CITY OF MARATHON, FLORIDA
RESOLUTION 2016-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY AND ESSENTIALNET SOLUTIONS, INC. FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES, REDUCING THE SCOPE OF DELIVERABLES AND COSTS ASSOCIATED; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, since 2001, EssentialNet Solutions, Inc. ("Consultant") has provided professional information technology services to the City of Marathon (the "City"); and

WHEREAS, the City continues to require the services of Consultant to provide professional information technology services; and

WHEREAS, the City and Consultant desire to amend the Agreement as per the attached reduction of the scope of services.

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 amendment to the Agreement between the City and Consultant, attached hereto as Exhibit "A," and a detailed amended Scope of Services as provided in "Exhibit B" is hereby approved. The City Manager is authorized to expend budgeted funds 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 15th DAY OF NOVEMBER, 2016.

THE CITY OF MARATHON, FLORIDA

Dr. Daniel Zieg, Mayor

AYES:	Bartus, Coldiron, Cook, Senmartin, Zieg
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Diane Clavier

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

EXHIBT A

Resolution 2010-74 Included by Reference

CITY OF MARATHON, FLORIDA
RESOLUTION 2010-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A TWO YEAR AGREEMENT WITH ESSENTIALNET SOLUTIONS, INC. FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES IN AN AMOUNT NOT TO EXCEED $40,440 ANNUALLY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, since 2001, EssentialNet Solutions, Inc. ("Consultant") has been providing professional information technology services to the City of Marathon (the "City"); and

WHEREAS, the City continues to require the services of professional information technology expertise; and

WHEREAS, the City desires to enter into an agreement with the Consultant for the provision of information technology services on specified terms and conditions.

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 agreement between the City and EssentialNet Solutions, Inc., for the provision of information technology services, a copy of which is attached hereto as Exhibit "A," 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 is hereby approved. The City Manager is hereby authorized to sign the Agreement and expend budgeted funds 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 27ᵗʰ DAY OF JULY, 2010.

THE CITY OF MARATHON, FLORIDA

Ginger Snead, Mayor

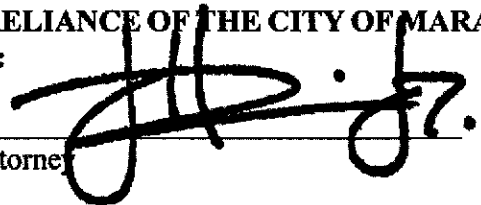| AYES:	Cinque, Keating, Ramsay, Worthington, Snead
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Diane Clavier

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

PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON, FLORIDA
AND
ESSENTIALNET SOLUTIONS
FOR
THE PROVISION OF INFORMATION TECHNOLOGY SERVICES

THIS AGREEMENT is made between **ESSENTIALNET SOLUTIONS**, 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, and fee for the provision of information technology services by the Consultant to the City (the "IT Services"); and

WHEREAS, the City desires to engage the Consultant to perform the services 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 an on-site systems engineer for three (3) days per month to manage the City's computer network and oversee the City's IT staff. Consultant shall also furnish remote information technology services throughout the month, monitoring the City's network and responding to issues as they arise. However, the scope of services does not include any hardware or software products required to implement the IT Services.

    1.2 Additional on-site non-scheduled technical support shall be provided upon request and availability, and will be billed at a rate of $125.00 per hour (plus travel and lodging expenses).

2. **Term/Commencement Date.**

    2.1 This Agreement shall become effective October 1, 2010 and shall remain in effect through September 30, 2012, unless earlier terminated in accordance with Paragraph 8. The City shall have the option to renew this Agreement for a one (1) year period upon the same terms and conditions contained herein upon 30 calendar days written notice to Consultant. Thereafter, any renewal shall be in writing and executed by both parties.

    2.2 Consultant agrees that time is of the essence and that it shall perform all IT Services in a professional and time sensitive manner.

3. **Compensation and Payment.**

   3.1 The Consultant shall receive an annual fee of $40,400 for the provision of the IT Services, payable in twelve (12) equal amounts.

   3.2 The Consultant shall invoice the City on a monthly basis.

   3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.

   3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

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

   4.2 Any subconsultants used must have the prior written approval of the City Manager.

5. **City's Responsibilities**

   5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.

   5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform the IT 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 or within one year from the termination 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 Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

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7. **Conflict of Interest.**

7.1   To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial information technology issues in the City. For the purposes of this section "adversarial" shall mean any matter that is materially adverse to the City's interest.

8. **Termination.**

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

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

8.3   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 8.4.

8.4   The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the IT Services provided 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.

9. **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:

9.1   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.

9.2   Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than $300,000.00 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.

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9.3 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than $1,000,000.00.

9.4 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.

10. Nondiscrimination.

10.1 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

11. Attorneys Fees and Waiver of Jury Trial.

11.1 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.

11.2 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.

12. Indemnification.

12.1 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 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 attorneys' 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.

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

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13. **Notices/Authorized Representatives.**

    13.1   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:	Roger Hernstadt, City Manager City of Marathon, Florida 9805 Overseas Highway Marathon, Florida 33050
With a Copy to:	John Herin, Jr., Esq Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 W Flagler St, Suite 2200 Miami, Fl 33130
For The Consultant:	John Redrup, President EssentialNet Solutions, Inc.

_____

_____

14. **Governing Law.**

    14.1   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.

15. **Entire Agreement/Modification/Amendment.**

    15.1   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.

    15.2   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.

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

   16.1 All records, books, documents, maps, data, deliverables, papers, and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

   16.2 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.

   16.3 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.

17. **Nonassignability.**

   17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. 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.

18. **Severability.**

   18.1 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.

19. **Independent Contractor.**

   19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor 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.

20. **Compliance with Laws.**

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

21. **Waiver**

    21.1   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.

22. **Survival of Provisions**

    22.1   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.

23. **Prohibition Of Contingency Fees**

    23.1   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.

24. **Counterparts**

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

[SIGNATURES APPEAR ON NEXT PAGE]

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, who has been duly authorized to execute same.
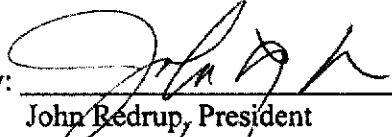
Attest: CITY OF MARATHON

Diane Clavier, City Clerk

By: _____
     Roger Hernstadt, City Manager

Date: _____ 07 30 10 _____

CONSULTANT

By: _____
     John Redrup, President

Date: _____ 8/6/2010 _____

Networked Solutions, Inc. dba/EssentialNet Solutions

7145 Turner Rd. Suite 102
Rockledge FL 32955

Proposal

Date	Proposal #
8/12/2015	3283

Name / Address	Ship To
City of Marathon 9805 Overseas Highway Marathon, FL 33050 Attn: George Garrett	City of Marathon 9805 Overseas Highway Marathon, FL 33050 Attn: George Garrett

P.O. No.	Terms	Due Date
	Due on receipt	10/1/2015

Item	Description	Qty	Cost	Total
MSL2 CoreNetwork	Level 2 Managed Services Core Networking - 24/7 monitoring - 1 Firewall - 2 Switches - APC - NAS - Unlimited Remote Support	1	75.00	75.00
MSL2 CoreNetwork	Level 2 Managed Services Core Networking - 24/7 monitoring - 1 Firewall - 2 Switches - APC - NAS - Unlimited Remote Support	9	50.00	450.00
MSL2ServerPhysi...	Level 2 Managed Services Physical Server - 24/7 Monitoring - PM - Patch Management - Unlimited Remote Support	3	150.00	450.00
MSL2ServerVirtual	Level 2 Managed Services Virtual Server - 24/7 Monitoring - PM - Patch Management - Unlimited Remote Support	10	125.00	1,250.00
MSL2PC	Level 2 Managed Services Computer - 24/7 Monitoring - PM - Patch Management - Unlimited Remote Support	54	35.00	1,890.00
Remote Backup	Remote Backup Monthly Service	3,700	0.50	1,850.00
Spam Filtering	Spam Filtering Monthly Service	154	2.00	308.00
Mail Bagging	E-Mail Bagging Monthly Service	1	35.00	35.00
Engineering Labor	IT Manager - up to 24 hours of support per month	1	2,084.00 0.00	2,084.00 0.00

Thank you for the opportunity to quote.

Total $8,392.00

Customer Signature _____

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

1.1 LEVEL 2 MANAGED SERVICES MONTHLY:

~~MSL2 CoreNetwork~~	~~Level 2 Managed Services Core Networking - 24/7 monitoring - 1 Firewall - 2 Switches - APC - NAS - Unlimited Remote Support~~	~~$ 75.00~~
~~MSL2 CoreNetwork~~	~~Level 2 Managed Services Core Networking - 24/7 monitoring - 1 Firewall - 2 Switches - APC - NAS - Unlimited Remote Support~~	~~$ 450.00~~
MSL2 CoreNetwork	Level 2 Managed Services Core Networking - 24/7 monitoring - 1 Firewall - 2 Switches - APC - NAS - Unlimited Remote Support	$ 950.00
MSL2ServerPhysical	Level 2 Managed Services Physical Server - 24/7 Monitoring - PM - Patch Management – Unlimited Remote Support	$ 450.00
MSL2ServerVirtual	Level 2 Managed Services Virtual Server - 24/7 Monitoring - PM - Patch Management – Unlimited Remote Support	$1,375.00
MSL2PC	Level 2 Managed Services Computer - 24/7 Monitoring - PM - Patch Management - Unlimited Remote Support	$2,135.00
Remote Backup	Remote Backup Monthly Service	$1,850.00
Spam Filtering	Spam Filtering Monthly Service	$ 308.00
Mail Bagging	E-Mail Bagging Monthly Service	$ 35.00
~~Engineering Labor~~	~~Labor/Up to 12 hours of training support per month~~	~~$1,042.00~~
		$7,103.00

~~1.12 The Consultant shall furnish an on-site systems engineer for three (3) days per month to manage the City's computer network and oversee the City's IT staff. Consultant shall also furnish remote information technology services throughout the month, monitoring the City's network and responding to issues as they arise. However, the scope of services does not include any hardware or software products required to implement the IT Services.~~

~~1.23 Additional on-site non-scheduled technical support shall be provided upon request and availability, and will be billed at a rate of $125.00 per hour (plus travel and lodging expenses).~~

13. **Notices/Authorized Representatives.**

13.1 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:	Charles Lindsey ~~Roger Hernstadt~~, City Manager
	City of Marathon, Florida
	9805 Overseas Highway
	Marathon, Florida 33050

With a Copy to:	~~John Herin, Jr., Esq~~
	~~Stearns Weaver Miller~~
	~~Weissler Alhadeff & Sitterson, P.A.~~
	~~150 W Flagler St, Suite 2200~~
	~~Miami, Fl 33130~~
	David Migut, City Attorney
	9805 Overseas Highway
	Marathon, FL 33050

For The Consultant:	John Redrup, President
	EssentialNet Solutions, Inc.
	7145 Turner Rd. Suite 102
	Rockledge, FL 32955

All other provisions in the contract approved by Resolution 2010-74 remain in effect and is attached.