

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-28**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RESPONSIBLE BID AND APPROVING A CONTRACT BETWEEN THE CITY AND ESSENTIAL NET SOLUTIONS FOR TECHNOLOGY CONSULTING AND SUPPORT SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) issued a Request For Proposals (RFP) for Technology Consulting and Support Services (the “Project”); and

WHEREAS, eight proposals were received, City staff subsequently reviewed and determined the proposal from Essential Net Solutions whose qualifications and capabilities were the best match for the City, their proposal was complete, and the bidder was responsive and responsible; and

WHEREAS, the City Council finds that accepting the proposal and entering into a contract with Essential Net Solutions is in the best interest of the City.

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 Contract between the City and Essential Net Solutions in an amount not to exceed \$15,000 per month, 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 by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract 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 8th DAY OF MARCH, 2022.

THE CITY OF MARATHON, FLORIDA



Mayor John Bartus

AYES: Cook, Gonzalez, Still, Zieg, Bartus
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(CITY SEAL)

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



City Attorney, Steven T. Williams

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

THIS AGREEMENT is made between **NETWORKED SOLUTIONS, INC. DBA 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, 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 Services include, but are not limited to, labor, materials, equipment, supplies, tools, and necessary incidentals required to provide IT services including Network Administration, System Administration, as well as in-house and remote support. In addition, service includes a minimum of one on-site engineer for the period of 40 hours per month, for 12 months. Renewal is on a 3 year basis.

1.2 Additionally, ENS must deliver to the I.T. Manager an analysis and review for risk of failure or loss, and mitigation strategy, of the City's current local IT network hardware, software, data, data backup processes, and security, to assist the IT Department, in developing how to best meet the ongoing needs of the City.

1.3 ENS will provide an objective review and analysis of hosted services to help the to determine, and recommend to the City, best practices on an ongoing basis.

1.4 On-going Services:

- Management and support of technology services to 10 facilities.

- Management, support, and monitoring of technology equipment owned and operated by the city (estimated – 20 servers (virtual and physical), 120 PCs, 25 Layer 2/3 switches, 20 Access points, 15 firewalls with subscription services
- Support and management of ATT and COMCAST services contracted by the City and delivered via point-to-point circuits.
- Image based backups of servers to a Tier3 or better datacenter within the continental US.
- New software and hardware maintenance and installation.
- Desktop and server maintenance and installation
- O365 email services and Office applications support and maintenance.
- Email services support and maintenance along with ongoing archiving of all emails with a minimum retention of 7 years.
- Spam and virus filtering for all accounts.
- Network system maintenance and analysis
- Cybersecurity analysis and 24/7 monitoring both currently contracted out to SD Data Center and Palo Alto Networks.
- Collaborate with city IT in reviewing any IT purchases to ensure compatibility with city systems.
- Assist City IT with budgeting as needed.
- Provide 3rd party vendor management for all technology and telecom service-related vendors.
- Assist City IT in communications with third party product and service vendors if needed.
- Collaborate with City IT to develop project plans and implement said plans.
- Collaborate with City IT in the development of strategic and tactical technology plans in accordance with City requirements.
- Assist City IT in managing and maintaining city EOC systems. Develop and collaborate with city staff to conduct impact analysis, to create and update disaster recovery plans. Such assessment shall consider multiple potential and realistic disaster scenarios and how to best manage them from the prospective of maintaining the highest level of IT service possible under each scenario until normal operations can be restored.
- Help Desk: Work with city IT to respond and prioritize any ticket requests from city staff and developing an after-hours and holiday response policy as situationally required.
- Assist City IT in managing and maintaining all city mobile devices.
- Work with the city IT to provide daily on-going backups on-site and off-site, maintain all ongoing-backups and provide a cold backup if needed.
- Work with city IT to maintain city WIFI and LAN systems alongside distribution network of firewalls and modems, routers, and switches.
- Manage adds moves and changes to the city VOIP and telecom systems provide on-going maintenance and support.
- Assist if needed city IT in on-going security system maintenance, managing card/badge issuance for city staff.
- Manage, deliver and maintain cybersecurity training services for all staff.
- Provide on-going patch management including 3rd party patching
- Provide testing, upgrade management, monitoring, and alerting of all city systems.
- Assist city IT in maintaining and troubleshooting of on-site city GIS services and cloud based.

2. **Excluded Services**

Service rendered under this Agreement does not include:

- 1) Parts, equipment, or software not covered by vendor/manufacturer warranty or support.
- 2) The cost of any parts, equipment, or shipping charges of any kind.
- 3) The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- 4) The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
- 5) The cost to bring Client's environment up to minimum standards required for Services.
- 6) Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.
- 7) Service and repair made necessary by the alteration or modification of equipment other than that authorized by Service Provider, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than Service Provider.
- 8) Maintenance of Applications software packages, whether acquired from Service Provider or any other source unless as specified in Appendix B.
- 9) Programming (modification of software code) and program (software) maintenance unless as specified in Appendix B.
- 10) Training Services of any kind.

3. **Compensation and Payment.**

- 3.1 The Consultant shall receive an monthly fee of \$15,000 for the provision of the IT Services, payable in each month of the term.
- 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.

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 (90) 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.
- 8.5 If either party terminates this Agreement, Service Provider will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Service Provider the actual costs of rendering such assistance.

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 Commercial General Liability Limits \$ 2,000,000 Aggregate
(Must Include Contractual Liability) \$ 1,000,000 Each Occurrence
\$ 1,000,000 Products-Comp/Op
\$ 1,000,000 Pers & Adv Injury
Automobile Liability \$ 1,000,000 Combined Single Limit
(Include Hired And Non-Owned Liability)

Worker's Compensation	Statutory
Employer's Liability	\$ 100,000 Each Accident
	\$ 500,000 Disease-Policy Limit
	\$ 100,000 Disease-Each Employee
Professional Liability	\$ 1,000,000 Per Claim

- 9.2 The City Of Marathon, Florida Must Be Named As An Additional Insured Under The General Liability Policy. Contractor's And/Or Subcontractor's General Liability Shall Be On A Primary And Non-Contributory Basis.
- 9.3 The Above Reflects The Minimum Requirements For Working With The City Of Marathon, Florida. Any Requirements Found In A Particular Job's Contract That Are Of A Higher Standard Will Prevail.
- 9.4 The City Of Marathon, Florida Must Be Given A Certificate Of Insurance Showing That The Above Requirements Have Been Complied With.
- 9.5 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.

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.

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: George Garrett, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 289-4130
cityofmarathon@ci.marathon.fl.us

With a Copy to: Steve Williams, City Attorney
Lesiel Martinez, IT Manger
9805 Overseas Hwy.
Marathon, FL 33050

For The Consultant: David Soper, Owner
EssentialNet Solutions, Inc.
2301 W. Eau Gallie Blvd. Ste 104
Melbourne, FL 32940
(321) 259-3242
info@ensus.com

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 The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

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. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a

copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
1. Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
 2. Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.
 3. The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.
 4. The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

5. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

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. **E-Verify System**

20.1 Beginning January 1, 2021, in accordance with F.S. 448.095, the Contractor and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any

subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall comply with and be subject to the provisions of F.S. 448.095

21. **Compliance with Laws.**

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

22. **Waiver**

22.1 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.

23. **Survival of Provisions**

23.1 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**

24.1 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.

25. **Counterparts**

25.1 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.

26. **Term/Commencement Date.**

- 26.1 This Agreement shall become effective April 1, 2022 and shall remain in effect through April 1, 2025, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement by written notice to the Consultant
- 26.2 Consultant agrees that time is of the essence and that it shall perform all IT Services in a professional and time sensitive manner.

[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 Owner, who has been duly authorized to execute same.

Attest:


CITY OF MARATHON


Diane Clavier, City Clerk

By: 
George Garrett, City Manager

Date: March 10, 2022

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

BY: 
Steve Williams, City Attorney

Witness:

CONSULTANT

By: _____

By: 
David Soper, Owner

Date: _____

Date: 2/3/2022