

RESOLUTION NO. 032816-1

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
VARNEY AND ASSOCIATES, CPAS, LLC FOR INDEPENDENT FINANCIAL SERVICES**

WHEREAS, the City Commission desires to enter into a Professional Services Agreement (“Agreement”) with Varney and Associates, CPAs, LLC (“Consultant”) for independent financial auditing services.

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

SECTION ONE. Agreement. That an Agreement with Consultant is hereby adopted as attached hereto as Exhibit A.

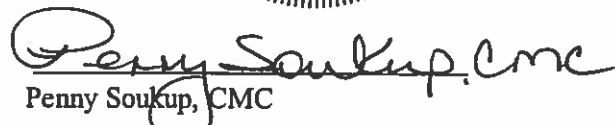
SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

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

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 28th day of March, 2016.



ATTEST:


Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS


By: 
Dennis P. Weishaar, Mayor

EXHIBIT A

Professional Services Agreement

Varney and Associates, CPAs, LLC

March 28, 2016

AGREEMENT BETWEEN THE CITY OF ABILENE, KANSAS
and
VARNEY & ASSOCIATES, CPAs, LLC
for
AUDITING SERVICES

This Agreement is entered into March 28, 2016 by and between the City of Abilene, (the "City"), and Varney & Associates, CPAs, LLC, a Kansas limited liability company (the "Consultant").

Recitals

A. The City desires to contract for professional auditing services for the purpose of auditing the City's financial statements for the fiscal years ending December 31, 2015, 2016, 2017, 2018, and 2019, in compliance with federal, state, and local regulations.

B. The Consultant has the requisite qualifications and experience to perform the services needed by the City and desires to perform those services pursuant to the terms of this Agreement.

The parties, in consideration of the mutual promises set forth in this Agreement, agree and covenant:

1. Exhibits. The following Exhibits are attached to and made a part of this Agreement (Mark with "X" if applicable):

Exhibit A: Scope of Work

Exhibit B: Insurance Requirements

2. Responsibilities of the Parties. The Consultant agrees to perform the responsibilities outlined in the attached and incorporated Exhibit A relating to the Consultant's audit of the City's financial statements for the years ending December 31, 2015, 2016, 2017, 2018, and 2019.

3. Term. The term of this Agreement shall commence upon execution of this Agreement by both parties, and shall remain in effect until completion of the Consultant's auditing services for the fiscal year ending December 31, 2019, subject to the potential for prior termination pursuant to the terms of this Agreement.

4. Payment. The City shall pay the Consultant for the performance of its responsibilities pursuant to this Agreement as set forth in Exhibit A. The Consultant shall not perform any additional services requiring additional fees or expenses without first obtaining the City's prior written consent.

5. Insurance Requirements.

5.1. Types and Amount of Coverage. The Consultant agrees to obtain insurance coverage as specified in Exhibit B, attached hereto, and shall not make any material modification or change from these specifications without the prior approval of the City. If the Consultant subcontracts any of its obligations under this Agreement, the Consultant shall require each such subcontractor to obtain insurance coverage as specified in Exhibit B. Failure of the Consultant or its subcontractors to comply with these requirements shall not be construed as a waiver of these requirements or provisions and shall not relieve the Consultant of liability.

5.2. Rating. All insurance policies shall be issued by insurance companies rated no less than A- VII in the most recent "Bests" insurance guide, and admitted in the State of Kansas. Except as otherwise specified in Exhibit B, all such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved.

5.3. Certificate of Insurance. The parties acknowledge that the Consultant has provided the City with a certificate of insurance listing the City as the Certificate Holder and evidencing compliance with the insurance requirements in this Agreement. The City reserves the right to require complete certified copies of all insurance policies procured by the Consultant pursuant to this Agreement, including any and all endorsements affecting the coverage required hereunder.

6. **Indemnification.** To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City, its agents, representatives, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees and court costs) attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, to the extent that such claims, damages, losses, and expenses are caused by the wrongful acts, negligent acts, errors, or omissions arising out of or related to the services of the Consultant, its employees, agents, or any tier of subcontractors in the performance of this Agreement.

7. **Voluntary Termination.** The City may terminate this Agreement, with or without cause, upon thirty (30) days advance written notice to the Consultant. In the event of such termination, the Consultant shall be compensated for such services as have been satisfactorily performed through the date of termination, but no compensation shall be earned after the effective date of the termination. Within five (5) days of any such termination, all finished or unfinished documents, data, studies, reports or other material prepared by the Consultant pursuant to this Agreement shall be delivered to the City. Notwithstanding the above, the Consultant shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purposes of set-off until such time as the exact amount of damages due the City from the Consultant may be determined.

8. **Default.** If either party fails to comply with any term of this Agreement within ten (10) days after written notice to comply has been mailed by the non-defaulting party to the defaulting party, such failure shall be deemed an immediate breach of this Agreement ("Event of Default").

9. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

9.1. **Termination.** The non-defaulting party shall have the right to terminate this Agreement or terminate the defaulting party's rights under this Agreement.

9.2. **Other Remedies.** The non-defaulting party may pursue any available remedy at law or in equity (including specific performance) by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations set forth in this Agreement, to enforce or preserve any other rights or interests of the non-defaulting party under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the non-defaulting party resulting from such Event of Default.

10. **Non-Assignable.** Due to the unique qualifications and capabilities of the Consultant, neither the rights nor responsibilities provided for under this Agreement shall be assignable by either party, either in whole or in part.

11. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, commercial courier or overnight air courier service. Notice shall be considered given when received on the date appearing on the return receipt, but if the receipt is not returned within five (5) days, then three (3) days after mailed, if sent by registered or certified mail or commercial courier service; or the next business day, if sent by overnight air courier service. Notices shall be addressed as appears below for each party, provided that if any party gives notice of a change of name or address, notices to the giver of that notice shall thereafter be given as demanded in that notice.

CITY: City of Abilene
Attn: Finance Director
P.O. Box 519
Abilene, KS 67410-0519

CONSULTANT: Varney & Associates, CPAs, LLC
Attn: April G. Swartz, CPA, CGFM
120 N. Juliette
Manhattan, KS 66502

12. **Retention and Inspection of Records.** The Consultant shall maintain complete, accurate, and clearly identifiable records with respect to all costs and expenses incurred under this Agreement. The records shall be maintained during the term of this Agreement, and for a period of three (3) years from the date of final payment under this Agreement (the "Retention Period"); provided, however, that if any litigation, claim or audit is commenced prior to the expiration of the

Retention Period, then the Retention Period shall be extended until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal. During the Retention Period, the Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to, or arising under, this Agreement. The City agrees to responsibly utilize all information obtained pursuant to this paragraph for the purposes of reviewing, confirming, and verifying the nature and amount of all costs and expenses incurred under this Agreement. The City agrees to take reasonable precautions not to disclose such information outside the scope of those stated purposes, subject to the Kansas open records act or other applicable law.

13. **Non-appropriation.** The City is subject to Kansas budget and cash basis laws, and operates on a calendar fiscal year. In the event that this Agreement involves financial obligations spanning multiple fiscal years for the City, it is subject to annual appropriation by the City's governing body for future fiscal years. If the City's governing body does not appropriate the funds necessary to fulfill the City's financial obligations pursuant to this Agreement, the City shall so notify the other parties to this Agreement and this Agreement shall be null and void for purposes of the fiscal year(s) affected by the decision of the governing body not to appropriate.

14. **Relationship.** It is expressly understood that Consultant in performing services under this Agreement, does so as an independent contractor. The City shall neither have nor exercise any control or direction over the methods by which Consultant performs its responsibilities as outlined in Exhibit A. The sole interest and responsibility of the City is to see that the services covered by this Agreement are performed and rendered in a competent, efficient, and satisfactory manner. Consultant shall be exclusively responsible for all taxes, withholding payments, employment-based benefits, deferred compensation plans, including but not limited to its workers compensation and social security obligations, and the filing of all necessary documents, forms, or returns pertinent to the foregoing.

15. **Subcontracting.** Consultant shall not subcontract any work or services under this Agreement without the City's prior written consent.

16. **Compliance with Applicable Law.** Consultant shall comply with all applicable federal, state, and local law in the performance of this Agreement.

17. **Administration of Agreement.** All references in this Agreement requiring the City's participation or approval shall mean the participation or approval of the City Manager or his designee, unless otherwise provided herein.

18. **Attorney Fees.** If any suit or action is instituted by either party hereunder, including all appeals, the prevailing party in such suit or action shall be entitled to recover reasonable attorney fees and expenses from the non-prevailing party, in addition to any other amounts to which it may be entitled.

19. **Right to Independent Legal Advice.** The Consultant understands and acknowledges the right to have this Agreement reviewed by legal counsel of the Consultant's choice.

20. **Applicable Law; Venue.** This Agreement and its validity, construction and performance shall be governed by the laws of Kansas. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be in the Dickinson County, Kansas District Court.

21. **Interpretation.** This Agreement shall be interpreted according to its fair meaning, and not in favor of or against any party.

22. **Time.** Time is of the essence of this Agreement. No extension will be granted unless in writing and signed by the parties. Should the end of a time period fall on a legal holiday that termination time shall extend to 5:00 p.m. of the next full business day.

23. **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

24. **Authority and Consent to Transaction.** Each party represents to the other that the person executing this Agreement has full and legal authority to bind such party to the terms of this Agreement, and that the execution and delivery of this Agreement have been duly and validly authorized by the governing body of each party.

25. **Persons Bound.** This Agreement shall extend to and bind the heirs, executors, administrators, trustees, successors and authorized assigns of the parties hereto.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, or in multiple originals, and all such counterparts or originals shall for all purposes constitute one agreement.

27. **Amendments.** Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

28. **Waiver.** No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

29. **Conflict Resolution.** No interpretation of this Agreement shall be allowed to find the City has agreed to binding arbitration.

30. **No Third Party Beneficiaries.** Solely the parties to this Agreement shall have rights and may make claims under this Agreement. There are no intended third party beneficiaries under this Agreement, and no third parties shall have any rights or make any claims hereunder.

31. **Typewritten or Handwritten Provisions.** Typewritten or handwritten provisions inserted or attached, and initialed by all parties, shall supersede all conflicting printed provisions.

32. **Feminine-Masculine, Singular-Plural.** Wherever used, singular shall include the plural, plural the singular, and use of any gender shall include all genders.

33. **Headings.** The headings of the sections of this Agreement are included for the purposes of convenience only and shall not affect the interpretation of any provision hereof.

34. **Merger Clause.** These terms are intended by the parties as a complete, conclusive and final expression of all the conditions of their Agreement. No other promises, statements, warranties, agreements or understandings, oral or written, made before or at the signing thereof, shall be binding unless in writing and signed by all parties and attached hereto.

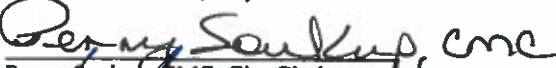
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

CITY OF ABILENE, KANSAS

By:


Dennis P. Weishaar, Mayor

Attest:


Penny Soukup, CMC, City Clerk

Form:


Karon G. Martin, City Attorney

VARNEY & ASSOCIATES, CPAs, LLC

By:

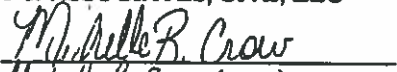

Michelle R. Crow (name)
CEO (title)

EXHIBIT A
Scope of Work

See Consultant's attached and incorporated "Detailed Proposal," dated February 1, 2016, attached hereto.

In addition, the following conditions shall be considered reportable during the course of the annual audit:

1. Reportable conditions that are also material weaknesses shall be identified as such in a separate letter to management.
2. Non-reportable conditions discovered by the Consultant shall be reported in a separate letter to management, which shall be referred to in any reports on internal controls.
3. Auditors shall be required to make an immediate, written report in a separate letter to management of all irregularities and illegal acts.

EXHIBIT B
INSURANCE REQUIREMENTS

Pursuant to Section 5 of the Agreement, the Consultant shall obtain, pay for, and maintain – and shall require each of its authorized subcontractors to obtain and maintain – for the duration of the Agreement, policies of insurance meeting the following requirements:

1. General Requirements.

A. Additional Insured. With the exception of the workers' compensation and professional liability policies to be obtained by the Consultant hereunder, all policies shall name the City, its agents, representatives, officers, officials, and employees as additional insured(s). Insurance for the additional insured shall be as broad as the insurance for the named insured, including defense expense coverage, and, with respect to the commercial general liability policy required hereunder, shall be endorsed to apply as primary and non-contributory insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured(s).

B. Waiver of Subrogation. Where allowed by law, all policies will include a waiver of subrogation in favor of the City, its agents, representatives, officers, officials, and employees.

C. Claims Made Policies. If coverage is written on a claims-made basis for any of the policies required by this Agreement, the Consultant must maintain the coverage for a minimum of two (2) years from the date of final completion of all work under the Agreement.

D. Premium and Deductible Expenses. The Consultant shall be responsible for all premiums and retention or deductible expense for any and all policies required by this Agreement.

2. Specific Coverage Requirements.

A. Professional Liability – Errors and Omissions. The Consultant shall maintain professional liability insurance covering errors and omissions, with limits of not less than \$1,000,000. In the event coverage is provided on a claims-made basis, the professional liability insurance shall be maintained for a period of not less than two (2) years after completion of the Contract or, in lieu thereof, the Consultant shall purchase tail coverage (extended reporting period) under which the City shall be afforded protection.

B. Commercial General Liability (“CGL”). The Consultant shall maintain CGL coverage written on ISO Occurrence form CG00 01 or an industry equivalent, which shall cover liability arising from Personal Injury, Bodily Injury, Property Damage, Premises and Operations, Contractual Liability, Independent Contractors and Advertising Injury. The policy limits shall not be less than the following:

- Each occurrence \$1,000,000
- General aggregate \$2,000,000
- Personal and Advertising Liability \$1,000,000

C. Business Automobile Liability ("BAL"). The Consultant shall maintain BAL coverage written on ISO form CA 00 01 or an industry equivalent. Coverage shall be applicable to all autos and other vehicles subject to compulsory auto liability laws that are owned, hired, rented or used by the Consultant and include automobiles not owned by but used on behalf of the Consultant. The BAL policy limits shall not be less than the following:

- Combined single limit \$1,000,000

D. Workers' Compensation/Employer's Liability. The Consultant shall maintain workers' compensation and employer's liability coverage with policy limits not less than the following:

- Workers' Compensation (Coverage Part A)
 - Statutory
- Employer's Liability (Coverage Part B)
 - \$100,000 each accident
 - \$500,000 disease – policy limit
 - \$100,000 disease – each employee