



## CITY OF CALISTOGA

### STAFF REPORT

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**TO:** Honorable Mayor and City Council  
**FROM:** Gloria Leon, Administrative Services Director  
**DATE:** August 20, 2019  
**SUBJECT:** Consideration of a Resolution to enter into a Professional Services Agreement with Marin IT for Information Technology Services for an amount not to exceed \$84,120 for Fiscal Year 2019-20.

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**Approved by**

A handwritten signature in blue ink that reads 'Michael Kirn'. The signature is written in a cursive style.

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**Michael Kirn, City Manager**

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**DESCRIPTION:**

Consideration of a Resolution to enter into a professional services agreement with Marin IT for Information Technology Services in an amount not to exceed \$84,120 for Fiscal Year 2019-20.

**RECOMMENDATION:**

Adopt Resolution to enter into a Professional Services Agreement with Marin IT.

**SUMMARY:**

1. Authorize the City Manager to enter into a Professional Services Agreement with Marin IT.
2. Approve a Budget Adjustment in the amount of \$3,744 derived from unencumbered Equipment Replacement Fund Balance, under Account 15-4975-4402.

**BACKGROUND:**

The City of Calistoga has six departments with 55 full-time budgeted employees. The City currently has no full-time staff dedicated to information technology (IT), nor does it have someone trained with an IT background. Information Technology leadership at the City is currently centered in the Administrative Services Department for long-term planning, coordination between departments and contract oversight.

The City continues to procure IT services through a third-party. These services include client help desk support, desktop technician support, network administration, system administration, applications development, applications maintenance, data base administration, and specific project development, implementation and support.

Currently, staff believes that Marin IT provides experience, service delivery and capability to enhance the City's IT support services and best fits the needs of the City of Calistoga currently. City staff recommends the renewal of the contract with Marin IT for Fiscal Year 2019-20. Marin IT is based in Novato, CA and currently serves municipal clients including the City of St. Helena. Marin IT also services and supports County of Napa, Central Marin Police Authority, San Rafael Police Department, Vallejo Police Department and Ross Police Department to name just a few.

The Administrative Services Department will continue to oversee and manage the contract and serve as City liaison to the consultant assisting other departments in issues related to IT needs. Marin IT will also be available to provide consultation on additional IT related matters as deemed necessary by the Administrative Services Director at a discounted hourly rate not to exceed \$115 and approved by the City Manager. The Director's verbal approval for such additional services are generally sufficient authorization to perform the work; but in all such cases the Director shall approve the work in advance and shall, as a minimum, confirm the approval with electronic email message.

Marin IT has been providing the City with IT services since July 2016. Each week, Marin IT provides twelve (12) hours of information technology on-site maintenance/support. Marin IT Computer Systems annual contract for 2018-19 is \$62,400.

In addition, Marin IT will continue to provide hosted data backup services for an amount not to exceed \$400 per month. Marin IT is also recommending to continue to provide remote monitoring and security anti-virus subscriptions to the service offering for an amount not to exceed \$18 per month per node. Currently the City has 50 workstations and 11 servers. Based on the number of equipment the monthly recurring cost would be \$1,098. The City has been paying for both the hosted data backup and remote monitoring service on an annual basis.

Total current budget for support services, hosted data backup services and remote monitoring is \$80,376 annually.

**FINANCIAL IMPACT:**

The City budget for FY 19-20 allocated \$62,400 under account 15-4975-4402 for Information Technology outsourcing needs which includes 12 hours per week. An additional appropriation is recommended from the equipment replacement fund balance in the amount of \$3,744 under account 15-4975-4402. The \$3,744 will be charged accordingly to all departments under account xx-xxxx-4510. Any additional hours outside

the 12 hours per week will be preapproved and billed at an hourly rate of \$115 per hour. It is recommended that the annual agreement have a budget not to exceed \$84,120.

**CEQA REVIEW:**

The project is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14, the California Code of Regulations, Section 15303 (c).

**CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTIVES:**

The project conforms to City Council Goal 1, Objective #4, provide optimal City services in a sustainable manner.

**ALTERNATIVES:**

The City Council may choose to not accept staff's recommendation. Under this alternative, internal staff with limited information technology knowledge would have to manage information technology needs for 55 full-time budgeted employees.

**ATTACHMENTS:**

1. Draft Resolution
2. Draft Agreement with Marin IT
3. Marin IT Proposal

RESOLUTION NO. 2019-XXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MARIN IT FOR INFORMATION TECHNOLOGY SERVICES IN AN AMOUNT NOT TO EXCEED \$84,120 FOR FISCAL YEAR 2019-20 FROM ACCOUNT 15-4975-4402 EQUIPMENT REPLACEMENT FUND BALANCE**

**Authorizing Agreement No. \_\_\_\_\_**

**WHEREAS**, the City of Calistoga has six departments comprised of 55 full-time budgeted employees; and

**WHEREAS**, the City currently has no full-time staff dedicated to Information technology, nor does it have someone trained or with an information technology background on staff; and

**WHEREAS**, information technology is currently centered in the Finance Department for long-term planning, coordination between departments and contract oversight; and

**WHEREAS**, the City recognizes the need to have information technology outsourced for client help desk support, network and system administration, applications development, applications maintenance, data base administration and specific project development, implementation and support; and

**WHEREAS**, in June 2016 during budget workshops the Council adopted a strategic goal of improving the City's use of technology; and

**WHEREAS**, Marin IT has been performing information technology services for the City of Calistoga for three (3) years and is qualified to perform information technology needed to various City departments;

**NOW THEREFORE BE IT RESOLVED THAT**, the City Council of the City of Calistoga hereby:

1. Authorizes the City Manager to enter into a professional services agreement with Marin IT in the amount not to exceed \$84,120 under budgeted account 15-4975-4402 for Fiscal Year 2019-20 for information technology services as set forth in Exhibit A to this Resolution.
2. Approves a budget adjustment in the amount of \$3,744 derived from unencumbered Equipment Replacement Fund Balance, under account 15-4975-4402.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **20th day of August 2019**, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN**  
**ABSENT:**

CHRIS CANNING, Mayor

**ATTEST:**

IRENE CAMACHO-WERBY, City Clerk

**CONSULTANT SERVICES AGREEMENT**  
**Authorizing Agreement No. \_\_\_\_\_**

THIS AGREEMENT is entered into as of the 1st day of July 2019, by and between the CITY OF CALISTOGA, herein called the "City," and Marin IT, Inc., herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain consulting services pertaining to information technology services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant Marin IT, Inc., shall have overall responsibility for the progress and execution of this Agreement.

3. Scope and Performance of Services.

A. Scope of Services. Consultant shall perform the services set out in the "Bid Proposal" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than July 1, 2019 and be completed not later than June 30, 2020. Consultant shall perform its services in accordance with the schedule and incorporated herein by reference. Any changes to these dates in Section 3 must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pay Consultant exceed Seventy-Four Thousand Dollars \$84,120.00. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. The City shall upon receipt of a written itemized monthly statement pay fees and applicable expenses under this Agreement within thirty (30) days of receiving such invoices from Consultant, unless contested. Payment of any fee or reimbursement shall not constitute a waiver by the City of any breach of any part of this agreement. Late charges will be assessed upon payments not received within thirty (30) days from receipt of invoice at a rate of 1.5% per month. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will

compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's



services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which

accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, rules and regulations. City is not responsible or liable for Consultant's failure to comply with any and all its requirements under this section and Agreement.

A. General. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's sub consultants (if any) shall, to the extent required by the California Labor Code, pay no less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all its requirements under this section and agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights to subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policies which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written

consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

## 18. Insurance.

### A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of his Agreement, a General Liability insurance policy insuring it and its firms to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$500,000 (Five Hundred Thousand Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A)

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A: VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate (s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 15-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Arbitration of Professional Liability or Other Claim. If a dispute between the City and Consultant arises over the fees charged for the services, the controversy will be first submitted to mediation. If the parties cannot agree on a mutually acceptable mediator, then each party will choose one mediator, and those two mediators will choose a third for a total of three mediators. If mediation is unsuccessful, the parties agree to submit the dispute to binding arbitration in accordance with the rules of the State Mediation and Conciliation Service (SMCS), as set forth in California Business and Professions Code, Sections 6200 through 6202. The Arbitrator or arbitration panel shall have the authority to award the prevailing party attorney's fees, costs, and interest incurred. Any arbitration hearing notice may be served by mail upon either side and personal service shall not be required.

If a dispute arises between the City and Consultant over any other aspect of the labor relations-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved pursuant to the dispute resolution process outlined above.

It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any professional services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to mediation, first; and if necessary by arbitration as provided by California law, and not by a lawsuit or other judicial proceeding except as California law provides for judicial review of the arbitration proceedings.

Both parties to this agreement are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of mediation or arbitration. Each party is to bear its own attorneys' fees and costs in any dispute resolution process; provided, however that the prevailing party may be entitled to such fees and costs (including interest) as described above.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk  
City of Calistoga  
1232 Washington Street.  
Calistoga, CA 94515

If to Consultant: Marin IT, Inc.,  
Tim Bush  
355 Bel Marin Keys Boulevard  
Novato, CA 94939

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or

provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and sub consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

CONSULTANT

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_



City Clerk

**EXHIBIT A**  
**Scope of Work**

Marin IT, Inc., will provide computer and network related service and consulting for the City of Calistoga. A weekly visit, consisting of 12 hours is scheduled for face to face contact. Other services will be provided via telephone and remote computer connections. Additional services beyond 12 hours per week of contracted time will be arranged, approved and billed separately.

Services Include:

Timely response to emergency issues

Maintain communication via an assigned in-house contact

Periodic checkup of servers and backup systems

Ongoing system checks and application of updates

Installation and configuration of hardware and software

User maintenance, add, remove, and modify user accounts

Assist in Computer System related decisions and decisions.

Provide for the specific 24x7 needs of the Police Department

Quarterly onsite meetings

Routine Desktop and Service Maintenance and Support

Assistance with maintaining existing equipment/applications (RIMS, Financial Software, MS Office, Printers, WWAN devices, etc.)

Availability to assist with design and integration of new applications into local network

In the event of a system failure/system down during regular business hours, Marin IT staff will be contacted. Response time will vary depending on the severity of the incident.

## EXHIBIT B

### Compensation

Marin IT, Inc., will provide 12 hours per week @ \$106.00 per hour, \$5,512 per month City-Wide for a total of \$66,144 annually. City agrees to reimburse Consultant for necessary and reasonable costs and expenses related to the services required under this Agreement. Any additional hours outside the 12 hours per week will be preapproved and billed at an hourly rate of \$115.00 per hour.

Marin IT, Inc., will provide hosted data backup services. Monthly recurring charges for this service are \$400.00. The annual cost for this service shall not exceed \$4,800.

Marin IT, Inc., will provide remote monitoring and security anti/virus subscriptions to the service offering. The cost per node is \$18.00 per month; currently the City has 50 workstations and 11 servers. The monthly recurring cost for 61 nodes is \$1,098.00. The annual cost for this service is \$13,176.

Charges for services may apply if Marin IT, Inc., is called to resolve issues after-hours, on weekends or holidays. Rates for these times will be billed at 1 ½ times the normal rate.

Cost for new and/or replacement hardware (servers, printers, network devices, PC's, monitors, hard drives, etc.) that are not under warranty are not covered under the defined statement of work and are billable.

Special projects that cannot be completed during regular visits or fall outside the Scope of Work will be quoted separately and submitted for approval prior to start of work.



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**Information Technology Support Agreement - 7/1/2019 to 6/30/2020**

366 Bel Marin Keys Blvd.  
Novato, CA 94939  
415.842.3275 Tel  
415.842.3270 Fax  
www.marinit.com

**Regarding:** IT Support – City of Calistoga  
**From:** Tim Bush  
**Date:** July, 2019

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**To:** Gloria Leon  
1232 Washington St.  
Calistoga, Ca 94515

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Gloria,

Marin IT, Inc. is pleased to provide you with our proposal to perform network support as well as workstation / desktop maintenance for the City of Calistoga.

**Section 1 – IT support Scope of Work**

**Marin IT, Inc. Responsibilities**

As part of this agreement it is our understanding that we will be responsible for any support required for the City of Calistoga to continue daily operations including but not limited to:

- Desktop virus software updates / maintenance
- Maintenance of desktop OS patches
- Local user account maintenance
- Hardware maintenance – Not including equipment, or replacement parts
- Mail client support
- VPN client support (If applicable)
- Firewall maintenance
- Router & Switch configuration / maintenance
- Assistance with installation of new equipment / applications
- Monitor local backup systems – Suggest corrective measures if system not functioning correctly
- Local windows domain maintenance (If applicable) including local name resolution, server troubleshooting, and assistance of local security policies
- Availability to assist with design and integration of new applications into local network – Example scheduling software, credit card processing
- Desktop / Misc. troubleshooting
- Police CAD/RMS, MDT support and maintenance

Marin IT technicians are expected to work with the City of Calistoga in supporting the network. Marin IT will use our ticketing system to log and track all service requests. Calistoga staff will only need to email our support portal to get a service ticket created. If email is unavailable, our dispatch desk is monitored from 8am until 5pm Monday – Friday. After-hours emergency support is available. After-hours remote support requires a 1-hour minimum. There is a \$200 mobilization fee and a 4-hour minimum if we must dispatch a technician. Clients are billed in ½ hour increments thereafter.



In the event that issues arise which are outside of the scope of this proposal Marin IT will discuss any fee impact with the designated City of Calistoga representative prior to proceeding with the work.

## Client Responsibilities

- All client and server software licenses associated with this agreement will be obtained & managed by the end user
- The City of Calistoga will be responsible for communicating needs & changes thru the designated representative / channels only.
- Client is responsible for providing reasonable/timely access to all buildings, offices, devices, laptops, MDC, smart phones, tablets, etc.

## Change / System Upgrade Process

- Discuss the need for the change in scope
- Identify the additional tasks, which need to be performed in order to complete the change in scope.
- Estimate the cost associated with the additional scope, and determine the impact on network operation.
- This agreement includes supporting IP connectivity to all City of Calistoga locations to support facilities operations.
- This agreement can be amended (if applicable supplemental agreement can be produced) to include phone system support assuming Marin IT is factory authorized dealer of the system installed.

## Pricing/Rate Schedule/Invoicing

This proposal is meant to provide weekly support for the City of Calistoga but does not include special projects. Any additional projects will be chargeable at the discounted rate of \$115 per hour. This agreement does not include hardware. Any equipment which will be needed to perform any maintenance tasks is not included and can be provided by Marin IT, Inc., for additional cost.

Our total charge for this service will be **\$66,144.00** broken into 12 monthly payments of \$5512.00. This rate includes 12 hours of regular on-site service each week during the term of the agreement. Hours for support services in excess of the regularly scheduled hours will be invoiced at a discounted rate of \$115 per hour (Marin IT's standard rate for support services is \$145 per hour). The rates noted here are for work during normal business hours (Monday through Friday between 8:00 AM and 6:00 PM). Rates for overtime, nights, weekends or holidays will be billed at 1 ½ times the regular rate. Rates for special projects (not covered under the scope of this agreement) will be at Marin IT's standard rates for the specific type of project, which range from \$145 to \$250 per hour.



## **Section 2 – Cloud Backup**

Marin IT currently provides hosted data backup services. Monthly recurring charges for this service are \$400.00. The annual cost for this service shall not exceed \$4800.00. Invoices will be sent monthly.

## **Section 3 – Remote Monitoring and Security Software**

If Desired, Marin IT will bundle remote monitoring & security/anti-virus subscriptions to the service offering. This is a per-node service that provides the following:

- Webroot Security software for real-time threat detection and removal
- Real-time monitoring and alerting for Computers and Servers
- Automated software patching/hot-fixes/updated
- Remote Management and Control

The cost per node for this is \$18 per month and will replace/offset the cost of renewing the Symantec Endpoint protection. There is normally a \$750 fee to activate the account, which will be waived if Calistoga adds this service. Currently the City has 50 workstations and 11 servers. The monthly recurring cost for 61 nodes is \$1098.00.

### **Cost Summary:**

• Annual Support Contract	-	\$66,144.00
• Cloud Data Backup/SPAM Filter	-	\$4,800.00
• Remote Monitor/Security	-	\$13,176.00
<b>Monthly Recurring</b>	<b>-</b>	<b>\$7,090.00</b>
<b>Grand total Annual</b>	<b>-</b>	<b>\$84,120.00</b>

**\*\*\*Marin IT Recommends budgeting for a 10% contingency for emergencies/misc replacements/upgrades, etc.\*\*\***



## Warranties and Limitations of Liability

**Warranties.** Product warranties, if any, are provided by the manufacturer or publisher of the products. MARIN IT, INC. MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHATSOEVER. ALL SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS" BASIS.

Limitation of Liability. CUSTOMER AGREES THAT THE LIABILITY OF MARIN IT FOR DIRECT DAMAGES RELATED TO ANY PRODUCT OR SERVICE ARISING UNDER THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO MARIN IT BY CUSTOMER FOR THAT PRODUCT OR SERVICE WHICH IS THE SUBJECT OF THE CLAIM. MARIN IT SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, EVEN IF MARIN IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY

MAKES ANY REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY INFORMATION OR PRODUCTS PROVIDED TO EACH OTHER, ALL OF WHICH ARE PROVIDED, SOLD OR LICENSED "AS IS," AND THE PARTIES AGREE TO LOOK SOLELY TO THE WARRANTIES AND REMEDIES, IF ANY, PROVIDED BY THE THIRD PARTY.

## Termination of Agreement

- **Discretionary.** After the first 6 months of the initial term, either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.
- **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.
- **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.
- **Return of Documents.** Upon termination, any and all documents or materials provided to Marin IT and any and all of Marin IT documentation and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to the designated City of Calistogorepresentative as soon as possible, but not later than thirty (30) days after termination.



## Non-Solicitation

During the term of this agreement, and for a period of one (1) year thereafter, neither party will directly or indirectly solicit away employees or consultants of the other party.

Thank you for your consideration,

Timothy R. Bush

Marin IT, Inc.

Accepted By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_