

ABILENE CITY COMMISSION - REGULAR MEETING AGENDA
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET
April 25, 2016 - 4:00 pm

1. **Call to Order**
2. **Roll Call:** ___ Marshall ___ Shafer ___ Payne ___ Ray ___ Weishaar
3. **Pledge of Allegiance**

Consent Agenda (*Consent Agenda items will be acted upon by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

4. Agenda Approval for the April 25, 2016 City Commission Meeting
5. Meeting Minutes: April 11, 2016 Regular Meeting
6. Approval of a Cereal Malt Beverage License for Historic Abilene, Inc., dba The Alamo Saloon located at 100 SE 5th Street pursuant to Chapter 3, Article 1 of the City Code of the City of Abilene, Kansas
7. Appointment of Wendy Klosterman to the Library Board of the City of Abilene, Kansas
8. Appointment of Drew Snitker to the Tree Board of the City of Abilene, Kansas filling an unexpired ending in May 2017
9. Approval of the Final Plat of the Astra Bank Addition in the City of Abilene, Kansas
10. Approval of a Letter of Support for Kansas Community Tax Credit Application at the request of the Eisenhower Foundation
11. Approval of a Letter of Support for a USDA Grant Application for the Abilene Farmer's Market at the request of the Dickinson County Economic Development Corporation
12. Resolution approving an Engagement Letter with Vamey and Associates, CPAs, LLC for 2016 Financial Auditing Services

Public Comments and Communications

13. **Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of 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.

14. **Declaration.** At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Proclamations and Recognition

15. **Recognition of Jay Leusman as KRWA Water Treatment Plant Operator of the Year**
16. **Arbor Day Proclamation**
17. **National Tourism Week Proclamation**

Public Hearings

18. **None**

Old Business

19. **None**

New Business

20. **Consideration of a Resolution approving Federal-Aid Fund Exchange Master Agreement No. 70-16 concerning the Federal Fund Exchange Program.**

21. **Consideration of a Resolution approving KLINK Resurfacing Agreement No. 236-16 concerning the City's participation in the KLINK Resurfacing Program**

22. Consideration of an Ordinance amending Chapter 4, Article 3 of the City Code of the City of Abilene, Kansas, by amending Sections 4-303 through 4-307, and adopting new Sections 4-308 through 4-312, all concerning nuisances, and repealing the existing Sections 4-303 through 4-307.
23. Consideration of an Ordinance amending Chapter 4, Article 5 of the City Code of the City of Abilene, Kansas, by amending Sections 4-509 and 4-510 concerning inoperable and abandoned vehicles, and repealing the existing Sections 4-509 through 4-512.
24. Consideration of a Resolution authorizing funds for a Lightning Alert System for the Parks and Recreation Department.
25. Consideration of a Resolution authorizing funds for a Feasibility Study for a Hotel and Conference Center.
26. Consideration of a motion to recess into executive session to discuss non-elected personnel for fifteen minutes to include the City Attorney and City Manager.
27. Consideration of a motion to return to regular session with no action being taken.

Reports

28. City Manager's Report
 - a. Expenditures Report

Adjournment

29. Consideration of a motion to adjourn the April 25, 2016 City Commission meeting.

Future Meeting Reminders: *(All meetings at Abilene Public Library unless otherwise noted)*

- Library Board, May 2 at 4:00 pm
- Kid's Council, May 2 at 6 pm (Frontier Estates)
- VENUE/TIME CHANGE: Commission Study Session, May 3 at 4:00 pm (Abilene Water Plant)
- City Commission Meeting, May 9 at 4:00 pm
- Planning Commission, May 10 at 4:30 pm
- Sister City, May 12 at 7:00 pm (Civic Center)



**Abilene City Commission Minutes
Abilene Public Library
April 11, 2016 @ 4:00 p.m.
Abilene, Kansas**

1. Call to Order

2. Roll Call – City Commission Present: Mayor Weishaar, Commissioners Ray, Payne, Marshall and Shafer.

Staff Present: City Manager Dillner, Human Resources Director/City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Public Works Director Schrader, Parks & Recreation Director Foltz, Interim-Police Chief Mohn and Fire Chief Sims.

Others Present: Teresa Weishaar, Veronica Murray, Brenda Moffitt, Brenda Bandy, Michelle Stephens, Laveda Montgomery, Dee Ramsey, Christi Wicks, Jean Detorick, Brenda Weaver, Marie Malo, Kirstin Johnson, Krystal Wallace, Tony Geiger and Mike Heronemus.

3. Pledge of Allegiance - Mayor Weishaar led the Pledge of Allegiance.

4. Mayoral Installation

Consideration of a motion to designate Commissioner Dee Marshall as Mayor and Commissioner Tim Shafer as Vice-Mayor.

Motion by Commissioner Payne, seconded by Weishaar to designate Dee Marshall as Mayor and Tim Shafer as Vice-Mayor. Motion carried unanimously 5-0.

Consent Agenda

5. Agenda Approval for the April 11, 2016 City Commission Meeting

6. Meeting Minutes: March 28, 2016, Regular Meeting

7. Approval of a Cereal Malt Beverage License for Brookville Hotel located at 105 E. Lafayette Street pursuant to Chapter 3, Article 1 of the City Code of the City of Abilene, Kansas.

Motion by Commissioner Weishaar, seconded by Commissioner Payne to approve the Consent Agenda as presented. Motion carried unanimously 5-0.

Public Comments and Communications

8. Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of 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 (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Weishaar asked for any comments or communications from the public that are not on the agenda.

There were no public comments or communications.

9. Declaration. At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

There were no declarations.

Proclamations and Recognition

10. H.O.P.E. Center Proclamation

Commissioner Shafer read the H.O.P.E. Center 2016 Week of Emphasis Proclamation and presented it to representatives from the H.O.P.E. Center.

11. Communities Supporting Breast feeding Proclamation

Commissioner Payne read the Proclamation in support of breast feeding and presented it to the Kansas Breast Feeding Coalition of Abilene.

Public Hearings

12. There were no public hearings.

Old Business

13. There was no old business.

New Business

14. Consideration of a Resolution approving an Economic Development Agreement with Thunderstruck Bumpers, Inc.

City Manager Dillner said this resolution provides a local incentive to Thunderstruck Bumpers, Inc. The City will reimburse ad valorem taxes for 10 years. They will be required to meet certain obligations annually and report to us on the requirements on or before January 30th of each year as explained in the agreement with them.

Motion by Commissioner Ray, seconded by Commissioner Shafer to approve **RESOLUTION NO 041116-1 APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT WITH THUNDERSTRUCK BUMPERS, INC.** Motion carried unanimously 5-0.

15. Consideration of an Ordinance amending Sections 5-311 and 5-312 of the City Code of the City of Abilene, Kansas concerning the sale and discharge of fireworks.

City Manager Dillner this Ordinance will modify the dates for the sale of fireworks to June 27 through July 4 every year by persons holding a valid permit issued by the City. It also modifies the dates allowed for discharging fireworks to July 1 through July 4 from 8:00 a.m. to 12:00 a.m. midnight. These changes allow us to coincide with Dickinson Counties regulations on fireworks.

Motion by Commissioner Weishaar, seconded by Commissioner Shafer to adopt Ordinance No. 3294 **AN ORDINANCE AMENDING SECTIONS 5-311 AND 5-312 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS CONCERNING THE SALE AND DISCHARGE OF FIREWORKS.** Motion carried unanimously 5-0.

16. Consideration of a motion to accept a bid of \$568,187.10 from T&M Construction, Inc. concerning the NW 11th Street Project.

City Manager Dillner said we received four bids for the street project. Two of the bids were well below the engineers estimate. The low bid was from T&M Construction, Inc. for \$568,187.10.

Public Works Director Schrader said they would begin work the first part of May.

Motion by Commissioner Shafer, seconded by Commissioner Ray to **ACCEPT A BID OF \$568,187.10 FROM T&M CONSTRUCTION, INC. CONCERNING THE NW 11TH STREET PROJECT.** Motion carried unanimously 5-0.

17. Consideration of a motion authorizing the purchase of an additional Police Patrol Vehicle from the 2016 Budget due to savings from the purchase of two Police Patrol Vehicles as provided in the 2016 Budget.

City Manager Dillner said the Police Department budget for two patrol cars in 2016. The trade ins reduced the cost enough to allow us to purchase one of the 2017 budget patrol cars in 2016.

Commissioner Shafer expressed some concerns due to sales tax revenues being down and suggested we wait until later in the year to make the purchase.

Motion by Commissioner Shafer to postpone this purchase of an addition patrol car until the first meeting in July to allow us to look at the status of our sales tax revenues. Motion died for lack of a second.

Motion by Commissioner Weishaar, seconded by Commissioner Ray **TO AUTHORIZE THE PURCHASE OF AN ADDITIONAL PATROL CAR VEHICLE IN 2016.** Motion carried 4-1. Voting No: Commissioner Shafer.

Reports

18. City Manager Reports

Staff has started discussing the 2017 CIP Budget.

We will be bringing proposed changes to you on the City Code as we are looking through it.

Planning Commission meets tomorrow night for the Chamber sign and Astra Bank is seeking a replat.

a. Expenditure Report

Adjournment

19. Consideration of a motion to adjourn the April 11, 2016 City Commission meeting.

Motion by Commissioner Weishaar, seconded by Commissioner Shafer to adjourn at 4:24 p.m. Motion carried unanimously 5-0.

(Seal)

S. Dee Marshall, Mayor

ATTEST:

Penny L. Soukup, CMC
City Clerk



Dwight D. Eisenhower Municipal Building
419 N. Broadway Street, PO Box 519
Abilene, KS 67410
www.abilenecityhall.com
Phone: (785) 263-2550
Fax: (785) 263-2552

April 25, 2016

Kansas Department of Commerce
Kansas Community Service Tax Credit Program
1000 SW Jackson Street, Suite 100
Topeka, KS 66612-1354

RE: Eisenhower Foundation's Application for the Kansas Community Service Tax Credit Program

To Whom It May Concern:

On behalf of the City of Abilene, Kansas, I wish to provide a Letter of Support for the Eisenhower Foundation's application to the Kansas Community Service Tax Credit Program. As you may know, Abilene is home to the Eisenhower Presidential Library, Museum and Boyhood Home. This treasured facility commemorates and preserves the legacy of a great Kansan who contributed to the well-being and security of the world during a tumultuous period in history.

Eisenhower served as a Five-Star General of the United States Army during World War II and continued his service to country as President of the United States. During his tenure as president, Eisenhower had many accomplishments that helped strengthen America. The Federal Aid Highway Act of 1956 began the process of constructing the Interstate Highway System. The Civil Rights Bill of 1957 made progress in racial equality. Eisenhower was also responsible for ending the Korean War.

Amid the federal budgetary situation we face as a nation today, Eisenhower serves as an example of fiscal constraint as he balanced the federal budget three times during his administration. These accomplishments are just an example of the importance of Eisenhower on our nation's history that should be shared with the public.

The Kansas Community Service Tax Credit Program will provide the Eisenhower Foundation with a source of revenue that will be used to promote President Eisenhower's legacy. As a federal institution, the Eisenhower Presidential Library, Museum and Boyhood Home cannot allocate funding to promote and share this important piece of our nation's history. As one of the State of Kansas' top tourist destinations, it is imperative that steps be taken to ensure that more people have the opportunity to learn about Eisenhower's story.

The Eisenhower Foundation has a focused plan to implement funds provided by its participation in the program. The proceeds will be used to inform the public of Eisenhower's relevancy to the modern era through the use of digital technology and public programming and events. Additionally, the Eisenhower Foundation plans to strengthen its internal capacity in order to provide a sustainable program for years to come.



Home of the Eisenhower Presidential Library, Museum and Boyhood Home

The Eisenhower Presidential Library, Museum, and Boyhood Home is an important asset for the State of Kansas and the City of Abilene. The Eisenhower Foundation provides support to this treasure that the federal government is not allowed to provide. Continued support of the Eisenhower Foundation is not only beneficial to the federal institution that preserves Eisenhower's legacy, but also to the community that he once called home.

On behalf of the City of Abilene, I would encourage you to support the Eisenhower Foundation's request for funds through the Kansas Community Service Tax Credit Program.

Sincerely,

S. Dee Marshall
Mayor

CC: Meredith Sleichter, Eisenhower Foundation
Karl Weissenbach, Eisenhower Presidential Library, Museum and Boyhood Home
City Commission





Dwight D. Eisenhower Municipal Building
419 N. Broadway Street, PO Box 519
Abilene, KS 67410
www.abilenecityhall.com
Phone: (785) 263-2550
Fax: (785) 263-2552

April 25, 2016

To Whom It May Concern:

On behalf of the City of Abilene, Kansas, I wish to provide a Letter of Support for the Dickinson County Economic Development Corporation's grant application for the USDA Farmers' Market Promotion Program.

The Farmers' Market in Abilene provides access to fresh fruit and vegetables for our residents. The Farmers' Market has been growing over the last few years. The USDA Farmers' Market Promotion Program will provide funds to continue the efforts to expand outreach, training and technical assistance to help the Farmers' Market further its efforts.

The City has supported the Farmers' Market by providing a place to locate its sales, and funds from the USDA will allow the Farmers' Market to enhance its value by allowing it to construct or acquire a building so the Market may be open longer and in inclement weather.

On behalf of the City of Abilene, I would encourage your support in awarding grant funds to further the Abilene Farmers' Market goals and to connect Abilene and surrounding area residents with the opportunity to access fresh food.

Sincerely,

S. Dee Marshall
Mayor



RESOLUTION NO. 042516-1

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.

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: _____

2016 Arbor Day Proclamation

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of Abilene has been recognized as a Tree City USA for 24 years by The National Arbor Day Foundation and desires to continue its tree-planting practices,

NOW, THEREFORE, I, Dee Marshall, Mayor of the City of Abilene, Kansas do hereby proclaim Friday, April 29, 2016 as

ARBOR DAY

in the City of Abilene and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

FURTHER, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Dated this 25th day of April in the year 2016.

ATTEST:

Penny L. Soukup, City Clerk

S. Dee Marshall, Mayor

RESOLUTION NO. 042516-2

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. 042516-3

**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. 3295

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, BY AMENDING SECTIONS 4-303 THROUGH 4-307, AND ADOPTING NEW SECTIONS 4-308 THROUGH 4-312, ALL CONCERNING NUISANCES, AND REPEALING THE EXISTING SECTIONS 4-303 THROUGH 4-307

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

SECTION ONE. Section 4-303 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

4-303. 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 of the City Code of the City of Abilene, Kansas is hereby amended to read 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.

SECTION THREE. Section 4-305 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

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.

SECTION FOUR. Section 4-306 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

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.

SECTION FIVE. Section 4-307 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

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.

SECTION SIX. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-308, which section shall read as follows:

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 hangers, 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.

SECTION SEVEN. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-309, which section shall read as follows:

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 interest, 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.

SECTION EIGHT. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-310, which section shall read as follows:

4-310. HEARING. If a hearing is requested before the deadline for self-abatement 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.

SECTION NINE. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-311, which section shall read as follows:

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.

SECTION TEN. The City Code of the City of Abilene, Kansas is amended by adding a section to be numbered Section 4-312, which section shall read as follows:

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 ELEVEN. Repealer. Existing Sections 4-303, 4-304, 4-305, 4-306, and 4-307 of the City Code of the City of Abilene, Kansas are hereby repealed.

SECTION TWELVE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication by summary 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

APPROVED AS TO FORM:

Aaron O. Martin, City Attorney

ORDINANCE NO. 3296

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 5 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, BY AMENDING SECTIONS 4-509 AND 4-510 CONCERNING INOPERABLE AND ABANDONED VEHICLES, AND REPEALING THE EXISTING SECTIONS 4-509 THROUGH 4-512

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

SECTION ONE. Section 4-509 of the City Code of the City of Abilene, Kansas is hereby amended to read 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.

SECTION TWO. Section 4-510 of the City Code of the City of Abilene, Kansas is hereby amended to read as follows:

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 THREE. Repealer. Existing Sections 4-509, 4-510, 4-511 and 4-512 of the City Code of the City of Abilene, Kansas are hereby repealed.

SECTION FOUR. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication by summary 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

APPROVED AS TO FORM:

Aaron O. Martin, City Attorney

RESOLUTION NO. 042516-4

A RESOLUTION AUTHORIZING FUNDS FOR A LIGHTNING ALERT SYSTEM FOR THE PARKS AND RECREATION DEPARTMENT

WHEREAS, the governing body desires to authorize funds for the purchase and installation of a Lightning Alert System to alert citizens of potential threats of lightning in Eisenhower Park and the surrounding area.

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

SECTION ONE. Appropriation. The City Commission hereby authorizes \$10,000 from the 2016 Budget to fund the acquisition of a Lightning Alert System from the following funds: General Fund: \$7,500; and Special Parks and Recreation Fund: \$2,500. The City Commission also acknowledges that continued operation of the system will annually cost \$1,500 to be budgeted from the General Fund.

SECTION TWO. 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

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"



WeatherBug[®]

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 Phone:		Contact Fax:	

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

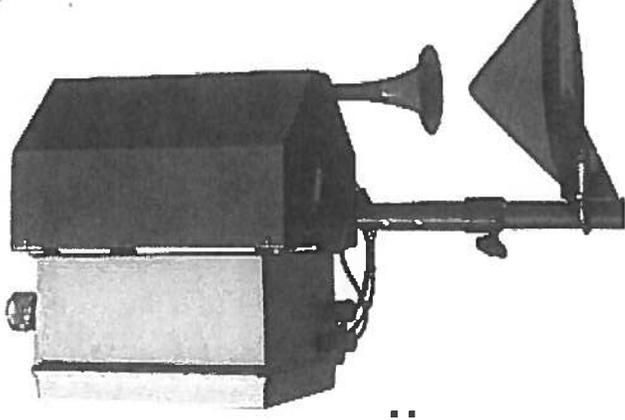


Outdoor Alerting Implementation Proposal

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:

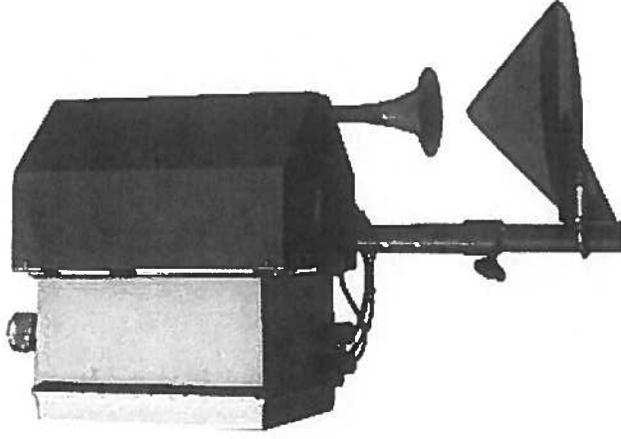
<https://www.youtube.com/watch?v=apiqHFf3A5U#action=share>

Timeframe: Annual; Agreement execution anniversary

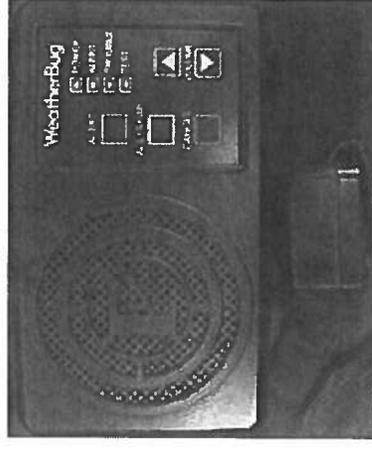
Cost: \$1,500 Annually

Outdoor and Indoor Components

- Outdoor Horn/Strobe unit



- Indoor Component (Informer)

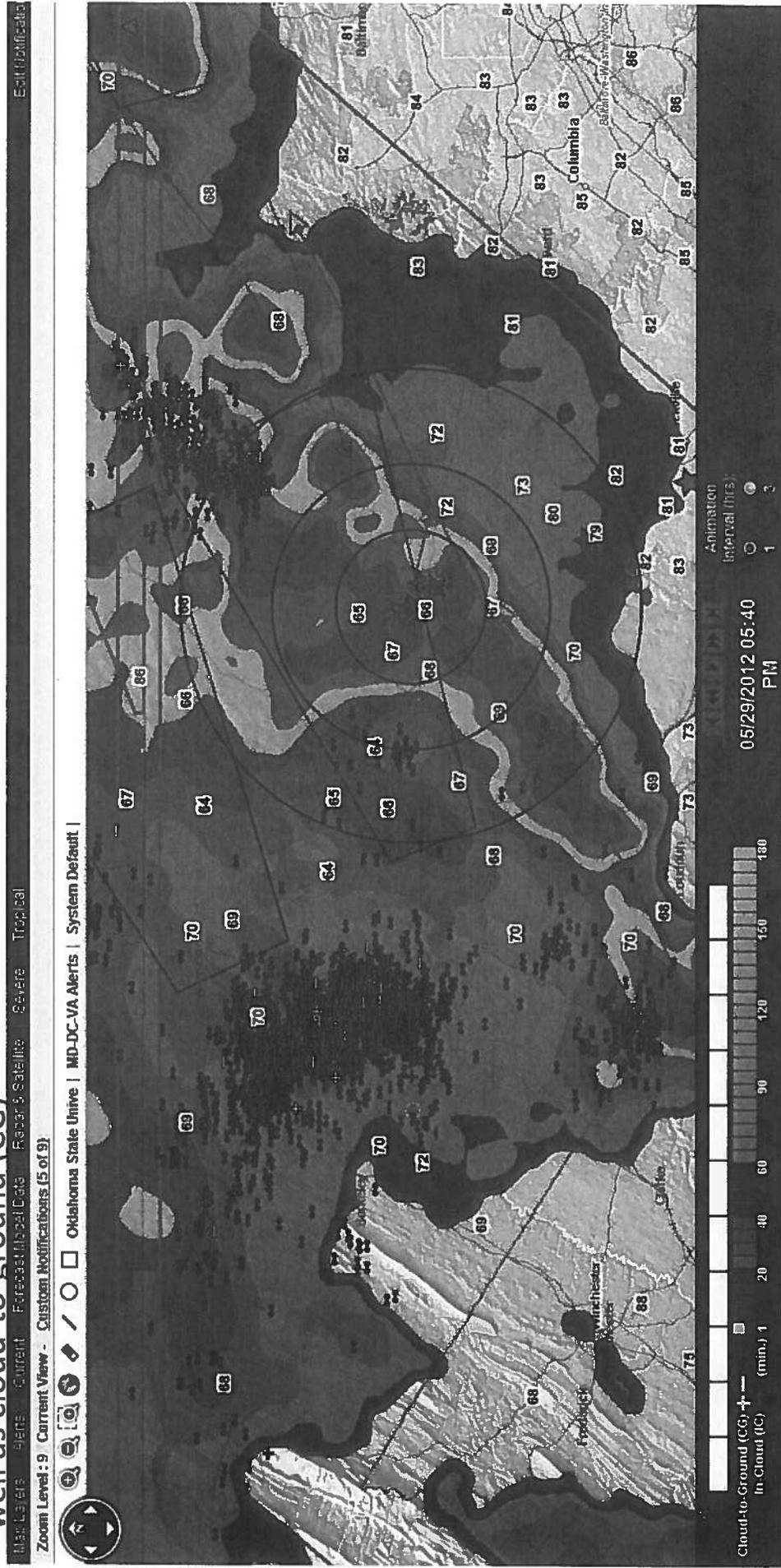


Bill Gravette Sports Complex

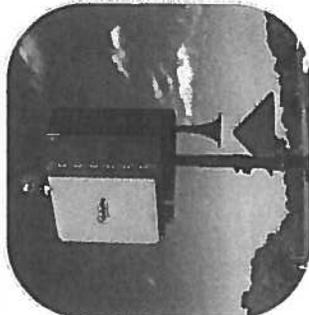
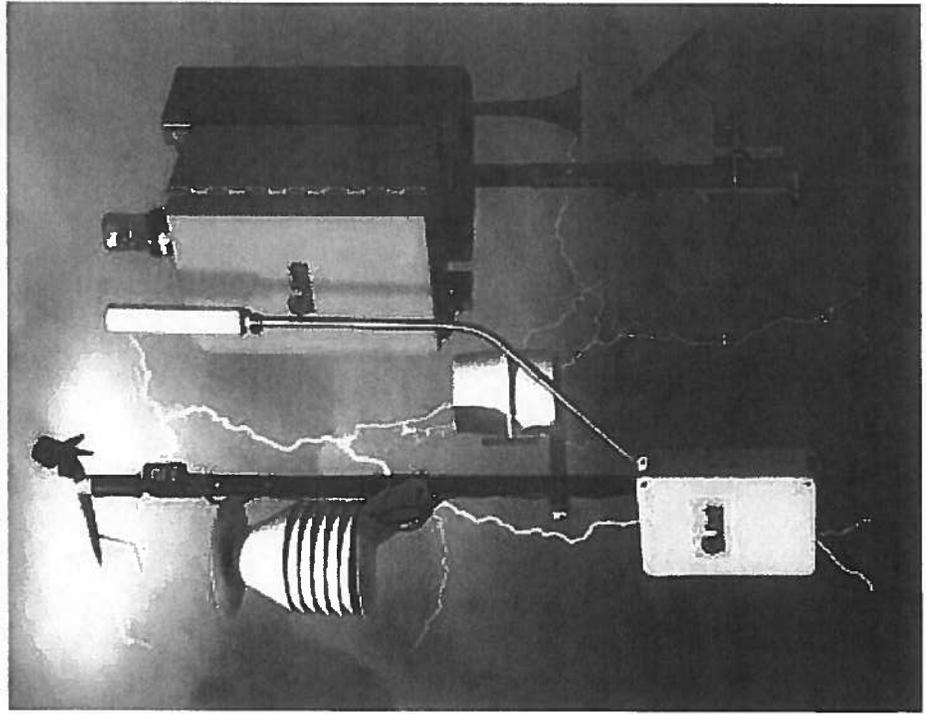


The Standard in Lightning Detection and Severe Weather Alerting

The first nationwide network to comprehensively detect total lightning – both in-loud (IC) as well as cloud-to-ground (CG)

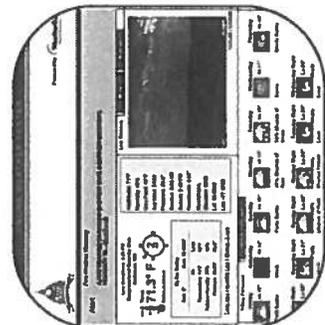


How does WeatherBug lightning and severe weather alerting work?

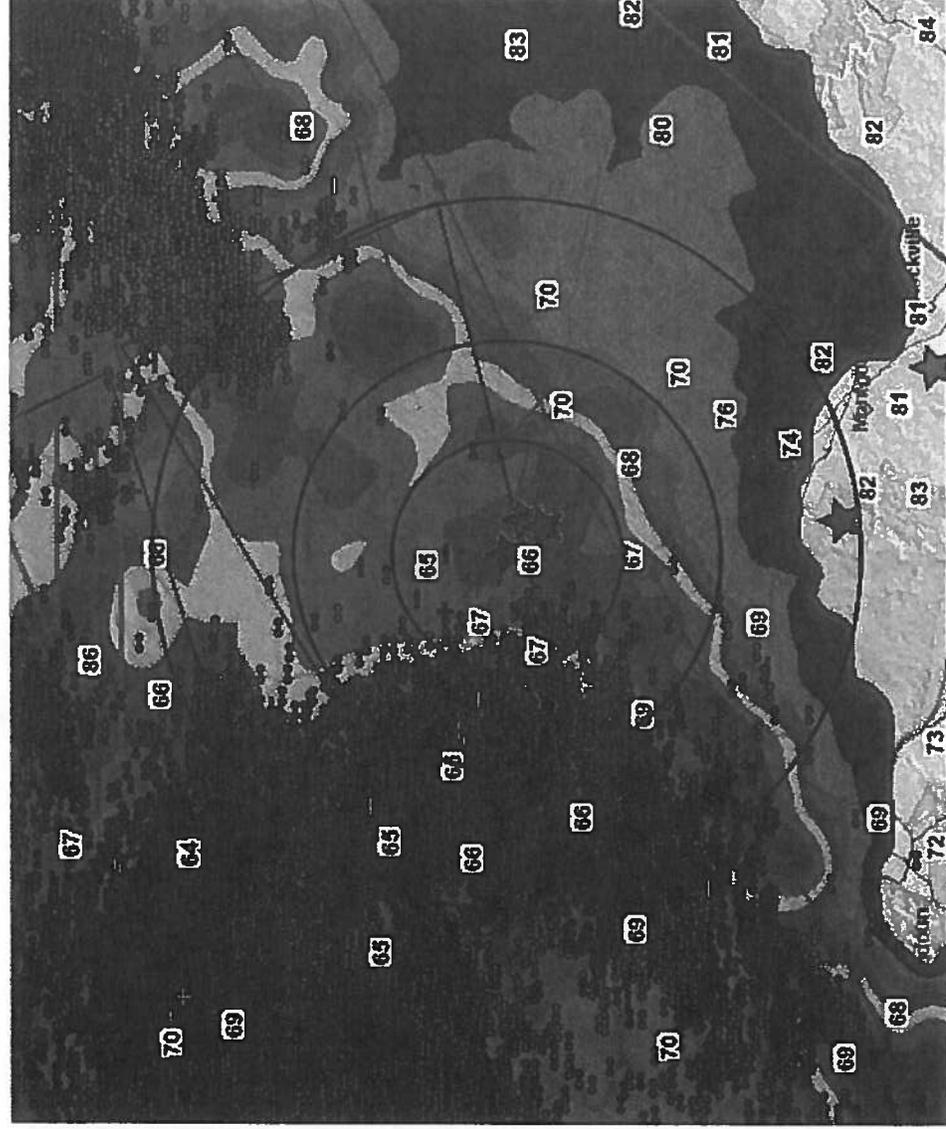


Connections:	Up
Alerts:	Active-Alert
During Hours of Operations:	Yes
Last Stroke Distance:	0.13 Miles

Estimated Time to All Clear	
HOURS	MINUTES
00 : 11 : 06	
Last Stroke Time: 04:26 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

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, TX75312

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

CONFIDENTIAL
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 on 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

RESOLUTION NO. 042516-5

**A RESOLUTION AUTHORIZING FUNDS FOR A HOTEL AND CONFERENCE CENTER
FEASIBILITY STUDY**

WHEREAS, the governing body has determined that it is a priority to support the tourism industry and that a hotel and conference center may be necessary to further efforts made in this area; and

WHEREAS, the City has solicited Request for Proposals from qualified companies and has identified a qualified and responsive company to complete the Feasibility Study to determine the feasibility of a hotel and conference center in Abilene.

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

SECTION ONE. Appropriation. The City Commission hereby authorizes up to \$12,000 from the 2016 Budget to fund the acquisition of a Feasibility Study with such funds being appropriated from funds in the General Fund set aside for economic development purposes.

SECTION TWO. 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

CBRE, Inc.
Valuation & Advisory Services
3280 Peachtree Road NE
Suite 1400
Atlanta, GA 30305

CBRE Hotels

*Response to Request for Proposals
Hotel/Conference Center Feasibility Study
City of Abilene, Kansas*

April 14, 2016

April 14, 2016

Mr. David Dillner
City Manager
City of Abilene, Kansas
(785) 263-2550
citymgr@abilenecityhall.com

Dear Mr. Dillner:

On behalf of CBRE Hotels, we appreciate receiving your Request for Proposals ("RFP") in connection with a feasibility study for a proposed hotel and conference center (herein referred to as the "the Project") to be located in the City of Abilene, Kansas (herein referred to as "the City").

According to the RFP, in 2008 the City commissioned a Market and Financial Feasibility Study to determine the demand for mid-priced branded lodging in Abilene. The study indicated that midscale lodging in Abilene is feasible subject to the limitations and contingencies presented in the study. Critical success factors included the inclusion of a conference center, equity level, regional marketing, tourism and promotion, and maintaining a favorable average daily room rate. We understand that the City desires to update the information and assumptions contained in this study to evaluate the ability of the Abilene market to support another hotel and a conference center.

This proposal sets forth our approach to completing the feasibility study, our qualifications to perform the work, and an outline of the proposed costs and timeline to complete the work. We are confident of our ability to perform this assignment based on our experience with hotel and conference center development as well as our knowledge of the local, state, regional and national lodging and meeting markets. We appreciate the opportunity to submit this proposal and look forward to assisting you.

A. Company Profile and Project Personnel

Organization Name: CBRE Hotels
Business Address: 3280 Peachtree Road, Suite 1400
Atlanta, GA 30305
Contact Person: Caroline Karlberg, Director
caroline.karlberg@cbre.com | 404.512.5107

CBRE Hotels is a division of the CBRE Group, Inc. (NYSE:CBG), the largest full service, real estate and investment organization in the World with more than 70,000 employees located in more than 400 offices worldwide. CBRE Hotels operates as an existing specialized advisory group within CBRE and provides hospitality and real estate industry professionals with a global practice and one-stop shop of

unparalleled, global and fully integrated real estate services and products. CBRE Hotels is comprised of over 375 dedicated hospitality professionals located in more than 60 offices across the globe. CBRE Hotels is a specialized advisory group within CBRE and consists of three integrated hospitality-focused divisions including valuation and advisory services, brokerage and capital markets, and research. More background and information on our Firm can be obtained from our web site at www.cbrehotels.com.

The names and positions of personnel who will be conducting the field work, analyses, and production of the report are as follows.

Project Manager: Caroline Karlberg, Director
Project Advisors: Scott Smith, Managing Director
Mark Woodworth, Senior Managing Director

The qualifications of the above professionals are included in the final pages of this proposal. No sub-consultants will be used on this assignment.

B. Relevant Hotel and Convention/Conference Center Projects

The below sample of projects represents a selection of engagements with which CBRE Hotels has been involved:

- **Georgia Tech Foundation:** Market study and financial projections relating to the proposed development of a hotel with an attendant Executive Conference Center and Continuing Education Center proximate to the campus of the Georgia Institute of Technology in Atlanta, Georgia.
- **City of Douglasville, GA:** Market study and appraisal for a proposed 246-room Sheraton Hotel to be developed adjacent to the planned convention center in Douglasville, Georgia.
- **Proposed Hotel and Expansion to the Classic Center, Athens, GA:** Market study, financial analysis and Request for Proposal process. City ultimately decided to work with a private sector developer to affect the development of a hotel adjacent to the Classic Center.
- **City of Alpharetta, GA:** Market study, financial analysis, capital construction analysis, and economic impact analysis for a proposed Conference Center to be developed by the City. City ultimately decided to work with a private sector developer to affect the development of a hotel adjacent to the proposed Center.
- **City of Dickinson, Texas:** Completed a site selection, market study and economic impact analysis for a proposed full-service hotel and conference center to serve the Bay Area in Houston, Texas. The study was completed in conjunction with Garfield Traub who was engaged as the Project Manager / Developer for the project.

- **Johnson Development Corp., c/o City of Sugar Land, TX:** Completed a market study and financial gap analysis for a proposed hotel and conference center at the historic Imperial Sugar plant site in Sugar Land, Texas. Also provided assistance in identifying potential developers/management companies for the project.
- **Texas A&M University:** Completed a site selection, market study and financial gap analysis for a full-service hotel and conference center adjacent to Texas A&M University in College Station, Texas.
- **City of Natchitoches, LA:** Completed a market study and financial gap analysis for a hotel to be located adjacent to the existing Natchitoches Conference Center. Also, managed an RFQ process for the City to identify a potential developer for the hotel project.
- **City of Victoria, TX:** Completed a site selection, market study, financial gap analysis and economic impact study for a hotel and conference center in Victoria, Texas. Also, identified three potential developers for the project.
- **Evergreen Resort and Conference Center:** Analysis of the potential to expand the guest rooms and meeting facilities at Evergreen Resort and Conference Center at Stone Mountain Park in Stone Mountain, Georgia. PKF Consulting managed the initial project work for the Stone Mountain Memorial Association when the facility concept was initially conceived in the mid-1980's.
- **City of Los Angeles and LA, Inc. (The Convention & Visitors Bureau):** Feasibility analysis of a headquarters hotel and sports and entertainment complex to be located adjacent to the Los Angeles Convention Center and Staples Center Arena, analysis of the best practices related to the booking of conventions, ongoing analysis of pickup from conventions held.
- **City of Newnan, GA:** Market study and financial analysis of a free-standing conference center within a mixed use development with hotel, office and retail uses. The assignment involved demand analysis and projection of revenues and cash flows.
- **City of Murfreesboro, TN:** Market study, financial analysis, development and distribution of a Request for Qualifications and Request for Proposals, negotiation of development and management agreements with John Q. Hammons Hotels and Resorts (the winning bidder).
- **Downtown Waco, Inc. / City of Waco, TX:** Market study for a hotel in downtown Waco. Issued requests for hotel developer qualifications/proposals and evaluated responses to RFP.
- **The Woodlands Township, The Woodlands, TX:** Market study for a 360-room Marriott hotel and adjacent 150,000-square foot convention center on The Woodlands Waterway. Conducted an economic impact study for the entire project. Represented the Township in contract negotiations with the designated developer. Involved development agreement, lease agreement, booking policy and room block policy. The hotel is open.

C. Scope of Work and Approach

Principal objectives of our work include the determination of current and potential lodging demand in the market area, the assessment of existing and potential hotel and meeting space supply, the estimation of the share of the market that could reasonably be attained by the proposed Project, and the projection of potential cash flows from operations available to service debt and provide a return on invested capital.

Prior to commencing our work on the study, we will meet with you and/or your associates, as appropriate, to discuss the overall Project in detail. Following this meeting, our work plan for the study will be as follows.

- **Evaluation of Site(s) and Surrounding Area:** In this part of the study, we will inspect and evaluate the potential sites to assess their opportunities and constraints for development of the proposed Project. Some of the factors we will analyze include vehicular and pedestrian access; availability of parking; visibility from principal access routes; access from local/regional airports; ambiance of the surrounding neighborhood; current land uses in the vicinity; topography of the site and immediate vicinity; relationship to area demand generators; relationship to area amenities such as restaurants and shopping; relationship to commercial core; contribution cost; and advantages/disadvantages of each site versus the alternative sites. Based on this analysis, we will make recommendations to the optimal site for the Project.
- **Market Area Review and Analysis:** We will gather and analyze relevant economic data regarding the Greater Abilene area to determine whether the overall economic environment in the area appears to be suitable for the proposed Project. We will examine correlations between key economic factors and the demand for lodging/meeting space and will utilize any available forecasts of these indicators in our evaluation of potential demand. We will perform primary market research in the area, consisting of interviews with key demand generators, inspection and evaluation of competition and discussions with people familiar with development patterns and the local and regional meeting and lodging markets. Those with whom we will conduct such interviews include, but are not limited to, the local convention and visitor's bureau, economic development department, chamber of commerce, government officials, business leaders, and owners/managers of potentially competitive lodging and meeting facilities.

We will also conduct an evaluation of the conference and convention business that has historically met in the City Abilene, the attractiveness of the City as a tourism and meeting destination, and the competitive advantages and disadvantages of the Project concept. This will also entail an overview

and definition of relative market segments. As part of this work step, we will analyze historical data and review projected convention/group bookings.

- **Demand Growth Estimates:** We will develop a census of competitive meeting and lodging facilities for the proposed Project. We will evaluate the performance of these facilities in the immediate area and within the determined competitive set, which may be local, county-wide, or regional. This census will include the following factors:
 - Name
 - Location
 - Average Room Rate and Occupancy (reported in the ranges and in aggregate)
 - Five year trend analysis
 - Market mix of guests
 - Type and size of food, beverage, and meeting facilities and amenities
 - Convention/Conference Center facility

We will identify any rumored or proposed projects in the area that might be considered competition for the proposed Project. We will analyze historical economic growth in the area and the characteristics of each of the principal segments of demand including commercial travelers, tourists, group meetings, and any other identifiable sources of demand. Then, using the information gathered in our research, we will estimate growth in demand for each market segment and project demand for each of the next five to ten years, expressed in room nights.

- **Facilities Recommendations and Operational Strategy:** Based on the nature and kind of requirements associated with the identified potential users of the Project, we will make recommendations relating to the:
 - Number and mix of guest rooms and suites;
 - Room configuration;
 - Food and beverage concept;
 - Banquet and meeting space requirements (including number of rooms and size);
 - Other required facilities and amenities;
 - Service levels required; and
 - Advantages and disadvantages of various hotel branding options.
- **Market Share Estimates:** The focus here will be on estimated demand for the proposed Project. Upon completion of the estimate of market area supply and demand, we will determine the share of the market that the proposed facility should reasonably be expected to capture for the property's first five years of operation. Our analysis will include an estimate of the demand that could be induced, if any, through the development of the Subject property.

This includes an analysis of underserved markets and/or opportunities that can be targeted with a new hotel and conference center. Based upon an analysis of the sources of demand available to the Subject property and its estimated competitive position, we will estimate the average daily room rate that could potentially be achieved in a representative year, in current value dollars, and over the first five years of operation of the Project.

- **Financial Analysis:** Based upon the analysis of market demand and the estimated utilization of the Project, we will project revenues and operating expenses for the hotel and conference center for its first ten years of operation. Our prospective financial analysis will be in sufficient detail to reflect the major revenue and expense categories. These estimates will result in a "bottom line" of net operating income available for debt service after management fees and reserves for replacement of fixed assets but before interest, depreciation, amortization and income taxes. All of our financial analyses are prepared in accordance with the Uniform System of Accounts for the Lodging Industry.

We shall prepare these estimates by department base on the historical operating performance of comparable facilities. CBRE Hotels annually publishes Trends in the Hotel Industry, a statistical analysis of operating statements of over 7,000 hotel properties. CBRE Hotels is the only consulting firm with access to the actual, unaggregated financial statements of comparable hotels. This database will be utilized in preparing financial statements for the proposed facility.

- **Final Report:** We will prepare a full narrative report that will describe the market analysis and our findings and conclusions regarding the future operating potential of the proposed Project. The report will be prepared in its final form upon receipt and resolution of any review comments that you might have. This report will be suitable for both your internal use as well as for presentation to potential hotel developers, lending institutions, management companies and franchises that may be interested in participating in the Project.

D. Proposed Cost and Timeline

Our fees are commensurate with services rendered and are based on time expended by our professionals, charged at our normal billing rates, and are not in any way contingent upon the results of our work. Based on our understanding of the scope of this engagement, we estimate our professional fees to be \$18,000. Out-of-pocket expenses for such items as travel, STR trend data, or other such ordinary and necessary reimbursable incidentals will be billed in addition to the fees. These expenses will be itemized and billed at cost. As it is customary in assignments of this nature, we require a retainer of 60 percent of the total project fee in order to begin our work, or \$10,800. A final invoice for the balance of our fees plus all expenses



incurred will be presented and will be payable upon delivery of a draft of our proposed final report.

Based on our present scheduling, we can commit to commence the engagement within approximately two weeks of receiving your authorization to proceed. Barring unforeseen circumstances, we envision completing our study three to four weeks thereafter.

Our report will be subject to our standard Terms and Conditions, which can be provided upon request.

E. Approval and Acceptance

If this proposal correctly states the nature of the work to be undertaken and the arrangements are satisfactory, please sign a copy of this letter and return it to us as our authorization to commence the assignment. We appreciate the opportunity to submit this proposal and we look forward to working with you on this very interesting assignment.

Yours sincerely,
CBRE Hotels

Caroline Karlberg
Director
caroline.karlberg@cbre.com | 404.512.5107

Approved and Accepted:

By: _____

Title: _____

Date: _____

QUALIFICATIONS OF CAROLINE KARLBERG

PROFESSIONAL HISTORY

<i>Present</i>	Director, CBRE Hotels Atlanta, Georgia
<i>Prior</i>	Analyst, Goldman Sachs New York, New York

AREAS OF EXPERTISE

Economic, financial, operational and valuation consulting for the hospitality, lodging, real estate, and tourism industries.

Market and financial feasibility studies, portfolio valuations, appraisals and business valuations, strategic research assignments, repositioning and operational analyses, conference center advisory services and litigation support services.

REPRESENTATIVE PROJECTS

Over 200 assignments conducted involving lodging facilities of all types and tiers: hotels, motels, resorts, golf courses, indoor water parks, conference centers, restaurants, and mixed-use developments.

Market studies, acquisition studies, appraisals, and development planning of hospitality assets valued at more than \$5 billion.

Preparation of market analyses and cash flow estimates for existing and proposed hospitality assets.

Preparation, administration and analysis of online meeting planner and local business leader surveys.

EDUCATION

Florida International University
Miami, Florida
Master of Science in Hospitality Management

Bucknell University
Lewisburg, Pennsylvania
Bachelor of Science in Business Management

PROFESSIONAL MEMBERSHIPS

- Member, Atlanta Hospitality Alliance
- Member, Georgia Women in Lodging
- Member, American Hotel and Lodging Association
- Member, Georgia Hotel and Lodging Association
- Vice President Atlanta Chapter, Bucknell University Alumni Association

QUALIFICATIONS OF SCOTT D. SMITH, MAI

PROFESSIONAL HISTORY

<i>Present</i>	Managing Director, CBRE Hotels Atlanta, Georgia
<i>Prior</i>	Senior Appraiser, Cushman and Wakefield of Georgia (Atlanta, Georgia) Vice-President, First Interstate Bank (San Diego, California) Senior Consultant, PKF Consulting (San Diego, California) Consultant, Laventhol and Horwath (Los Angeles, California)

AREAS OF EXPERTISE

Economic, financial, operational and valuation consulting for the real estate, hospitality and related service industries.

REPRESENTATIVE PROJECTS

Numerous market and economic feasibility studies for hotels, motor hotels, and resorts in the United States and Caribbean.

Acquisition studies and development planning for numerous hotels and resorts.

Appraisal of the market value of all types of income producing properties including: hotels, office buildings, golf courses, mixed-use and retail developments.

Preparation of master plan studies for the development of multiuse real estate projects in the Southeast. These studies include highest and best use analyses for the proposed site, market and financial feasibility analyses, economic valuations and development of the management structure for project implementation.

Development of reorganization plans and expert testimony in court for bankruptcy proceedings associated with all types of hotels.

Preparation of cash flow and return on investment calculations for proposed, operating and distressed hotels, resorts, fractional interest and luxury residential developments.

Appraisal of the market value of large real estate portfolios.

EDUCATION

University of Tennessee
Knoxville, Tennessee
B. S. Degree, Business Administration

Various courses and seminars related to real estate valuation issues and topics, leading to MAI designation, and to satisfy continuing education requirements. Currently certified by the Appraisal Institute under its continuing professional education program.

PROFESSIONAL MEMBERSHIPS

- Member of the Appraisal Institute
- Certified General Appraiser in the following states: Georgia, Florida, North Carolina, Alabama, Texas, Louisiana, and Indiana.

RESUME OF R. MARK WOODWORTH

Mr. Woodworth is Senior Managing Director of CBRE Hotels | Americas Research. Mr. Woodworth has over 30 years of hospitality industry experience in both a consulting and hands-on operational capacity. Mr. Woodworth is based in the Atlanta office of CBRE Hotels.

Before joining CBRE Hotels, formerly PKF Consulting, Mr. Woodworth was a Partner and Industry Chairman of the Hospitality Industry Consulting practice for Coopers & Lybrand L.L.P., and specialized in the lodging industry. Prior to that, he was a Senior Principal with Laventhol & Horwath where he focused on the hospitality industry and was responsible for all lodging and real estate consulting services in the southeastern United States.

Mr. Woodworth has managed and conducted consulting assignments, involving both the public and private sectors, throughout the U.S. He has worked for the industry's leading lenders, developers, chains and management companies and has dealt with all aspects of operations, development and financing. Mr. Woodworth has been qualified as an expert and has testified in litigation and/or bankruptcy matters in New York, Georgia, Alabama, South Carolina, Kentucky and Texas regarding hospitality properties.

Mr. Woodworth has been quoted on hospitality issues in such noted publications as The Wall Street Journal, The New York Times, The Los Angeles Times, The Washington Post, Barron's, USA Today, The Financial Times and numerous industry publications. Furthermore, Mr. Woodworth is a frequent speaker at industry conferences and a lecturer at Cornell University and Georgia State University, among others. He serves on the Board of Directors of the Atlanta Convention & Visitors Bureau, the Finance Committee of the United Way of Metropolitan Atlanta, the DeKalb County Convention Center Authority, the Georgia Chapter of the Cornell Hotel Society and recently completed two terms on the Cornell University Council, an advisory group appointed by the University Board of Trustees. He also recently completed a three-year term on the Board of Advisors for the Center for Hospitality Research at Cornell University.

Mr. Woodworth holds both a B.S. and Master's Degree from Cornell University's School of Hotel Administration. He also serves on the faculty of the Center for Professional Development at Cornell, where he continues to guest lecture.

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*Check Summary Register©

April 2016

Name	Check Date	Check Amt	
002000 Astra Bank checking			
Paid Chk# 021582	ABILENE MIDDLE SCHOOL	04/25/2016	\$364.50 3 ON 3 SPRING BB TOURNEY
Paid Chk# 021583	ABILENE PRINTING & OFFICE	04/25/2016	\$860.00 BILLING CARDS - STATEMENTS
Paid Chk# 021584	ABILENE REFLECTOR-CHRONIC	04/25/2016	\$423.38 PAYMENT FOR PARKS - APPLIES TO
Paid Chk# 021585	AIR AND FIRE SYSTEMS INC	04/25/2016	\$272.40 HYDROTEST 8 AIR PAK BOTTLES &
Paid Chk# 021586	APAC, INC - SHEARS	04/25/2016	\$1,996.67 HMA FOR STREET REPAIR
Paid Chk# 021587	AT & T	04/25/2016	\$75.91 INTERNET
Paid Chk# 021588	BAYER CONSTRUCTION CO, IN	04/25/2016	\$266.85 ROCK FOR BEDDING PIPE
Paid Chk# 021589	CAT CANS PORTABLE SERVICE	04/25/2016	\$205.00 PORTA-POTTIES FOR KSU PARACHU
Paid Chk# 021590	CENTRAL KS FOUNDATION	04/25/2016	\$50.00 TRAINING 203
Paid Chk# 021591	CONSOLIDATED PRINTING	04/25/2016	\$9,030.00 VISITOR'S GUIDE & ART/DESIGN
Paid Chk# 021592	CRAFCO, INC	04/25/2016	\$9,056.50 CRACK SEALING MATERIAL
Paid Chk# 021593	D S & O RURAL ELECTRIC COO	04/25/2016	\$41.75 ELECTRIC SERVICE @ WATER TOWER
Paid Chk# 021594	DANKO EMERGENCY EQUIPME	04/25/2016	\$61.86 HELMET FRONT
Paid Chk# 021595	DICK EDWARDS AUTO PLAZA	04/25/2016	\$183.80 PARTS CAR 12
Paid Chk# 021596	DK CTY EMS	04/25/2016	\$152.00 BRADLEY JAMISON 16004348
Paid Chk# 021597	DK CTY REGISTER OF DEEDS	04/25/2016	\$10.00 DEED COPIES & CL BROWN
Paid Chk# 021598	DK CTY SHERIFF	04/25/2016	\$1,715.00 MARCH 2016 PRISONER CARE
Paid Chk# 021599	DON'S TIRE & SUPPLY	04/25/2016	\$556.70 TIRES CAR 4
Paid Chk# 021600	DPC INDUSTRIES, INC	04/25/2016	\$3,810.00 CAUSTIC SODA
Paid Chk# 021601	E S WILSON TRANSPORT, INC	04/25/2016	\$350.00 TRANSPORT TROLLEY TO K.C. FOR
Paid Chk# 021602	ELECTRO FIRE PYROTECHNICS	04/25/2016	\$6,500.00 4TH OF JULY FIREWORKS SHOW
Paid Chk# 021603	ENTENMANN-ROVIN CO.	04/25/2016	\$220.50 2 BADGES
Paid Chk# 021604	EXPRESS PRINT & SIGNS	04/25/2016	\$1,213.30 YOUTH SOCCER SHIRTS
Paid Chk# 021605	FORENSIC PSYCHOLOGY ASSO	04/25/2016	\$450.00 EVALUATION - 214 WILLIAMS
Paid Chk# 021606	FOUR SEASONS INC	04/25/2016	\$126.00 PARK SHOP HVAC MAINTENANCE
Paid Chk# 021607	HAMM INC	04/25/2016	\$624.50 ALLEY/STREET ROCK
Paid Chk# 021608	HD SUPPLY WATERWORKS	04/25/2016	\$2,269.15 SENSUS SUPPORT CONTRACT
Paid Chk# 021609	JENNIE HIATT	04/25/2016	\$5.50 TURNPIKE FEES
Paid Chk# 021610	BRAD HOMMAN	04/25/2016	\$30.00 RE-PROGRAMMING TESTING PAGES
Paid Chk# 021611	MICHAEL HOOK	04/25/2016	\$1,458.33 CONTRACT LABOR
Paid Chk# 021612	IMAGE QUEST	04/25/2016	\$187.15 COPIER - BASE SERVICE
Paid Chk# 021613	ISG TECHNOLOGY, INC	04/25/2016	\$351.00 SYMANTEC SUBSCRIPTION
Paid Chk# 021614	JERRY A. MILLER	04/25/2016	\$300.00 APRIL AWOS
Paid Chk# 021615	JUNCTION CITY FAMILY YMCA	04/25/2016	\$30.00 LIFEGUARD TRAINING PRECOURSE S
Paid Chk# 021616	KA-COMM, INC.	04/25/2016	\$2,875.28 INSTALLATION OF EQUIPMENT NEW
Paid Chk# 021617	KANSAS GAS SERVICE	04/25/2016	\$1,988.46 GAS SERVICE
Paid Chk# 021618	MARK KINDERKNECHT	04/25/2016	\$2,500.00 SIDEWALK REPAIR/ REPAIR FOR ST
Paid Chk# 021619	KRWA	04/25/2016	\$1,220.00 6 REGISTRATIONS TO CONFERENCE
Paid Chk# 021620	KS DEPT OF REVENUE	04/25/2016	\$30.00 3 DMV CHECKS
Paid Chk# 021621	LA RUE DISTRIBUTING INC	04/25/2016	\$119.18 COFFEE
Paid Chk# 021622	LIONS CLUB	04/25/2016	\$120.50 KELLEE QUARTERLY DUES
Paid Chk# 021623	MICHAEL FERRELL ANDERSON	04/25/2016	\$945.00 CHILI COOKOFF AD/TR & T WORK
Paid Chk# 021624	MEMORIAL HOSPITAL	04/25/2016	\$292.75 BRADLEY JAMISON - 16004347
Paid Chk# 021625	NATIONAL SIGN CO., INC	04/25/2016	\$2,183.80 2016 SIGNS
Paid Chk# 021626	NEOFUNDS BY NEOPOST	04/25/2016	\$284.33 POSTAGE
Paid Chk# 021627	OCCK INC.	04/25/2016	\$6,166.67 MARCH 2015 SERVICE

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April 2016

Name	Check Date	Check Amt	
Paid Chk# 021628 OSBORN PROPERTIES	04/25/2016	\$200.00	APRIL BILLBOARD
Paid Chk# 021629 PACE ANALYTICAL SERVICES	04/25/2016	\$468.00	LAB WORK
Paid Chk# 021630 POLYDYNE, INC	04/25/2016	\$1,080.00	CLARIFLOC
Paid Chk# 021631 PRAIRIE FIRE COFFEE	04/25/2016	\$83.80	COFFEE
Paid Chk# 021632 QUILL	04/25/2016	\$58.99	EXPANDING FOLDERS
Paid Chk# 021633 SAGE PRODUCTS, INC	04/25/2016	\$388.52	MARKING PAINT/FLOOR STRIPPER/M
Paid Chk# 021634 SALINA SUPPLY CO	04/25/2016	\$16,072.14	MANHOLE RING/LIDS & FIRE HYDRA
Paid Chk# 021635 STANION WHOLESALE ELECTRI	04/25/2016	\$138.60	LIGHTS FOR WWTP
Paid Chk# 021636 STOUT SERVICE & SALES, INC	04/25/2016	\$1,429.20	BAGGER SYSTEM - EXCEL MOWER
Paid Chk# 021637 STRODA, JAMIE	04/25/2016	\$100.00	REIMB. CIVIC CENTER RENTAL
Paid Chk# 021638 SUPERIOR SANITATION SERVIC	04/25/2016	\$475.00	TRASH SERVICE @ PARK/BALL DIAM
Paid Chk# 021639 THE VENUE ON BROADWAY	04/25/2016	\$150.00	RENTAL MARCH 29TH - COMMIS/STA
Paid Chk# 021640 UNIFIRST CORPORATION	04/25/2016	\$2,212.25	UNIFORM SERVICE
Paid Chk# 021641 UNIVERSITY OF KANSAS	04/25/2016	\$120.00	F.F 1 & 2 TESTING FOR JONATHAN
Paid Chk# 021642 US POST OFFICE-POSTMASTER	04/25/2016	\$1,100.00	REGULAR BILLING MAY 2016
Paid Chk# 021643 VAN DIEST CHEMICAL CO	04/25/2016	\$4,045.55	MOSQUITO SPRAY & GENERAL WEED
Paid Chk# 021644 VISA - UMB ADMINISTRATION	04/25/2016	\$4,185.11	SUPPLIES
Paid Chk# 021645 VISA - UMB AIRPORT	04/25/2016	\$551.60	SUPPLIES
Paid Chk# 021646 VISA - UMB COMMUNITY DEVEL	04/25/2016	\$91.25	SUPPLIES
Paid Chk# 021647 VISA - UMB CVB	04/25/2016	\$2,447.49	SUPPLIES
Paid Chk# 021648 VISA - UMB FIRE DEPT	04/25/2016	\$2,902.42	SUPPLIES
Paid Chk# 021649 VISA - UMB MUNICIPAL COURT	04/25/2016	\$268.17	SUPPLIES
Paid Chk# 021650 VISA - UMB PARKS	04/25/2016	\$3,980.80	SUPPLIES
Paid Chk# 021651 VISA - UMB POLICE DEPT	04/25/2016	\$2,380.27	SUPPLIES
Paid Chk# 021652 VISA - UMB PUBLIC WORKS	04/25/2016	\$4,797.71	SUPPLIES
Paid Chk# 021653 WAGeworks	04/25/2016	\$170.00	FSA MONTHLY ADMIN FEE/AFLAC FL
Paid Chk# 021654 WAITT OUTDOOR	04/25/2016	\$1,859.00	BILLBOARDS
Paid Chk# 021655 JACK E MEEHAN	04/25/2016	\$115.00	TABLECLOTHS
Paid Chk# 021656 WESTAR ENERGY	04/25/2016	\$43,587.74	ELECTRIC SERVICE
Paid Chk# 501214E Biweekly ACH	04/08/2016	\$64,211.21	
Total Checks		\$221,643.54	

FILTER: None