

RESOLUTION NO. 022315-5

A RESOLUTION AMENDING AN AGREEMENT DATED MARCH 8, 2010 FOR AIRPORT TECHNICAL ENGINEERING SERVICES WITH JERRY MILLER ELECTRONICS

WHEREAS, the City of Abilene desires to amend an Agreement with Jerry Miller Electronics, dated March 8, 2010, and attached hereto as **Exhibit A**, for on-going maintenance of the Automated Weather Observation System ("AWOS") at the Abilene Municipal Airport.

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

SECTION ONE. Agreement. That an Agreement with Jerry Miller Electronics is hereby amended as attached hereto as **Exhibit B**.


SECTION TWO. Implementation. The City Manager is hereby authorized to execute the aforementioned amendment to the Agreement dated March 9, 2010, 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 23rd day of February, 2015.



ATTEST:


Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By: 
Brenda Finn Bowers, Mayor

EXHIBIT A

Agreement for Airport Technical and Engineering Services

with

Jerry Miller Electronics

dated

March 8, 2010

**AGREEMENT FOR
AIRPORT TECHNICAL and ENGINEERING SERVICES**

This Agreement, made this 8th day of March, 2010, is by and between the City of ABILENE, Kansas Airport, (hereinafter referred to as "Airport") and Jerry Miller Electronics, (hereinafter referred to as "Engineer-Technician").

W I T N E S S E T H:

THAT WHEREAS, Jerry Miller Electronics is a firm based in the State of Kansas, and which does business in Kansas; and

WHEREAS, He is skilled in and is capable of providing certain engineering services of the type required routinely by Airport, including the maintenance, installation and repair of Automatic Weather Observation Systems, Non-directional Radio Beacons and other communications facilities licensed by the Federal Communications Commission and Federal Aviation Administration.

WHEREAS, Airport is a licensee of the Federal Aviation Administration and is obliged to maintain its facilities in such a manner as to comply with all applicable technical rules, and any applicable state and local rules and therefore has need for a qualified engineering firm or individual to provide such technical services to Airport on an independent contractor basis, and the Airport is willing, in consideration of Engineer's services, to timely pay Engineer's fees as agreed upon for each class of service performed as an independent contractor;

Now, therefore, the parties hereto agree as follows:

1. DUTIES OF ENGINEER-Technician. The technical support services to be provided by Engineer include providing general assistance on a technical task, providing consulting services, acting as a technical advisor to perform installation and construction of technical facilities, and such design work as may be within the capability of Engineer. Engineer will provide periodic inspection functions, as required by FAA. He will provide additional inspections, tests, adjustments, repairs, maintenance, and logging as necessary in connection with the Airport as necessary to comply with applicable FCC and FAA and other Federal, state and local laws and regulations; and it will advise Airport whether maintenance of said equipment is in accordance with the necessary Rules and Regulations. Additional duties of Engineer will be as set forth in any addendum attached to this Agreement, and signed by both parties hereto. It is understood and agreed that Engineer will have other clients, and that no specific time periods will be dedicated to Airport, or to the work to be performed by Engineer hereunder.

1.a. Engineer shall oversee and be responsible for the overall completed installation and FAA Commissioning of AWOS equipment at Abilene Airport.

To include:

Document #1 (as provided by Jim Price) ordering of AWOS III Version D, From Vaisala, a split system with the sensors in the field and monitor in the airport Hangar building.

Document #2 (John Koffman Electric) Overseeing of concrete, tower and electrical work to operational standards.

1.1 Independent Contractor Status of Engineer. Engineer is retained by Airport under this Agreement only for the purposes and to the extent set forth in this Agreement and any addendum hereto, or as otherwise agreed to in writing between Airport and Engineer, and Engineer's relationship to Airport shall, during the term of this Agreement and any and all periods of performance of the contracted activities and/or services hereunder, be that of an independent contractor, who contracts to do a piece of work according to his/her own methods, and using his/her own tools and equipment, and not being subject to the control of Airport except as to the result of the work.

2. QUALIFICATIONS OF ENGINEER. Engineer agrees that as long as this contract or any renewals or extensions are in effect, Engineer, and any and all engineers performing work under this contract who are employees, subcontractors, principals or agents of Engineer will each hold, to the extent required, valid FCC license and FAA certification entitling that person to work on the necessary equipment. Engineer warrants that it, and any its engineers in its employ or under its control who may perform work for Airport under this Agreement are sufficiently experienced and skilled in the inspections, maintenance, testing, adjusting and repairing of all equipment, relative to the work performed; that they have adequate knowledge of the Rules and Regulations of the FAA so as to determine whether a facility is operating in accordance therewith; that each such person will have current knowledge of applicable changes to said rules regarding operation; and that each is familiar with the particular regulations of the FAA relating to the maintenance, inspection, operation, testing, adjusting and repairing of AWOS, NDB and associated equipment and the operating and maintenance logging requirements of FAA.

3. **PAYMENT TO ENGINEER.** Engineer acknowledges that during the term of this Agreement, Airport reserves the right to require a bid price for certain projects, which is based on an itemized total project cost, rather than an hourly, daily, or monthly rate. In such cases, Engineer will have the right to accept or reject the project based on the total project cost as agreed between Airport and Engineer.

The work of the Engineer is based on a fixed fee, 6500.00 to be paid at time of installation. This includes sensor installation, normal maintenance, logging, repair and operation of AWOS for the first year. After the first year monthly AWOS maintenance will be 275.00. The placement of all equipment is to be based on the current airport layout plan. Engineer will be readily available for instruction to city crew or other contractors for completion of this project. Costs of any repair parts are to be billed separately. Airport will provide all required electrical power and hookup, (including grounding system and AC lines), concrete bases for equipment and erect 30 foot tower for AWOS. Engineer will provide no parts, concrete or hardware. All necessary parts are to be provided by the Airport, Koffman Electric or equipment manufacturer.

4. **STATUS OF ENGINEER, INDEMNIFICATION AND HOLD HARMLESS.** Engineer shall retain complete control over any agents, employees and servants who shall be the exclusive agents, employees and servants of the Engineer and not of Airport. Nothing herein shall be construed to create any partnership or joint venture, nor shall Engineer be considered a partner, agent or employee of Airport, and Engineer shall have no authority to bind Airport in any manner whatsoever, it being intended that Engineer shall be and remain an independent contractor, and not otherwise, and that Engineer shall be responsible for all actions of itself, its principals, agents and employees. Engineer agrees to defend, indemnify, save and hold Airport free and harmless from any claims, liability or loss and expense which arise by reason of the acts or omissions of the Engineer, or its principals, agents or employees, in the performance of the Engineer's obligations under this Agreement, provided, however, that Engineer will assume no liability whatsoever, nor shall any of Engineer's agents, employees, subcontractors, or anyone associated with Engineer be deemed liable, for any damage, penalty, fine, forfeiture, loss, or claims against Airport for acts or omissions of Airport taken against the advice of Engineer, or for recommendations not followed. Engineer will not be responsible for any damage, loss, or claim against Airport related to violation of FAA rules or regulations, or violation of any act, statute or regulation, if Engineer did not have a reasonable opportunity to discover the violation, or if, upon discovery of the violation or potential violation, Engineer advised Airport thereof, and no action, or inappropriate action, was taken by Airport as the result.

4.1 Insurance Coverage. Engineer shall maintain, at all times during this Agreement, and at all times during the performance of the duties hereunder, liability insurance, with coverage amounts sufficient to Engineer, covering Engineer, its agents, employees and principals. (1 Million) The policy shall be kept in force, and evidence of the insurance shall be furnished to Airport at the commencement of the term of this Agreement, and periodically thereafter if requested by Airport.

4.2 Risk of Loss And Obligation To Pay Agents of Engineer. Engineer shall bear any risk of loss, death or injury to its employees or agents, save for that caused by any undisclosed hazards at Airport that are known to Airport, which result in injury or harm to Engineer, or Engineer's agents, employees or subcontractors.

5. TOOLS AND EQUIPMENT. Engineer shall supply tools and testing equipment required for normal and customary testing and maintenance, except for special tools furnished by the equipment manufacturer.

6. PURCHASING POWER RESTRICTION. Engineer shall not order, purchase or charge anything to, for, or in the name of Airport without the express authority of Airport except as otherwise specifically provided herein, or in any written amendment to this Agreement.

7. NON-DISCLOSURE; NO CONFLICT OF INTEREST. Any and all information obtained by Engineer concerning Airport's operation and internal affairs shall not be revealed to any person or persons, without obtaining specific written permission of Airport.

7.1 Other Obligations of Engineer. It is specifically understood and agreed by Airport that Engineer will solicit, agree to perform, and perform other engineering work for other communications licensees. No such efforts of Engineer will be deemed a violation of this Agreement, and Airport consents to the entry by Engineer into agreements similar or identical to this Agreement with other airports and communications licensees, and such is not to be deemed a conflict of interest on the part of Engineer. Engineer will not, however, provide contract engineering services to other entities to the extent that such would make the performance of the obligations of Engineer under this Agreement impossible.

There may be occasions during the term of this Agreement that Contractor will have emergency work to provide for several clients, including Airport, at the same time, or during time periods which make it difficult or impossible for Engineer to immediately respond to requests for assistance from Airport. Engineer will work with Airport to establish procedures to avoid such incidents, and will in any event use best efforts to respond to requests for technical assistance from Airport at the earliest possible opportunity. Airport will assist in this process, and will work with Engineer to establish emergency procedures to, for example, return equipment to operation after a failure, or in similar circumstances.

8. **TERM.** The initial term of this Agreement shall be for one year, or for such shorter period as is necessary to complete performance of specific tasks by a specific completion date. If the work is ongoing, and not a specific task with a fixed completion date, the Agreement will continue for the entire year term. The Agreement, in any event, commences on the date of signing. Either party may terminate this Agreement upon 30 days' written notice of termination to the other party, for any reason or no reason, but such termination does not relieve either party of the duties and obligations hereunder relating to indemnity, hold harmless, non-disclosure or confidentiality, which shall survive the termination of this Agreement; and termination does not relieve Airport of the obligation to pay money otherwise due and owing to Engineer.

9. **RENEWAL.** This Agreement shall automatically renew for additional periods of one year each, without lapse in the Agreement at the end of the initial term or any renewal term, unless notice of cancellation is given thirty (30) days prior to expiration.

10. **SUBSTITUTION.** Engineer's services described herein may be rendered by the use of independent sub-contractors. Engineer will not, by virtue of use of sub-contractors, be relieved of any obligation under this Agreement, and any and all indemnification and hold harmless provisions shall be in effect, and relate to all work performed by subcontractors of Engineer, as though the work had been performed by Engineer hereunder.

11. **BASIC SERVICES.** The payment of fees for basic services performed by Engineer shall be paid to Engineer by Airport upon receipt of a statement for services. The basic services to be provided are as defined herein in section numbered 1 above, and as may be listed herein in any addendum to this Agreement. Emergency services shall be performed by Engineer as quickly as is reasonably possible, and may require additional outside consulting or contract engineering services. Any such additional expenses will be reimbursed without unreasonable delay by Airport. In the case of an emergency which has caused Airport equipment to be off the air, advance approval from Airport for additional expense for services, parts or materials in order to restore service as soon as physically possible will not be required, though consultation with Airport in advance of major capital expenditures to restore service is necessary.

12. **ENTIRE AGREEMENT.** This contract contains the entire Agreement between the parties and supersedes all prior representations, agreements, understandings, trade practices, or proposals. The Agreement is to be construed under the laws of the State of Kansas, and subject matter and in personam jurisdiction over this Agreement, and over the parties hereto, shall exist in the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first written above.

FOR Airport:

Ned. Bailey-Mason
(Principal)

Date:

FOR Jerry Miller Electronics Engineer-Technician:

JM
(Principal)

Date:

EXHIBIT B

Amendment to Agreement for Airport Technical and Engineering Services

with

Jerry Miller Electronics

dated

March 8, 2010

February 23, 2015

AMENDMENT TO AGREEMENT FOR AIRPORT TECHNICAL AND ENGINEERING SERVICES

This amendment to the original agreement dated March 8, 2010, made this 23rd day of February, 2015, by and between the City of Abilene, Kansas, Kansas Airport, and Jerry Miller Electronics is as follows:

1. Article 3, Payment to Engineer, is amended to increase the monthly AWOS maintenance from \$275.00 to \$300.00 per month, beginning with the January 2015 payment.
2. All of the other provisions of the original agreement shall remain in full force and effect.

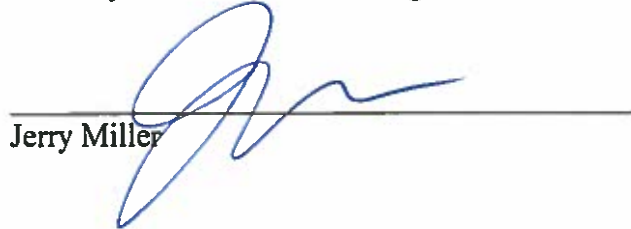
In Witness Whereof, the parties hereto have set their hands as of the date shown above.

For Airport:



David Dillner
Abilene City Manager

For Jerry Miller Electronics Engineer-Technician:



Jerry Miller