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**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-177**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH ESILO, LLC FOR OFFSITE DATA STORAGE IN AN ANNUAL AMOUNT NOT TO EXCEED \$9,600; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) currently utilizes the services of eSilo, LLC for data storage and retention; and

WHEREAS, in order to comply with State of Florida retention requirements as well as protect the City’s data, the City desires to expand the services received from eSilo, including the use of additional servers; and

WHEREAS, this equipment and software are budgeted in the fiscal year 08-09 budget.

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

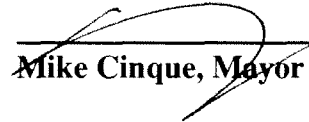
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby authorizes the agreement between the City and eSilo, LLC. for offsite data storage, a copy of which is attached hereto as Exhibit “A”, in an annual amount not to exceed \$9,600; together with such non-substantial changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney. The City Manager is authorized to execute the Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 25th day of November, 2008.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

SiloServ Software License and System Administration Agreement

Name of Customer: The City of Marathon
Customer's Address: 9805 Overseas Highway
Marathon, FL 33050

BACKGROUND

eSilo, LLC ("Vendor") develops and supports data storage solutions for business clients. The City of Marathon ("Customer"), desires to utilize Vendor's SiloServ's, proprietary Backup Server Application software ("Licensed Software") and administration support for it.

Section 1

LICENSE AGREEMENT

1.01 Vendor agrees to provide Customer with the Licensed Software and administration support for it as described in Section 2 of this Agreement. The initial term of this agreement is 48 months. THIS AGREEMENT IS SUBJECT TO THE ATTACHED GENERAL TERMS AND CONDITIONS, INCLUDING VENDOR'S LIMITED WARRANTY.

Section 2

DESCRIPTION OF SYSTEM COMPONENTS

2.01 The system consists of two SiloServ's (the "Server"), provided by the Vendor. The Main Server will be located at the Customer's Installation Site and the Mirrored Server will be co-located at Qwest CyberCenter in Sterling, VA. Vendor shall provide the Licensed Software and administration and support as described in paragraph 2.03. Each SiloServ has the storage capacity of 900 gigabytes of compressed storage.

2.02 The Licensed Software consists of the following software program: *eSilo Backup Server Application*. Vendor shall install the eSilo Licensed Software on the two SiloServ's Prior to installation.

2.03 System Administration consist of Licensed Software Administration. Vendor shall provide security patches and upgrades for the SiloServ operation and other software support that is required to keep the server software running smoothly.

Section 3 RESTRICTIONS AND LIMITATIONS ON USAGE

3.01 Customer's license of the Licensed Software is nonexclusive and nontransferable and extends only to Customer's own use of the Licensed Software on the System at the Installation Site. Customer may not assign or transfer this License or Customer's other rights under this Agreement, whether by operation of law or otherwise, except with Vendor's prior written consent. Customer may not move the System to another location, except with Vendor's prior written consent. This Agreement authorizes Customer to use the Licensed Software only on the SiloServ's located at the Installation Site. Vendor reserves the right to charge additional fees for use of the Licensed Software on any other terminals, including any multi-terminal access resulting from networking. THE LICENSE SOFTWARE CONSTITUTES HIGHLY SENSITIVE AND PROPRIETARY TRADE SECRETS AND CONFIDENTIAL INFORMATION OF VENDOR. CUSTOMER MUST STRICTLY OBSERVE ALL RESTRICTIONS IMPOSED BY VENDOR WITH RESPECT TO PROPRIETARY PROTECTION OF THE LICENSED SOFTWARE.

Section 4 FEES AND TERMS OF PAYMENT

4.01 Customer shall pay Vendor a monthly fee of \$800.00 for use of the Licensed Software and two SiloServ's with a storage capacity of 900 compressed gigabytes each for forty eight months. eSilo has waived the Installation Fee of \$2,500.00, based on the 48 month contract.

4.02 Vendor shall submit bills to the Customer on a monthly basis. Customer agrees to remit payment within Thirty (30) days of the invoice date.

4.03 If any payment due Vendor, pursuant to the terms of this contract, is not received by Vendor on or before the dates herein required for payment, such fees will accrue interest at a late payment rate charge of one and one half percent (1.5%) per month (but in no event in an amount in excess of the maximum rate allowed by applicable law) from the date on which it was due until the date on which it is paid in full with accrued interest.

Section 5 RIGHT OF EARLY TERMINATION

5.01 Customer may discontinue further use of the Licensed Software and System Administrative Support and terminate this Agreement by giving Vendor notice of termination at least sixty (60) days before the date of termination. Customer's notice shall state the date of termination. Except in the event of Vendor's non-performance, the sum due and owing for the remaining term of this Agreement (48 Months), including all fees, shall accompany the notice of termination.

Section 6 OWNERSHIP OF SILOSERV

6.01 SiloSers that are installed at the Customer's Location shall remain the property of eSilo, LLC. Customer has the responsibility to return the SiloSers to the Vendor upon termination of this Agreement. eSilo, LLC will be responsible for the return shipping charges. In the event eSilo, LLC does not receive the SiloSers within 45 days of termination of this contract, eSilo, LLC shall be entitled to liquidated damages per SiloServ if in the first year of \$12,000, if within the second year \$8,000 and after the second year \$4,000.

**Section 7
RENEWAL**

7.01 This agreement shall automatically renew itself each 48 months on its anniversary date. The Customer may elect not to renew this Agreement by submitting written notice to the Vendor at any time prior to the anniversary date.

**Section 8
INSRUANCE**

8.01 Vendor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Customer. 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 Customer, the insurance coverage shall be primary insurance with respect to Customer, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 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.**
- 2. Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less that \$300,000 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.**
- 3. Professional Liability: Vendor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.**
- 4. Certificates of Insurance shall be provided to Customer 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 Customer before any policy or coverage is cancelled or restricted.

**Section 9
NONDISCRIMINATION**

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

**Section 10
OWNERSHIP AND ACCESS TO RECORDS AND AUDITS**

10.01 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from Vendor providing services to Customer under this Agreement shall be the property of Customer. Customer 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 Vendor involving transactions related to this Agreement. Customer may cancel this Agreement for refusal by Vendor to allow access by Customer to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

**Section 11
VENDOR**

11.01 Vendor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of Customer 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.

Section 12
PROHIBITION OF CONTINGENCY FEES

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

Section 13
COMPLIANCE WITH LAWS

13.01 Vendor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to services provided hereunder.

Section 14
ACKNOWLEDGEMENTS

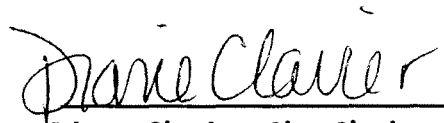
14.01 CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT (INCLUDING THE ATTACHED GENERAL TERMS AND CONDITIONS), UNDERSTANDS IT, AND ASSENTS TO IT. CUSTOMER AGREES THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT IT SUPERCEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS AGREEMENT SHALL BECOME EFFECTIVE WHEN ACCEPTED AND EXECUTED BY CUSTOMER AND APPROVED AND EXECUTED BY VENDOR.

14.02 IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: Customer, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same,

and by Vendor, signing by and through its President, who has been duly authorized to execute same.

Attest:

CITY OF MARATHON




Diane Clavier, City Clerk

By: 

Clyde Burnett, City Manager

Date: 11/26/08

Approved by City Attorney
for legal sufficiency for City
use only:



City Attorney

eSilo, LLC

By: 

Date: 12-4-08