

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**December 8, 2016**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on December 8, 2016. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

**1. ROLL CALL**

Charlie Troutner	present
Clay Longanecker	present
Darius Crist	present
Cindy Crooks	present

Jody Brown	absent
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With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Community Development Director Kenneth Cook
	City Attorney Patrick Reavey
	Public Works Superintendent Trey Whitaker

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

4. The agenda for December 8, 2016 was considered.
5. City Council meeting Minutes of November 10, 2016 was considered.
6. Animal Permit for Darius Crist at 510 West Braun Street was considered.
7. Animal Permit for Sergio Galaz at 1300 West Braun Street was considered.
8. Animal Permit for Rick Magee at 1301 West 8<sup>th</sup> Street was considered.
9. Animal Permit for Jarold and Sharon Owens at 410 West Braun was considered.
10. Animal Permit for H.M. and B.K. Damet for 202 West 8<sup>th</sup> Street was considered.
11. Animal Permit for Glyn Powers at 1606 West 8<sup>th</sup> Street was considered.
12. Animal Permit for Michael Mabrey at 1200 West Braun was considered.
13. Approval of a One-Year Contract Extension with Clements Cleaning Service to provide janitorial services for the Edgerton Community Building/City Hall/ 305 E. Nelson for 2017 was considered.
14. Approval of Final Acceptance of 2016 Chip Seal Program and authorize final payment to Harbour Construction, Inc. was considered.
15. Approval of renewal of Cereal Malt Beverage License Application for 2017 was considered.
16. Approval of Resolution No. 12-08-2016A declaring the Boundaries of the City of Edgerton, Johnson County, Kansas was considered.

17. Approval of Resolution No. 12-08-2016B renewing an existing facility use and maintenance agreement for the Bank of Knowledge and authorizing its use by the Board of Directors of the Johnson County Library as a Library Facility was considered.
18. Approval of an Agreement with the Johnson County Sheriff's Department for the provision of law enforcement services for fiscal al year 2017 and authorize the Mayor to execute the agreement was considered.
19. Approval of a Grant Concurrence to Bid Construction of West 8<sup>th</sup> Street Sidewalk project was considered.

Motion by Crooks, seconded by Longanecker, to remove items numbered 6 and 14 from the consent agenda and to approve the remaining items.

Council member Crist removed himself from the council chambers.

Motion by Longanecker, seconded by Crooks, to approve the animal permit for Darius Crist at 510 West Braun Street.

Motion approved, 3-0.

Council member Troutner had several questions about Shanandoah Street and why it was not chip sealed. Public Works Superintendent Trey Whitaker addressed council about this issue. He noted a technical analysis needs to be done on Shanandoah because it needs more than chip seal.

Motion by Troutner, seconded by Crist, to approve Final Acceptance of 2016 Chip Seal Program and authorize final payment to Harbour Construction, Inc.

Motion approved ,4-0.

## **20. PUBLIC COMMENTS**

Darlene Brown, 220 E. McDonald, was present to talk about the poor condition of her street. She lives on E. McDonald which is gravel and has lots of holes and bumps.

## **21. DECLARATION**

Council member Troutner excused himself from Item #22, agreement with the Edgerton Historic Society.

## **BUSINESS REQUIRING ACTION**

### **EDGERTON COMMUNITY MUSEUM AGREEMENT**

## **22. FACILITY USE AND MAINTENANCE AGREEMENT WITH EDGERTON HISTORIC SOCIETY FOR EDGERTON COMMUNITY MUSEUM FOR 2017 WAS CONSIDERED.**

Motion by Longanecker, seconded by Crist, to approve the agreement with Edgerton Historic Society, for Edgerton Community Museum for 2017, for one dollar a year and to include changes.

Motion approved, 3-0.

**CANDID MARKETING CONTRACT**

**23. CONTRACT WITH CANDID MARKETING FOR MARKETING AND COMMUNICATIONS SERVICES FOR STRATEGIC MARKETING SERVICES FOR 2017 WAS CONSIDERED.**

Beth Linn, City Administrator, introduced Becky Freetly, Candid Marketing who presented a power point presentation with the annual update. The new website should be up and running by spring break. There were no questions or comments.

Motion by Crooks, seconded by Longanecker, to approve the contract with Candid Marketing.

Motion approved, 4-0.

**CHAMBER OF COMMERCE CONTRACT**

**24. CONTRACT WITH GARDNER EDGERTON CHAMBER OF COMMERCE FOR CHAMBER SERVICES FOR 2017 WAS CONSIDERED.**

Beth Linn, City Administrator, introduced Jason Camis, Gardner Edgerton Chamber of Commerce, who presented the outline of the agreement for 2017. The three goals are advocacy, collaboration and exposure. The agreement states that the Chamber shall prepare a plan of work that delineates specific activities for each goal.

Motion by Crooks, seconded by Longanecker, to approve the contract with Gardner Edgerton Chamber of Commerce for chamber services for 2017.

Motion approved, 4-0.

**NOTIFY JOCO, COUNTYWIDE MASS NOTIFICATION SYSTEM AGREEMENT**

**25. APPROVAL OF THE AGREEMENT TO PARTICIPATE IN THE MEMORANDUM OF UNDERSTANDING FOR USE OF THE COUNTYWIDE MASS NOTIFICATION SYSTEM (NOTIFY JOCO) WAS CONSIDERED.**

Beth Linn, City Administrator, provided information about the agreement. Notify JoCo is a mass notification system that is designed to keep residents informed of emergencies, including weather warnings, water main breaks, public safety alerts and natural disasters. Council member Crooks asked how soon can we be online. The reply was that we should be able to go online in January.

Motion by Crist, seconded by Crooks, to approve the agreement to participate in the memorandum of understanding for use of the countywide mass notification system.

Motion approved, 4-0.

**ORDINANCE NO. 1041**

**26. CONSIDER ORDINANCE NO. 1041 APPROVING THE DESCRIPTION AND SURVEY OF LANDS NECESSARY FOR ACQUISITION OF EASEMENTS NEEDED FOR CONSTRUCTING WEST 8<sup>TH</sup> STREET SIDEWALK AND ASSOCIATED IMPROVEMENTS WAS CONSIDERED.**

Kenneth Cook, Community Development Director, explained Ordinance No. 1041. The purpose is to approve the description and survey of lands necessary for acquisition of easements needed for constructing West 8<sup>th</sup> street sidewalk and associated improvements. The City of Edgerton is constructing a new sidewalk along the East side of 8<sup>th</sup> Street from Heather Knoll Drive to Nelson Street in order to improve the pedestrian accessibility. The City of Edgerton has reached agreements with 9 out of the 17 properties, which amounts to 99.6% of the Permanent Sidewalk Easements and 75.7% of the Temporary Construction Easements. Staff will continue to negotiate easements and hopes to secure easements without the need to finish the condemnation process.

Motion by Troutner, seconded by Crooks, to approve Ordinance No. 1041.

Motion approved, 4-0.

**PUBLIC HEARING ELHC XIII---INDUSTRIAL REVENUE BONDS**

**27. PUBLIC HEARING REGARDING PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC XIII, LLC, OR ITS SUCCESSORS IN INTEREST WAS CONSIDERED.**

Scott Anderson, Bond Counsel for City of Edgerton, was present to discuss and answer any questions about the bonds and property tax abatement for ELHC XIII, LLC project. ELHC XIII desires to construct an approximately 400,000 square foot spec warehouse and distribution facility.

Mayor Roberts opened the Public Hearing at 7:42. After asking for questions and comments, he received none. The Public Hearing was closed at 7:43 pm. Jeff White, Principal with Columbia Capital Management, LLC presented the Cost Benefit Analysis for ELHC XIII, LLC. There were no questions or comments.

**RESOLUTION NO. 12-08-16C---INDUSTRIAL REVENUE BONDS**

**28. RESOLUTION NO. 12-08-16C CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC XIII, LLC, OR ITS SUCCESSORS IN INTEREST WAS CONSIDERED.**

After public hearing and the cost benefit analysis, next is the resolution consenting to the partial assignment of a resolution of intent from ELHC, LLC to ELHC XIII, LLC or its successors in interest. There were no questions or comments.

Motion by Longanecker, seconded by Crooks, to approve Resolution No. 12-08-16C.

Motion approved, 4-0.

**29. REPORT BY THE CITY ADMINISTRATOR**

- 1) Jim Elrod Retirement- December 15<sup>th</sup>, 2016 4:00-5:30 pm Reception
- 2) Special City Council Meeting on the 15<sup>th</sup> @ 6:00 pm
- 3) Finance Director-Karen Kindle- Great Job Mayor " Best Audit we have ever had!"



Motion by Longanecker, seconded by Crooks, to approve the job description for Finance Director.

Motion approved 4-0.

- 4) An existing organization chart and a proposed organization chart was presented to Mayor and Council. The Assistant City Administrator job description brought up lots of discussion. After some review of the organization charts and questions and comments were answered, council agreed that this would be a great move.

Motion by Crooks, seconded by Crist, to authorize the position of Assistant City Administrator and approve the job description.

Motion approved, 4-0.

- 5) The Community Development Block Grant project will be starting soon.  
6) The CARS program will also begin soon on the West Side of the Railroad Tracks to 5<sup>th</sup> Street

Motion by Crooks, seconded by Crist, to approve the special council meeting on the 15<sup>th</sup> of December at 6:00 pm.

Motion approved 4-0.

Motion by Crist, seconded by Crooks, to cancel the meeting on the 22<sup>nd</sup> of December 2016.

Motion approved 4-0.

### **30. REPORT BY THE MAYOR**

Reminded all about the Department of Commerce Event and that they have offered their assistance.

### **31. FUTURE MEETING/EVENT REMINDERS:**

- ✓ December 15<sup>th</sup> -6:00 pm-City Council Meeting
- ✓ December 22<sup>nd</sup> 7:00 pm-City Council Meeting (TBD)
- ✓ December 26<sup>th</sup> – City Offices Closed
- ✓ January 2<sup>nd</sup> – City Offices Closed

### **32. ADJOURN**

<b>MOTION</b>	Crooks	<b>SECOND</b>	Crist	<b>VOTE</b>	4-0	<b>TIME</b>	8:30 pm
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Janeice L. Rawles, CMC  
City Clerk

**Approved by the Governing Body on**

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**City of Edgerton, Kansas  
Minutes of City Council Special Session  
December 15, 2016**

A Special Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on December 15, 2016. The meeting convened at 6:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

**1. ROLL CALL**

Charlie Troutner	present
Clay Longanecker	present
Jody Brown	present
Darius Crist	present
Cindy Crooks	present

With a quorum present, the meeting commenced.

Staff in attendance:      City Administrator Beth Linn  
                                    Community Development Director Kenneth Cook  
                                    City Attorney Patrick Reavey  
                                    Public Works Superintendent Trey Whitaker

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

- 4. Agenda Approval was considered.
- 5. Approve Final Acceptance of Waverly Road Project and Authorize Final Payment to Clarkson Construction Company was considered.

Motion by Longanecker, seconded by Crist, to approve the consent Agenda.

Motion approved, 5-0.

**6. PUBLIC COMMENTS**

None

**7. DECLARATION**

None

**BUSINESS REQUIRING ACTION**

**EXECUTIVE SESSION**

- 8. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A.75-4319 (b) (2) CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR WAS CONSIDERED.**

Motion by Crooks, seconded by Crist, to recess into executive session for a period of fifteen minutes pursuant to K.S.A. 75-4319 (b) (2) consultation with an attorney deemed privileged in the attorney-client relationship to include city attorney and city administrator.

Motion approved, 5-0

Meeting recessed at 6:20 pm.

Motion by Crooks, seconded by Crist, to reconvene into regular session, no action taken.

Motion approved, 5-0.

Meeting reconvened at 6:35 pm.

**RESOLUTION NO. 12-15-2016A----FEES AND RATES**

- 9. RESOLUTION NO. 12-15-2016A ESTABLISHING FEES AND RATES FOR PERMITS, LICENSES AND SERVICES WITHIN THE CITY OF EDGERTON, KANSAS WAS CONSIDERED.**

A draft of Resolution No. 12-15-16A is included in the agenda packet. The fees in blue are either new fees or existing fees with an updated rate and the items in red are existing fees included in the Edgerton City Code at the rate listed. The Council accepted staff's proposal, and considered adding an additional \$1.00 (one dollar) per 1,000 gallons for wastewater charges of water used within the LPKC district. Council member Troutner is not in favor of raising the re-connection fee for water service.

Motion by Crooks, seconded by Longanecker, to approve Resolution No. 12-15-2016A, establishing fees and rates for permits, licenses and services within the City of Edgerton, Kansas.

Vote on motion: YEA; Longanecker, Crooks, Brown, Crist. NAY; Troutner

Motion approved 4-1.

**10. REPORT BY THE CITY ADMINISTRATOR**

Packets were handed out to Mayor and Council members for the Holiday Lighting Contest. This year's event has 26 entries and the winners will be announced on December 21<sup>st</sup>, 2016.

A reminder of **no** meeting on December 22, 2016.

**11. REPORT BY THE MAYOR**

No report

## 12. FUTURE MEETING/EVENT REMINDERS



December 22<sup>nd</sup> 7:00 pm City Council Meeting CANCELLED



December 26<sup>th</sup> – City Offices Closed



January 1<sup>st</sup> – City Offices Closed

## 13. ADJOURN

<b>MOTION</b>	Crist	<b>SECOND</b>	Crooks	<b>VOTE</b>	5-0	<b>TIME</b>	6:50 PM
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Janeice L. Rawles, CMC  
City Clerk

Approved by the Governing Body on

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## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Approval of Contract with Weather or Not®, Inc. to provide weather forecasting services

**Department:** Public Works Department

**Background/Description of Item:** Weather or Not is a service that provides weather forecasting for business and municipalities. These forecasts are designed to provide key operational staff with the ability to accurately and efficiently schedule projects and/or emergency operations as necessary. This service provides staff with weather information via email and text messages. Notifications are provided twice a day during normal conditions, additionally Weather or Not will contact staff via phone during significant weather events. These calls are vital for winter weather operations and give the staff additional tools during inclement weather events.

Over the last month the City has been provided a demo for the weather service. Staff has utilized the provided forecast to better equip snow crews with the start and stop of precipitation, refreeze potential and total accumulation expected. This has been extremely valuable for winter operations and providing better preparation for incoming events.

The City's purchasing policy allows and encourages the practice of cooperative purchases, used most frequently with vehicles and equipment. The City's purchasing policy allows for the City to "piggy-back" on contracts entered into by other jurisdictions. Section 2.14 of the agreement between the City of Prairie Village and Weather or Not includes the cooperative purchasing provisions to allow the City of Edgerton to take piggy-back on an existing contract.

The all-inclusive fee for the Premier Plus (\*including the StreamerRTsm total lightning service and A+ Weather Post Storm Reports) is \$9806 annually. The 2017 Public Works budget includes sufficient budget for the cost.

Enclosure: City of Edgerton – A+ Weather Services Contract  
City of Prairie Village: Cooperative Contract Documents  
Weather or Not: Service Proposal

**Recommendation:** Approval of Contract with Weather or Not®, Inc. to provide weather forecasting services

**Funding Source:** General – Public Works – Professional Services

Prepared by: Trey Whitaker, Public Works Superintendent  
Date: 11/30/2016



6100 Nieman Rd., Suite 200  
Shawnee, Kansas 66203  
913.722.3955

## City of Edgerton - A<sup>+</sup> Weather Services Contract

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This is to confirm that the City of Edgerton retains *Weather or Not*<sup>®</sup>, Inc. ("*Weather or Not*") from January 1, 2017 thru December 31, 2017 to provide weather forecasting services set forth herein. Forecasts shall be e-mailed M-F by 7:00 AM and 3:00 PM, and by 8:00 AM on weekends with all appropriate updates being made, as information becomes available. A<sup>+</sup><sub>TM</sub> Weather Alerts will be delivered to up to 10 City of Edgerton mobile devices. The City of Edgerton may call for updates whenever they choose. *Weather or Not* may record telephone calls between weather forecasters and the City of Edgerton. The City of Edgerton understands that these recordings may occur for the purpose of *Weather or Not* customer service training (without further notices) and consents to these recordings.

The all-inclusive fee for the Premier Plus, (\*including the StreamerRT<sup>sm</sup> total lightning service and A<sup>+</sup><sub>TM</sub> Weather Post Storm Reports) billable annually in the amount of \$9806.00, payable net 20. StreamerRT<sup>sm</sup> End User License Agreement electronic consent required. The City of Edgerton agrees that the information provided by *Weather or Not* as a part of the services shall not be rebroadcast, redistributed, republished or otherwise reproduced, in whole or in part, without the express written consent of *Weather or Not*.

The City of Edgerton acknowledges that forecasting the weather is not an exact science and that *Weather or Not* has no control over the City of Edgerton's actions in response to forecasts and information delivered by *Weather or Not*. *Weather or Not* shall not be responsible for the acts or omissions of the City of Edgerton taken in reliance upon the information provided by *Weather or Not*, hereunder. The City of Edgerton hereby releases *Weather or Not*, its representatives, officers, directors, and shareholders from all loss, cost, damage, liability and expense including actual, consequential, and incidental damages suffered by the City of Edgerton or any of its agents, contractors or employees or other third parties as a result of weather conditions, whether or not forecasted by *Weather or Not*, or as a result of any other services provided by *Weather or Not*.

The City of Edgerton hereby agrees that this agreement shall not be assigned or otherwise transferred in whole or in part without the express written consent of *Weather or Not*. This agreement shall be binding when signed by both parties.

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Sara Croke  
Weather or Not

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City of Edgerton

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Date

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Date

## AGREEMENT for WEATHER FORECAST SERVICES

This Agreement, made this 19<sup>th</sup> day of DECEMBER, 2016, by and between Weather Or Not, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2017 through 2019 with the following terms and conditions.

The Contractor proposes and agrees to provide all necessary machinery, tools, and equipment; and to do all the work specified in these documents of the agreement in the manner herein prescribed and according to the requirements of the City as herein set forth.

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

### 1.0 **Service Specifications**

- 1.1 The Contractor will provide to the Public Works Department, original all season weather forecast services developed by professional forecasters.
- 1.2 The Contractor will deliver daily forecasts by fax, e-mail (up to a maximum of 12 users) and texting (up to a maximum of 12 users) at 5:00 AM, 7:00 AM and 3:00 PM weekdays and no later than 8:00am on weekends and holidays. The daily forecast shall include current and projected weather conditions including start time and duration of rain/snow, intensity of rain, snow or ice and the potential for accumulating ice, damaging winds, dangerous temperatures, and 24-hour pavement temperature forecasts during winter weather. All forecasts shall contain enough pertinent information to allow the Public Works Department to make scheduling decisions for severe weather and emergency conditions, as well as planning for routine construction activities.
- 1.3 The Contractor will provide continual weather updates to designated personnel as conditions change and for severe weather forecasts of high winds, lightening, precipitation, and/or violent weather. A minimum of two (2) hours' notice of all winter storms and one (1) hour when possible for lightening or thunderstorm activity, will be required.
- 1.4 The Contractor will provide access for the City to control receiving of texting information for each individual contact. Each contact should be able to designate a time for blocking messages from their mobile device with an automatic restart at the end of that time frame. Individual contacts should be able to set weather thresholds and desired weather locations for notification.
- 1.5 The City may call the Contractor at any time with forecast requests and personal notification from a live meteorologist as required on a 24/7 basis. The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period. Please attach a list of all meteorologists employed by your company including an updated resume for each meteorologist.
- 1.6 The City may request to tour the business facility prior to bid award.



- 1.7 The Contractor will provide historical data requests from the City within a reasonable timeframe.
- 1.8 The City agrees that the information provided by the Contractor will not be rebroadcast, redistributed, republished, or otherwise reproduced, in whole or in part, without the written consent of the Contractor.
- 1.9 The City acknowledges that forecasting the weather is not an exact science, and releases the Contractor from any and all loss, cost, damage, liability, and expense suffered as a result of weather conditions, whether forecasted or not forecasted.
- 2.0 **General**
- 2.1 The signed agreement will be the authorization for the vendor to provide the described services.
- 2.2 James Carney, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117, Email-jcarney@pvkansas.com will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 2.3 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.4 All invoices with a copy of the service report are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.5 Insurance:
  - A. The Contractor shall procure and maintain, at its expense, workmen's compensation insurance and benefits for its employees.
- 2.6 It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
- 2.7 To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Contractor or any permitted subcontractors hired by Contractor, the Contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the Contractor providing the services described in this agreement.

**2.8 Applicable Laws and Permits:**

- A. The Contractor shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.
- B. Pursuant to K.S.A. No. 16-113, if the Contractor does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County, Kansas Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, it shall be filed with the Clerk of the District Court. Contractor shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

- 2.9 The Contractor may not use any subcontractors without the prior written consent of the City, which may be withheld for any reason at the City's discretion.
- 2.10 This Contract shall not be assigned by Contractor to any other party without first obtaining the written consent of the City.
- 2.11 This Contract shall be governed by and interpreted in accordance with the laws of the State of Kansas. Venue for all actions relating to this contract shall be in the district court of Johnson County, Kansas
- 2.12 This Agreement is for the period of January 1, 2017 through December 31, 2019. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.13 The Contractor will commence work within ten (10) calendar days from and after receiving the fully executed agreement from the City and will complete all work covered in this contract.
- 2.14 Municipal Cooperative Procurement: contractor agrees to provide products and/or services to any municipality, county, or state government; public utility; non-profit hospital; educational institute; special governmental agency; and non-profit corporation performing governmental functions that participates in or is represented by the Mid-America Council of Public Purchasing (MACPP) in the greater Kansas City Metropolitan Trade Area and any member of the Mid America Regional Council (MARC).



### 3.0 Fees

3.1 The fee to be paid in advance for the completion of this service is:

	2017 Annual Fee	2018 Annual Fee	2019 Annual Fee
Annual Weather Forecasting Services	\$9,211.00	\$9,487.00	\$9,487.00

❖ Reminder: attach copy of resumes for all meteorologists employed by your company.

### 4.0 References

4.1 The Contractor will provide three (3) local references of comparable work from the last twelve (12) months.

Company: Overland Park Contact: Mr. Kyle Burns

Phone #: 913-895-8308 Email: kyle.burns@opkansas.org

Brief Description on Work: Meteorological consulting services 24/7, 365 similar to Prairie Village, current services.

Company: Leawood Contact: Mr. Joe Johnson

Phone #: 913-339-6700 Email: joej@leawood.org

Brief Description on Work: Meteorological consulting services 24/7, 365 similar to Prairie Village, current services

Company: Lenexa Municipal Services Contact: Mr. Nick Arena

Phone #: 913-477-7810 Email: narena@lenexa.com

Brief Description of Work: Meteorological consulting services 24/7, 365 similar to Prairie Village, current services

### **Addendum**

Weather or Not appreciates the opportunity to submit this proposal. We shall meet or exceed all specifications with the diligence and success that has been this woman-owned, small businesses record since 1993.

In addition to the services specified in Section 1:

Weather or Not will provide Prairie Village with Post Storm Reports and a Winter Summary report as included in our services package since 2011.

Contractor Contact: Sara CrokeCompany Name: Weather or Not, Inc.Address: 6100 Nieman Rd.Shawnee, KS 66203Telephone Number: 913-722-3955Fax Number: N/AEmail: sara@weatherornot.com/s/ Sara Croke 12.6.16  
Contractor Agent Date

ATTEST:

/s/ Joyce Hagen Mundy 12/19/16  
Joyce Hagen Mundy, City Clerk Date/s/ Catherine P. Logan 12/19/16  
Catherine P. Logan, City Attorney Date/s/ Laura Wassmer 12/19/16  
Laura Wassmer, Mayor Date



**Weather**  
**or Not**®

When Accuracy Means Money sm

# Proposal for Services

Prepared for: **Edgerton Public Works**

Date: November 4, 2016






# Company Overview

For almost 30 years, Weather or Not has successfully helped clients save money and improve safety by providing the best weather decision making tools for their operations.

Weather apps and websites provide convenience for the every day person. However, **business owners benefit from making key operational decisions based on more than 'convenience'.**

**Instead, decision makers rely on professional tools** to analyze storm paths used by the Weather Consultants to specifically monitor for unique business needs.

## Weather or Not provides a competitive advantage through:

- **Demonstrated Accuracy** resulting in client retention of 90+%
- **Customized weather forecasts** to ensure your business needs are met
- **Hands on Expert Analysis** by professional meteorologists interpreting for your business thresholds
- **Critical Updates 24/7** when weather changes
- **24 hour Access** to our  Weather Team for questions and consultation

Proven track record with hundreds of clients, including:

Airports - Construction - Landscape, Roofing and Snow Removal - Parks and Recreation - Professional Sports Organizations - Public Works - School Districts - Utilities

# Our Understanding

*Thank you for recent discussions. The following points covered.*

## WEATHER CHALLENGES:

- 10 of 18 days w/trace or more of snow or ice (Feb 15-Mar 4, 2016)
- Public forecasts showed no snow in forecast. (We called/alerted our clients 4-1/2 hrs. notice before roads became icy)
- 68% of days April-June were wet but, not ALL rainouts

## OPERATION

- Effectively R
- Treating str slickness &
- Unnecessa
- Parks and

## OVERALL PROBLEM TO SOLVE:

- Get out ahead of the snow, ice or thunderstorm to keep travelers and event patrons safe.



# Preliminary Weather Ops Audit

The SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis is based on the preliminary Weather Operations Audit. It is a summary of internal strengths and weaknesses and external opportunities and threats.

## Strengths ... What your organization does best

- Strong interest in weather impacts
- Local knowledge of weather challenges
- Local employees result in fast response times
- Wealth of local historical knowledge
- Keen awareness of vulnerabilities

# Preliminary Weather Ops Audit

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## Weaknesses... What needs to improve

- Waiting for police call out
- Passive weather resources
- Alert systems limited only to severe weather
- Different people using difference sources simultaneously
- Limited ability to work the storm and analyze at the same time

# Preliminary Weather Ops Audit

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## Threats... What are obstacles

- Road condition not priority #1 to first responders
- Weather changes when not being monitored
- Most KC forecasts are not about Edgerton
- Vague weather forecasts causing event cancellations
- Radar inaccuracies causing pre-treatment to wash away



# Preliminary Weather Ops Audit

## Opportunities...

### -Solutions We Recommend

- Creating a timeline to safety/a forecasting plan and process for winter maintenance, construction, parks and recreation
- Evaluating and choosing best go-to weather resources
- Training to analyze satellite imagery and all other weather resources
- Post storm reviews
- Customized and proactive lightning alerting system
- Training on matching weather analysis to operational decisions
- Matching accurate weather to effective pre-treatment and crew scheduling

# Proposed Solution

Based on our conversation and knowledge of this industry, the following services are being recommended.

<b>We Notify...</b>	<ul style="list-style-type: none"> <li>• Through <b>N+</b> Weather Alerts - up to 5 mobile devices/emails</li> <li>• Setup includes types of weather, locations and Do Not Disturb parameters</li> <li>• NOTE: Lightning notification service provided through StreamerRT</li> </ul>
<b>We Explain...</b>	<ul style="list-style-type: none"> <li>• Through Expert Analysis resulting in detailed short-term precipitation outlook Emailed twice a day during the week and daily on weekends</li> <li>• Includes explanation of key weather factors over the coming 5 days</li> </ul>
<b>We Answer...</b>	<ul style="list-style-type: none"> <li>• Through <b>N+</b> Weather Premier Consulting services where designee may call to confer with their meteorologist 24/7 regarding current or upcoming weather</li> </ul>
<b>We Report...</b>	<ul style="list-style-type: none"> <li>• Through Post Storm Reports that are sent within 3 business days of significant snow event</li> <li>• Important facts are highlighted for specific storms; seasonal summaries are also provided</li> </ul>

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Approval of Supplemental Agreement No. 1 to Contract to Employ City Engineer with BG Consultants, Inc.

**Department:** Administration

**Background/Description of Item:** In September 2008, the City of Edgerton entered into a Contract with BG Consultants, Inc. to provide City Engineer services. The City Engineer has served as an important member of the design/build team on behalf of the City.

In July 2016, the City of Edgerton approved a loan agreement with Kansas Department of Health and Environment (KDHE) for a low-interest loan through the Kansas Water Pollution Control Revolving Fund for the purpose of financing the Automated Meter Reading Project.

The City of Edgerton has submitted the first pay request for the loan including city engineer services provided by BG Consultants related to the Automated Meter Reading System Project. The City has been notified by KDHE that any contract for services that will receive payment through the state revolving loan fund must have several contract provisions not previously included such as anti-discrimination, anti-lobbying etc. Based on this letter, the City needs to amend the original contract for city engineer to include the required provisions. BG has agreed to the provisions, and there is no additional cost associated with the provisions.

Enclosures: Supplemental Agreement No. 1 to Contract to Employ City Engineer with BG Consultants, Inc.

**Recommendation:** Approve Supplemental Agreement No. 1 to Contract to Employ City Engineer with BG Consultants, Inc. subject to approval by the City Attorney.

**Funding Source:** N/A

Prepared by: Karen Kindle, Finance Director  
Date: January 5, 2017

**Supplemental Agreement No. 1**  
**to**  
**Contract to Employ City Engineer**  
**Between**  
**The City of Edgerton, Kansas and BG Consultants, Inc.**  
**For**  
**City Engineering Services**  
**Edgerton, Kansas**

The purpose of this Supplement No. 1 is to add KPWSLF program requirements to the original contract. The **City of Edgerton, Kansas**, hereinafter called the **CLIENT**, and **BG Consultants, Inc.**, hereinafter called the **CONSULTANT**, were parties to the original agreement. This agreement is a supplement to the **AGREEMENT** between the City of Edgerton, Kansas and BG Consultants, Inc. dated September 25, 2008.

**SECTION I – SCOPE OF SERVICES**

Under the terms of Supplemental Agreement No. 1, the **CLIENT** and **CONSULTANT** agree to modify the **AGREEMENT** to include additional contract provisions described as follows:

**Contract Provisions**

1. The attached State of Kansas Act Against Discrimination Contract Provision Certification Form will be incorporated into the **AGREEMENT**.
2. The attached Certification Regarding Lobbying (EPA Form 6600-06) will be incorporated into the **AGREEMENT**.
3. The attached Contract Provisions for Equal Opportunity will be incorporated into the **AGREEMENT**.
4. The attached Contract Provisions for the Kansas Act Against Discrimination, Contract Provisions for Restrictions on Lobbying, Contract Provisions for the Trafficking Victims Protection Act of 2000, Contract Provisions for Suspension and Debarment, Contract Provisions for Non Discrimination and Contract Provisions for Non Segregated Facilities will be incorporated into the **AGREEMENT**.

## SECTION II – OTHER MATTERS

It is mutually agreed and understood that all terms of the original Agreement, not specifically revised by this Supplement No. 1, shall remain unchanged and in full force.

IN WITNESS WHEREOF, the parties have executed this Supplement No. 1 on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

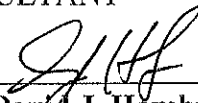
City of Edgerton, Kansas  
CLIENT

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

BG Consultants, Inc.  
CONSULTANT

By  \_\_\_\_\_  
David J. Hamby, P.E.

Title Vice President

Date 12/19/16



STATE OF KANSAS  
ACT AGAINST DISCRIMINATION  
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY Edgerton, Kansas

CONTRACTOR'S  
SIGNATURE



TITLE Vice President

KPWSLF NO. 2903

DATE 12/19/2016



2903  
KDHE PROJECT #

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

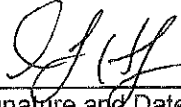
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

David Hamby, Vice President

Typed Name & Title of Authorized Representative

 12/19/2016  
Signature and Date of Authorized Representative

### Contract Provisions for Equal Opportunity

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **Contract Provisions for the Kansas Act Against Discrimination**

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

- (1) Who employs fewer than four employees during the term of such contract; or
- (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

### **Contract Provisions for Restrictions on Lobbying**

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

### **Contract Provisions for the Trafficking Victims Protection Act of 2000**

The Contractor, its employees, sub-contractors, and sub-contractors employees under any KPWSLF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

### **Contract Provisions for Suspension and Debarment**

The Contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions." The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Contractor agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

### **Contract Provisions for Non Discrimination**

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

### **Contract Provisions for Non Segregated Facilities**

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; *Provided*, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider New Phone System

**Department:** Administration

### **Background/Description of Item:**

The City's current phone system, Fortinet, is no longer meeting the City's needs. The Fortinet system was installed in March 2011, at which time it was a definite upgrade for the City. However, the Fortinet system does not have the capacity to handle the number of staff members and the City's multiple locations. The call capacity of the current system is two (2) calls, which cannot be expanded without a new system. This limitation was noted in the technology audit performed in 2014. For example, if one staff member receives a call and another staff member is making a call, the call limit is reached. At that moment, any calls coming to City Hall are routed to the answering service. Any staff member wishing to make a call must wait for an available line. This situation is not ideal for serving customers or for carrying out the work of the City.

The 2016 Budget approved funding for a new phone system. In March 2016, Janeice Rawles and Karen Kindle began working with Allied Business Solutions, the City's phone consultant, to determine what the City needed, and from there to determine what type of phone system would work the best. There are three types of phone systems – premise based, managed and cloud/hosted. Staff discussed the pros and cons of the three types of systems vs what the City needs now and would need in the future. Please see the attached Phone System Options Pros/Cons document for information about each type of system.

Based on that analysis, staff determined that the cloud/hosted system would be the best fit for the City. The City needs a flexible, easy to maintain system that can adapt to the City's ever changing needs, and does not require significant IT resources to maintain. The City needs the ability to easily change the number of phones, the location of phones, how calls to the City are routed, add locations, etc. Staff determined that the cloud/hosted system is the best type of system to meet these requirements.

Cloud/hosted systems require high speed internet connections to perform the best. The City's current internet connections are DSL connections, and lack the amount of speed required for cloud/hosted systems. Moreover, these slower connections affect the ability to access other web-based programs. Staff contacted CenturyLink to determine if high speed fiber internet connections would be available for the City's locations. CenturyLink is in the process of deploying high speed fiber within the City, and provided a quote for this service to be extended to the City's four locations. Please see the attached CenturyLink Fiber Quote Summary. Staff is waiting for the service agreement from CenturyLink. Upon acceptance of the service agreement, CenturyLink estimates that the fiber connections will be installed in 60-90 days.

While working on the fiber connections, staff worked with Allied Business Solutions to obtain and review cloud/hosted phone system quotes. There are many vendors in this field, so staff and Allied Business Solutions narrowed the field by focusing on entities that Allied had experience with or entities that had a local partner for support. Some quotes were obtained from firms who had been interested in the City's IT Services RFP. In the end, quotes were obtained from nine vendors. Staff visited with the vendors, and looked at the phones proposed by the vendors. It became clear that all of the systems quoted would meet the City's needs. The deciding factors became customer service and cost.

Staff narrowed the quotes down to Net2Phone, Hanebutt Technologies and The Purple Guys. All three

had similar features, had similar pricing structures, were within \$50 of each other on the monthly cost and had similar one-time, setup costs. While the quote from Allegiant contains a lower monthly cost, Allegiant has proposed significant changes to the City's IT infrastructure that no other vendor indicated were necessary, including our current IT services provider, Strategy LLC.

Staff is recommending the Governing Body approve Net2Phone as the City's preferred phone system vendor, subject to contract approval by the City Attorney. At this time, Net2Phone is running a promotion where the phones are free. In addition, the City's IT services provider is the local partner for support, and has had a good experience with this vendor.

Enclosure: Phone System Options Pros/Cons, CenturyLink Fiber Quote Summary, Summary of Phone System Quotes, Net2Phone Quote, Net2Phone Terms of Service, Net2Phone Payment Plan Agreement

**Related Ordinance(s) or Statute(s):** n/a

**Recommendation:** Approve the selection of Net2Phone as the preferred vendor for the new phone system, subject to contract review and approval by the City Attorney.

**Funding Source:** General Fund, Water Fund and Sewer Fund Telephone and Maintenance Contract Lines; Equipment Reserve Fund, Water Equipment Reserve Fund and Sewer Equipment Reserve Fund.

Prepared by: Karen Kindle, Finance Director and Janeice Rawles, City Clerk  
Date: January 5, 2017

## **City of Edgerton Phone system options (Pros/Cons)**

### **Premised based phone system: (Current System)**

#### **Description:**

Premise-based PBX and VoIP systems are solutions where the equipment - including phone system servers, cabling and routers - are installed and maintained locally at your company's place of business. System providers are typically affiliated with large, national or multi-national manufacturers with substantial staff dedicated to product development and engineering. This high level of support helps ensure system hardware and applications are constantly updated to meet the emerging needs of the marketplace. Premise-Based systems can be digital, VoIP or a hybrid of both. While many companies want to take advantage of the collaboration, productivity, and mobility solutions VoIP offers, hybrid Digital/VoIP systems (such as the Mitel 5000 system popular with thousands of businesses, including many ETA customers) offer a phased migration path to VoIP for companies without the financial or personnel resources to make the transition all at once.

#### **Pros:**

- Systems and applications can be fully customized to business needs and requirements
- Internal IT teams can make updates and changes to the system on the fly
- Ongoing technology updates available to meet emerging business needs

#### **Cons:**

- Substantial upfront capital expenditure required
- Ongoing provider maintenance fees typically increase annually
- Repairs, replacement costs, upgrades, and updates can be hefty expenses if not included in a maintenance contract
- System's business value may never be truly realized because a large number of features are available but never installed or used
- Hardware is a poor capital investment because it loses nearly all of its value before you sell or dispose of it. By investing working capital into depreciating assets, you eliminate the potential for that money to generate positive cash flow back into your business



## **Managed phone system:**

### **Description:**

With managed phone system programs, providers offer all the equipment, software, and technical expertise needed for a company to reap the benefits of the system's functionality without the costs, risks, and headaches of owning the equipment. There are many flavors of managed phone system programs, but the best ones include some level of maintenance, remote access services, fixed pricing for commonly added items (i.e. wireless headsets), end-user training, discounts on future relocations and more. This allows companies to select the technology they need when they need it, eliminate financial risk and cost uncertainties, and get technical expertise and support from a team of specialists with extensive expertise deploying and maintaining the technology to a wide range of businesses.

### **Pros:**

- Get the benefits of premise-based technology without the upfront costs, annually increasing maintenance fees and replacement costs
- Round-the-clock access to support and service by technicians and help desk personnel with extensive experience programming, servicing, and deploying the technology in a wide range of business environments
- Control ongoing costs and reduce financial risk. Programs can include free or discounted software upgrades, technology refresh programs, free or discounted end-user training, site relocation discounts and more
- Enjoy discounted, fixed price upgrade options for commonly added items

### **Cons:**

- Internal IT staff not able to make programming changes on the fly
- Companies with fixed, one time budgets may not be able to take advantage of managed programs
- High cost

### **Cloud / Hosted based phone system:**

Hosted PBX, or Hosted VoIP (Voice over IP), represents the latest wave in phone system technology. With Hosted PBX, the phone system server resides in the provider's data center instead of your office. Voice and data traffic is routed over the Internet / switched telephone network, or PSTN, to the hosted system. Since the system itself is offsite, Hosted PBXs offer Web-based access to configure the system, define how you want calls to flow, view call detail records and billing information, listen to and delete voice mail, and more.

#### **Pros:**

- Cost-effective way for smaller businesses to get rich VoIP functionality
- Minimal IT involvement needed to install solution
- Easy, online access to administer features, manage the system, and add/delete users
- Scales easily in small businesses

#### **Cons:**

- System improvements and upgrades are performed on the provider's schedule and may not be available when you want or need them
- Requires dedicated Internet access / or Private data circuit
- Upfront costs can be substantial depending on level of VoIP infrastructure needed and phones that need to be purchased
- Many providers are startups, so you'll need to decide if you have concerns about whether they'll go out of business or consolidate with another vendor

# City of Edgerton

## CenturyLink Fiber Quote Summary

<b>City Location</b>	<b>One-Time Installation Cost</b>	<b>Monthly Cost</b>	<b>Annual Cost</b>
City Hall	\$ 750	\$ 605	\$ 7,260
305 E. Nelson	\$ 750	\$ 605	\$ 7,260
Public Works	\$ 750	\$ 485	\$ 5,820
BBCWWTP	\$ 750	\$ 605	\$ 7,260
	<b>\$ 3,000</b>	<b>\$ 2,300</b>	<b>\$ 27,600</b>

City of Edgerton  
Summary of Phone System Quotes  
As of 1/5/2017

Vendor	Local On-going Service Provider	On-site Training	(13 seats) Monthly Cost*	One-Time Cost	Phone Cost	Unlimited Minutes	Call Record On Demand	(1) Mobile App on Cell Phone	Fax	Term
Allegiant	Yes	Yes	\$ 291.25	\$ 6,731.30	Aastra 6867i GigE SIP phone Color 3.5" LCD \$203.45 M685i Expansion Module (color LCD) \$176.91	Yes	Yes	Yes \$49.95 per user upfront software cost (Bria Softphone)	Maintain Analog Fax Line	
Net2Phone	Yes	Yes	\$324.84	\$1,311.80	Polycom VVX 400 Free	Yes	No have to record all calls or no calls.	Yes	Yes, but can also accommodate keeping our fax machine	36 months
Hanebutt Technologies	Yes	Yes	\$ 368.76	\$1,742.40	VVX201 \$41.60 VVX500 \$198.50 Cordless handset \$93.50	Yes	Yes	Yes	Web fax - all users would have ability to receive faxes at their DID and can send faxes from their DID. Faxes can be set up to also go into an email in Outlook. Can keep analog lines and just purchase a converter for each line. Hannebutt would not charge for the converters.	
The Purple Guys	Yes	Yes	\$ 381.05	\$ 1,000.00	Incl in Monthly Fee - no option to purchase outright. New phones after 36mos - like a true lease.	Yes	No - have to record all calls for that extension and can set up to delete after so many days and can save ones want to keep.	Yes	Web fax is available for \$60 per year	12 months
EOS	Yes	Yes	\$ 412.67	\$ 1,750.00	MiVoice 5360 Phone \$9.75/mo or \$ one-time MiVoice 5320 Phone \$4.88/mo or \$ one-time MiVoice 5330 Phone \$5.85/mo or \$ one-time	Yes for Premier seats.	Yes	Yes	Maintain Analog Fax Line	
Network Computing Solutions	Yes	Yes	\$ 550.00	\$ 2,198.00	ShoreTel IP480G \$299 Can pay for phone as part of monthly cost, adds \$7 per month. If go this route, the \$7 is an on-going cost, won't end until sign new agreement and decide want to upgrade phone, at which time the mothly cost could change based on the new phone selected.	Yes	Yes - on the fly	No - but there is a way to set up the system itself to mask cell phone when returning calls from a cell phone.	Web fax - all users would have ability to receive faxes at their DID and can send faxes from their DID. Faxes can be set up to also go into an email in Outlook.	3 years
CenturyLink	Yes	Yes	\$ 1,081.00	Waived	Incl in monthly fee	Yes	Yes - have to use an add-on piece of equipment	Yes. \$2.95 per user per month for standard version of app	Maintain Analog Fax Line	36 months
Ello Tello	No quote submitted.									
AT&T Ring Central	Requires an AT&T cell service account for at least one device. City not interested in moving from Verizon or having multiple cell service accounts.									

Notes

\*Monthly costs are before taxes and fees.  
(1) Allows a user in the field to return calls and have their desk phone # appear in the caller ID instead of their cell phone #.



## *net2phone Hosted PBX Proposal*

Your All Inclusive Cloud Business Phone System

net2phone hosted PBX is a solution that uses the cloud to move businesses away from expensive, traditional phone lines. net2phone reduces operating costs while delivering a scalable, flexible business phone service with top of the line customer service and superior technical support.

### **Affordable**

With the lowest monthly rates in the industry, net2phone offers unlimited calling plans to the US and Canada, plus over 20 international destinations, offering savings of up to 70%.

### **Reliable**

Routing over 180 million minutes daily and offering 24x7 support, thousands of customers count on us.

### **All Inclusive**

net2phone is a flexible and scalable business phone solution with advanced business features connecting businesses anywhere, anytime.



### THE GLOBAL LEADER IN VOICE OVER IP SOLUTIONS

Established in 1990, net2phone's parent company, IDT, is a NYSE listed company with revenues in excess of \$1.2 billion driven by 1400 employees across six continents.


As the pioneer of VoIP and the largest distributor-based VoIP Provider in the world, net2phone routes millions of minutes daily over data networks, offering high-quality voice services and saving consumers and businesses up to 70% off international calling rates.



net2phone keeps it simple. We offer 40+ advanced business features at a fraction of the price. And, the latest features and functionality update instantly!

## Business Features

- Unlimited calling to 25 international destinations



Austria	Hungary	Norway	Spain
Canada	India	Peru	Sweden
Cyprus	Ireland	Portugal	United Kingdom
Denmark	Israel	Puerto Rico	USA
France	Italy	Romania	
Germany	Mexico	Singapore	
Greece	Netherlands	Slovakia	

- Connect multiple offices and off-site employees under one phone system
- Auto Attendant virtual receptionist to answer and route calls
- Company Directory with dial-by name or extension
- Call Queue routing and ring groups
- Time-based customized greetings
- On Hold customized messaging and music
- Call Flow Dashboard to monitor and record live calls
- Detailed reporting and history for every extension

## User Features

- Direct phone numbers
- Voicemail/Email integration
- Call screening/blocking
- Conferencing
- Interoffice paging
- Find Me/Follow Me call forwarding
- Personalized voicemail
- Softphone and mobile app compatibility

## Optional Features

- Virtual phone numbers
- Toll free numbers
- Number portability
- Faxing



net2phone is already compatible and supported by most SIP compliant VoIP phones. We also offer a full range of recommended Polycom business-class phones. They arrive plug-and-play ready - no configuration needed.



## Polycom VVX Touch Screen Phones



### VVX 600 and VVX 500

Top-of-the-line, all-in-one, one-touch desktop UC solutions designed specifically for executives, managers and knowledge workers.

## Polycom VVX Phones



### VVX 400 and VVX 300

Color mid-range Business Media Phones for enhanced call handling. Designed for today's office workers and call attendants.

## Polycom Conference Phones



### IP 7000, 6000, and 5000

Reduce listener fatigue by turning ordinary conference calls into crystal-clear, interactive conversations that sound as natural as being there.

## Routers & Faxing



### Edgewater Router

Prioritizes voice over data, ensuring high quality voice on every call.



### Fax over IP (FoIP)

Enables cloud-based faxing using your existing fax machine.



**Sybran Communications**  
11242 Strang Line Rd  
Lenexa, KS, US, 66215

*Prepared For*  
**City of Edgerton, KS**  
404 E. Nelson  
Edgerton, KS, US, 66021

*Shipping To*  
**City of Edgerton, KS**  
404 E. Nelson  
Edgerton, KS 66021  
US

Quote #248727712208 prepared on Nov 4, 2016 is valid for 30 days

### One Time Charges

No	SKU	Description	Qty	Unit Price	Extended Price
1	VVX400-02	Polycom VVX 400 : A cost effective UC solution for call attendants that will handle moderate call volume.	13	\$0.00	\$0.00
2	LNP-01	Ported Phone Number (free)	13	\$0.00	\$0.00
Estimated Shipping Charges					<b>Unavailable</b>
*Total One Time Charges					<b>\$0.00</b>

### Recurring Charges

No	SKU	Description	Qty	Unit Price	Extended Price
1	MR-LINE-UNL	Net2Phone Office™ Unlimited US & CA Plan	13	\$19.99	\$259.87
2	MR-LINE-FAX	Net2Phone Office™ Dedicated Fax Line	2	\$19.99	\$39.98
3	FBE-01	FaxxBochs Fax Over IP FBB-01 : The most reliable FoIP solution on the market today.	2	\$5.00	\$10.00
4	EDG4700-05	Edgemarc 4700 Router with 5 Concurrent Calls	1	\$14.99	\$14.99
*Total Monthly Recurring Charges					<b>\$324.84</b>

\*Totals shown do not include all applicable fees, taxes or shipping charges.

Hosted PBX Plans include: Unlimited calls to USA, Austria, Canada, Cyprus, Denmark, France, Germany, Greece, Guadeloupe, Hungary, India, Ireland, Israel, Italy, Mexico, Netherlands, Norway, Peru, Portugal, Puerto Rico, Romania, Singapore, Slovakia, Spain, Sweden, UK. USA, Canada, Mexico and India include both fixed and mobile. All other countries are fixed only. Also includes call center services.

This quote is subject to the terms and conditions found at <https://net2phoneoffice.com/terms.html>

This quote is also subject to a 36 month Payment Plan Agreement.

To accept this quote please click here: [I accept this quote](#) or enter the complete url below in your browser:  
<https://partner.net2phoneoffice.com/api/presign/7E5z-zZuz>



## Terms of Service

In addition to the Website Terms & Conditions contained on the NET2PHONE OFFICE™ ("Net2Phone", "We") website (the "Site"), You ("You" or "Customer") acknowledges that by using the NET2PHONE OFFICE™ Hosted PBX Service and/or SIP Trunking Service (and each of their ancillary solutions) (collectively referred to herein as the "Service"), You agree to abide by and comply with these Terms of Service. If you do not wish to be bound by these Terms of Service, You may not use the Service. Net2Phone may modify these Terms of Service without notice and such modifications shall be deemed effective immediately upon posting of the modified Terms of Service. You agree to review these Terms of Service periodically to be aware of such modifications and your continued access or use of Service.

1. Rights Granted. Subject to the terms of these Terms of Service and the Terms & Conditions, Net2Phone grants You the right to use the Service. All rights not expressly granted under these Terms of Service are retained by Net2Phone.
2. Registering for the Service. Upon registering for the Service and establishing a Service account (an "Account") and at subsequent times as requested by Net2Phone, You agree to provide to Net2Phone Your true, accurate, current, and complete personal name and/or business name, billing and shipping addresses, all addresses where the Service is to be used, 911 registered addresses for all Equipment ("911 Location"), email address, contact phone number, credit card information, and other information which Net2Phone deems necessary to administer Your Account ("Customer Information"). You represent and warrant that the Customer Information You provide is accurate, current, and complete, and agree to promptly update any of the information if it changes. If You provide Customer Information that is, or that Net2Phone suspects to be, false, inaccurate, not current, incomplete, fraudulent, or otherwise unlawful, Net2Phone has the right, in its sole discretion, to immediately suspend or terminate the Service and/or Your Account.

### 3. The Service.

(a) The following comprises the base plan offering for the NET2PHONE OFFICE Hosted PBX Service:

Phone Terminal Extension (includes a USA or Canada Phone Number) - monthly fee quoted during the sign-up process

USA or Canada Toll Free Phone Number - monthly fee quoted during the sign-up process + \$0.015/min

A-Z Pricing For International Calls Charged At Per Minute Rates

Additional Features. Each of the following features is an additional fee as quoted during the sign-up process or thereafter:

Each Additional IVR

Each Additional Queue

Each Conference Bridge

Each Additional Intercom Extension

Each Additional USA/Canada Phone Number

(b) The following comprises the base plan offering for the NET2PHONE OFFICE SIP Trunking Service:

One (1) concurrent virtual phone channel (SIP Trunk) which allows for one simultaneous call per channel ordered. Each channel includes a USA or Canada virtual Phone Number - monthly fee quoted during the sign-up process

Purchase of Equipment shall be pursuant to prevailing price at the time of Customer's registration for the Service.

Net2Phone reserves the right, in its sole discretion, to block access to certain high cost/premium locations. Please contact Net2Phone Customer Support for more information.

Additional features and services may be added and made available to You pursuant to these Terms of Service and additional terms and conditions.

You may also be subject to an Administration Fee which may be imposed to recover costs associated with, among other things, customer support, and Service/Equipment installation and configuration.

Net2Phone reserves the right to charge You a \$29.99 Reactivation Fee per Phone Terminal Extension and/or SIP Trunk in the event Net2Phone suspends or terminates Your Account due to non-payment.

4. Accounts. The Account owner shall be the legal entity (e.g., corporation, partnership, individual) that signs up for the Service with Net2Phone. If no legal entity is provided upon sign-up, the Account owner shall be the owner of the credit card (or alternative method of payment) used to open the Account. Subsequent changes to ownership must be supported by appropriate legal documentation. If Net2Phone is unable to determine the valid owner of the Account, Net2Phone reserves the right to suspend and/or terminate the Account and Service. Customers with a past due balance on previous or multiple accounts will be charged the full balance due and owing upon opening a new account or updating their credit card (or alternative method of payment) information on file.
5. Customer Information. You hereby grant to Net2Phone a perpetual, worldwide, royalty-free, non-exclusive license to copy, store, record, transmit, display, print, and use Customer Information to the extent required to provide or improve the Service. We may use your personal information for other purposes such as to provide You with information about features of the Service, to contact You for

updates to Your account information, and to provide You with marketing and promotional material about the Service as well as Net2Phone's other products and services. We may also share Your Customer Information with third parties that provide products or services that may be of interest to You and as permitted pursuant to Net2Phone's Privacy Policy, which is incorporated into these Terms of Service by reference. You hereby agree that Net2Phone may send You (and any other user of the Service connected to Your account) marketing and promotional materials via e-mail, regular mail, or any other medium, provided, that You may unsubscribe to such materials at any time by notifying Net2Phone Customer Support. Net2Phone is not obligated to store Your communications logs, voicemails, faxes or e-mails. You agree that Net2Phone has no responsibility or liability whatsoever for the deletion or failure to store any call log information, voicemails, faxes, e-mails, messages, and/or other communications maintained or transmitted by the Service.

6. Prohibited Uses. Net2Phone reserves the right, in its sole discretion, to immediately and without notice terminate the Service to You for any use of the Service or any other action that causes a disruption in the network integrity, or directly or indirectly threatens or compromises the security of Net2Phone, its vendors, or the Service. Customer agrees, represents, and warrants that it will use the Service for its own internal use only, and shall not resell, transfer or charge for the Service or Equipment without the express written permission of Net2Phone. Such permitted use shall not include certain activities including, but not limited to autodialing, transmitting any material that contains viruses, time bombs, trojan horses, worms, malware, spyware, or any other programs that may be harmful or dangerous, spoofing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, polling, transmitting any material that may infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or other rights of third parties, telemarketing (including without limitation charitable or political solicitation, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer agrees not to use the Service to send unsolicited commercial e-mails to recipients outside of the entity covered under its Account. Customer shall not transmit through the Service any unlawful, harassing, defamatory, abusive, threatening, harmful, vulgar, obscene, indecent, or otherwise objectionable communications or material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, violate the intellectual property rights of others, give rise to civil or criminal liability or otherwise violate any applicable local, state, national or international statute, regulation, or other law. Any use found to be inconsistent with these restrictions will result in the immediate termination of the Service. You understand that Net2Phone may immediately terminate Your right to use the Service without liability of any kind if You use the Service to send or transmit any unsolicited communications or advertisements.
7. Intellectual Property Rights. You acknowledge and agree that any and all patents, copyrights, trademarks, logos, slogans, service marks, trade secrets, and all other intellectual property rights (collectively, "Proprietary Rights") in the Equipment and Service are and shall remain the sole and exclusive property of Net2Phone and its licensors and suppliers. Nothing in these Terms of Service shall be construed to grant, transfer, or assign any Proprietary Rights to, or vest any Proprietary Rights in, Customer or any third party. You are only entitled to the limited use of the rights expressly granted to You in these Terms of Service as may be amended from time to time. The Services that are the subject of this Agreement, the systems and methods that it accesses, and/or the related services provided are covered by one or more patents or patents pending in the U.S. or elsewhere. A list of those patents can be found at <http://www.white-vp.com>. You will not take any action to jeopardize, limit, or interfere with Net2Phone's or a third party's Proprietary Rights. You acknowledge and agree that any unauthorized use of the Proprietary Rights is a violation of these Terms of Service, as well as a violation of applicable intellectual property laws. You acknowledge and understand that all title and rights in and to any third party content that may be accessed through the Service is the property of the respective content owners and may be protected by applicable intellectual property laws. You agree and acknowledge that any breach of the provisions regarding intellectual property ownership contained in these Terms of Service shall cause Net2Phone irreparable harm and Net2Phone may obtain injunctive relief and seek all other remedies available in law and in equity.
8. No Modifications. You agree not to undertake, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Equipment or the Service, or any component thereof including components supplied by third parties. You agree not to misappropriate, intercept, capture, emulate, decrypt, or redirect the communications protocols used by Net2Phone for any purpose, including connecting to any computer server, PBX, or other device not authorized by Net2Phone or in a manner not authorized by Net2Phone.
9. Telephone Number. Telephone numbers provided by Net2Phone to You ("Phone Numbers") are licensed to You pursuant to the Terms & Conditions contained on this Site and in these Terms of Service. Your use of a Phone Number with any device other than the Equipment is strictly prohibited without the express written permission of Net2Phone. Net2Phone reserves the right to change or cancel international Phone Numbers at its sole discretion.
10. Number Porting. Net2Phone cannot guarantee that requested telephone numbers will be available or that Your existing provider will port Your number. For porting numbers into Your Net2Phone Account, please contact Net2Phone Customer Support. Net2Phone will use reasonable efforts to facilitate number transfers or port requests for You, provided that You comply with the necessary and specific procedures for porting between service providers. Net2Phone does not guarantee the successful porting of Your numbers to Your Account. You acknowledge and understand that Net2Phone will not be liable for the failure or delay of any third party to cooperate in

the porting of any telephone number, or for the unauthorized porting of any telephone number by a third party. For porting Phone Numbers out of Your Net2Phone Account, follow the procedures of Your new service provider. You understand that porting Phone Numbers out of Your Account does not automatically terminate Your Net2Phone Account.

11. Conditions. Customer acknowledges and agrees that Net2Phone's obligations to provide the Service are expressly conditioned upon (i) Net2Phone's receipt of all payments due hereunder, and (ii) Customer's satisfaction of the technical requirements set forth herein including possession of properly configured Equipment and the provision of accurate Customer Information to Net2Phone. A loss of electrical power at Your location will result in loss of the Service, including 911 services during such outage unless You have a backup system. If the connection to the wired broadband Internet over which Your Service is provided is interrupted, You will not have access to the Service during that interruption and will not have access to 911 services during that interruption. Net2Phone reserves the right to suspend the Service if, in Net2Phone's sole discretion, Your use of the Service exceeds what would be expected of normal business use, including without limitation allowing more than one user to use a single Phone Terminal Extension or using a Phone Terminal Extension in excess of what would be expected of a single user. You agree that Net2Phone is entitled to monitor Your use of Service.
12. Payment Terms. The Service is provided to You on a monthly prepaid basis. Upon Your registration for the Service, Net2Phone will charge Your credit card (or alternative method of payment, as approved by Net2Phone ) a deposit in an amount equal to the applicable monthly recurring fees and charges for one month of Service plus any applicable Equipment and other fees. All pricing is in United States dollars. For billing purposes, Your start of Service date ("Service Date") will commence on the earlier of (i) one month following Your registration for the Service and (ii) the date of actual service activation. You are responsible and will be charged for all non-recurring fees (i.e., international calls, toll free numbers, etc.) incurred by You. If you do not cancel the Service during the first thirty (30) days following registration, then the deposit (less any non-recurring charges incurred by You) will be applied to the month of Service following the Service Date. If you cancel the Service during the first thirty (30) days following registration, then the deposit (less any non-recurring charges incurred by You) will be refunded to Your credit card or returned to you via check or other method of payment, as determined by Net2Phone. You understand that Your first invoice may be pro-rated. If You are paying for the Service with a credit card, then You agree that prior to the provision of any Service by Net2Phone, You will provide Net2Phone with Your credit card information and You authorize Net2Phone to bill Your credit card on a monthly basis. You agree to advise and notify us of any changes to Your credit card information, such as credit card account number or expiration date changes. If the credit card on Your account is declined or fails for any reason, Net2Phone reserves the right to disconnect Your Service without notice and terminate Your account and Net2Phone reserves the right to continue to attempt charging Your credit card for any outstanding Service charges and additional fees due and owing at the time. Your ability to utilize the Service is contingent upon Net2Phone's prior receipt of payment for the month in which the Service are to be utilized. The pricing provided to You at time of sign-up or thereafter (as amended by Net2Phone in its sole discretion) shall govern Your payment obligations hereunder. You are solely liable for any transactions or activities by You or anyone else that occur on Your account, and in no event shall Net2Phone be liable for any unauthorized use of Your Account. You acknowledge that You are financially responsible for any unauthorized use of Your account resulting in extra costs or fees. Upon termination, we will charge You any fees and any other outstanding charges and disconnect the Service. Net2Phone also reserves the right to charge termination and transfer fees, if applicable.
13. Taxes. Prices for the Service do not include any customs, duties, sales, use, value added, excise, federal, state, local, public utility, universal service, E-911 fees or other similar taxes. All such taxes shall be paid by Customer and will be added to any amounts otherwise charged to Customer. Should Net2Phone pay or be required to pay such liabilities (including any taxes and fees that were due but not charged or previously collected), You agree that Net2Phone may charge You for such payments upon receipt of an invoice and showing of indebtedness to Net2Phone. If any amounts paid for the Service are refunded by Net2Phone, applicable taxes may not be refundable. All prices, taxes, surcharges, and fees are subject to change at any time. You are responsible for paying all charges for Your Account, including but not limited to, toll free, local, long distance, international, additional feature charges, 411, operator assisted charges, and directory assistance charges, and for all taxes, surcharges, and fees imposed on You or us as a result of your use of the Service.
14. Equipment. In order to utilize the Service, You must use compatible telephone equipment ("Equipment"). If You do not possess compatible Equipment, You may purchase Equipment from Net2Phone when You register for the Service. You are responsible for the condition of the Equipment provided to You or which You otherwise utilize for the Service. You are responsible for replacing all lost, stolen or broken Equipment. Replacement charges will be based on the retail price of Equipment, plus applicable shipping costs and taxes. You agree to immediately notify Net2Phone of any lost or stolen Equipment and shall cooperate with Net2Phone in all reasonable aspects to eliminate actual or potential unauthorized use of the Equipment. Net2Phone's liability for delivery shall cease, and title to such Equipment and all risk of loss or damage shall pass to You, upon delivery to a common carrier for shipment. Other than as expressly set forth below, Equipment may not be returned by Customer for any reason without prior approval of Net2Phone. If You cancel the Service during the first thirty (30) days following registration, then (subject to the conditions set forth below) you may return purchased Equipment. The returned Equipment must be returned in its original packaging, fully functional, show no signs of wear and tear, and be accompanied with all manuals, cords, wires, brochures, peripheral devices, and accessories that were originally shipped with the Equipment. Net2Phone may, in its sole discretion, decline Your return and charge You for the full retail value of the Equipment.

You are responsible for all return shipping charges for any Equipment returned to Net2Phone for any reason, including situations in which hardware is covered under warranty. The Return Merchandise Authorization process is provided below. If You are purchasing Equipment on a monthly payment plan, a separate agreement is required. Please contact Net2Phone Customer Support for more information. You agree that under no circumstances will Net2Phone have any liability to You or to any third party for any damages arising out of, associated with or related to installation or configuration of Equipment and/or the Service.

15. Product Availability. Net2Phone does not warrant that any descriptions, pricing, availability, marketing materials, promotional flyers, advertisements, or other printed or electronic materials or information related to the Service or Equipment is accurate, complete, reliable or comprehensive. Certain advertised products or features related to the Service may be unavailable or subject to additional terms, restrictions and conditions. You acknowledge and agree that the Service may not be available 100% of the time. Credit allowances for interruption of the Service may only be provided on a case-by-case basis at the sole discretion of Net2Phone and shall be Your sole remedy for any Service interruptions or other issues with the Service.
16. Service Changes. You understand and agree that Net2Phone may make modifications or changes to the Service, which will not materially diminish the functionality of the Service, without prior notice to You.
17. 911 Service. **See accompanying Emergency (911) Services Conditions and Limitations for additional terms and conditions.** 911 Services are not available in all service areas depending on Your 911 Address. Service availability will be determined based upon the 911 Location You provide to Net2Phone. For Hosted PBX Service, under no circumstances may You alter Your caller ID Information. For SIP Trunking Service, when dialing emergency services, You must use a Net2Phone provided Phone Number as Caller ID that was registered with the location of the handset making the call. Any such alteration or failure to properly register the location of the Phone Number, as the case may be, may result in difficulty accessing 911 services and further result in a \$100 surcharge per 911 call You make with such altered caller ID. In addition to the terms and conditions contained herein, Your use of 911 Services is subject to the Conditions and Limitations of Emergency (911) Services. You acknowledge that NET2PHONE does not offer primary line or lifeline services. NET2PHONE strongly recommends that you always maintain an alternative means of accessing traditional emergency (911) services such as a POTS line or a traditional wireless phone service.
18. Customer Representations & Warranties. You represent and warrant that you possess the legal right, capacity, and ability to agree to these Terms of Service. You represent and warrant that You have made and will maintain at all times wireless or traditional wireline telephone service that will enable You to call 911 and any other applicable emergency service number. You represent and warrant that You will not use the Service in environments requiring fail-safe performance. You represent and warrant that the Customer Information and all other information provided in connection with Your Net2Phone Account are true and correct at all times. You represent and warrant that You will not use the Equipment or Service in violation of these Terms of Service.
19. Customer Responsibilities. You are financially responsible for Your use of the Service, including the authorized or unauthorized use of Your Account. In order to use the Service, You must have properly configured and working Internet service and hereby agree, at Your sole expense: to (1) obtain access to Your own Internet service with a third party provider other than Net2Phone; (2) be responsible for payment of Internet connection or service fees and all equipment necessary to establish a connection to such Internet service, as may be required to use the Service; (3) supply and pay third-party providers for all additional phone service and features required for Your use of the Service; and (4) pay Net2Phone for the Service.
20. Universal Service Recovery Fee. Net2Phone is required to contribute to the federal Universal Service Fund, which provides support to promote access to telecommunications services at reasonable rates for those living in rural and high-cost areas, income-eligible consumers, rural health care facilities, and schools and libraries. Net2Phone reserves the right to recover these costs from its customers. Universal Service Fund rates are set by the Federal Communications Commission and are subject to change.
21. Recording Conversations. The Service allows You to record individual telephone conversations. The laws regarding the permissibility, and notice and consent requirements, for recording conversations vary from state to state. You are solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this feature. Net2Phone expressly disclaims all liability with respect to your recording of telephone conversations. You hereby agree to release, hold harmless, and fully indemnify Net2Phone from and against any damages or liabilities of any kind related to Your recording of any telephone conversations using the Service.
22. Termination. Net2Phone reserves the right to terminate the Service for any reason upon thirty (30) days' notice. Net2Phone shall not be liable to You or any third party for any reason for terminating or suspending Your use or access to the Service. If You terminate the Service in the middle of a billing cycle, or Net2Phone terminates the Service as a result of Your breach of these Terms of Service or other terms and conditions contained on the Site, You shall not be entitled to any refund or pro ration of any pre-paid amounts, credits, or other amounts paid to Net2Phone prior to the termination or suspension date. Upon expiration, cancellation or termination of the Service, Customer shall relinquish and discontinue use of any Phone Numbers, voice mail access numbers, Logins and/or web portals assigned to Customer by Net2Phone or its vendors. Upon the termination of Service for any reason, disconnection fees may apply.

23. Disclaimer of Liability EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OF SERVICE, THE SERVICE IS PROVIDED "AS IS" AND NET2PHONE MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF OR ANY COUNTRY. NEITHER NET2PHONE NOR ITS VENDORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO NET2PHONE'S OR YOUR TRANSMISSION FACILITIES OR EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF YOUR DATA FILES, SOUND FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF NET2PHONE'S OR ITS VENDORS' NEGLIGENCE. NEITHER NET2PHONE NOR ITS VENDORS WILL BE LIABLE FOR MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ALTERATION, MODIFICATION, IMPROPER INSTALLATION, OR REPAIRS BY ANYONE. NEITHER NET2PHONE NOR ITS VENDORS WILL BE LIABLE FOR DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE SERVICE RESULTING FROM YOUR EQUIPMENT, USE OF THE INTERNET, OR TELECOMMUNICATIONS SYSTEMS. NET2PHONE BEARS NO RESPONSIBILITY OR LIABILITY FOR ANY COSTS, DAMAGES, LIABILITIES, OR INCONVENIENCE CAUSED BY CALLS MADE TO YOUR NUMBER.

NET2PHONE MAKES NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR FREE OR THAT ANY DEFECTS IN THE SERVICE WILL BE CORRECTED. NET2PHONE IS NOT RESPONSIBLE FOR MESSAGES OR INFORMATION LOST OR MISDIRECTED DUE TO INTERRUPTIONS OR FLUCTUATIONS IN THE SERVICE OR THE INTERNET IN GENERAL. NET2PHONE IS NOT RESPONSIBLE FOR THE CONTENT OF TRANSMISSIONS OR FOR THE CONTENT OR FUNCTIONALITY OF ANY THIRD PARTY NETWORK USED IN CONNECTION WITH THE SERVICE.

24. Limitation of Liability IN NO EVENT SHALL NET2PHONE, ITS PARENT, SUBSIDIARIES AND AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, RESELLERS, CONTRACTORS AND LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF NET2PHONE HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY NET2PHONE. NET2PHONE'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES, REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED AND CAPPED IN THEIR ENTIRETY TO THE MONTHLY FEES NET2PHONE CHARGED YOU DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE THAT THE EVENTS GIVING RISE TO THE ACTION OR CLAIM FIRST OCCURRED. THE LIMITATION OF LIABILITY REFLECTS THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY IN ANY AND ALL CIRCUMSTANCES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO CERTAIN OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

25. Indemnification. To the maximum extent permitted by applicable law, You shall indemnify and hold harmless, Net2Phone, its affiliates, agents, resellers, and other providers who furnish goods and services to You in connection with the Service, and their officers, directors, managers, employees, and shareholders (the "Indemnified Parties") from and against any and all liability, claims, losses (including loss of profits, revenue and goodwill), damages, fines, penalties, injuries to persons or property, costs, and expenses (including reasonable attorneys' fees) arising from or related to: (1) the use of or reliance upon the Service by You or any third party acting upon Your permission, knowledge, authority or direction, (2) a breach by You of these Terms of Service and/or the Terms & Conditions contained on the Site, (3) any negligent acts, omissions to act or willful misconduct by You or any third party acting with Your permission, knowledge, authority or direction, (4) Your inability to use the Service or failure or outage of the Service for any reason, including but not limited to those related to calling, "911" or other emergency responders, (5) the use of the Service in connection with Your violation of any applicable law, code, regulation, or ordinance, and/or (6) Your misappropriation, breach, violation, or infringement of any right, title or interest of any third party, including but not limited to, contractual rights, intellectual property rights (including patent, trademark, copyright, and trade secret rights), rights of privacy, and rights of publicity and personality.

26. Dispute Resolution. You agree that You may only resolve disputes with Net2Phone on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. You hereby acknowledge that class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are hereby waived by You. You agree that regardless of any statute or law to the contrary, any suit arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after the earlier of: (a) when such claim or cause of action arose or (b) termination of Service to Customer, or be forever barred. These Terms of Service shall be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any conflict of law principles thereof which might require the application of the law of another jurisdiction. Any controversy or claim arising out of or relating to these Terms of Service, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association ("Rules"). One arbitrator shall be chosen in accordance with the Rules. The Parties agree that all proceedings shall take place in the State of New Jersey, Essex County. You agree and submit

to personal jurisdiction in New Jersey. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction.

27. Force Majeure. Net2Phone shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control, including without limitation, acts of God, earthquake, fire, flooding, fiber cuts, actions or inactions of third party providers or suppliers, riots, sabotage, war, government requirements, or other events that are beyond Net2Phone's reasonable control.
28. Assignment. Net2Phone may assign these Terms of Service and any of its rights and obligations hereunder at any time. You may not transfer or assign these Terms of Service or any of Your rights or obligations under these Terms of Service. Any purported transfer or assignment on Your part in violation of this section is void. Subject to the foregoing, these Terms of Service shall be binding on and inure to the benefit of the parties, their successors, permitted assigns, and legal representatives.
29. No waiver of rights. Failure of either party at any time to require the other party's performance of any obligation under these Terms of Service shall not affect the right to require performance of this obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver of modification of any right under these Terms of Service.
30. Severability. In the event any portion of these Terms of Service may be determined by any governmental body having jurisdiction, or by any court of competent jurisdiction, to be unenforceable, the balance of these Terms of Service shall be severed therefrom and shall remain in full force and effect unless a failure of consideration would thereby result.
31. Publicity Rights. You agree that Net2Phone may identify You as a user of the Service in its business deals, press releases, marketing materials, electronic, printed, and broadcast advertising; newsletters, mailings, tradeshow, other promotional materials, on Net2Phone's website, or any other third-party website where Net2Phone or its designated agents may promote the Service. You hereby grant Net2Phone and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display Your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.
32. Interpretation. These Terms of Service, including the documents incorporated herein, constitute the entire agreement between You and Net2Phone with respect to the Service and supersedes all prior or contemporaneous understandings regarding such subject matter. If any part of these Terms of Service is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect. The failure of Net2Phone to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or any other provision. Nothing in these Terms of Service shall be deemed or construed to constitute or create employment, partnership, association, joint venture, agency, or fiduciary relationship between the parties hereto. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect.
33. Miscellaneous. This electronic document and any other electronic documents, policies, and guidelines incorporated herein will be: (1) deemed for all purposes to be a "writing" or "in writing," to comply with all statutory, contractual, and other legal requirements for a writing; (2) legally enforceable as a signed writing; and (3) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Electronic documents introduced as evidence in any judicial, arbitration, mediation, or administrative proceeding will, if established and maintained in the ordinary course of business, be admissible to the same extent as business records in written form that are similarly established and maintained.

## Emergency (911) Services Conditions and Limitations

YOUR SAFETY IS OF THE UTMOST IMPORTANCE TO NET2PHONE. THIS IS WHY THE NET2PHONE OFFICE™ SERVICE OFFERS AN EMERGENCY CALLING FEATURE THAT PERMITS YOU TO DIAL 9-1-1 TO REACH EMERGENCY PERSONNEL. HOWEVER, THE 911-TYPE SERVICE OFFERED THROUGH NET2PHONE OFFICE™ IS FUNDAMENTALLY DIFFERENT IN SEVERAL IMPORTANT WAYS FROM TRADITIONAL WIRELINE AND WIRELESS 911 EMERGENCY ACCESS SERVICES. NET2PHONE OFFICE™ 911-TYPE SERVICE IS NOT A REPLACEMENT TO THE TRADITIONAL LOCAL WIRELINE 911 SERVICES OFFERED OVER THE PUBLIC SWITCHED TELECOMMUNICATIONS NETWORK AND WIRELESS 911 SERVICES IN YOUR LOCAL SERVICE AREA. NET2PHONE AND ITS THIRD PARTY UNDERLYING PROVIDERS CANNOT GUARANTEE THE RELIABILITY OF THE 911-TYPE DIALING FEATURES OF YOUR SERVICE. FOR HOSTED PBX SERVICES, NET2PHONE'S LIMITED 911-TYPE SERVICE IS AVAILABLE ONLY ON NET2PHONE AUTHORIZED HOSTED PBX EQUIPMENT (HEREINAFTER REFERRED TO AS "EQUIPMENT"), AND FOR SIP TRUNKING SERVICES, ONLY ON SUPPORTED SIP DEVICES (HEREINAFTER REFERRED TO AS "DEVICE"). YOU MUST PROPERLY ACTIVATE AND INSTALL YOUR EQUIPMENT/DEVICE AND ENSURE THAT THE INFORMATION YOU PROVIDE TO NET2PHONE IS ACCURATE. YOU MUST ALSO INFORM ANY OTHER PERSONS WHO MAY BE PRESENT AT THE PHYSICAL LOCATION WHERE YOU UTILIZE THE SERVICE

OF THE CONDITIONS AND LIMITATIONS OF NET2PHONE OFFICE'S 911-TYPE DIALING AND THE NON-AVAILABILITY OF TRADITIONAL 911 SERVICES FROM YOUR EQUIPMENT/DEVICE AND SERVICE. YOU ACKNOWLEDGE AND UNDERSTAND THAT NET2PHONE HAS APPRISED YOU OF THE CONDITIONS AND LIMITATIONS OF THE EMERGENCY (911) SERVICES AS SET FORTH HEREIN. NET2PHONE STRONGLY RECOMMENDS THAT YOU ALWAYS MAINTAIN AN ALTERNATE MEANS OF REACHING AN EMERGENCY (911) OPERATOR IN CASE OF AN EMERGENCY.

#### Service Outage, Power Failure or Disruption

Your 911-type dialing will not function in the event of a power failure or disruption in service. Should there be an interruption in power or broadband connection (including wireless broadband connection where applicable) for any reason whatsoever, the Service and 911 dialing will not function unless and until power and service is fully restored. In the event of a power failure you may be required to reset your Equipment, Device, routers, modems and/or switches prior to utilizing the Service or dialing 9-1-1. Service outages or termination of service by your broadband provider and/or ISP or by Net2Phone will prevent ALL Service including emergency (911) dialing. You acknowledge and understand that if there is a service outage for ANY reason, such outage will prevent ALL Service, including emergency (911) dialing.

#### Use of TDD or TTY Devices

Your emergency 911-type service may not be fully compatible with all types of TDD or TTY devices for the hearing impaired and that where such devices are used to make calls, neither Net2Phone nor Net2Phone's third party providers hold themselves out as providing or enabling Net2Phone to provide emergency services compatible with any TDD/TTY or other hearing impaired devices.

#### Connecting Your Equipment/Device

The emergency (911)-type service will not function unless you have successfully configured and connected your Equipment or Device and provided accurate and updated information to Net2Phone. Even if you properly connect your Equipment or Device and receive a dial tone, there may still be a delay in time when your emergency (911)-type dialing feature is fully activated. You cannot dial emergency (911) services unless and until you have confirmation that your Equipment or Device is operational as described herein, and your billable service has begun.

#### Failure to Designate the Correct Service Address When Activating 911 Dialing or Moving Your Equipment or Device

Your Service Address is the physical address that you provided during the sign-up process. The Service Address is the physical location from where you intend to use your Equipment or Device. Where the Service Address is visible to the emergency response operator, this is where emergency personnel will be sent to if you cannot communicate your actual physical location if different from your Service Address.

For Hosted PBX service, if you have more than one handset at your Service Address and each handset has a different number, you must make sure that the Service Address corresponds to each number where your handset is physically located. If you move your handset to a location other than your primary Service Address, you may not be able to place emergency calls or your calls could be misrouted to the incorrect emergency operator or incorrect emergency service personnel, or emergency personnel could be dispatched to the wrong address.

For SIP Trunking service, you must make sure to register a unique Phone Number with Net2Phone for each handset being utilized with your Device, provide and register with Net2Phone the accurate location of the handset, and make sure that when dialing 911, you send the proper Phone Number provided by Net2Phone which has the Service Address of the handset's registered location. If you send a Phone Number that wasn't registered for emergency services or with another address other than the service address of the handset placing the call, you may not be able to place emergency calls or your calls could be misrouted to the incorrect emergency operator or incorrect emergency service personnel, or emergency personnel could be dispatched to the wrong address.

Net2Phone does NOT recommend that you use the Equipment or Device to dial emergency access services if you move your Equipment or Device away from your registered Service Address. You acknowledge and understand that neither Net2Phone nor its third party service providers shall have any responsibility or liability for provision of the Service and 911-type access if the Equipment or Device is moved outside of your registered Service Address.

#### Changing Your Service Address and Use of Service Outside the United States/Canada

If you want to change your registered Service Address, you must contact Net2Phone's Customer Service at [support@net2phoneoffice.com](mailto:support@net2phoneoffice.com) to update your address and determine whether emergency (911)-type services are available at the new location. Emergency (911)-type dialing is not available in all service areas. Emergency (911)-type service will NOT function outside of the United States/Canada. If Emergency (911)-type service is available at your new Service Address, it may be necessary for Net2Phone to assign a new phone number to you.

### Network Congestion

There is a greater possibility of network congestion and/or reduced speed in the routing of an emergency (911) call made from your NET2PHONE OFFICE™ Service as compared to traditional 911 dialing over wireline or wireless public telephone networks.

### Automated Number Identification

The emergency dispatcher or administrative operator may not be able to identify your phone number when you dial emergency (911) using the NET2PHONE OFFICE™ Service. Existing emergency response systems are not always technically capable of receiving and/or passing routing information properly. Accordingly, emergency personnel may not be able to identify your phone number in order to call you back if your call is not completed, dropped or disconnected, or if you are unable to speak to tell the emergency dispatcher or operator your phone number and/or if the Service is not operational for any reason. If you enable any call redirection services with your NET2PHONE OFFICE™ Service such as Call Forwarding or Call Block, emergency personnel may not be able to call you back if your call is disconnected for any reason.

### Automated Location Identification (E911)

Emergency personnel will be dispatched to your registered Service Address. This may or may not be the actual physical location of your Equipment or Device if you registered an incorrect or false Service Address or moved the Equipment or PBX Device without updating your registered Service Address with Net2Phone. If you dial 911, you must immediately tell the dispatcher your location (or the location of the emergency, if different). You must also not disconnect the line as the dispatcher may need a phone number to use to call you back. If you are unable to speak and describe your location, the emergency dispatcher may not be able to locate you or dispatch emergency personnel to the correct location. You will need to state the nature of the emergency promptly and clearly, including your location. You acknowledge and understand that emergency operators and emergency personnel will not be able to find your location if the call is not completed, dropped or disconnected, if you are unable to speak to tell them your location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

### Home Security Systems and other Non-voice Communications Equipment

By agreeing to Net2Phone's Conditions and Limitations of Emergency (911) Services, you hereby waive any claim against Net2Phone and Net2Phone's third party providers for interference with or disruption of your home security systems and any and all other communications or electronic equipment that may occur due to your use of the Net2Phone Services and Equipment or Device.

### Local Number Portability

The Conditions and Limitations of Emergency (911) Services as described in this agreement apply even if you are porting your number to your NET2PHONE OFFICE™ Service. If your Equipment or Device is not yet activated as of the Port Effective Date (the date on which your phone service is transferred to the NET2PHONE OFFICE™ Service), your existing phone service for the number you are transferring will be disconnected and you will have no service for that line. To avoid an interruption in your phone service, it is extremely important that you properly install your Equipment or Device prior to, or on, the Port Effective Date. An estimate of the Port Effective Date will be provided to you by Net2Phone via e-mail following your completion of the ordering process.

### Limitation of Liability and Indemnification

You acknowledge that the NET2PHONE OFFICE™ Service's 911-type dialing is NOT the same as traditional 911 or E911 dialing, and does not necessarily include all of the capabilities of traditional 911 and E911 dialing. You further acknowledge that the emergency (911) services hereunder may not work under all circumstances and is not as reliable as traditional 911 and E911 dialing.

IN NO EVENT SHALL NET2PHONE, ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR UNDERLYING SERVICE PROVIDERS BE LIABLE FOR ANY COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO THE FAILURE OF NET2PHONE OFFICE™ SERVICE'S 911-TYPE DIALING AND/OR INABILITY OF YOU OR ANY USER OF YOUR NET2PHONE OFFICE™ SERVICE TO BE ABLE TO DIAL 911, TO ACCESS EMERGENCY SERVICE PERSONNEL, TO ACCESS THE CORRECT PUBLIC SERVICE ANSWERING POINT ASSOCIATED WITH YOUR TELEPHONE NUMBER, OR TO CORRECTLY ROUTE AN EMERGENCY CALL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS NET2PHONE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS AND UNDERLYING SERVICE PROVIDERS, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF YOUR NET2PHONE OFFICE™ SERVICE.

### Release

By purchasing the NET2PHONE OFFICE™ Service during your sign up process, you hereby expressly release Net2Phone, its affiliates, directors, officers, employees, agents and underlying service providers from any and all liability associated with your use of the



NET2PHONE OFFICE™ Service (including the Conditions and Limitations of Emergency (911) Services for customers receiving NET2PHONE OFFICE™ Service Emergency (911) Service).

#### Sole Remedy

Your sole and exclusive remedies are expressly set forth in the Terms of Service including these Conditions and Limitations of Emergency (911) Services. Some jurisdictions may not permit the exclusion or limitation of implied warranties, and some jurisdictions may not permit the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such jurisdictions, the liability of Net2Phone, its directors, officers, employees, affiliates, agents and underlying service providers shall be limited to the maximum extent permitted by law.

### To Receive an RMA for Hosted PBX Equipment

- Contact support at [support@net2phoneoffice.com](mailto:support@net2phoneoffice.com) to begin the process.
- Provide the following to a support technician: RMA type, product name, serial number and MAC address (if applicable), and a reason for return of the product.
- A NET2PHONE support technician will troubleshoot the problem with the Customer to verify issues.
- An RMA number will be provided to the Customer for the return of the product(s) under warranty. The Customer must then provide a replacement shipping address.
- All replacements will be of like kind or better condition at the discretion of NET2PHONE. Returning RMA Products
- All products are to be returned with the original manufacturer's packaging.
- All original parts and materials (cords, connectors, power supplies, CD's, books, etc.) must be included.
- The product must be packed properly in a shipping box, with the RMA number visible on the outside.
- Customer is responsible for freight back to NET2PHONE.
- Product must be returned to Net2Phone within 10 business days of receiving an RMA number.

#### Product should be returned to:

Net2Phone, Inc.  
231 BEVERLY ROAD  
GREENVILLE SC 29609  
RMA# \_\_\_\_\_

Product (s) returned without an RMA number will be immediately returned to You at Your cost.

### Once RMA Product(s) Received

- When the faulty product is received, the NET2PHONE lab will test to confirm the product is defective.
- If the product is bad, a replacement product will be shipped (default method is ground) to customer.
- If the product is found good, it will be returned (default method is ground) to customer and shipping will be invoiced to customer.
- If a shipping method other than ground is requested by the customer, the customer will be responsible for the difference in charges between ground and the requested method.
- After the RMA is facilitated and the faulty product is shipped back to the manufacturer, if it is determined that the reason for product failure is physical damage, misuse, or any other reason that voids and/or is not covered under the warranty; the customer will be notified and charged the appropriate amount to repair the product to its original condition.