

**RESOLUTION NO. 2003- 23**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH ESSENTIALNET SOLUTIONS; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council of the City of Marathon (the "City") desires to enter into an Agreement with EssentialNet Solutions for the performance of information technology and website development services for the City.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recital is true and correct and incorporated herein by this reference.

**Section 2. Approval and Execution of Agreement.** The Agreement between the City of Marathon and EssentialNet Solutions, in substantially the form and substance that is attached as Exhibit "A," is approved. The City Manager and the City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute the Agreement on behalf of the City.

**Section 3. Effective Date.** This resolution shall take effect immediately upon adoption.

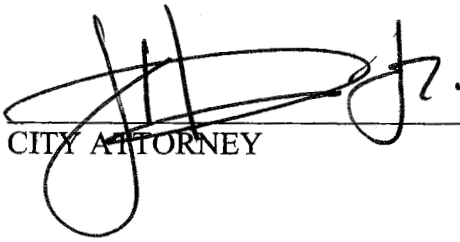
PASSED AND ADOPTED this 19<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
JOHN BARTUS, MAYOR

ATTEST:

Katherine V. Selchan  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
CITY ATTORNEY

CHINA

## CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into this 19<sup>th</sup> day of December, 2002, by and between the City of Marathon, a Florida municipal corporation (the "CITY"), and EssentialNet Solutions ("CONSULTANT").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### 1. PURPOSE/AUTHORIZATION

- 1.1. The purpose of this Agreement is to provide for the CITY's retention of CONSULTANT to perform data migration, website development and information technology for the CITY as described in Section 2 below.
- 1.2. CONSULTANT shall be authorized to perform the data migration, website development and information technology services specified in this Agreement on behalf of the CITY as required under Florida law.
- 1.3. The Agreement shall provide for the CITY to obtain ownership, retention and proper licensure for all hardware, software and other intellectual property obtained for CITY by CONSULTANT under the terms of this Agreement.

### 2. SCOPE OF SERVICES

CONSULTANT shall provide the following services to the CITY:

#### 2.1 DATA MIGRATION:

CONSULTANT shall perform data migration services in the transfer of all essential data from the current City server, as provided by Severn-Trent and Associates, to the CITY's Dell PowerEdge 2600 provided for by CONSULTANT, at the direction of the City Manager.

#### 2.2 WEBSITE DEVELOPMENT:

The following services will be provided by consultant through their subconsultant Black Widow Internet Services of the Keys, Inc., located at 6303 Overseas Highway, Marathon, Florida 33050:

- 2.2.1. Design and host the CITY's website containing departmental descriptions, Council meeting schedule, meeting agendas, agenda packages and minutes.

- 2.2.2. Installation and implementation of Document Builder software to allow authorized CITY employees to add, delete and modify CITY documents residing on the CITY website.
- 2.2.3. Publish CITY-provided GIS database interface on the website.
- 2.2.4. Publish CITY-provided City View database interface on the website.
- 2.2.5. Publish CITY-provided City View database interface on the website.
- 2.2.6. Provide dedicated D1 1.5Mbs connection.
- 2.2.7. Provide statistical reports to the CITY, regarding website traffic and usage.

2.3 **INFORMATION TECHNOLOGY:**

- 2.3.1. Install and configure a Dell PowerEdge 2600 server at the City offices to improve performance, insure against data loss, and minimize potential down time of data systems.
- 2.3.2. Provide centralized management of all network resources and a central location for the electronic storage of the CITY's documents.
- 2.3.3. Insure electronic data security and integrity with a nightly backup and the ability to restore from a central location.
- 2.3.4. Install and configure a Dell Optiplex GX260T workstation and four (4) Dell Optiplex GX260S workstations, all with Microsoft Office SB XP software.
- 2.3.5. Maintain software and hardware uniformity and interchangeability among users.
- 2.3.6. Provide a Xerox Color laser printer for City Hall and three (3) HP LaserJet Printers for use at City Hall, the City Marina and the City Fire Department.
- 2.3.7. Maintain a three-year replacement program for all computers and equipment.

- 2.3.8. Design and supervise installation of all data cabling. Actual installation and monthly fee for internet services by an independent internet service provider shall be at an additional cost to the CITY, upon approval of the City Manager.
- 2.3.9. Provide all users with e-mail connections for internal and external communications and common contact lists and scheduling.
- 2.3.10. Provide for a Fujitsu Flatbed Scanner.
- 2.3.11. Provide for and configure five (5) Dell Latitude C640 Laptops with Microsoft Office SB XP software.
- 2.3.12. Provide for and reconfigure a wireless network currently owned and operated by Severn-Trent and Associates. Ownership of the wireless network will be transferred to the CITY.
- 2.3.13. Install and provide training for Marina software.
- 2.3.14. Install and provide training for Cisco phone system upgrade.
- 2.3.15. Promote sharing of information and collaborative work between all CITY staff.
- 2.3.16. CONSULTANT shall provide CITY with three (3) days or 24 hours of technical support per month throughout the duration of this Agreement for the first three (3) months of this Agreement.

### 3. **COMPENSATION**

- 3.1. For all Services provided by CONSULTANT as described in Section 2 of this Agreement, the CITY shall pay CONSULTANT a total fee of \$97,670.00, in the matter prescribed by Section 3.2.
- 3.2. For the compensation described in Section 3.1., a deposit of \$89,582.50 will include 100% of all hardware, software and vendor supplied services, as well as 50% of CONSULTANT labor. The balance of \$8,087.50, which will represent the remaining 50% CONSULTANT's labor will be due upon completion of installation and reconfiguration of the system. Final payment will not be made until all systems are functioning properly.

- 3.3. For additional site maintenance on the website the CITY shall compensate the CONSULTANT \$55.00 per hours for front-end service and re-design, at the request to the City Manager. For additional site maintenance on the website, regarding the back-end server, the CITY shall pay CONSULTANT \$150.0 per hour, at the request of the City Manager.
- 3.4. For maintenance support following the first three (3) months of the Agreement, CITY shall pay CONSULTANT \$7,200.00 for each additional three (3) months during the one (1) term of this Agreement.
- 3.5. If City Manager finds a diminished need for maintenance support following any three (3) month maintenance support period, City Manager will have the option of reducing the maintenance support to two (2) days per month at a pro-rated cost of \$4,800.00, by giving written notice to CONSULTANT within ten (10) days of the start of said maintenance support period.
- 3.6. For additional technical support exceeding the three (3) days or 24 hours provided for under the terms of this Agreement, CITY shall compensate CONSULTANT \$105 per hour, at the request of the City Manager.
- 3.7. CONSULTANT shall additionally be reimbursed for actual travel and shipping expenses, with prior approval of the City Manager.

#### **4. RECORDS/RIGHT TO INSPECT AND AUDIT**

- 4.1. All records, books, documents papers and financial information (the "Records") that result from CONSULTANT providing services to the CITY under this Agreement shall be the property of the CITY.
- 4.2. Upon termination or expiration of this Agreement, or at any time upon the written request of the CITY Manager, any and all such Records shall be delivered to the CITY by CONSULTANT within 15 calendar days from the date of the request.
- 4.3. CONSULTANT shall maintain records, books, documents, papers and financial information pertaining to work performed under this Agreement during the term of this Agreement and for a period of three (3) years following termination of this Agreement.
- 4.4. The CITY Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any

Records of CONSULTANT involving transactions related to this Agreement.

- 4.5. The CITY may cancel this Agreement for refusal by CONSULTANT to allow access by the CITY Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

## 5. **INDEMNIFICATION**

- 5.1. CONSULTANT shall defend, indemnify, and hold harmless the CITY, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with CONSULTANT's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the CONSULTANT and third parties made pursuant to this Agreement. CONSULTANT shall reimburse the CITY for all its expenses including reasonable attorney fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with CONSULTANT's performance or non-performance of this Agreement.
- 5.2. CONSULTANT shall indemnify, defend and hold the CITY harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any employment related litigation brought under federal or state law.
- 5.3. CONSULTANT shall indemnify, defend and hold the CITY harmless from any claims that any software used or furnished by CONSULTANT infringes or misappropriates any registered copyright, patent or trademark based upon the use of the software in the performance of this Agreement. Further, CONSULTANT shall indemnify, defend and hold the CITY harmless against any claims of infringement based upon the use of a superseded or altered version of the software provided by CONSULTANT. If a final injunction is obtained against the use of any part of the software by reason of infringement of a registered copyright or

patent, CONSULTANT will either (i) procure for the CITY the right to continue to use the software; (ii) modify the software so that it becomes noninfringing; or (iii) provide the CITY with acceptable alternative software.

5.4. The provisions of this section shall survive termination of this Agreement.

6. **INSURANCE**

6.1. CONSULTANT shall maintain at its sole cost and expense all times, in addition to any other insurance the CITY may reasonably require, professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with minimum policy limits for each coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. The CITY shall be named as an additional insured on each of the above policies, unless prohibited by law, and CONSULTANT shall provide CITY with a certificate evidencing same. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without thirty (30) days written notice to the CITY prior to the effective date of cancellation, modification, or reduction in coverage.

6.2. CONSULTANT shall maintain Worker's Compensation insurance at the statutory minimums required by Chapter 440, Florida Statutes.

6.3. CONSULTANT shall maintain each of above insurance policies throughout the term of this Agreement and any extensions of this Agreement.

6.4. CONSULTANT shall provide CITY with a current copy of each of the above insurance policies, and any renewals.

7. **TERM**

7.1 This Agreement shall become effective upon execution by both parties and shall continue in force for a term of one (1) year from its execution, unless earlier terminated as provided in Section 8.

7.2. The CITY shall have the option to renew the labor and services portion this Agreement for a period of one year upon the same terms and conditions contained herein plus 5% upon 60 calendar days written notice to CONSULTANT. Thereafter, any renewal shall be in writing and executed by both parties.



8. **TERMINATION**

- 8.1 The CITY may elect to this Agreement by giving CONSULTANT written notice at least 30 days prior to the effective date of termination. Upon receipt of a written notice of termination, CONSULTANT shall not enter into any third party agreements or incur any financial obligations or expenses unless such expenses are specifically approved or directed in writing by the City Manager.
- 8.2 CONSULTANT may terminate this Agreement by giving the CITY written notice at least 180 calendar days prior to the effective date of termination.
- 8.3 In the event of termination or expiration of this Agreement, CONSULTANT and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from CONSULTANT to the CITY, or to any other person or entity the CITY may designate, and to maintain during such period of transition the same services provided to the CITY pursuant to the terms of this Agreement.
- 8.4 CONSULTANT will take all reasonable and necessary actions to transfer all books, records and data of the CITY in its possession in an orderly fashion to either the CITY or its designee in a hard copy and computer format.
- 8.5 Subsequent to the complete or partial termination of this Agreement, CONSULTANT shall continue to provide all necessary services to assist the CITY Auditors with the preparation of the annual audit for the fiscal year in which this Agreement is terminated. CONSULTANT shall be compensated for any such post-termination services on an hourly basis not to exceed \$105 per hour.

9. **ENTIRE AGREEMENT/MODIFICATION/AMENDMENT**

- 9.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 9.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

10. **SEVERABILITY**

10.1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

11. **GOVERNING LAW**

11.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida.

12. **WAIVER**

12.1. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

13. **NOTICES/AUTHORIZED REPRESENTATIVES**

13.1 Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties at the following addresses:

**For the CITY:**

City of Marathon  
Attention: City Manager  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 742-0033  
Facsimile: (954) 345-1292

**With a copy to:**

Weiss Serota Helfman Pastoriza & Guedes, P.A., City Attorneys  
Attention: Nina L. Boniske, Esq.  
2665 South Bayshore Drive  
Suite 420  
Miami, FL 33133  
Phone: (305) 854-0800  
Facsimile: (305) 854-2323

**For CONSULTANT:**

John Redrup, President  
EssentialNet Solutions  
439 Bridgetown Court  
Satellite Beach, Florida 32937  
Phone: (321) 779-8884  
Facsimile: (321) 779-3393

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

**14. INDEPENDENT CONTRACTOR**

- 14.1. CONSULTANT is and shall remain an independent contractor and is not an employee or agent of the CITY. Services provided by CONSULTANT shall be by employees of CONSULTANT working under the supervision and direction of CONSULTANT and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the CITY. CONSULTANT agrees that it is a separate and independent enterprise from the CITY.
- 14.2. CONSULTANT shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with CONSULTANT. This Agreement shall not be construed as creating any joint employment relationship between CONSULTANT and the CITY, and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to, unpaid minimum wages and/or overtime payments.

15. **OWNERSHIP OF HARDWARE, SOFTWARE AND INTELLECTUAL PROPERTY**

- 15.1. All hardware purchased for the CITY by CONSULTANT under the terms of this Agreement shall be the sole property of the CITY. In the event of termination or upon the expiration of this Agreement, the CITY shall continue to retain sole ownership of all hardware.
- 15.2. All software purchased for the CITY by CONSULTANT under the terms of this Agreement shall be the sole property of the CITY. All software shall be registered and licensed to the CITY. CONSULTANT shall be responsible for providing the CITY with proper registration and licenses for all software purchased under the terms of this Agreement.
- 15.3. All finished or unfinished documents, including but not limited to, detailed reports, studies, digital files and other data prepared for the CITY by or through CONSULTANT under the terms of this Agreement shall be the sole property of the CITY, and shall be delivered to the CITY within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONSULTANT shall have the right to keep one records set of the documents upon completion of the services. However, in no event shall the CONSULTANT, without the CITY's prior written authorization, use, or permit to be used, any of the documents or digital files prepared for the CITY.

16. **PROHIBITION AGAINST CONTINGENT FEES**

- 16.1. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

17. **WARRANTIES OF CONSULTANT**

- 17.1. CONSULTANT warrants and represents that its employees will abide by the Code of Ethics for Public Officers and employees, 112 Florida Statutes, and the Conflict of Interest and Code of Ethics ordinances set

forth in Section 2-11.1 of the CITY Code, as these codes may be amended from time to time.

18. **ATTORNEYS FEES**

18.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

19. **WAIVER OF JURY TRIAL**

19.1. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

**IN WITNESS WHEREOF** the undersigned parties have executed this Agreement on the date indicated above.

**WITNESSES:**

**EssentialNet Solutions**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: John L. Redrup, Jr.

Print Name: John L. Redrup, Jr.

Title: President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: 1-28-03

**ATTEST:**

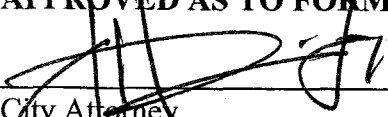
**CITY OF MARATHON**

Kathleen V. Selchan  
City Clerk

By: John Bartus  
John Bartus, Mayor

Date: December 19, 2002

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
City Attorney

