

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-18**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, WAIVING THE CITY'S COMPETITIVE BIDDING PROCEDURES AND APPROVING A PROPOSAL BY RV COMMUNICATIONS FOR THE PROVISION OF A PHONE SYSTEM, INCLUDING PHONES AT ALL CITY LOCATIONS, NECESSARY SOFTWARE LICENSES, AND DIGITAL TELEPHONE FOR THE FIRE DEPARTMENT; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 2015-04, the City Council of the City of Marathon, Florida (the "City"), adopted Purchasing Procedures after determining that it was fiscally prudent and in the best interests of the City's residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

WHEREAS, in accordance with Sections 2-183 of the Purchasing Ordinance, the City Council may authorize at a public meeting after majority vote the waiver of competitive bidding procedures upon the recommendation of the City Manager that it is in the City's best interest to do so, to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by waiver process shall be acquired after conducting a good faith review of available sources and negotiation as to price, delivery and terms.; and

WHEREAS, City staff sought competitive quotes from capable vendors to provide phone hardware, software and services to the City of Marathon; and

WHEREAS, the City received quotes from one (1) independent firm which was responsive and adequate; and

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 authorizes the City Manager to expend budgeted funds with RV Communications for provision of phone hardware, software, and services throughout City offices.

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 9th DAY OF FEBRUARY, 2016

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin
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:



David Migut, City Attorney

RV Communications

P.O. Box 541206
 Merritt Island, FL 32954
 PH: 321-452-5606

Agreement

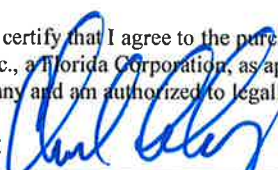
Date	Estimate #
1/26/2016	6959

Billing Name / Address
City Of Marathon 9805 Overseas Highway Marathon, FL 33050

Location of Work

Terms	Rep
Due on receipt	Pete

Item #	Equipment Description	Qty
	All phones at all locations will be able to have inter-office dialing and transferring of calls. System is configured for all phones at city hall to have their own wire and jacks separate from the data network. Voicemail and automated attendant are also included and will be equipped with 12 ports but is capable of expanding. Manager programming software is included giving you an easy Windows interface to manage and program the system. All upgrades are firmware making long term investment protection priority.	
700476005	Avaya IP 500 V2 Control Unit	2
700479710	Avaya IP 500 V2 System SD Card Mu- Law	2
202970	Avaya IP 500 20 Pack SIP License	1
205650	Avaya IP 500 Voice Networking Add 4	1
700504556	Avaya IP 500 V2 Combo Card	1
339096	Avaya IP 500 R9.1 Essential Edition License	2
275653	Avaya IP 500 Preferred Edition RFA Voicemail Pro	1
700417397	Avaya IP 500 VCM 64	1
700505424	Avaya IP 500, 9608 IP Phone	61
700500725	Avaya IP 500 POE Adaptor for the IP 9608	15
700429202	Avaya IP 500 Rack Mounting Kit	1
229447	Avaya IP 500 License Avaya IP Endpoint 20	3
174461	Avaya IP 500 Voicemail Pro RFA Add 8	1
700504842	Avaya IP 500, 9508 Digital Telephone for Fire Dept.	14
Sale	Trendnet 48 Port POE Switch (City hall)	1
	Cost includes programming, training and installation on existing cable. Also included is terminating the existing cable in the new City Hall. Any additional wiring will be billable. System and all components come with a one year manufacturers warranty. Warranty support beyond the one year is available upon request.	

By signing below, I certify that I agree to the purchase of above items by RV Communications Inc., a Florida Corporation, as applicable. I am an owner or corporate officer of my company and am authorized to legally sign and authorize purchases. Buyer Signature: 	Subtotal:	\$54,737.12
	FL Sales Tax: (6.5%)	\$0.00
Print Name: CHARLES LINDSEY Date: 2-11-16	TOTAL:	\$54,737.12
Seller Signature:		

TERMS AND CONDITIONS

1. **PURCHASE TERMS.** The purchase price ("Purchase Price") of the equipment does not include applicable taxes which the customer agrees to pay. In the event of any errors, mistakes or omissions of any prices, RV Communications, Inc. (RVC) will notify customer of this error and of the correct prices or changes. Customer will then have the option of either cancelling this Agreement without incurring a cancellation charge or ratifying the revised Agreement.
 2. **PAYMENT TERMS.** Payment of Purchase Price shall be made as follows: 50% deposit plus all applicable Taxes due upon execution of this agreement; 50% upon cutover unless otherwise indicated on the front of this contract.
 3. **CUTOVER DATE.** Customer shall mean the earlier of the date which the installed Equipment and major components of the system (e.g. main console, control unit, etc.) are functioning and able to perform substantially the function for which they are intended or the date on which the Customer commences use of the installed equipment.
 4. **SECURITY.** Interest to secure the payment of the total unpaid balance of the Purchase Price, the Customer hereby grants RVC, its successors or assigns a security interest in the Equipment together with all replacements, parts, additions, repairs and accessories and hereby authorized RVC to file financing statement signed only by RVC in any and all places such financing statements may be filed by RVC to perfect the security interest in the Equipment herein granted in accordance with the Uniform Commercial Code. In addition, Customer shall execute and deliver RVC such documents as RVC shall request in order to perfect such security interest in the Equipment. Customer agrees the Equipment will at all times be and remain personal property notwithstanding its attachment or affixation to any real property until the entire unpaid balance has been paid in full. Upon default in payment to Purchase Price, RVC may declare the entire unpaid balance of the Purchase Price due and payable and shall be entitled to exercise all of the rights and remedies due a secured party under the Uniform Commercial Code. As well as any other remedy at law or in equity for Customer's default. The security interest of RVC shall extend to the proceeds coming into possession of the Customer by virtue of any disposition or sale of the security whether by act of Customer or by operation of the law.
 5. **DELIVERY AND INSTALLATION.** RVC shall deliver and install the Equipment at the Premises set forth above and Customer agrees to accept delivery and to permit RVC access to the Premises as RVC shall require for the purpose of installing the Equipment. If the Premises are not available to the Customer and ready for installation of the Equipment within 90 days of the estimated Cutover Date, RVC shall have the option to terminate this Agreement without liability for such termination. Should Customer require any burial, serial, or feeder cables or unusual concealment of wiring which has not been written on the face of this contract, Customer will pay for such additional telephone conduit, raceway, and cabling as may be required. Customer request for any change to the Equipment must be received and accepted by RVC not less than one (1) week before the scheduled Cutover Date. Any extra expense attributable to such change orders shall be borne by the Customer and shall be under a separate agreement. In no event will RVC install equipment prior to credit approval.
 6. **FORCE MAJEURE.** The performance by RVC thereunder, whether the Equipment is purchased or leased, shall be subject to delays caused by Act of God, war, riot, fire, explosions, accident, flood, sabotage, inability to obtain fuel or power, government, laws, regulations, or orders, acts or inaction of the Customer, acts or inaction of the telephone company, or any other cause beyond the reasonable control of RVC, or labor trouble, strike, lockout, or injunction. In the event any of such delay, the Cutover Date and times will be extended for additional period(s) of time so as to cover such period(s) of delay. RVC shall make a reasonable efforts to make timely delivery and installation, however, RVC SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR DAMAGES, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR OTHERWISE, DELAYS IN DELIVERY AND INSTALLATION.
 7. **LIMITATION OF LIABILITY.** Except as provided below, the liability of RVC and its affiliates and supplier for any claims, losses, damages, or expenses from any cause whatsoever (including acts or omissions of third parties) regardless of the form of action Whether in contract, tort or otherwise, shall not exceed the lesser of (1) the direct damages proven; or (2) the repair cost, replacement cost, license fee, annual rental charge or purchase price, as the case may be of the Product that directly gives rise to the claim. Except as provided below, RVC and its affiliates and suppliers shall not be liable for any incidental special reliance, consequential or direct loss or damage arising out of this Agreement. As used in this paragraph, consequential damages include, but are not limited to, the following lost profits, lost revenues and losses arising out of unauthorized use (or charges for such use) of common carrier telecommunications services or facilities accessed through or connected to Products. For personal injury caused by RVC's negligence, RVC liability shall be limited to proven damages to person. No action or proceeding against RVC or its affiliates or suppliers may be commenced more than twelve (12) months after the cause of action occurs. THIS PARAGRAPH SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.
 8. **WARRANTY.** Subject to the provision of this paragraph, whether the Equipment is purchased or lease, RVC warrants that the Equipment shall be (i) installed in accordance with current telecommunications industry standards and (ii) free from defects in material and workmanship for the period of time specified in RVC's standard warranty policy. If any defects covered by this warranty appear within the stated period, RVC shall have the option of repairing or replacing the defective Equipment. Such repair or replacement shall be the Customer's exclusive remedy for breach of warranty. RVC SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, FOR DAMAGES OR FOR COMMERCIAL LOSS OR OTHERWISE. THIS WARRANTY SHALL BE VOID AS TO EQUIPMENT DAMAGES OR RENDERED UNUSABLE BY THE WILLFUL ACT, NEGLIGENCE AND/OR TAMPERING OR PERSONS OTHER THAN RVC, OR BY FIRE, LIGHTNING, OTHER CASUALTY OR FROM FACTORS EXTERNAL TO THE EQUIPMENT. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL OR IMPLIED) INCLUDING WARRANTY OF MERCHANTABILITY IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
 9. **TRAINING.** RVC shall provide, at no additional charge to the Customer for thirty (30) days after cutover, training services reasonably required for Customer's personnel to properly use the system based on RVC's experience with systems of like size and complexity.
 10. **CUSTOMER'S OBLIGATIONS.** Customer shall, at its expense on the signing of this Agreement, and at all other times thereafter during the period of installation services:
 - a. allow employees or agent so RVC access to the Premises and facilities where the Equipment is to be installed with the requirements of the installation;
 - b. that the Premises will meet all temperature, humidity control air conditions and all other environmental requirements set forth in the applicable equipment Specifications and will be dry and free from dust and other hazards so as not to be injuries to person or the Equipment to be installed;
 - c. provide all patching, painting, concrete and other openings, conduit floor reinforcements or other mechanical modifications pertinent to this installation;
 - d. provide ample electric current of proper voltage for any necessary purpose, terminating in rooms where it is required;
 - e. provide suitable and easily accessible space for secure storage of the equipment any tools test sets and other items necessary for installation;
 - f. be responsible for the proper and timely security of all consents and approvals in connection with the installation of the Equipment.
 11. **RISK OF LOSS.** Risk of loss of each item of Equipment shall pass to the customer at time of delivery of equipment to the Premises except with respect to damage resulting from negligence of willful misconduct of RVC.
 12. **DEFAULT.** If Customer shall fail to pay or cause payment of any sum owing to RVC hereunder when due then in addition to all other remedies available to RVC at law or equity or under provisions of this Agreement and not in limitations thereof, RVC may, until said sum is paid in full, (1) collect interest on the sum then owing at a rate of 18% per annum from the date of the last installment due date until such default by Customer has been cured; (2) cease maintaining or installing the Equipment; (3) cease performing warranty service without exceeding the warranty period; (4) cease performance of any other obligations undertaken in this Agreement. It is expressly agreed and understood that in no event shall the aggregate interest charges under the provisions of this paragraph exceed the maximum rate of interest which could be charged under applicable state law.
 13. **PURCHASE ORDERS.** Any purchase order issued by Customer in connection with this transaction shall be deemed to have been issued for Customer's administrative convenience only. Any contractual terms and conditions contained in any such purchase order shall be inapplicable and shall not constitute a part of this agreement.
 14. **ASSIGNMENT.** Agreement may be assigned by RVC in whole or part and RVC may freely subcontract any or all of the work hereunder, provided that any such assignment or subcontracting shall not relieve RVC of its obligations under this Agreement.
 15. **ENTIRE AGREEMENT.** Agreement and all Exhibits attached hereto constitute the entire agreement between Customer and RVC with respect to the subject matter and no waiver, modification or amendment of any of the terms and conditions hereof shall be effective unless set forth in writing and signed by RVC and Customer.
 16. **VENUE.** In the event any litigation brought to enforce or construed the terms are conduits of this Agreement, exclusive venue shall be in the circuit courts of Brevard County, not withstanding the residence or commercial domiciles of the parties.
 17. **CANCELLATION.** In the event the Customer cancels this order prior to installation of the Equipment, all monies deposited with RVC shall be retained by RVC as liquidated damage. Customer agrees that retention of deposits is not a penalty and is a reasonable manner of estimating the damages incurred by RVC. Also customer may be charged a 20% restocking fee on purchase price of equipment.
 18. **SITE REVIEW.** RVC shall not be required to commence the installation of the system until Customer credit is approved by an officer of RVC and a site review of the Customer's Premises has been made by RVC's technical personnel. RVC shall have the right to terminate this Agreement in its sole discretion, based upon its review and/or its site review.
 19. **MAINTENANCE TYPES.** The standard types of RVC maintenance coverage are:
 - A. **EXECUTIVE SERVICE PLAN (ESP24)** - coverage includes free inspection of phone line outages; parts/labor, service calls, and lightning damage repair or replacements Sunday through Saturday (seven days a week), 24 hours a day. Additionally, training services are provided free of charge. Holidays not included.
 - B. **BASIC SERVICE PLAN** - coverage includes parts/labor and service calls Monday through Friday, 8:00 am to 5:00 pm. Added benefit or service after 5:00 pm at regular rates including weekends (lightning coverage not included with Basic Plan.) Holidays not included.
- For all measures, RVC will isolate the cause of the failure and will commence remedial measures, including remote diagnosis and programming, the replacement of inoperative components via express carrier, and, if appropriate, the dispatch of a technician to Customer's premises. RVC will perform remedial maintenance covered by these types of maintenance coverage without additional charge for labor or repair parts except the Basic Service Plan does not include lightning damage coverage. Replacement parts may be new, remanufactured or refurbished at the option of RVC, and will be provided on an exchange basis. Customer must select the same type of maintenance and to inspect Products under normal operating conditions. RVC will furnish remedial maintenance provided Customer makes prompt and full payment of RVC invoices. Remedial maintenance performed by RVC that is not covered by this Agreement or is provided outside of coverage period hours will be invoiced to Customer on a time and material basis. RVC reserves the right to cancel the maintenance plans upon Thirty (30) days written notice.
20. **MAINTENANCE COVERAGE EXCLUSIONS.** RVC will not provide, without additional charge, any remedial maintenance or parts in cases involving damage malfunction or failures caused in whole or in part by any of the following:
 - a. failure to follow RVC's installation, operation or maintenance instructions;
 - b. unauthorized modification of Products or the movement of any Product other than by RVC or its authorized agents;
 - c. misuse, abuse or negligent acts other than by RVC or its authorized agent; or
 - d. acts of public enemies and with respect to purchase.
 21. **MISCELLANEOUS.** This agreement shall be construed and performed in accordance with the laws of the state in which the Equipment is installed. In the event that any term or conditions of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity of enforceability of any other term or condition thereof.