

AMENDMENT 1

FIRST AMENDMENT TO JANUARY 20th, 2004, PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOMPOC AND MCKIBBEN CONSULTING

This document ("Amendment 1"), dated January 20th, 2005, shall modify and amend the existing Professional Services Agreement dated January 20th, 2004, by and between the City of Lompoc ("City") and McKibben Consulting ("Consultant").

RECITALS

- A. City and Consultant have an on-going contractual relationship under the terms of an agreement entitled "Professional Services Agreement" ("Agreement") which is dated January 20th, 2004.
- B. City is now making preparations to launch a new Wireless Internet Utility ("WIU") service and desires to expand Consultant's scope of work and to provide for additional compensation to Consultant in connection with these added responsibilities.
- C. With this Amendment, City wishes to modify and amend the existing above-referenced Agreement.

AGREEMENT

1. Underlying Agreement. This Amendment modifies and amends the Professional Services Agreement dated January 20th, 2004, by delegating additional duties to Consultant and by providing for additional compensation to Consultant. The additional compensation authorized by this Amendment is not subject to the \$800,000.00 contract limit contained in the underlying Agreement. It is the intent of the parties for Consultant to continue with the duties and responsibilities outlined in the underlying Agreement. Terms and Conditions of the underlying Agreement that are not specifically addressed in this Amendment shall continue in full force and effect.
2. Expanded Scope Of Work. This section outlines Consultant's additional duties and related compensation as a result of this Amendment 1:
 - a. WIU Network Operations Center. Consultant will establish, staff, operate, supervise and maintain a Network Operations Center ("NOC") to provide continuous monitoring of all essential WIU systems. The NOC will provide routine operation of the electronic systems, adjustments to system operating parameters to optimize network performance, troubleshooting of any system faults and interfacing with the various system component vendors to affect any necessary repairs and upgrades that may from time-to-time be required. The monthly fee for NOC services will be \$6,250.00.


- b. WIU Customer Relationship Management. Consultant will establish, staff, operate, supervise and maintain a Customer Relationship Management ("CRM") facility. This CRM facility will accept calls from potential new customers, process new service orders, provide technical support to customers, deal with billing issues, alert the NOC of any system anomalies, and generally provide any other routine support required by any given customer or potential customer of the WIU. The additional monthly fee for the CRM facility will be \$12,500.00.
 - c. WIU Email Services. Consultant will provide, operate and maintain facilities to accommodate email boxes for WIU customers. This includes servers and software to accommodate industry-standard, POP3 and Web mail access to email accounts. The additional monthly fee for this service will be \$2,000.00 inclusive of up to 4,000 WIU subscribers. Should the WIU attain subscription levels above 4,000 total subscribers, then Consultant may bill City for additional email boxes at the rate of \$3 per month per additional subscriber.
 - d. WIU IT Support Services. Consultant will supply and supervise Information Technology ("IT") support personnel with the appropriate skill levels and system-specific training to perform routine as well as time-sensitive tasks associated with maintaining the computer systems and associated hardware components that comprise the WIU. The additional monthly fee for the IT Support services will be \$10,500.00.
 - e. WIU Ongoing Marketing Services. Consulting will provide routine marketing services such as press releases, outdoor advertising materials, brochures, new customer "Welcome Kit", local print advertising and preparation of bill stuffers for inclusion in the City's utility billing cycles. The additional monthly fee for the Ongoing Marketing Services will be \$4,200.00.
 - f. WIU Future Value-Added Services. City may from time-to-time request additional value-added services, outside of those envisioned at the time of this Amendment 1, that City may wish to provide to its WIU customers. It is understood that these services will likely be offered to subscribers for an additional fee. Consultant agrees to cooperate with City to provide said services. It is understood that Consultant will be entitled to additional fees should it be necessary for Consultant to incur additional costs in order to provide said Value-Added Services. The parties agree to cooperate in good-faith to make these services available in order to keep the WIU viable and competitive.
3. Customer Premises Equipment Support Services. Consultant shall provide on-going support services to City related to Customer Premise Equipment ("CPE") that will be supplied to customers of the WIU. CPE is defined as electronic hardware devices, such as wireless bridges, wireless routers, wireless network interface cards, and any other devices deemed necessary and desirable in order to provide services to WIU customers. All CPE will be owned at all times by the City and will only be supplied to a customer of

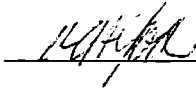
the WIU as required in connection with services that have been ordered by a given customer. The CPE Support services to be provided by Consultant shall include:

- a. Acquisition of CPE. It is expected that CPE will be provided by a number of different companies during the term of this Agreement. Consultant shall coordinate closely with City to test equipment and verify specific CPE performance prior to City initiating a significant purchase. Consultant will also advise City on quantities that may be required to insure that sufficient CPE stock is on hand to meet new WIU customer demand in a timely fashion.
- b. Maintaining CPE Stock. City will cause CPE to be shipped from the manufacturer or distributor to a staging location to be specified by Consultant. This staging location will be maintained in a reasonably secure facility so as to prevent damage or loss to CPE stock. Consultant assumes responsibility for replacing CPE stock that is lost or damaged due to mishandling by Consultant's personnel. City shall assume all other hazard risk to CPE including loss by the shipping company while in transit to and from Consultant's storage facility.
- c. Preparing CPE For Delivery To End-User. Consultant will prepare CPE for shipment to WIU customers. This process will be coordinated closely with City, but generally involves inspecting the CPE when it arrives from the manufacturer, packaging the CPE with a WIU "Welcome Kit", taking all necessary steps to prepare the CPE for shipment via a common-carrier such as UPS, and monitoring the shipping process to ensure that the CPE is delivered to the correct customer address.
- d. Managing Defective CPE devices. It can be anticipated that, from time-to-time, CPE will become damaged or will fail in service due to manufacturing defects. Consultant will manage the return of failed CPE devices from the customer and replacement with new product. Consultant will then manage warranty issues, if applicable, with the manufacturer of the failed device. If the device is not repairable, then Consultant will coordinate with all parties involved to dispose of the device and remove it from inventory records.
- e. Fees for Management of CPE. Consultant will bill City for services rendered in connection with CPE on the following fee schedule:
 - 1) Flat fee for management of the CPE handling process including on-going coordination with the CRM Facility to insure that new customer orders are fulfilled in a timely and expeditious manner...\$2,000 per month.
 - 2) Acceptance of delivery from manufacturer, verification of manufacturer's shipping documents, rejection of shipments that have sustained obvious damage during shipment, unpacking of each CPE device, serial and "MAC" address number recording, performance testing and physical inspection of each CPE device...\$5.00 per device


IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first written above.

CITY OF LOMPOC:

By: 

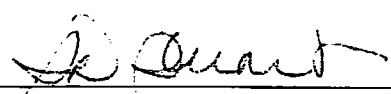
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CONSULTANT:

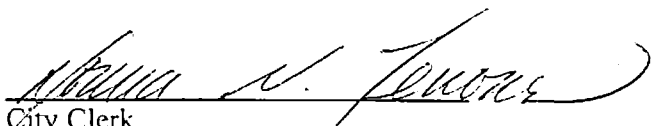
By: 
By: W. Mark McKibben

Title: Owner
Business License #60223

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk