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**CITY OF MARATHON, FLORIDA
RESOLUTION 2004-122**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, APPROVING AN AGREEMENT WITH
ESSENTIALNET SOLUTIONS, INC. FOR THE PROVISION OF
INFORMATION TECHNOLOGY SERVICES**

WHEREAS, on July 24, 2004, the City of Marathon, Florida (the "City"), issued a request for proposal for information technology services (the "RFP"); and

WHEREAS, on September 22, 2004, the City Council reviewed staff's ranking of the respondents to the RFP and directed staff to negotiate an agreement with the top ranked respondent, EssentialNet Solutions, Inc.; and

WHEREAS, the City Manager and City Attorney have negotiated a proposed contract with EssentialNet Solutions, Inc. for submission and approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

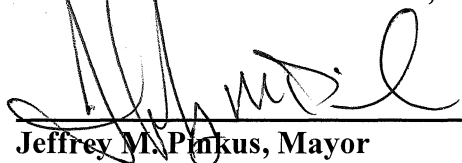
Section 2. The Agreement between EssentialNet Solutions, Inc. and the City for the provision of information technology services, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. The City Manager is authorized to sign the agreement on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this October 12, 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

AYES: Bartus, Mearns, Miller, Pinkus
NOES: None
ABSENT: Bull
ABSTAIN: None


ATTEST:



Clara Perrine, Deputy City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA
ONLY:**



City Attorney

**AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ESSENTIALNET SOLUTIONS, INC.
FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES**

THIS AGREEMENT is made between **ESSENTIALNET SOLUTIONS, INC.**, a Florida corporation, (hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for the provision of information technology services (the "IT Services"); and

WHEREAS, the City desires to engage the Consultant to perform the IT Services as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

1.1. The Consultant shall furnish IT Services as set forth in Exhibit "A," attached to this Agreement (the "Scope of Services").

2. **Term/Commencement Date.**

2.1. This Agreement shall become effective upon execution by both parties and shall remain and continue in effect until September 30, 2006, unless earlier terminated in accordance with Paragraph 7 of this Agreement or extended in accordance with Paragraph 2.2 of this Agreement (the "Term").

2.2. The City may extend this Agreement for one (1) additional one (1) year term, subject to a three percent (3%) annual cost of living increase in compensation (the "Term Extension").

2.3. Consultant agrees that time is of the essence in the performance of this Agreement and Consultant shall provide IT Services within the timeframes mutually agreed to by Consultant and the City Manager as set forth in the Scope of Services. The Scope of Services may only be modified through written mutual agreement.

3. **Compensation and Payment.**

3.1. The Consultant shall receive a total fee of \$26,400.00 (the "Contract Price"), for the Term of this Agreement, payable in monthly installments of \$2,200 in consideration for the provision of IT Services. In the event the City elects to extend the Term of this Agreement, in accordance with Paragraph 2.2, the Contract Price paid to Consultant shall be adjusted three percent (3%) for the Term Extension. Except as provided for in Section 3.3, the

Contract Price shall constitute full payment and includes all sub-consultant fees, labor, overhead, reproduction costs, review fees, travel, mileage, telephone expenses, other costs, and profit.

3.2. The Consultant shall invoice the City on a monthly basis. Invoices shall not exceed the amount allocated to each month of work as set forth in Paragraph 3.1. The invoice shall include a summary description of IT Services provided by Consultant for the month being billed.

3.3. For additional on-site IT Services in excess of the two (2) days per month specified in the Scope of Services, the City shall compensate the Consultant at a rate of \$97.50 per hour at the request of the City Manager.

3.4. The City shall pay Consultant in accordance with the Florida Prompt Payment Act. The City may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the Consultant. If a dispute should occur regarding an invoice submitted, the City, at its sole discretion may pay to the Consultant the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

3.5. The City reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the Consultant until all IT Services are completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the Consultant's duties and responsibilities under this Agreement.

3.6. Except as provided for in Paragraph 3.3, Consultant shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the City for direct, indirect, consequential, impact of other costs, expenses or damages arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

4. **Sub consultants.**

4.1. The Consultant shall be responsible for all payments to any sub-consultants and shall maintain responsibility for all work related to the provision of IT Services.

4.2. Any sub-consultants used must have the prior written approval of the City Manager.

5. **City's Responsibilities.**

5.1. Assist Consultant by placing at its disposal all available information as may be requested in writing by the Consultant and allow reasonable access to all pertinent information, hardware and software relating to the IT Services to be performed by Consultant.

5.2. Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

6.1. The Consultant shall exercise the same degree of care, skill and diligence in the performance of the IT Services as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement it is determined that the Consultant's work is incorrect, defective or fails to conform to the Scope of Services, upon written notification from the City, the Consultant shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and reimbursements to the City for any other services and expenses made necessary thereby, save and except any costs and expenses which the City would have otherwise paid absent the Consultant's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, by law, equity or otherwise.

6.2. The Consultant's obligations under Paragraph 6.1 of this Agreement shall survive termination of this Agreement.

7. **Termination**

7.1. The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

7.2. Upon receipt of the City's written notice of termination, Consultant shall stop all work unless directed otherwise by the City Manager.

7.3. In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 7.4.

7.4. The Consultant shall transfer all plans, drawings, books, records, reports, working drafts, documents, hardware, software, and data pertaining to the provision of IT Services to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

7.5. Consultant may terminate this Agreement by giving the City written notice at least 180 calendar days prior to the effective date of termination.

7.6. 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 the Agreement.

7.7. 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 \$97.50 per hour.

8. Insurance.

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

8.1. Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

8.2. Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

8.3. Commercial General Liability. If applicable, this insurance shall be written in comprehensive form and shall protect the Consultant and the City against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Consultant or any of its agents, employees, or sub-consultants. The limit of liability shall not be less than \$2,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Consultants and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Consultant in performance of this Agreement. Consultant's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Consultant's insurance. Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

8.4. Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00 with a deductible of no more than \$100,000.00 per claim. The Consultant shall be responsible for

maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of this Agreement. Upon request of the City, the Consultant shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the City, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

8.5. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

8.6. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The City Manager may at any time require the Consultant, to provide a bond or other monetary consideration to cover the Consultant's deductible for Professional Liability Insurance.

9. **Nondiscrimination.**

9.1. During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

10. **Attorneys Fees and Waiver of Jury Trial.**

10.1. 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.

10.2. 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.

11. **Indemnification.**

11.1. Consultant shall indemnify and hold harmless the City and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant or any persons employed or utilized by the Consultant in the performance of this Agreement. This provision shall be subject to the limitations set forth in Section 725.08, Florida Statutes, to the extent applicable to the performance of this Agreement.

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

12. **Notices/Authorized Representatives.**

12.1. Any notices required 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 (or their successors) at the following addresses:

For the City: City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

With a copy to: John R. Herin, Esq.
City Attorney
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2300
Miami, FL 33131
Telephone: (305) 789-3427
Facsimile: (305) 789-3395

For the Consultant: John Redrup, President
EssentialNet Solutions, Inc.
4280 Caparosa Circle
Melbourne, Florida 32940
Telephone: (321) 259-3242
Facsimile: (321) 259-3486

13. **Governing Law.**

13.1. 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, Middle Keys Division of the Circuit Court or the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1. 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.

14.2. 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.

15. **Ownership and Access to Records and Audits.**

15.1. All plans, drawings, records, books, documents, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing IT Services to the City under this Agreement shall be the property of the City.

15.2. 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 the Consultant involving transactions related to this Agreement.

15.3. The City may cancel this Agreement for refusal by the 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.

15.4. 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.

15.5. 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.

15.6. 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 fourteen (14) 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. **Nonassignability.**

16.1. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires. This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager.

17. **Severability.**

17.1. 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.

18. **Independent Consultant.**

18.1. The Consultant and its employees, volunteers and agents shall be and remain independent consultants and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

19.1. The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the provision of IT Services.

20. **Waiver.**

20.1. 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.

21. **Survival of Provisions.**

21.1. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition Of Contingency Fees.**

22.1. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the 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 the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts.**


23.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.


[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its President, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

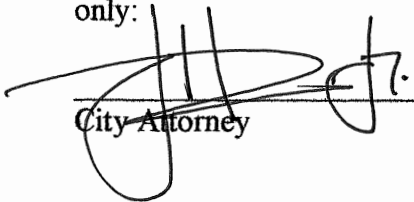

Cindy L. Ecklund, City Clerk


By: 
Mike Puto, Acting City Manager

Date: 10/18/04

Approved as to form and legality for the use and reliance of the City of Marathon, Florida only:

CONSULTANT


City Attorney

By: 
John Redrup, President

Date: 10/11/2004

EXHIBIT "A"

SCOPE OF SERVICES

1. The Contractor shall furnish labor, materials, supervision, equipment, supplies, tools, services, and other necessary incidentals required to provide Network Administration services to include support to the in-house IT Technician. In addition to this support service, guarantee an on-site engineer for the period of two (2) non-cumulative days per month for 12 months or as needed. A one year renewal is optional. Service shall include:

New software and hardware installation

Troubleshooting desktop and server problems

Internet connectivity and email verification

Miscellaneous computer tasks as needed

Monthly maintenance of network and analysis of new systems

Maintenance networks security

Maintenance of e-mail server

Review software and hardware purchase requests to insure compatibility with network system, as needed.

Assist with budget preparation by projecting future needs requirements

Assist in liaison with vendors as needed

Assist with implementing and maintaining site connectivity to include all wireless and radio applications

Prepare system schematics of networks and update

Assist with special systems design

Assist with planning emergency IT needs

In the event of a hurricane threat or other natural disaster, ensure that City's e-mail and network servers are hosted from a safe and secure location