

**RESOLUTION NO. 2011-27**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE PURCHASE OF A LIGHTNING DETECTION AND ALERTING SYSTEM FOR SEVERAL PARKS WITHIN THE VILLAGE; PROVIDING FOR THE SELECTION OF EARTH NETWORKS (D/B/A WEATHERBUG) TO PROVIDE THIS SYSTEM; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT FOR THE PURCHASE OF THE SYSTEM; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne, Florida (the “Village”) desires to purchase a lightning detection and alerting system for several parks within the Village (the “System”); and

**WHEREAS**, Village staff recommends that the Village Council waive competitive bidding, pursuant to Section 2-85 of the Village Code of Ordinances (the “Village Code”), because it is impractical to apply such procedures given Earth Networks’ d/b/a Weatherbug (the “Weatherbug”) proprietary weather network of 8,000 tracking stations and lightning detection technology; and

**WHEREAS**, the Village Council authorizes the Village Manager to execute the agreement, attached hereto as Exhibit “A,” with WeatherBug for the System; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1.     Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2.     Approval of Purchase.** The Village Council hereby approves the purchase of the System.

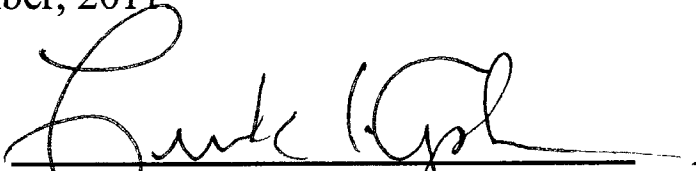
**Section 3. Selection of Weatherbug.** The Village Council hereby selects Weatherbug to provide the System.

**Section 4. Waiver of Competitive Bidding.** The Village Council hereby waives competitive bidding, pursuant to Section 2-85 of the Village Code, because it is impractical to apply such procedures given Weatherbug's proprietary weather network of 8,000 tracking stations and lightning detection technology.

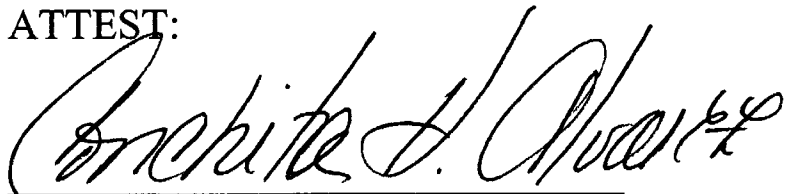
**Section 5. Village Manager Authorized.** The Village Manager is hereby authorized to execute the agreement with Weatherbug, attached hereto as Exhibit "A," for the System.

**Section 6. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 6th day of September, 2011

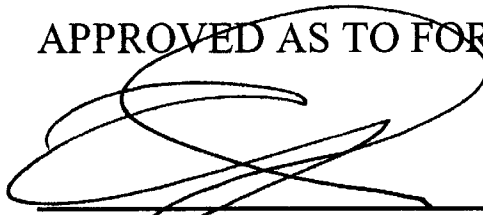
  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
VILLAGE ATTORNEY

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

<b>Customer Contact Information</b>			
<b>Business Name:</b>	Key Biscayne Parks and Recreation	<b>Business Address:</b>	88 West McIntyre Street Key Biscayne, Fl 33149
<b>Contact Name:</b>	Todd Hofferberth		
<b>Contact Phone:</b>	(305) 365-8900	<b>Contact Fax:</b>	

<b>Customer Billing Information (if different from above)</b>			
<b>Business Name:</b>		<b>Business Address:</b>	
<b>Contact Name:</b>		<b>Contact Fax:</b>	
<b>Contact Phone:</b>			

<b>WeatherBug Contact Information</b>			
<b>Salesperson:</b>	Stuart Hershon	<b>Email Address:</b>	shershon@weatherbug.com
<b>Contact Phone:</b>	(800) 544-4429 ext 4080	<b>Contact Fax:</b>	(301) 258-5210

<b>Schedule of Products and Services</b>				
Product Name	Notes	Quantity	Unit Price	Total Price
Upgrade of two "Receiver" model horns to "Transmitter" model horns.		2	\$1,000.00	\$2,000.00

<b>Grand Total:</b>	<b>\$2,000.00</b>
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Initial Term of Contract \_\_\_\_\_

Date of Original Signed Terms and Conditions: \_\_\_\_\_

**Remarks:**

The buyer agrees to payment terms of Net 30 unless otherwise documented. Late payment fees will be charged as one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late.


Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials or regulatory expense may be subject to an additional charge.

Please allow six to eight weeks for delivery of hardware.

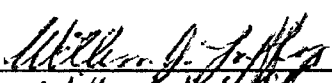
This order is subject to sales tax at time of invoicing.

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

**Customer:**

By:   
 Name: John C. Gilbert  
 Title: Village Manager  
 Date: 9/14/11

**EARTH NETWORKS**

By:   
 Name: William J. Gilbert  
 Title: W. Sales Operations  
 Date: 9/13/2011

Please fax all pages of the signed agreement directly to Earth Networks at 1-301-258-5210.



## ATTACHMENT 1 - TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

**9. Lightning Disclaimer.** Experience has shown that the resolution, timeliness, and format in which lightning data are

presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or safeguarding of facilities, whether it be of immediate or short term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk and have not directly or indirectly been implied, condoned or recommended by Seller, and/or its data suppliers.

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

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

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

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

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

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

**16. Attorney's Fees/Costs.** In any action by a party to enforce its rights hereunder, the non-prevailing party

shall pay the prevailing party's costs and expenses (including reasonable attorney's fees & other arbitration costs).

**17. Extraordinary Circumstances.** Except for obligations of payment, neither Seller nor the Buyer shall be liable for nonperformance caused by circumstances beyond their control, including but not limited to, work stoppages, floods, lightning and all other acts of God.

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

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

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

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

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

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

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

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

  
Customer Signature and Date

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

<b>Customer Contact Information</b>			
<b>Business Name:</b>	Key Biscayne Parks and Recreation	<b>Business Address:</b>	88 West McIntyre Street Key Biscayne, Fl 33149
<b>Contact Name:</b>	Todd Hofferberth		
<b>Contact Phone:</b>	(305) 365-8900	<b>Contact Fax:</b>	
<b>Customer Billing Information (if different from above)</b>			
<b>Business Name:</b>		<b>Business Address:</b>	
<b>Contact Name:</b>			
<b>Contact Phone:</b>		<b>Contact Fax:</b>	

<b>WeatherBug Contact Information</b>			
<b>Salesperson:</b>	Stuart Hershon	<b>Email Address:</b>	shershon@weatherbug.com
<b>Contact Phone:</b>	(800) 544-4429 ext 4080	<b>Contact Fax:</b>	(301) 258-5210

<b>Schedule of Products and Services</b>				
<b>Product Name</b>	<b>Notes</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
Installation: Horn		3	\$500.00	\$1,500.00
Installation: Weather Station plus Lightning Package		1	\$2,500.00	\$2,500.00
Lightning Package Upgrade		1	\$3,990.00	\$3,990.00
Online Weather Center - Lifetime		1	\$0.00	\$0.00
Outdoor Alerting System		2	\$5,490.00	\$10,980.00
Outdoor Alerting System		1	\$6,490.00	\$6,490.00
Streamer RT – Gov't / Comm (3 Seat License)	StreamerRT is provided at no cost in year one of the contract. It then becomes renewable in year two at \$1,500 annually for a three seat license.	1	\$0.00	\$0.00
WeatherBug Protect		5	\$0.00	\$0.00
WeatherBug Tracking Station w/ Display		1	\$5,000.00	\$5,000.00

<b>Grand Total:</b>	<b>\$30,460.00</b>
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Initial Term of Contract \_\_\_\_\_

Date of Original Signed Terms and Conditions: \_\_\_\_\_



ATTACHMENT 1 - TERMS AND CONDITIONS

**Remarks:**

The buyer agrees to payment terms of Net 30 unless otherwise documented. Late payment fees will be charged as one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late.

Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials or regulatory expense may be subject to an additional charge.

Please allow six to eight weeks for delivery of hardware.

This order is subject to sales tax at time of invoicing.

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

**Customer:**

**EARTH NETWORKS**

By: [Signature]  
Name: Joseph Gilbert  
Title: Village Manager  
Date: 9/13/11

By: [Signature]  
Name: William J. Kelly  
Title: VP, Sales Operations  
Date: 9/13/2011

Please fax all pages of the signed agreement directly to Earth Networks at 1-301-258-5210.

## ATTACHMENT 1 - TERMS AND CONDITIONS

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

Earth Networks  
Dept 0152, PO Box 120152  
Dallas, TX75312

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

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

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

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

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

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

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

**9. Lightning Disclaimer.** Experience has shown that the resolution, timeliness, and format in which lightning data are

presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or safeguarding of facilities, whether it be of immediate or short term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk and have not directly or indirectly been implied, condoned or recommended by Seller, and/or its data suppliers.

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

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

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

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

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

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

**16. Attorney's Fees/Costs.** In any action by a party to enforce its rights hereunder, the non-prevailing party

shall pay the prevailing party's costs and expenses (including reasonable attorney's fees & other arbitration costs).

**17. Extraordinary Circumstances.** Except for obligations of payment, neither Seller nor the Buyer shall be liable for nonperformance caused by circumstances beyond their control, including but not limited to, work stoppages, floods, lightning and all other acts of God.

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

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

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

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

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

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

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

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

  
Customer Signature and Date



ADDENDUM  
TO  
ATTACHMENT 1 - TERMS AND CONDITIONS  
OF THE WEATHERBUG PROFESSIONAL AGREEMENT  
BY AND BETWEEN  
KEY BISCAZYNE PARKS AND RECREATION (“BUYER”)  
AND EARTH NETWORKS (“SELLER”)  
DATED AS OF June 23, 2011  
(This “ADDENDUM”)

1. The terms and provisions of this Addendum shall supersede and control over any conflicts between the Schedule of Products and Services and Attachment 1 – Terms and Conditions (collectively, the “Agreement”).
2. Payment due for the products and services to be provided by Seller pursuant to the Agreement shall be due on or before thirty (30) days after the date the lightning detection system becomes fully operational.
3. Seller confirms that the installation and anticipated maintenance costs for the lightning detection system are “standard” and no additional charge shall be required for the same.
4. The second sentence of Paragraph 2 of Attachment 1 (the “Attachment”) relating to Inspection and Acceptance is hereby deleted.
5. Paragraph 3(1) is hereby amended to clarify that Buyer shall have complete access to the Streamer RT web service.
6. Paragraph 5 of the Attachment is hereby amended to modify the venue for any arbitration to be in Miami-Dade County, Florida.
7. Paragraph 6 of the Attachment is hereby amended to clarify that the cost of the return of defective items covered under warranty shall be at Seller’s expense if it specifies a manner of delivery other than standard ground delivery.
8. Paragraph 7 of the Attachment is hereby amended to clarify that only material changes made to the equipment sold by Seller without Seller’s consent, not to be unreasonably withheld, may result in the warranty being voided as to the modified equipment.
9. The third sentence of Paragraph 8 of the Attachment is hereby deleted commencing with “BUYER ACKNOWLEDGES...” In place of said provision, the following provision shall be inserted: THE EQUIPMENT AND SOFTWARE SOLD BY SELLER SHALL WORK FOR THEIR INTENDED USE AND PURPOSE AS A LIGHTNING DETECTION SYSTEM FREE OF ANY DEFECT AND SHALL OPERATE IN ACCORDANCE WITH ALL OF SELLER’S SPECIFICATIONS, WARRANTIES AND REPRESENTATIONS.



10. Paragraph 10 of the Attachment is hereby deleted.

11. The first sentence of Paragraph 11 of the Attachment is hereby amended to delete the word "gross."

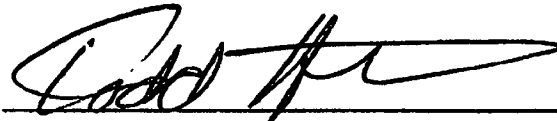
12. Paragraph 15 is hereby amended to reflect that the laws of the State of Florida shall govern the agreement.

13. Paragraph 19 is hereby deleted in its entirety.

14. Paragraph 21 is hereby deleted in its entirety.

**IN WITNESS WHEREOF**, the parties hereto have executed this Addendum on the dates set forth below.

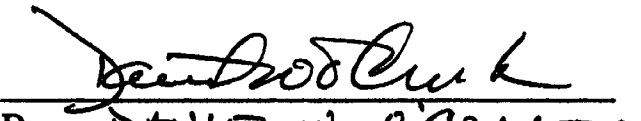
VILLAGE OF KEY BISCAYNE



Todd Hofferberth, Director, Parks & Recreation

Date: 9.15.11

EARTH NETWORKS d/b/a WEATHERBUG



By: DANIEL W. O'CONNELL

Date: 6/23/11