon the Secretary and the City and their successors in office.

9. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

10. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

11. **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or designee.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF ABILENE, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS CONCERNING NUISANCES

BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Section 4-302 of the City Code of the City of Abilene, Kansas is hereby amended as follows:

4-302. UNLAWFUL ACTS. It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance in the City.

SECTION TWO. Section 4-304 through Section 3-312 of the City Code of the City of Abilene, Kansas are hereby amended as follows:

4-304. NOTICE OF VIOLATION.

Whenever the City Health Officer determines there has been a violation of this Article or has grounds to believe that a violation has occurred, a written Notice of Violation and Order of Abatement (“Notice and Order”) shall be given to the property owner, any known agent of the property owner, and any other person deemed responsible for the violation.

4-305. ORDER OF ABATEMENT.

The Notice and Order of Abatement shall provide information sufficient to reasonably allow the recipient to determine the nature of the actions required to self-abate the violation and specify a reasonable time period for completion of the self-abatement. A reasonable time to abate the violation shall be presumed not to exceed ten days in accordance with K.S.A. 12-1617e(b), subject to extension upon the authority of the City Health Officer following a demonstration of due diligence in the self-abatement of the violation.

4-306. REQUEST FOR HEARING.

The recipient of the Notice and Order may request a hearing before the Building Standards Board (“Board”), pursuant to Section 4-310, by completing and filing a written “Request for Hearing” form in the office of the Community Development Director prior to the close of business on the date of the deadline for self-abatement of the violation as stated in the Notice and Order. The timely filing of a request for hearing shall stay the enforcement of the Notice and Order until the appeal can be heard and decided by the Board.

4-307. FORM.

The Notice and Order shall:

1. Include a description of the subject real estate sufficient for identification;
2. Include a statement of the nature of the violation and including relevant ordinances, with sufficient information that would reasonably allow the recipient to determine the nature of the

violation to allow for self-abatement.

3. Include an order of abatement allowing a reasonable time to take the actions required to self-abate the violation;
4. Inform the recipient of the Notice and Order of the right to a hearing if the recipient completes and files a written request for a hearing form in the office of the Community Development Director prior to the close of business on the date of the deadline for self-abatement of the violation;
5. Inform the recipient that failure to comply with the Notice and Order may result in the City abating the violation and recovering any costs not paid by the recipient within thirty days of a notice of costs by (a) assessing of any costs against the subject real estate or (b) filing suit seeking a personal judgment against the recipient; and
6. Inform the recipient that the violation is subject to prosecution.

4-308. SERVICE OF NOTICE AND ORDER. The Notice and Order shall be served either by certified mail, return receipt requested, or by personal service; provided, however, if the subject real estate is unoccupied and the owner is a non-resident, then by mailing the Order by certified mail, return receipt requested to the last known address of the owner. If a person to whom a Notice and Order is directed for service has failed to accept delivery or otherwise failed to effectuate receipt of a Notice and Order pursuant to this section during the preceding 24-month period, the City may provide notice of the issuance of any further Notice and Order by such other methods as door hangars, conspicuously posting notice of such order on the subject property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, the alternative means of notice provided by this section shall be given by telephone communication or first class mail. Destroying or tampering with any means of posting notice of such order on the subject property shall be a separate violation.

4-309. ABATEMENT BY CITY; ASSESSMENT AND COLLECTION OF COSTS.

- (a). If the recipient of the Notice and Order fails to comply with the Order within the period of time designated in the Order, then the City may go onto the property to abate the violation in a reasonable manner. The City may use its own employees or contract for services to abate the violation. The City, or its agents, shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violation(s).
- (b). If the City takes action to abate the violation, it shall provide a notice of costs to the person responsible for the violation. The notice of costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the notice of costs shall also be posted on the property in a reasonable manner. The recipient shall have thirty days from the date of the notice of costs to make full payment. The notice of costs shall state:
 1. The description of the subject real estate sufficient for identification;

2. The nature of the work performed to abate the violation;
 3. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
 4. That the notice is a demand for payment within thirty days from the date of notice;
 5. That failure to pay the entire amount within thirty days shall allow the City to file a tax lien against the property or to pursue a personal judgment for the recovery of the costs, or both;
 6. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
 7. The payments shall be made by check or money order made payable to the City of Abilene, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments, unless a payment arrangement has been agreed to and approved in writing by the Community Development Director.
- (c). If the payment of costs is not made within the thirty-day period, the City may levy a special assessment for such costs against the subject real estate. The City Clerk at the time of certifying other city taxes to the County Clerk shall certify such costs, and the County Clerk shall extend such costs on the tax roll of the county against the subject real estate, and it shall be collected by the County Treasurer and paid to the City as other city taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the district court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs, including but not limited to, investigative cost as well as the cost of providing notice, including any postage, have been paid in full.
- (d). The abatement of a violation of this article by the City shall not be a defense or excuse to any person in violation of this article.

4-310. HEARING. If a hearing is requested within the ten day period as provided in Section 4-306, such request shall be made in writing to the Community Development Director. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the Notice and Order. A request for hearing shall be based upon a claim that the true intent of this article or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Article do not fully apply, or the requirements of this Article are adequately satisfied by other means. The hearing shall be held by the Board as soon as possible after the filing of the request therefore, and the person shall be advised by the City of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the City may introduce such witnesses and evidence as is deemed necessary and proper by the Board. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the Board shall record its determination of the matter in writing and serve a copy upon the person requesting the hearing. The decision of the Board shall be a final order of the City.

4-311. PENALTY.

- (a). In addition to or as an alternative to the remedy of abatement as provided under this Article, any person in violation of this Article may be prosecuted in municipal court and subject to:
 - 1. a fine of not less than \$50 nor more than \$500;
 - 2. a sentence of not more than six months in jail;
 - 3. such other orders as the court deems just and consistent with the purpose and intent of this Article; or
 - 4. any combination thereof.
- (b). Prosecution of any offender under this Article does not limit the City's right to pursue assessment or collection of costs as stated in this Article, or by other laws.
- (c). Each day that any violation shall continue shall constitute a separate offense.
- (d). Any fines assessed under this Article shall be collected by the municipal court administration and paid over to the general fund, except for assessments of court costs.

4-312. ADDITIONAL REMEDIES. In addition to or as an alternative to the remedy of abatement or the penalties provided herein, the City Health Officer may cause to be instituted any appropriate proceeding at law or in equity to restrain, correct or abate any violation of the provisions of this Article or of any order or direction made pursuant thereto.

SECTION THREE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 5 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS CONCERNING INOPERABLE AND ABANDONED VEHICLES

BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Section 4-509 and Section 4-510 of the City Code of the City of Abilene, Kansas are hereby amended as follows:

4-509. NUISANCE AND ABATEMENT. Any inoperable vehicle parked, stored or deposited in a manner other than that permitted under this article is hereby declared a nuisance and may be abated from property other than public property or property open to use by the public under the same authority and procedure as set forth in Article 3 of this Chapter, as it now exists or may be amended. Disposition of any vehicle abated pursuant to this article shall be in compliance with the procedures for impoundment, notice and public auction provided by K.S.A. 8-1102(a)(2), as amended.

4-510. FAILURE TO COMPLY; PENALTY.

- A. In addition to or as an alternative to the remedy of abatement as provided under this article, any person in violation of this article may be prosecuted in municipal court and subject to:
1. a fine of not less than \$50 nor more than \$500;
 2. a sentence of not more than six (6) months in jail;
 3. such other orders as the court deems just and consistent with the purpose and intent of this article; or
 4. any combination thereof.
- B. Prosecution of any offender under this article does not limit the city's right to pursue assessment or collection of costs as stated in this article, or by other laws.
- C. Each day that any violation shall continue shall constitute a separate offense.
- D. Any fines assessed under this article shall be collected by the municipal court administration and paid over to the general fund, except for assessments of court costs.

SECTION TWO. Section 4-511 and Section 4-512 of the City Code of the City of Abilene, Kansas are hereby repealed in their entirety.

SECTION THREE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

ORDINANCE NO. ____

AN ORDINANCE AMENDING SECTION 1-810 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS CONCERNING THE BOARD OF ZONING APPEALS

BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Section 1-810 of the City Code of the City of Abilene, Kansas is hereby amended as follows:

1-810. BOARD OF ZONING APPEALS. The Board of Zoning Appeals shall be organized as provided in Chapter 25 of the Zoning Regulations of the City of Abilene, Kansas. ~~be consist of seven (7) members, who shall be appointed by the Governing Body for three (3) year terms commencing on the first day of May, pursuant to K. S. A. 12-759. The Zoning Administrator shall serve as the Secretary of the Board of Zoning Appeals.~~ The Board of Zoning Appeals shall be organized in the manner and have the powers and duties provided by K. S. A. 12-741 et seq, and the ~~Abilene~~ Zoning Regulations of the City of Abilene, Kansas Code, as adopted herein.

SECTION TWO. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

RESOLUTION NO. 042516-3

A RESOLUTION APPROVING AN ENGAGEMENT LETTER WITH VARNEY AND ASSOCIATES, CPAS, LLC FOR 2016 FINANCIAL AUDITING SERVICES

WHEREAS, with the adoption of Resolution No. 032816-1, the City Commission approved a Professional Services Agreement with Varney and Associates, CPAs, LLC (“Consultant”) for independent auditing services; and

WHEREAS, the City Commission desires to accept an Engagement Letter with Varney and Associates, CPAs, LLC (“Consultant”) for the purposes of completing the financial audit for 2016.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That an Engagement Letter is hereby adopted as attached hereto as **Exhibit A.**

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of April, 2016.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

EXHIBIT A

Engagement Letter for Financial Auditing Services

April 25, 2016



March 28, 2016

City of Abilene, Kansas
PO Box 519
Abilene, KS 67410

Dear Governing Body Members:

The following represents our understanding of the services we will provide the City of Abilene, Kansas.

You have requested that we audit the summary statement of receipts, expenditures and unencumbered cash – regulatory basis - of City of Abilene, Kansas, as of December 31, 2015, and for the years then ended, and the related notes to the financial statements, which collectively comprise City of Abilene, Kansas's basic financial statements as listed in the table of contents. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

In addition, we will audit the entity's compliance over major federal award programs for the period ended December 31, 2015. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the entity's major federal award programs.

Supplementary information other than RSI will accompany the City of Abilene, Kansas's basic financial statement. These reports are regulatory-required supplemental information. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- Schedule of expenditures – actual and budget (regulatory basis)
- Schedule of individual fund receipts and expenditures – actual and budget (regulatory basis)

Schedule of Expenditures of Federal Awards

We will subject the schedule of expenditures of federal awards to the auditing procedures applied in our audit of the basic financial statement and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statement or to the financial statement itself, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements as a whole.

Data Collection Form

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, schedule of expenditure of federal awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the *earlier* of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

Audit of the Financial Statements

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and in accordance with the *Kansas Municipal Audit and Accounting Guide (KMAAG)*. Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statement is free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America and the KMAAG.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

We will issue a written report upon completion of our audit of City of Abilene, Kansas's basic financial statement. Our report will be addressed to the governing body of City of Abilene, Kansas. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Audit of the Financial Statements (Continued)

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

Audit of Major Program Compliance

Our audit of City of Abilene, Kansas's major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the Uniform Guidance, and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the entity has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal award programs. Our procedures will consist of determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of those procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Also, as required by the Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the entity's major federal award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the entity's major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

Management's Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statement in accordance with KMAAG;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements;
3. For safeguarding assets;
4. For identifying all federal awards expended during the period including federal awards and funding increments received prior to December 26, 2014, and those received in accordance with the Uniform Guidance generally received after December 26, 2014;
5. For preparing the schedule of expenses of federal awards (including notes and noncash assistance received) in accordance with the Uniform Guidance requirements;

Management's Responsibilities (Continued)

6. For the design, implementation, and maintenance of internal control over compliance;
7. For identifying and ensuring that the entity complies with laws, regulations, grants, and contracts applicable to its activities and its federal award programs;
8. For following up and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
9. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
10. For submitting the reporting package and data collection form to the appropriate parties;
11. For making the auditor aware of any significant vendor relationships where the vendor is responsible for program compliance;
12. To provide us with:
13. Access to all information of which [management] is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
14. Additional information that we may request from [management] for the purpose of the audit; and
15. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
16. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole; and
17. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility (a) for the preparation of the supplementary information in accordance with the applicable criteria, (b) to provide us with the appropriate written representations regarding supplementary information, (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information, and (d) to present the supplementary information with the audited financial statements, or if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Michelle Crow, CEO, is the engagement partner for the audit services specified in this letter. Her responsibilities include supervising Varney & Associates, CPAs, LLC's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

March 28, 2016
City of Abilene, Kansas
Page five

Our fees are based on the amount of time required at various levels of responsibility, plus actual out-of-pocket expenses. Our fees will not exceed the following: 2015 - \$13,000; 2016 - \$13,000; 2017 - \$13,500; 2018 - \$13,500 and 2019 - \$13,500. In addition, we will bill an additional \$1,500 per major programs for the years that a Single Audit is required. We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use City of Abilene, Kansas's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit.

Other Matters

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

The audit documentation for this engagement is the property of Varney & Associates, CPAs, LLC and constitutes confidential information. However, we may be requested to make certain audit documentation available to federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Varney & Associates, CPAs, LLC's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

At the conclusion of our audit engagement, we will communicate to the governing body the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

March 28, 2016
City of Abilene, Kansas
Page six

In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements compliance over major federal award programs including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Sincerely,



Varney & Associates, CPAs, LLC

RESPONSE:

This letter correctly sets forth our understanding.

City of Abilene, Kansas

Acknowledged and agreed on behalf of City of Abilene, Kansas by:

Name: _____

Title: _____

Date: _____

Memo

To: David Dillner

CC: City Commission

From: Jane Foltz, Director Abilene Parks and Recreation Department

Date: April 7, 2016

Re: Weatherbug Outdoor Alerting System for BGSC

I was asked by City Commissioner Tim Shafer to look into getting an alert system for the ball fields in case of lightening when baseball or softball games are being played. Commissioner Shafer had been at a neighboring facility when one of these devices was used during inclement weather.

I contacted the Salina Parks and Recreation department Sports Supervisor Travis Scheele. Travis brought me up to speed on the system they use in Salina. He shared that it has been very beneficial to staff and patrons as when it goes off there are no questions as to how staff, umpires, spectators or teams will respond.

I contacted Stuart Hershon from Earth Networks and he was able to give us a bid by locating our complex on Google Earth. The system will alert anyone in the area using a horn and strobe unit. The unit will be internet based using Weatherbug.

The cost of unit with installation plus an extra strobe that will be installed at the pool, is \$9,996. This includes the 1st year annual fee that is \$1,500. We do not have wireless internet at the ball complex and I have talked with Heather Colette from Eaglecom to see if we can get internet at the complex. She has sent an email to the office and we are currently waiting on a response.

I have talked with staff and they are very excited to have this technology installed for the safety of staff as well as the public.

It is my recommendation to have this safety device installed at the Bill Gravette Sports Complex as soon as possible. Lead time for installation is 6-8 weeks and Stuart has let me know that he will put a rush on this system.

Funding for this alert system would come from a number of sources:

General Fund \$4,500

Special Parks and Recreation \$2,500

Pool fund \$2,000

Park fund \$1,000

The annual fee of \$1,500 will be budgeted in the coming years under the operations budget of the pool and parks department.

EARTH NETWORKS PROFESSIONAL AGREEMENT

12410 Milestone Center Drive,
 Suite 300, Germantown, MD 20876
 EARTH NETWORKS dba WEATHERBUG
 herein referred to as "Earth Networks"



Customer Contact Information

Business Name:	Abilene KS Parks and Rec	Business Address:	1020 NW Eighth St. Abilene, KS 67410
Contact Name:	Jane Foltz		
Contact Phone:	(785) 263-7477	Contact Fax:	

Customer Billing Information (if different from above)

Business Name:		Business Address:	
Contact Name:		Contact Fax:	
Contact Phone:			

Earth Networks Contact Information

POC:	Stuart Hershon	Email Address:	shershon@weatherbug.com
Contact Phone:	(800) 544-4429 ext 4080	Contact Fax:	(301) 258-5210

Schedule of Products and Services

Product Name	Notes	Quantity	Unit Price	Total Price
WeatherBug Outdoor Alerting Package Includes:			\$10,940.00	\$10,940.00
• WeatherBug Outdoor Alerting System Horn/Strobe Unit		1		
• Strobe Only unit		1		
• Informer		2		
• WeatherBug Lighting Alert Feed & StreamerRT Visualization		2		
• Installation Services		2		
• UPS Back-up power supply		2		

Initial Term of Contract:
 1 year on Lightning Alerting Subscription

Sub Total:	\$10,940.00
Discount:	(\$1099.00)
S & H	120.00
Sales Tax:	N/A
Grand Total:	\$9,996.00

Quotation valid through: 04/30/16

Date of Original Signed Terms and Conditions: _____

Remarks:

The buyer agrees to payment terms of Net 30 unless otherwise documented. Late payment fees will be charged as one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late. **StreamerRT and alert feeds provided at no charge in Year 1. The annual fee for these services following year one shall be \$1500/year.**

Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials, or regulatory expense may be subject to an additional charge. Furthermore, customer is responsible for providing all communication and electrical infrastructure. This quotation identifies the quantity of OAS units estimated for adequate coverage and has been agreed to by both parties as per (name and date of summary document). If additional units are required or desired after installation, they can be added for \$8740 per unit installed.

Please allow six to eight weeks for delivery of hardware.

The parties agree to be bound by the Earth Networks terms and conditions.

CUSTOMER:

EARTH NETWORKS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please fax all pages of the signed agreement directly to Earth Networks at (301) 258-5210



Customer Check List

Earth Networks thanks you in advance for your business. In order for us to expedite your order, please be sure that you have signed and returned the following information:

- Signed Earth Networks Professional Agreement
- Sign and date the bottom right page of Standard Terms and Conditions where it asks for "Customer Signature and Date"
- Signed Purchase Order, Check or Credit Card Authorization
- Tax Exempt Certificate (if applicable)

If you should have any questions please feel free to contact your POC:

NOTE: AWS Convergence Technologies Inc. officially changed its name to **Earth Networks Inc.**, January 2011. Please ensure that you have made the name change to all documents submitted to **Earth Networks** for processing.

POC: Stuart Hershon

Phone: (800) 544-4429 ext 4080

Email Address: shershon@weatherbug.com

Fax: (301) 258-5210

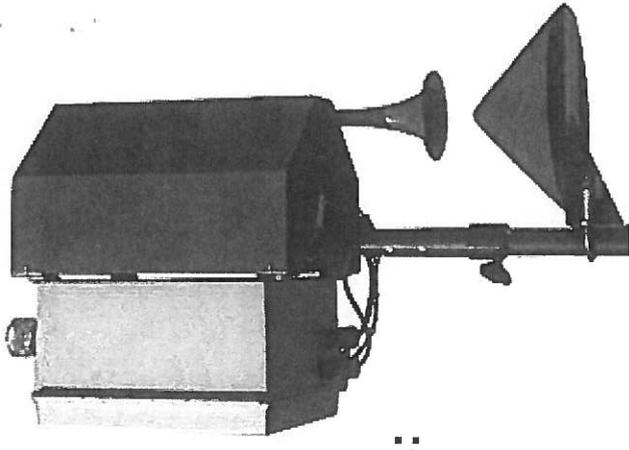


Outdoor Alerting Implementation Proposal

Presented to: Abilene, KS

04/07/2016

Implementation Proposal



Description: Outdoor Alerting Systems for the following locations:

1. Bill Gravette Sports Complex 1 Horn/Strobe unit
2. Abilene Pool 1 Strobe only unit

Timeframe: 6-8 weeks after agreement is finalized

Cost: \$10,940 for 1 Outdoor Alerting System and 1 Strobe with Installation
(\$9,996 if the purchase is made by April 30th)

Ongoing Costs

Description: Ongoing Alert Feeds & StreamerRT Software:

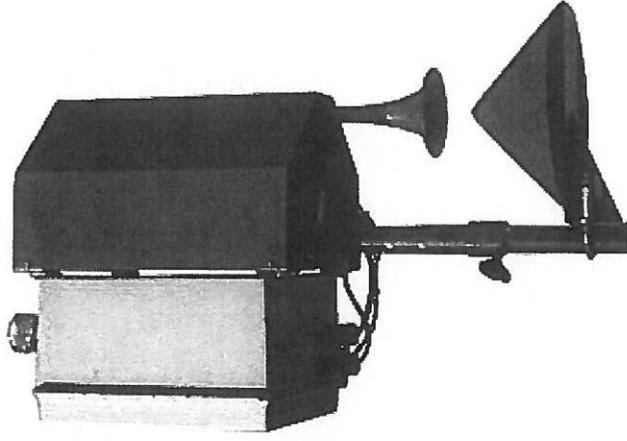
<https://www.youtube.com/watch?v=apiqHFf3A5U#action=share>

Timeframe: Annual; Agreement execution anniversary

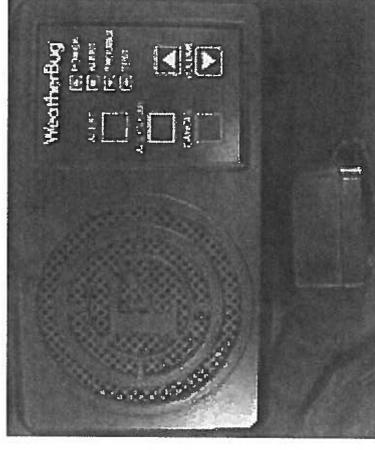
Cost: \$1,500 Annually

Outdoor and Indoor Components

- Outdoor Horn/Strobe unit



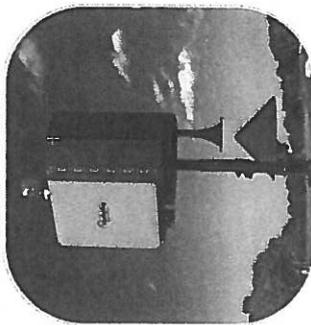
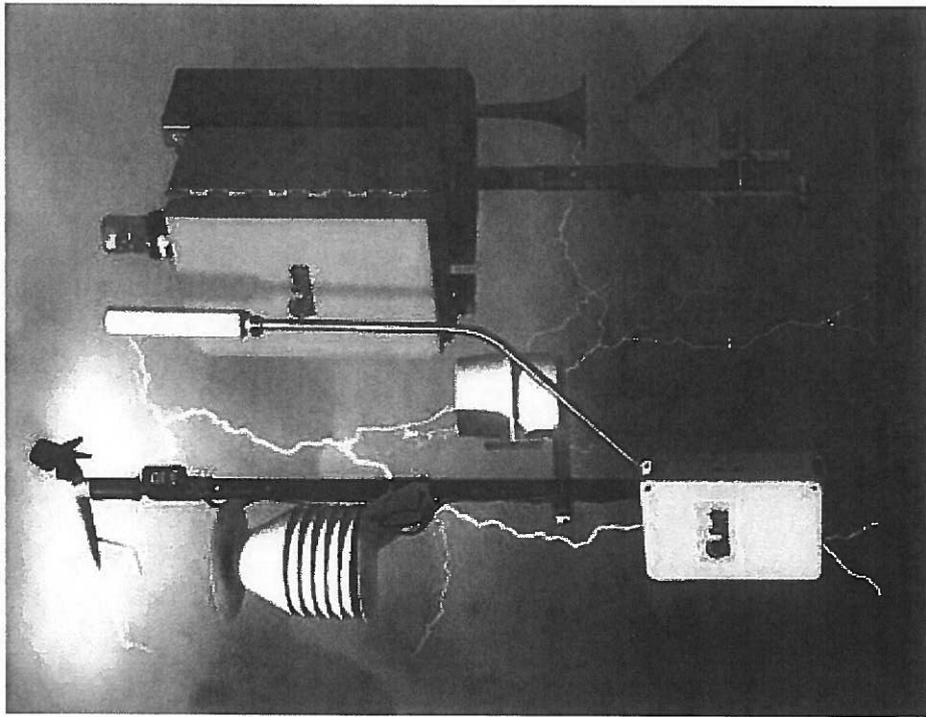
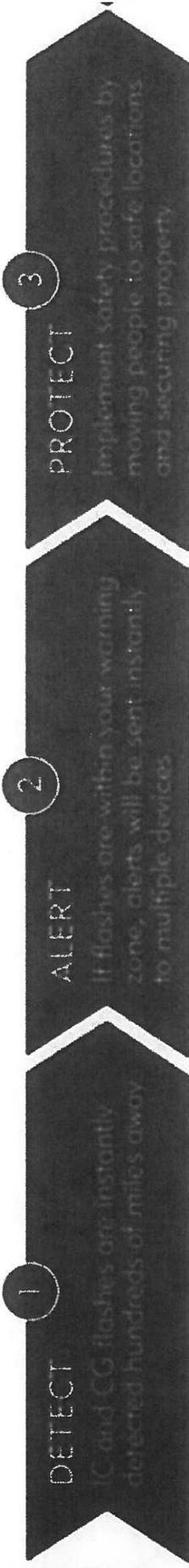
- Indoor Component (Informer)



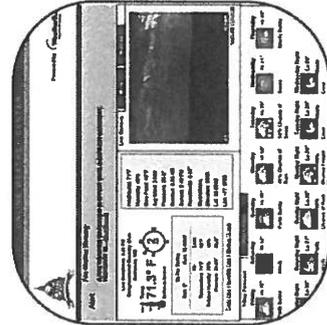
Bill Gravette Sports Complex



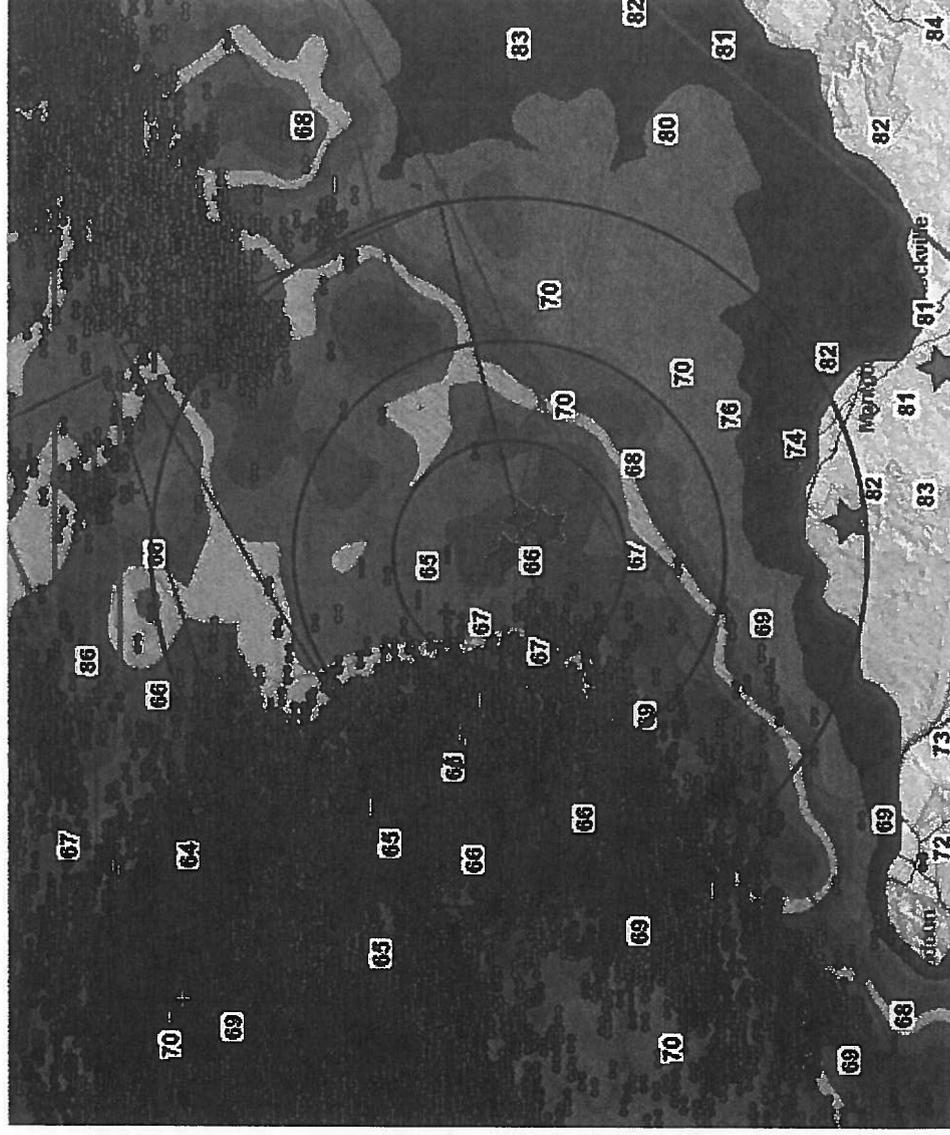
How does WeatherBug lightning and severe weather alerting work?



Connections:	Up
Alerts:	Active Alert
During Hours of Operation:	Yes
Last Stroke Distance:	0.13 Miles
Estimated Time to All Clear HOURS MINUTES SECONDS 00 : 11 : 06 Last Stroke Time: 04:28 PM AMST	



StreamerRT – Visualization of Lightning & Severe Weather



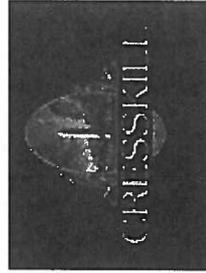
- Maximize your response efforts with advanced warning
- GIS-based navigable map with animated radar and satellite overlays
- Access to entire network of stations
- View live, local data points such as lightning, wind speed and rain rates
- Web based access for decision-makers.

National References



Congressional Country Club, Bethesda, MD

- John Lyberger, PGA Director of Golf



Borough of Cresskill, Cresskill, NJ

- Chief Chris Ulshoefer, Chief of Fire Department



Maryland SoccerPlex, Boyds, MD

- Trish Heffelfinger, Executive Director

Florida References



Village of Key Biscayne Parks and Recreation

- Todd Hofferberth, Director



Lee County

- Alise Flanjack, Deputy Director



Palm Harbor

- Erica Lynford, Director

ATTACHMENT 1 - TERMS AND CONDITIONS

1. Payment. The Buyer agrees to payment terms per Remarks section of Schedule. Late payment fees will be charged as follows: (a) one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late; (b) Payment should be made to:

Earth Networks
Dept 0152, PO Box 120152
Dallas, TX 75312

2. Inspection and Acceptance. It is Buyer's responsibility to inspect and accept each unit at the time of delivery. Failure of Buyer to inspect and accept the unit at that time waives Buyer's rights to inspection and acceptance as a term of the contract. However, any actions under this clause shall not be deemed a waiver of any warranty contained herein.

3. Web Services. As part of this package purchase, Seller agrees to provide to Buyer: (1) complete access to the web service specified on the Schedule; (2) Provide adequate bandwidth and server capacity; (3) Provide toll-free technical support. The above services will be provided for as long as Seller maintains support for the applicable web service.

4. Term and Termination. The web services shall have an initial term as specified on the Schedule. Unless otherwise specified on the Schedule, the web services subscription shall automatically renew for successive 12 month terms, unless terminated by either party with at least 30 days written notice prior to the expiration of the then current term.

5. Dispute. The parties agree that any dispute, other than those relating to payment, due and owing from Buyer to Seller, arising out of or relating to this Agreement, shall be subject to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The parties shall jointly request that an Arbitrator be appointed by the Alternative Dispute Resolution Administrator for the Circuit Court for Montgomery County, Maryland, to serve as the final arbiter of any dispute. Any award of the Arbitrator shall be enforceable in the applicable court for enforcement. Both Buyer and Seller agree that the finding of the arbitrator is binding and no other remedy, including legal remedies, is permitted.

6. Warranty. The Seller warrants the hardware and software purchased by the Buyer against defects in workmanship and materials for a period of one (1) year from date of delivery under this contract. The Seller shall, at its sole option, either repair or replace defective items. Buyer is responsible to return of defective items to Seller by means specified by the Seller. The Buyer shall bear all shipping expenses. Packing of defective items for return is responsibility of Buyer. Damage due to natural causes (storms, lightning, flying debris, etc.) is not covered by this warranty. Damage resulting from Buyer negligence or mishandling of hardware and software is not covered by this warranty.

7. Alterations and Attachments. If Buyer makes alterations or attaches a device or any other item to the Earth Networks unit as sold and installed, the warranty is voided and Seller has no further obligation under the warranty.

8. Disclaimer of Implied Warranties. EXCEPT AS PROVIDED ABOVE, THE WEB SERVICES AND DATA DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABALE" BASIS. EXCEPT AS PROVIDED IN SECTION 6 ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO BUYER, OR TO ANY AUTHORIZED USER OR THIRD PARTY, INCLUDING ANY WARRANTIES OF QUALITY, ACCURACY, PERFORMANCE, COMPATABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT SELLER IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE SERVICES, AND SELLER SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM BUYER'S OR ANY AUTHORIZED USER'S RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.

9. Lightning Disclaimer. Experience has shown that the resolution, timeliness, and format in which lightning data are presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or

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EN.Cont.Approval.F1 2/3/2012

safeguarding of facilities, whether it be of immediate or short term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk and have not directly or indirectly been implied, condoned or recommended by Seller, and/or its data suppliers.

10. Liability. Buyer and subsequent users of hardware and software agree to waive any liability of Seller for damage caused by hardware and software installation and operation on any user premises.

11. Limitations of Liability. Except for damages caused by Seller's willful misconduct, recklessness, or gross negligence, the parties agree that to the extent permitted by applicable law, Seller limits or disclaims liability related to the manufacture, delivery, or use of the equipment, the software and/or supplies used in connection with the equipment or the provision of services for the equipment, as follows: (a) For direct damages, Seller liability is limited to the amounts paid by Buyer for the equipment, software, supplies or services giving rise to, or which are the subject of the claim, whether such claim alleges breach of contract, or tortious conduct including but not limited to negligence or any other theory; (b) Seller disclaims liability for indirect, incidental, special, or consequential damages (including but not limited to, loss of use, revenue, or profit) whether such claim alleges breach of contract, tortious conduct including but not limited to negligence, or any other theory.

12. Data Rights. Seller retains all rights to data and/or video images (hereinafter "data") generated by the Earth Networks system(s). Seller grants Buyer a limited license for use of such data, in connection with Buyer's internal business/educational purposes, but for no other purpose. Seller has exclusive rights for resale or to otherwise use data from the installed system(s). Buyer and users of hardware and software under this contract cannot provide access to third parties without the express written consent of Seller. Requests for access must be in writing to the Seller at the Seller's place of business. Seller grants Buyer a royalty free license to use and disseminate data generated by the Buyer's Earth Networks system for educational purposes, save and except that Buyer is expressly prohibited from disseminating data to media outlets (such as TV stations, cable channels, radio stations, newspapers, and magazines). Buyer is expressly prohibited from disseminating data from any other Earth Networks system.

13. Access To Communication Line. Buyer agrees to connect, at Buyer expense, the Earth Networks unit(s) to a dedicated, full-time Internet connection. Buyer further agrees to maintain the Earth Networks system in an operational mode at all times and to permit Seller authorized outside access to system data through the telecommunication line. Telecommunication line expense is solely the obligation of Buyer. Buyer agrees to follow all procedures outlined in the Operations Manual to ensure system access is maintained.

14. Non-Waiver of Rights. The failure of Buyer or Seller to insist upon strict performance of the terms and conditions of this Contract or to exercise any rights or remedies, shall not be construed as a waiver or its rights to assert any of same rights or to rely on any such terms or conditions at any time thereafter.

15. Governing Law. This Agreement shall be governed by the laws of the State of Maryland.

16. Attorney's Fees/Costs. In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's costs and expenses (including reasonable attorney's fees & other arbitration costs).

17. Extraordinary Circumstances. Except for obligations of payment, neither Seller nor the Buyer shall be liable for nonperformance caused by circumstances beyond their control, including but not

limited to, work stoppages, floods, lightning and all other acts of God.

18. Breach. Either party may terminate this Agreement or breach by the other party of any material term or condition hereof 10 days after written notice is given to the breaching party by the non-breaching party if such breach is not cured.

19. Order Fulfillment. If this is a multiple unit order and/or includes promotional goods, credits, services, and the Buyer does not fully complete the terms of the Order agreement, Seller reserves the right to re-bill at standard prices or to retrieve the promotional items, unless the Buyer reconciles by acquiring another Earth Networks product eligible for such promotional items/discounts.

20. Patent Indemnity. Seller will defend the Buyer from, and pay for ultimate judgment or liability for infringement in the United States by equipment or operating system software ("Software") of any patent, trademark, trade secret, protected semiconductor chip mask work, or copyright if Buyer promptly notifies Seller in writing of any alleged infringement, allows Seller to defend, and cooperates with Seller. Seller is not responsible for any non-Earth Networks litigation expenses or settlements unless Earth Networks agrees to them in writing. Seller is not liable for any infringement due to equipment or software being made or modified by the Buyer or Buyer requested specification or designs, or being used or sold in combination with equipment, software, or supplies not provided by Seller. **IMPORTANT: SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT AND HAS NO OTHER LIABILITY FOR INFRINGEMENT OR ANY DAMAGES THEREFROM.** To avoid an infringement (even if not alleged) Seller may, at its option, at no charge to Buyer, obtain a license to use, modify, or substitute an equivalent item for the infringing equipment or software.

21. Purchase Orders. Except for identifying goods, services or software ordered, prices and quantities, the terms and conditions contained or referenced in Buyer purchase order or other ordering documents shall be of no force or effect.

22. Necessary Maintenance by Earth Networks. Buyer will provide, upon reasonable notice by Seller, access to the system(s) for the purpose of supplying necessary maintenance and/or the installation of additional sensor equipment.

23. Severability/Assignability. If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable. Neither party may assign this Agreement or any of its rights and obligations hereunder to any person, firm or corporation, without the prior written consent of the other, which consent shall not be unreasonably withheld, provided however that either party may assign this Agreement to a successor in interest as a result of a sale of all or substantially all of its stock or assets.

24. Modification. This contract shall not be varied in its terms or conditions by any oral Agreement or representation, but only by an instrument in writing of even or subsequent date thereto, properly executed by both the Seller and Buyer.

25. Entire Agreement. The terms and conditions contained or referenced in this Order Agreement are the complete and entire agreement between Seller and Buyer respecting the subject matter of this Agreement.

Customer Signature and Date