

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-169**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CERTAIN PURCHASES IN EXCESS OF \$10,000 AND LESS THAN \$25,000; WAIVING THE CITY'S PURCHASING POLICIES AND PROCEDURES; AUTHORIZING THE ACTING CITY MANAGER OR DESIGNEE TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Marathon, Florida (the "City"), adopted purchasing policies and procedures after determining that it was fiscally prudent and in its best interests to adopt policies and procedures regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services (the "Purchasing Policies and Procedures"); and

WHEREAS, pursuant to Resolution 2007-156, the City Council amended the Purchasing Policies and Procedures to provide that any purchases over \$10,000 and less than \$25,000 must be placed on a City Council agenda as a consent item for approval prior to execution of the contract or consummation of the purchase; and

WHEREAS, the Acting City Manager recommends the City Council waive the City's purchasing policies and procedures due to the sole source status of the vendors listed in Composite Exhibit "A;" and

WHEREAS, the Acting City Manager has authorized staff to prepare purchase orders for those items set forth in Composite Exhibit "A," attached hereto and now wishes to bring them before City Council as a consent agenda item.

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. Based upon the recommendation of the Acting City Manager, the City Council finds that Sallie Mae Business Office Solutions and EssentialNet Solutions are sole source vendors for the purchases approved herein.

Section 3. The City's purchasing policies and procedures are hereby waived, and the City Council hereby approves the purchases set forth in Composite Exhibit "A" attached hereto and incorporated herein by this reference.

Section 3. The Acting City Manager or designee is authorized to execute any agreements in connection with the purchases.

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 10th day of November, 2009.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Ramsay, Keating, Worthington, Cinque, Snead
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

EssentialNet Solutions

4280 Caparosa Circle Phone (321) 259-3242
Melbourne, FL 32940 Fax (321) 259-3846

City of Marathon Fire Rescue Department
Marathon, FL 33050

October 9, 2009

Dear Diane:

EssentialNet Solutions is pleased to present this proposal for a rack-mount Dell PowerEdge R905 Virtual Server for the City of Marathon Fire Rescue Department. We will deliver the server to the Fire Rescue Dept. and commence the installation onsite.

Dell PowerEdge R905

- o 32 GB 667MHz memory
- o Dual 2x Quad core Opteron 8374HE processors
- o Five 320 GB 15K SCSI Hotplug Hard Drives (new)
- o RAID5 Hot-Plug SCSI
- o DVD-ROM
- o 4 year Pro-support 4Hr 7x24 Parts and Labor On-site Warranty

Description	Unit Price	Quantity	Total
Hardware			
Dell PowerEdge R905 4 Quad Core Server	\$15,339.00	1	\$15,339.00
Total Hardware			\$15,339.00
Shipping			
Shipping	\$75.00	1	\$75.00
Total Shipping			\$75.00
Total This Quotation:			\$15,414.00

If you have any questions, please call me at 321 259-3242. Thanks again for the opportunity to quote.

Sincerely,



John L. Redrup, Jr.
President



EssentialNet Solutions

4280 Caparosa Circle Phone (321) 259-3242
Melbourne, FL 32940 Fax (321) 259-3846

City of Marathon Fire Rescue Department
Marathon, FL 33050

October 9, 2009

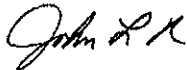
Dear Diane:

EssentialNet Solutions is pleased to present this software and installation proposal for the City of Marathon Fire Rescue Department. We would configure and setup the R905 server with this software.

Description	Unit Price	Quantity	Total
Installation & Configuration			
Installation & Configuration	\$1,500.00	1	\$1,500.00
Total Installation & Configuration			\$1,500.00
Software			
MS Data Protection Mgr 2007 Server License	\$463.00	1	\$463.00
MS Data Protection Mgr 2007 Enterprise Server ML License	\$344.00	8	\$2,752.00
MS Exchange 2007 Server Devise CAL's	\$54.00	12	\$648.00
MS Exchange 2007 Server Standard License	\$565.00	1	\$565.00
MS SharePoint 2007 Server Devise CAL's	\$76.00	12	\$912.00
MS SharePoint 2007 Server License	\$3,570.00	1	\$3,570.00
MS Windows 2003 Standard Server License (2008 downgrade)	\$579.00	1	\$579.00
MS Windows 2008 Standard Server License 64bit	\$579.00	1	\$579.00
MS Windows 2008/2003 Standard Server Devise CAL's	\$24.00	20	\$480.00
Total Software			\$10,548.00
Total This Quotation:			\$12,048.00

If you have any questions, please call me at 321 259-3242. Thanks again for the opportunity to quote.

Sincerely,



John L. Redrup, Jr.
President



AGREEMENT

THIS AGREEMENT is made as of September 1, 2009 (the "Effective Date") by and between **The City of Marathon, FL** (the "Client") and **SALLIE MAE BUSINESS OFFICE SOLUTIONS**, a division of Sallie Mae, Inc., a Delaware corporation ("Solutions").

WHEREAS, the Client desires to utilize Solutions' Business Office Suite™ Electronic Payment Gateway Services on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. AGREEMENTS.

1.1 Business Office Suite™ Electronic Payment Gateway Services. If indicated here , Solutions hereby agrees to provide its Electronic Payment Gateway Services to the Client. Solutions' Electronic Payment Gateway Services include transmitting ACH checking or savings account information and credit card settlement information through various merchant processors, including but not limited to NDC, MAPP, Vital, and FDC, for deposit to a designated bank account and financial institution to be designated in writing by the Client, providing real-time validation of credit card transactions and customized transaction and settlement reports to each entity or department within the Client designated in writing by the Client, and archiving of transaction history and availability of that history via the internet. For ACH transactions, the route transit number will be validated prior to delivery to a financial institution.

1.2 Customer Service. Solutions shall provide customer service and technical support to the Client.

1.3 Other Documents. The Client hereby agrees to execute, in connection with any services provided by Solutions to the Client under this Agreement, such other documents and certificates as may be reasonably requested by Solutions.

1.4 Exclusivity. During the term of this Agreement, the Client agrees that Solutions shall be the exclusive provider to the Client of the Services checked above.

2. PAYMENT TERMS.

2.1 Pricing Schedules. The fees and charges to the Client under this Agreement are set forth on the Pricing Schedule attached as Exhibit I hereto. The fees and charges are subject to change at any time. Client certifies that any fees to be paid by end user are legal under current governing law.

2.2 General Payment Terms. Solutions shall submit an invoice to the Client each month, covering the fees and charges for the previous month. Except as otherwise specifically provided in any Exhibit or Addendum to this Agreement, all charges shall be due and payable 30 days from the invoice date or the delivery date, which ever is last. Charges due by the Client shall not be subject to set off for any claims against Solutions. All payments made shall be in United States currency and shall be made without deductions based on any taxes or withholdings. Any amounts payable by the Client hereunder which remain unpaid after the due date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

2.3 Taxes.

(a) End-Users Taxes. The Client shall promptly provide Solutions with a properly executed certificate of exemption for all foreign, federal, state, county and local taxes and fees (if any) and shall be responsible for the collection of all applicable end-user taxes and fees and the remittance of such taxes and fees to the relevant governmental authority.

(b) Sales Taxes. The fees and charges listed in this Agreement do not include taxes. If Solutions is required to pay sales, use, property, value-added, or other taxes based on the licenses or services granted or provided under this Agreement, then such taxes shall be billed to and paid by the Client, on a monthly basis. This shall not apply to taxes based on Solutions' income.

3. RECORDS.

Solutions hereby agrees to maintain adequate books and records in connection with activities under this Agreement. Such records shall include, without limitation, retention of any microfilm and image capture, cash letters, deposit and statistical reports, exception reports, and remittance data. The Client may audit the relevant books and records of Solutions. Any such audit shall be conducted only after five (5) business days prior written notice during regular business hours at Solutions' offices and shall not interfere unreasonably with

Solutions' business activities. Audits shall be made no more than once annually.

4. TERM AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall be valid for a period of two (2) years unless terminated earlier as set forth herein. This Agreement shall automatically renew annually unless either party provides ninety (90) days written notice to the contrary prior to the expiration of the term. In the event that the parties do not elect to renew the agreement, the Client shall continue to pay Solutions for any fees and charges incurred prior to and through the date of termination of this Agreement.

4.2 Termination for Breach. Each party may terminate this Agreement upon 10 days prior written notice if the other party materially breaches this Agreement and fails to correct the breach within 30 days following written notice specifying the breach.

4.3 Force Majeure. Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by strike, riot, fire, flood, natural disaster, or other similar cause beyond such party's control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided further that the other party may terminate this Agreement if such condition continues for a period of one hundred eighty (180) days.

4.4 Effect of Termination. The termination of this Agreement or any license shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve the Client's obligation to pay all charges and fees that have accrued or that are owed by the Client under this Agreement. The parties' rights and obligations under Articles 5, and 6 shall survive termination of this Agreement. Upon termination, the Client shall cease using, and shall return or destroy, all copies of the applicable programs.

5. WARRANTIES AND REMEDIES

5.1 Warranties. To the extent that Solutions provides any programs, media or services as part of or as a supplement to the Business Office Suite Services, Statement Processing Services or Payment Processing Services, the following shall apply:

A. Program Warranty. Solutions warrants for a period of one year from the Effective Date that each unmodified program will perform the functions described in the documentation accompanying the program (the "Documentation").

B. Media Warranty. Solutions warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for 90 days from the Effective Date.

C. Services Warranty. Solutions warrants that its Internet bill presentment and payment systems, its lockbox services, and its technical support and training services will be performed consistent with generally accepted industry standards. This warranty shall be valid for 90 days from performance of service.

D. DISCLAIMERS. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5.2 Exclusive Remedies. For any breach of the warranties contained in Section 5.1 above, the Client's exclusive remedy, and Solutions' entire liability, shall be:

A. For Programs. The correction of program errors that cause breach of the warranty, or if Solutions is unable to make the program operate as warranted, the Client shall be entitled to recover the fees paid to Solutions for the program license.

B. For Media. The replacement of defective media returned within 90 days of the Effective Date.

C. For Services. The re-performance of the services, or if Solutions is unable to perform the services as warranted, the Client shall be entitled to recover the fees paid to Solutions for the unsatisfactory services.

5.3. Limitation of Liability. Solutions' liability for damages hereunder shall in no event exceed the amount of fees and charges paid by the Client under this Agreement, and if such damages result from the Client's use of the services, such liability shall be limited to fees paid for the relevant services giving rise to the liability.

5.4 Liability Of Third Party Vendors Or Sub-Contractors. Solutions may perform any of its duties hereunder either directly or by or through agents, contractors or sub-contractors, and Solutions not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, contractor or sub-contractor appointed with due care by it hereunder.

6. MISCELLANEOUS.

6.1 Entire Agreement. This Agreement (including all exhibits hereto) contains the complete agreement among the parties concerning the subject matters hereof, and

supersedes any and all other agreements, understandings, and representations between the parties, written or oral.

6.2 Representation of Authority. Each party represents and warrants to the other that the execution and delivery of this Agreement and performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal obligation of such party and is enforceable in accordance with its terms.

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Neither party may assign its rights and obligations hereunder without the prior written consent of the other party; provided however that the prior written consent shall not be required for any such assignment to an entity controlling, controlled by or under common control with the assigning party.

6.4 Headings. The headings in this Agreement are for convenience of reference only and shall not control or affect its interpretation.

6.5 Waivers and Amendments. No waiver or modification of this Agreement or of any covenant, condition or limitation of this Agreement shall be valid unless memorialized in writing executed by the party to be charged therewith. No waiver of any breach of this Agreement shall constitute a waiver of any other breach.

6.6 Survival of Warranties. All representations, warranties and covenants contained in this Agreement, and the indemnity provisions of this Agreement, shall survive the termination of this Agreement.

6.7 Confidentiality, Nondisclosure, Gramm-Leach Bliley and FERPA.

(a) By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to identifiable personal information concerning the Client's citizen's and users of the Business Office Suite Services, the terms and pricing under this Agreement, and all other information clearly identified as confidential by a party.

A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party.

The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of one year after

termination of this Agreement. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

(b) Left Blank Intentionally

(c) Sallie Mae agrees to implement and maintain an information security program designed to meet the objectives of the Federal Trade Commission's Standards for Safeguarding Customer Information; Final Rule (16 CFR Part 314).

6.8 Trademarks. "Business Office Solutions", "Business Office Suite" and any other trademarks and service marks adopted by Solutions to identify the products and services belong to Solutions. The Client will have no rights in such marks except as expressly set forth herein and as specified in writing from time to time. The Client's use of Solutions' trademarks shall be under Solutions' trademark policies and procedures in effect from time-to-time. The Client agrees not to use the trademark "Business Office Solutions" or any mark beginning with "Sallie Mae", "Business Office Suite Services" or any other mark likely to cause confusion with the "Sallie Mae", "Business Office Solutions" or "Business Office Suite Services" as any portion of the Client's tradename or trademark for any products of the Client, or trademark for any portion of the Client's internet addresses or domain names.

The Client agrees, with respect to the foregoing trademarks of Solutions, that advertisement, brochure, or other such use of the trademark containing such trademark shall be approved in writing by Solutions prior to its first use and to include in each advertisement, brochure, or other such use of the trademark, the symbol "TM" and the following statement:

"Business Office Suite Services" is a trademark of Business Office Solutions, a division of Sallie Mae, Inc., Reston, Virginia.

"Sallie Mae" is a registered trademark of the SLM Corporation. SLM Corporation and its subsidiaries are not sponsored by or agencies of the United States of America.

6.9 Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or requested to carry out the intent and purposes of this Agreement.

6.10 Severability. In the event any provision of this Agreement is found to be unenforceable by a court of

competent jurisdiction, the remainder of this Agreement shall continue in full force and effect.

6.11 Counterparts. This Agreement may be executed in counterpart and shall be binding and effective upon execution by all parties.

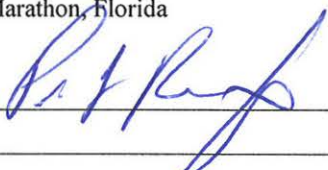
6.12 Notices. Any notices permitted or required under this Agreement shall be in writing and shall be sent by (i) nationally recognized overnight courier service, or (ii) by telecopy with a confirmation copy by overnight courier service, to the parties at the following addresses (unless and until changed by notice as provided herein).

To:

Sallie Mae Business Office Solutions

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement as of the day and year first written above.

City of Marathon, Florida

By: 
Name: _____
Title: _____

463 Swansea Mall Drive
Swansea, MA 02777
Attention: Laura E. Newell, Executive Vice President

with a copy to:

Deputy General Counsel
Sallie Mae, Inc.
12061 Bluemont Way
Reston, VA 20190

6.13 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be construed and interpreted in accordance with the law of the State of Georgia without regard to conflicts of law.

BUSINESS OFFICE SOLUTIONS,
a division of Sallie Mae, Inc.

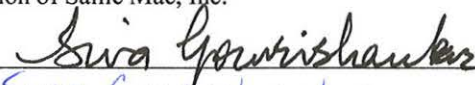
By: 
Name: Siva Gowrishankar
Title: VP & President Bos.

Exhibit 1

**Sallie Mae's Business Office Suite
Pricing Schedules**

Description of Service	Charge to City	Charge to Customer (Convenience Fee Model)
Design and implementation fee	Waived	
Transaction charge for ACH payment		\$3.00
Transaction charge for Credit/Debit Card payment		\$3.00
e-Client Web Based Reporting System	Waived	
ACH return transactions	\$10.00	

This pricing is specific to payments processed for permits where the payment amount per transaction is \$65.00. Other pricing may be necessary for other departments, payment types or amounts.

Exhibit 2

Additional Agreements of Parties.

Insurance.

Solutions shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Client. 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 Client, the insurance coverage shall be primary insurance with respect to Client, 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. Professional Liability: Solutions shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
3. Certificates of Insurance shall be provided to Client 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 Client, or as soon as reasonably possible thereafter, before any policy or coverage is cancelled or restricted.

Nondiscrimination.

During the term of this Agreement, Solutions 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

Ownership and Access to Records and Audits.

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

Independent Contractor.

Solutions and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of Client 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.

Prohibition Of Contingency Fees.

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

Compliance with Laws.

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

Exhibit 2