



**EARTH NETWORKS ORDER FORM**

12410 Milestone Center Drive,  
Suite 300, Germantown, MD 20876

**Customer Contact Information**

<b>Business Name:</b>	City of North Port	<b>Business Address:</b>	4970 City Hall Blvd North Port, FL 34286-4100
<b>Contact Name:</b>	Tricia Wisner	<b>Contact Fax:</b>	
<b>Contact Phone:</b>	(941) 429-3570		

**Earth Networks Contact Information**

<b>POC:</b>	Sanjeev Chalissery	<b>Email Address:</b>	schalissery@earthnetworks.com
<b>Contact Phone:</b>	(301) 250-4109	<b>Contact Fax:</b>	(301) 528-3321

**Schedule of Services**

Product Name	Notes	Quantity	Unit Price	Total Price
Sferic Siren - Outdoor Alerting System w/ E-Horn	Includes the Horn, Strobe, Informer, UPS Battery Back Up, Data Cables, Lx Alerting Subscription and all mounting equipment. Installation at North Port Aquatic Center.	1	\$8,740.00	\$8,740.00

Initial Term of Contract:  
1 Year

<b>Sub Total:</b>	\$8,740.00
<b>S &amp; H</b>	TBD
<b>Sales Tax:</b>	N/A
<b>Year 1 Total:</b>	\$8,740.00

Quotation valid through: **05/12/2022**

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

**Remarks:**

The customer 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. The service(s) shall be for 1 year. The annual fee for the Lx Alerting Subscription following year one shall be \$1,500/year subject to annual price increase of 5% for each year of the Term. An optional corrective maintenance package is available starting in Year 2 for an additional \$500/year

Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials, or regulatory expense may be subject to an additional charge. Furthermore, customer is responsible for providing all communication and electrical infrastructure. This quotation identifies the quantity of OAS units estimated for adequate coverage and has been agreed to by both parties. If additional units are required or desired after installation, they can be added for \$8,740 per unit installed.

Please allow up to six to eight weeks for delivery of hardware.

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

This Order Form is subject to the terms and conditions attached hereto.

**CUSTOMER:**

**EARTH NETWORKS:**

Signature: \_\_\_\_\_

DocuSigned by:  
*Sanjeev Chalissery*  
Signature: \_\_\_\_\_  
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Name: \_\_\_\_\_

Name: Sanjeev Chalissery

Title: \_\_\_\_\_

Title: Account Manager

Date: \_\_\_\_\_

Date: 4/13/2022

## 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. Renewal pricing for web services shall be as reflected on the Order Form. The initial term and any subsequent renewal term is each a "Term" as used herein.

**5. Dispute.** Intentionally left blank.

**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 Acts of God or 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 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 Internet connection. The Internet expense is solely the obligation of Buyer. Buyer agrees to follow all

ATTACHMENT 1 - TERMS AND CONDITIONS

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.** The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.

**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. 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.

**20. 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.

**21. Maintenance/Installation.** Installation will be provided as described on the Order Form. Maintenance, if purchased, is as described on the attached Maintenance Rider, incorporated herein by reference. You agree that, prior to scheduling any maintenance visit, you will consult with technical support by phone, to determine whether it is possible to resolve any issues in that manner. In the event that such troubleshooting does not resolve the issue(s), a site visit will be scheduled. At the time of the site visit, you will provide us all reasonable access for the purpose of supplying necessary maintenance and/or the installation. Maintenance covers all parts, labor and replacement/repair of hardware. It does not cover the relocation of hardware. If non-standard equipment (e.g. a lift) is required to access hardware, You agree to either supply such equipment or cover the rental expense.

**22. 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.

**23. Modification.** This Agreement shall not be varied in its terms or conditions by any oral Agreement or representation, but only by an instrument in writing properly executed by both parties except with respect to annual or periodic price adjustments as reflected on the Order Form. Any amendments changing Buyer's financial obligations under this Agreement shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of Buyer that do not change Buyer's financial obligations under this Agreement.

**24. 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.

**25. Non-Discrimination.** The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services.

\_\_\_\_\_  
Customer Signature and Date

ATTEST

APPROVED AS TO FORM AND CORRECTNESS

\_\_\_\_\_  
Heather Taylor, MMC  
City Clerk

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Amber L. Slayton  
City Attorney