

## Staff Report

**TO:** Honorable Mayor and Members of the Town Council  
**FROM:** Wes Heathcock, Town Manager  
**DATE:** September 10, 2024  
**RE:** Information Technology Contract Services - Vision Quest Information Solutions, Inc.

### Recommendation

Adopt resolution authorizing the Town Manager to enter into an agreement with Vision Quest Information Solutions Inc. to provide information technology services in a base amount of \$6,450 per month for a 5-year term with the option to extend the agreement for one 12-month period.

### Issue Statement and Discussion

The Town of Loomis entered into a contract with Vision Quest Information Solutions, Inc (VQIS) first in 1997 and has since renewed the contract multiple times. The last contract was executed March 1, 2019 on a month to month basis after the first 12 month period. The current monthly rate of VQIS service cost is \$3,121 per month. Replacement equipment is an additional cost minus the service costs to install the equipment.

The Town of Loomis recently went through a virtual threat assessment under the existing services and cyber protection equipment. The assessment demonstrates the Town is highly vulnerable to cyber-attacks due to a gap in cyber security services and aged equipment. VQIS provided a comprehensive service proposal to upgrade equipment and enhance cyber security to protect the Town from virtual threats.

The scope of the new contract is significantly more comprehensive than the existing services received including replacing 19 computers – 10 computers will be replaced at no additional cost to the Town and 9 will be replaced based on the unit cost. Installing programs and connecting the computers fees are included in the base contract services. Enhanced cyber security includes the following features:

CYBERSECURITY SERVICES	Qty
24 x 7 Security Operations Center	Included
24 x 7 Security Expert Team on Standby	Included
AI - Enabled End User Endpoint Protection	Included
Machine-learning algorithms examining End User behavior, flagging Irregular activity	Included
Dark-Web Monitoring & Scanning	Included
Monthly Technology "Cybersweeps"	Included
Annual Cybersecurity Risk Reviews	Included
Advanced Endpoint Security for Desktops and Laptops	Included
Intrusion Prevention Services	Included
Ongoing Security Scanning with Real Time Alerts	Included
Secured Remote access to your server from home	Included
Security Awareness Training	Included
Password Management Solution	Included
Business Continuity and Disaster Recovery backup solution	Included

The upgraded service contract proposes a base service cost of \$6,450 per month with the onboard fee of \$2,000 waived. The monthly base cost rate is locked in for the 5-year contract plus the additional 12-month extension. The contract term is through 2029 with the option to extend it to 2030.

**CEQA Requirements**

There are no CEQA issues involved with the contract.

**Financial and/or Policy Implications**

The monthly base rate of \$6,450 is disbursed among departments based on the number of computer access points they are using. The 2024/25 budget accounted for the contract increase and the 9 computers the Town will be paying to replace.

**Attachments**

- A. Resolution
- B. Vision Quest Information Solutions, Inc Agreement

# **TOWN OF LOOMIS**

**RESOLUTION NO. \_\_ - 24**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS  
AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH VISION QUEST  
INFORMATION SOLUTIONS INC. TO PROVIDE INFORMATION TECHNOLOGY SERVICES IN A  
BASE AMOUNT OF \$6,450 PER MONTH FOR A 5-YEAR TERM WITH THE OPTION TO EXTEND  
THE AGREEMENT FOR ONE 12-MONTH PERIOD.**

**WHEREAS**, the Town has Contracted with Vision Quest Information Technologies for Information Technology Services since 2004; and

**WHEREAS**, the Town projects only increasing needs due to increasing complexity in equipment and cyber security; and

**WHEREAS**, the Town can stabilize and lock in its maintenance cost through a long-term fixed rate contract.

**NOW, THEREFORE BE IT RESOLVED**, that the Town of Loomis hereby authorizing the Town Manager to enter into an agreement with Vision Quest Information Solutions Inc. to provide information technology services in a base amount of \$6,450 per month for a 5-year term with the option to extend the agreement for one 12-month period.

PASSED AND ADOPTED this 10<sup>th</sup> day of September 2024, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

## Master Service Agreement

Between

Vision Quest Information Solutions Inc.

and

The Town of Loomis

This Master Service Agreement (hereinafter referred to as “MSA” or “Agreement”) is entered into and is made effective as of September 11, 2024 (“Effective Date”), by and between Vision Quest Information Solutions Inc. (“Consultant”), of 1137 Smith Ln. Roseville, Ca 95661 and The Town of Loomis (“Company”), of 3665 Taylor Road, Loomis, CA 95650 (collectively referred to as the “Parties,” “Both Parties,” or “Each Party”).

### RECITALS

**WHEREAS**, Consultant is in the business of Managed Security Services.

**WHEREAS**, Company desires to have Consultant provide managed security services (“Services”) as purchased by Company from time to time by way of a service schedule (“Service Schedule”), service agreement, pricing appendix, purchase or service order, or other approved method of purchasing products or services from Consultant (“Service Order”), in exchange for the Compensation specified in this Agreement or any applicable Service Schedule, Service Order or Invoice prepared by Consultant; and

**WHEREAS**, Consultant is willing and qualified to provide such Services to Company as defined in this Agreement;

**NOW, THEREFORE**, Company agrees to hire Consultant and the Parties hereby agree as follows:

### AGREEMENT

#### **ARTICLE 1 – GENERAL**

**1.1 Term and Termination.** This Agreement shall commence on the Effective Date set forth above and shall remain in effect for 60 months and shall automatically renew for one 12-month period, unless and until it is terminated by either Party by providing the other Party with 30 days’ notice in accordance with the notice provisions of this Agreement.

**1.2 Independent Contractor Status.** Notwithstanding any provision hereof, it is understood by both Parties that in providing the Services, Consultant is serving as an independent contractor, and is neither an employee nor a partner, joint venturer or agent of the Company. Neither party shall bind or attempt to bind the other to any contract, and any such contracts entered into in violation of this provision shall be void and unenforceable. Company will not provide fringe benefits of any kind to Consultant or its members, employees, agents and other affiliates, including health insurance, retirement, paid vacation, or any other employee benefits. As an independent contractor, Consultant is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any kind, including but not limited to workers’ compensation insurance.

As an Independent Contractor, unless this Agreement or an applicable Service Schedule or Service Order specifically

states otherwise, the manner in which the Services are to be performed, including but not limited to the scheduling of individual tasks and the specific hours to be worked by Consultant or its employees, contractors and affiliates, shall be determined by Consultant. It is further understood that as an independent contractor, Consultant may have other clients and may provide any services to any third party during the term of this Agreement.

## **ARTICLE 2 – SERVICES AND SERVICE ORDERS**

**2.1 Scope of Services.** Beginning September 11, 2024 Consultant agrees to undertake and provide the Services described in the Service Schedule attached to this Agreement as Appendix 1 and any subsequent Schedules or Service Orders approved by Consultant (hereinafter collectively referred to as the “Services”).

Company acknowledges that the actual damages likely to result from an early termination are difficult to estimate on the Effective Date. Therefore, if Company cancels a Service or Service Order before the Service Activation Date, it will pay a cancellation fee equal to  $\frac{3}{4}$  the total cost of the leftover term of the contract, any installation costs, special construction costs, and any and all other costs and fees incurred by Consultant, whether previously waived or not, and any third party charges incurred by Consultant with respect to such canceled Service.

**2.2 Assignment and Outside Contractors.** Consultant may, with the prior consent of the Company, engage such persons, corporations or other entities as it reasonably deems necessary for the purpose of performing Services under this Agreement; provided, however, that Consultant shall remain responsible for the performance of all such Services and shall be considered to engage with any third party persons, corporations or other entities on its own behalf.


**2.3 Exclusions.** While Consultant will always make the best possible efforts to provide support and troubleshoot issues as requested, this agreement only applies to the systems and services listed in the Service Schedule and applicable Service Orders. In addition, this Agreement does not cover a) issues caused by using equipment, software or service(s) in a way that is not recommended; b) issues resulting from unauthorized changes made by Company to the configuration or setup of equipment, software or Services; c) issues caused by Company's actions that have prevented or hindered Consultant in performing required and recommended maintenance upgrades; d) issues resulting from work performed by Company or any of its contractors other than Consultant on the systems, software and equipment that falls under this Agreement.

**2.4 Company Responsibilities.** Company will use the software / equipment / IT system / etc covered under this Agreement or any Service Schedule or Service Orders as intended. Additionally, Company will a) notify Consultant of any issues or problems with said software / equipment / IT system / etc in a timely manner; b) provide Consultant with access to the software / equipment / IT system / etc for the purposes of maintenance, updates and fault prevention; c) keep Consultant informed about potential changes to its IT system; and d) maintain good communication with Consultant at all times.

## **ARTICLE 3 – BILLING AND PAYMENTS**

**3.1 Charges and Billing.** Company shall pay all monthly recurring charges (“MRC”) in advance and all other Charges monthly in arrears. All Charges shall be payable in U.S. Dollars, no later than thirty (30) days from the invoice date (“Due Date”) and shall be exclusive of any applicable taxes.

“Charges” means the fees, rates, and charges for the Services, as specified in the applicable Service Order or as otherwise invoiced by Consultant pursuant to the Agreement. Unless otherwise agreed to by the Parties in writing, Charges for each Service Order shall begin to accrue on the date the Service is provisioned by the Consultant.



Charges for the Services are subject to change at any time if third party charges in connection with a Service are increased or newly charged to Consultant.

**3.2 Late Payments.** If Company is late in making payment, it shall pay a late fee on any late payments at the higher of one and a half percent (1.5%) per month or the maximum rate allowed by applicable law. If Consultant uses a collection agency or attorney to collect a late payment or returned payment, Company agrees to pay all reasonable costs of collection or other action. These remedies are in addition to and not in limitation of any other rights and remedies available to Consultant under the Agreement, at law or in equity.

**3.3 Taxes and Other Fees.** All Charges for the Services are exclusive of any taxes and other fees and surcharges. Company shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, and bypass ("Taxes").

**3.4 Invoice Disputes.** To the extent that Company disputes any portion of an invoice in good faith, it shall notify Consultant in writing and provide detailed documentation supporting its dispute within thirty (30) days of the invoice date or the Company's right to any billing adjustment shall be waived. In the event of a billing dispute, Company shall timely pay all undisputed amounts. If the dispute is resolved against Company, Company shall pay such amounts due plus interest from the original Due Date. Company may not offset disputed amounts from one invoice against payments due on the same or another account.


**3.5 Changes and Fee Estimates.** Fees shall be subject to change by Consultant upon no less than 30 days' written notice to Company. Any fee estimates provided by Consultant at Company's request are for informational purposes only and may differ from the rate(s) ultimately payable by Company pursuant to a subsequent invoice, Service Order or Service Schedule.

**3.6 Refunds and Cancellations.** The fees charged under this Agreement are non-refundable. No refunds will be given after Consultant has commenced work pursuant to this Agreement or any Service Order or Service Schedule. Partial refunds requested prior to commencement of Consultant's work may be given at Consultant's discretion, subject to an administrative and cancellation fee of 15% of the total service fee.

#### **ARTICLE 4 – LIMITED WARRANTY**

**4.1 Limited Warranty.** Consultant warrants, for a period of thirty (30) days following delivery of any services hereunder (the "Warranty Period") that all Services will be performed in a professional manner and in accordance with generally applicable industry standards. Consultant's sole liability (and Client's exclusive remedy) for any breach of this Warranty shall be for Consultant to re-perform any deficient services, or, if Consultant is unable to remedy such deficiency within fifteen (15) days, to void the invoice for the deficient services. Consultant shall have no obligation with respect to any Warranty claim if (1) it is notified of such claim after the Warranty Period or (2) the claim is the result of third-party hardware or software, the actions of Client, or the actions or omissions of some other party or is otherwise caused by factors outside the reasonable control of Consultant.

THIS SECTION IS A LIMITED WARRANTY, AND SETS FORTH THE ONLY WARRANTIES MADE BY CONSULTANT. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER WRITTEN OR ORAL, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, WITH RESPECT TO ANY GOODS AND/OR SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM THE COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE, OR ANY WARRANTIES REGARDING THE PERFORMANCE OF ANY SOFTWARE OR HARDWARE PROVIDED OR INSTALLED BY



CONSULTANT. COMPANY MAY HAVE OTHER STATUTORY RIGHTS; HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD. Consultant will pass along to the Company any third-party warranties relating to any goods purchased and/or installed by Consultant on Client's premises and/or equipment.

## **ARTICLE 5 – LIMITATION OF LIABILITY**

**5.1 Aggregate Limit of Liability.** COMPANY UNDERSTANDS AND AGREES THAT CONSULTANT SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF SERVICES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR LOSS OR INCREASED EXPENSE OF USE CLIENT OR ANY THIRD PARTY INCURS), WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR STRICT LIABILITY, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY PROBLEMS WHICH MAY OCCUR AS A RESULT OF THE USE OF ANY THIRD-PARTY SOFTWARE OR HARDWARE. IN NO EVENT SHALL THE AGGREGATE AMOUNT COMPANY MAY RECOVER FROM CONSULTANT UNDER THIS AGREEMENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES, OR INDEMNIFICATION ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES AND/OR THIS AGREEMENT, FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO CONSULTANT'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY ("COMPANY'S CLAIMS") EXCEED THE TOTAL PAYMENTS MADE TO CONSULTANT BY COMPANY PURSUANT TO THIS AGREEMENT IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS THE FOREGOING SUM REPRESENTS CONSULTANT'S TOTAL LIABILITY FOR ALL OF COMPANY'S CLAIMS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO PERSONAL INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CONSULTANT.

## **ARTICLE 6 – INSURANCE**

**6.1 Insurance.** Each Party agrees to maintain through a reputable carrier licensed to do business in the State of California comprehensive liability insurance including general liability, contractual liability, property damage, and cyber liability coverage, in commercially reasonable amounts, calculated to protect itself and the other party to this Agreement from the consequences of a data security breach, and other claims for damage to property or personal injury, that may arise from activities performed or facilitated by this Agreement, whether these activities are performed by that Party, its employees, agents, or anyone directly or indirectly engaged or employed by that Party or its agents.

The parties agree to provide satisfactory proof of insurance upon execution of this Agreement, and to immediately notify the other in writing of any lapse, cancellation, or modification of the insurance coverage required herein.

## **ARTICLE 7 – INDEMNITY**

**7.1 Release and Indemnification.** Subject to the limitation of liability set forth in Section 5.1, each Party agrees to release, indemnify, defend and hold harmless ("Indemnifying Party") the other Party, its directors, officers, employees, and agents, successors and assigns ("Indemnified Party"), from and against all claims, losses, expenses, fees, damages and liabilities, including reasonable attorney fees and disbursements, costs, and judgments, sustained in any action commenced by any third party in connection with the Indemnifying Party's performance of, or failure to perform, its obligations and duties under this Agreement, except for those damages, costs, expenses and liabilities arising from the negligence or willful misconduct of the Indemnified Party; provided, however, that Consultant is not obligated to indemnify Company,

and Company shall defend and indemnify Consultant hereunder, for any claims by any third party, including any clients and/or customers of Company, arising from services provided by Company that incorporate any of the Services being provided by Consultant hereunder, including but not limited to (a) the violation of any applicable law by the Company or the Company's clients and/or customers; (b) damage to property or personal injury (including death) arising out of the acts or omissions of Company's clients and/or customers; (c) termination or suspension of Services of Company or Company's clients and/or customers due to a Company Default; (d) claims by any third party, including without limitation Company's clients and/or customers, arising out of or related to the use or misuse of any Service; or (e) claims by any third party, including without limitation Company's clients and/or customers arising out of or related to a Security Incident as defined in Section 8.7. In all claims for Indemnity under this paragraph, the Indemnifying Party's obligation shall be calculated on a comparative basis of fault and responsibility. Neither party shall be obligated to indemnify the other in any manner whatsoever for claims, losses, expenses, or damages resulting from the other party's own negligence.


**7.2 Indemnification Procedures.** The Indemnified Party shall promptly notify the Indemnifying Party in writing of any such suit or claim and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The Indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the Indemnifying Party shall not take any action in defense or settlement of the claim that would negatively impact the Indemnified Party. The Indemnified Party shall provide cooperation and participation of its personnel as required for the defense at the cost and expense of the Indemnifying Party.

## **ARTICLE 8 – CONFIDENTIALITY AND DATA PROTECTION**

**8.1 Confidentiality.** Each Party acknowledges that, in connection with this Agreement, it may be furnished with, or given access to, certain confidential and/or proprietary information of the other Party, and that, subject to the provisions of this section, such information shall not be disclosed by the Party receiving the information to any third party, and shall not be used by either Party for purposes other than those contemplated by this Agreement.

**8.2 Information Subject to Confidentiality.** Confidential Information may include, but is not limited to, the following:

- Any materials regardless of form furnished by either Party to the other for use;
- Any information furnished by any Party that is stamped "confidential," "proprietary," or with a similar legend, or any information that any Party makes similar reasonable efforts to maintain secret;
- Any business or marketing plans, strategies, customer lists, operating procedures, design formulas, know-how, processes, programs, software, inventories, discoveries, improvements of any kind, sales projections, strategies, pricing information; and other confidential trade secrets, data and knowledge of either Party;
- Any information belonging to employees, agents, members, shareholders, owners, customers, suppliers, vendors, contractors, business partners and affiliates of either Party;
- Any non-public inventions the rights to which have not been assigned to the Party receiving the information;
- Any non-public and proprietary technical information belonging to either Party, the rights to which have not been assigned to the party receiving the information. and other proprietary



information owned by either Party, (collectively "Confidential Information"), which are valuable, special and/or unique assets of that Party.

- Any templates, schematics, processes or technical documentation provided by Consultant shall be deemed Confidential Information and proprietary information of Consultant without any marking or further designation. Company may use such information solely for its own internal business purposes.
- Consultant shall maintain the confidentiality of information in its possession regarding individual protected health information in accordance with applicable law, and shall not release such information, to any other person or entity, except as required by law.


**8.3 Non-Disclosure.** Neither Company nor Consultant will disclose or use, either during or after the term of this Agreement, in any manner, directly or indirectly, any such Confidential Information of the other Party, for their own benefit or the benefit of any third party. Neither Party will use, share, divulge, disclose or communicate in any manner whatsoever any Confidential Information to any third party without the prior written consent of the other Party, except to the extent specifically permitted under this Agreement.

Both Parties will protect all Confidential Information of the other, and will treat it as strictly confidential, unless and until: a) said information becomes known to third parties not under any obligation of confidentiality to the party whose confidential information is at issue ("Disclosing Party"), or becomes publicly known through no fault of the other party (the "Receiving Party"); or b) said information was already in the Receiving Party's possession prior to its disclosure, except in cases where the information has been covered by a preexisting Confidentiality Agreement; or c) said information is subsequently disclosed by a third party not under any obligation of confidentiality to the Disclosing Party; or d) said information is approved for disclosure by prior written consent of the Disclosing Party; or e) said information is required to be disclosed by court order or governmental law or regulation, provided that the Receiving Party gives the Disclosing Party prompt notice of any such requirement and cooperates with the Disclosing Party in attempting to limit such disclosure; or f) said information is proven independently developed by the Receiving Party without recourse or access to the information; or g) disclosure is required in order for a party to comply with its obligations under this Agreement, provided that prior to disclosure, the Receiving Party gives the Disclosing Party prompt notice of any such requirement and cooperates with the Disclosing Party in attempting to limit such disclosure.

A violation of this paragraph shall be a material violation of this Agreement.

**8.4 Employees and Agents.** The Parties further agree to disclose the Confidential Information to their officers, directors, employees, contractors and agents (collectively, the "Agents") solely on a need-to-know basis and represent that such Agents have signed appropriate non-disclosure agreements and/or that the Party receiving Confidential Information has taken appropriate measures imposing on such Agents a duty to (1) hold any Confidential Information received by such Agents in the strictest confidence, (2) not to disclose such Confidential Information to any third party, and (3) not to use such Confidential Information for the benefit of anyone other than the party to whom it belongs, without the prior express written authorization of the party disclosing same.

**8.5 Unauthorized Disclosure of Confidential Information.** If either party to this Agreement intentionally discloses or threatens to disclose the other party's Confidential Information to another party or to the Disclosing Party's detriment or damage, in violation of this Agreement, the party whose information is at issue will suffer irreparable damage and shall be entitled to an award by any court of competent jurisdiction of a temporary restraining order and/or preliminary injunction to restrain the other party from such unauthorized use or disclosure, in whole or in part, of such Confidential Information, without the need to post a bond, and/or from providing services to any party to whom such information has been disclosed or may be disclosed.



The infringing party further agrees to reimburse the Disclosing Party for any loss or expense incurred as a result of the infringement, including but not limited to court costs and reasonable attorney fees incurred by the Disclosing Party in enforcing the provisions of this Agreement, in addition to any other damages which may be proven.

The parties shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**8.6 Data Protection.** The Parties acknowledge that Consultant may have access to certain of Company's computer and communications systems and networks for the purposes set forth in this Agreement. If any data is made available or accessible to Consultant, its employees, agents or contractors, pertaining to Company's business or financial affairs, or to Company's projects, transactions, clients, customers, partners, vendors or any other person or entity, Consultant will not store, copy, analyze, monitor or otherwise use that data except for the purposes set forth in this Agreement and any valid Service Schedule or Service Order. Consultant will comply with all applicable laws, regulations, and government orders relating to personally identifiable information ("PII") and data privacy with respect to any such data that Consultant receives or has access to under this Agreement or in connection with the performance of any Services for Company. Consultant will otherwise protect PII and will not use, disclose, or transfer such PII except as necessary to perform under this Agreement or as specifically authorized by the data subject or in accordance with applicable law. To the extent that Consultant receives PII related to the performance of this Agreement, Consultant will protect the privacy and legal rights of Company's personnel, clients, customers and contractors.


**8.7 Security Incidents.** Consultant shall report to the Company any Security Incident of which Consultant becomes aware. "Security Incident" means any actual or reasonably suspected: (i) unauthorized or unlawful access, destruction, or acquisition of Company Data that is stored within or processed by Consultant's network information systems. Consultant shall investigate any Security Incident and provide reasonable cooperation to Company in its own investigation of and response to any Security Incident. If a Security Incident arises, each Party shall bear its own costs in responding to, investigating, and mitigating damages caused by, a Security Incident.

## **ARTICLE 9 – DEFAULT**

**9.1 Default by Company.** Company is in default of this MSA if it (a) fails to cure any monetary breach within ten (10) days of receiving notice of the breach from Consultant; (b) fails to cure any non-monetary breach of any terms of the agreement within thirty (30) days of receiving notice of the breach from Consultant; or (c) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law (each such event shall be a "Company Default").

In the event of a Company Default, Consultant may suspend Services to Company until Company remedies the Company Default, or Consultant may terminate this Agreement and/or any or all of the Services being provided hereunder. Consultant may at its sole option, but without any obligation, cure a non-monetary breach at Company's expense at any point and invoice Company for the same. These remedies are in addition to and not a substitute for all other remedies contained in this MSA or available to Consultant at law or in equity.

**9.2 Financial Hardship.** In the event Company experiences financial hardship such that it is impossible for it to avoid default, the Company shall provide prompt notice of its inability to satisfy its obligations to Consultant in writing (e-mail will suffice). Company shall provide proof of its inability to pay upon Consultant's request. At Consultant's option, it may agree to engage in good faith negotiations of the Terms of this Agreement to modify its terms or terminate this Agreement. Any modifications to this Agreement shall be in writing and signed by both Parties.



**9.3 Default by Consultant.** Consultant is in default of this MSA if it fails to cure any non-monetary breach of any material term of this MSA within thirty (30) days of receiving written notice of the breach from Company ("Consultant Default"); provided, however, that Company expressly acknowledges that Service related failure or degradation in performance is not subject to a claim of a Consultant Default. Company's sole and exclusive remedy for any failure of Service is limited to the remedies set forth in under the Limited Warranty and Limitation of Liability sections of this Agreement. In the event of a Consultant Default, Company may terminate the Services and this Agreement upon written notice to Consultant. Any termination shall not relieve Company of its obligations to pay all charges incurred hereunder prior to such termination.

**ARTICLE 10 – MISCELLANEOUS** **10.1 Notices.** All notices and other communications required or permitted under this Agreement shall be in writing, and shall be deemed delivered when personally delivered, sent by e-mail, or forty-eight hours after being deposited in the United States mail as certified or registered U.S. mail with postage prepaid, addressed to the address of the Party to be noticed as set forth on the signature page of this Agreement, or to such other address or e-mail address as such party last provided to the other by written notice conforming to the requirements of this paragraph.

**10.2 Entire Agreement.** This Agreement, together with all attachments, schedules, exhibits and other documents that are incorporated by reference herein, constitute the entire agreement between the Parties, represent the final expression of the Parties' intent and agreement relating to the subject matter hereof, contain all the terms and conditions that the Parties agreed to relating to the subject matter, and replaces and supersedes all prior discussions, understandings, agreements, negotiations, e-mail exchanges, and any and all prior written agreements between the Parties. Any subsequent changes to the terms of this Agreement may be amended or waived only with the written consent of both Parties, and shall be effective upon being signed by both Parties.


**10.3 Severability.** If any provision of this Agreement is declared by any court of competent jurisdiction to be illegal, void, unenforceable or invalid for any reason under applicable law, the remaining parts of this Agreement shall remain in full force and effect, and shall continue to be valid and enforceable. If a court finds that an unenforceable portion of this Agreement may be made enforceable by limiting such provision, then such provision shall be deemed written, construed and enforced as so limited.

**10.4 Successors and Assigns.** Company shall not transfer or assign, voluntarily or by operation of law, its obligations under this Agreement without the prior written consent of Consultant. This Agreement may be assigned by Consultant (i) pursuant to a merger or change of control of Consultant, or (ii) to an assignee of all or substantially all of Consultant's assets. Any purported assignment in violation of this section shall be void.

**10.5 Survival.** All provisions that logically ought to survive termination of this Agreement, including but not limited to applicable Warranties, Limitation of Liability, Indemnity, Choice of Law, Forum Selection, and Confidentiality provisions, shall survive the expiration or termination of this Agreement.

**10.6. No Waiver.** The failure of any Party to insist upon strict compliance with any of the terms, covenants, duties, agreements or conditions set forth in this Agreement, or to exercise any right or remedy arising from a breach thereof, shall not be deemed to constitute waiver of any such terms, covenants, duties, agreements or conditions, or any breach thereof.

**10.7. Force Majeure.** Either Party who fails to timely perform their obligations under this Agreement ("Nonperforming Party") shall be excused from any delay or failure of performance required hereunder if caused by reason of a Force Majeure Event as defined herein, as long as the Nonperforming Party complies with its obligations as set forth below.



For purposes of this Agreement, "Force Majeure Event" means any event, circumstance, occurrence or contingency, regardless of whether it was foreseeable, which is a) not caused by, and is not within the reasonable control of, the nonperforming Party, and b) prevents the Nonperforming Party from its obligations under this Agreement. Such events may include, but are not limited to: acts of war; insurrections; fire; laws, proclamations, edicts, ordinances or regulations; strikes, lock-outs or other labor disputes; riots; explosions; and hurricanes, earthquakes, floods, and other acts of nature.

The obligations and rights of the Nonperforming Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations under this Agreement shall resume. In the event that the interruption of the Nonperforming Party's obligations continues for a period in excess of thirty (30) days, either Party shall have the right to terminate this agreement upon ten (10) days' prior written notice to the other Party.

Upon occurrence of a Force Majeure Event, the Nonperforming Party shall do all of the following: a) immediately make all reasonable efforts to comply with its obligations under this Agreement; b) promptly notify the other Party of the Force Majeure Event; c) advise the other Party of the effect on its performance; d) advise the other Party of the estimated duration of the delay; e) provide the other Party with reasonable updates; and f) use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement. **10.8 Mediation and Arbitration.** If a dispute arises under this Agreement, the Parties hereby agree to first attempt to resolve said dispute by submitting the matter to a mutually agreed-upon mediator in the State of California. The Parties agree to share any mediation costs and fees, other than their respective attorney fees, equally.

If the dispute is not resolved through mediation, the Parties agree to submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association, and each Party hereby consents to any such disputes being so resolved. Judgment on the award so rendered in any such arbitration may be entered in any court having jurisdiction thereof.

**10.9 Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California, excluding that State's choice-of-law principles.

**10.10 Choice of Forum.** The Parties hereby agree that all demands, claims, actions, causes of action, suits, proceedings, including any arbitration, mediation and/or litigation between the parties, to the extent permitted under this Agreement and arising out of same, shall be filed, initiated, and conducted in the State of California. Unless the provisions of this Agreement exclude litigation as a remedy in a dispute by the Parties, it is hereby agreed that any litigation arising out of this Agreement must be filed and litigated in a state or federal court located in the State of California. In connection with the foregoing, to the extent that litigation is a permissible method of dispute resolution under this Agreement, each Party hereby consents and submits to the exclusive jurisdiction of those courts for purposes of any such proceeding, and waive any claims or defenses of lack of jurisdiction of, or proper venue by, such court.

**10.11 Attorney Fees.** In the event that any arbitration, suit or action is instituted to resolve a dispute pertaining to matters covered under this Agreement, or enforce any provision thereof, the prevailing Party in any such dispute or proceeding shall be entitled to recover from the losing Party all fees, costs and expenses of enforcing any right of such prevailing Party under or with respect to this Agreement, including without limitation, all reasonable fees and

expenses of attorneys and accountants, court costs, and expenses of any appeals.

**10.12 Headings Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

**10.13. Counterparts.** The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same Agreement. The Parties further agree that e-signatures carry the same weight and effect as traditional paper documents and handwritten signatures; therefore this Agreement may be electronically signed via any e-signature service compliant with the Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA) as of the Effective Date of this Agreement.

**Company:**

Signature\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Company\_\_\_\_\_

Date\_\_\_\_\_

**Consultant:**

Signature\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Company\_\_\_\_\_

Date\_\_\_\_\_

## APPENDIX 1

### SERVICE SCHEDULE

General	Included
Hardware & Software Details	Included
Authorized Software Support	Included
Network Mapping	Included
Network Coverage	
Firewall & Wireless Access Device Management	Included
Network Connections	Included
Installation of New User Desktops/laptops	Included
Smart Phone Setup	Included
Network Performance Monitoring	Included
Printer Management & Monitoring (SNMP Enabled Printers Only)	Included
Help Desk Support	
During Hours Remote Support (7:00am – 5:00pm Mon – Fri non-holidays)	Included
During Hours On-Site Support (7:00am – 5:00pm Mon – Fri non-holidays)	Included
Emergency Hours Remote Support (Billed as needed at \$265 per hour)	Hourly Rate
Emergency Hours On-Site Support (Billed as needed at \$375 per hour)	Hourly Rate

Workstation Services	Premier Services
<ul style="list-style-type: none"> <li>• Security               <ul style="list-style-type: none"> <li>○ Blacklisted Software</li> <li>○ Antivirus Software Definitions</li> <li>○ Blacklisted Event Detection</li> <li>○ Windows Patch Management</li> <li>○ Support Software Updates (Adobe Reader, Microsoft Office, etc.....)</li> </ul> </li> </ul>	Included
<ul style="list-style-type: none"> <li>• Performance               <ul style="list-style-type: none"> <li>○ Hard Drive File Fragmentation</li> <li>○ Hard Drive MFT Fragmentation</li> <li>○ Low Memory Detection</li> <li>○ High CPU Usage Detection</li> <li>○ Startup/Background Processes</li> <li>○ Unauthorized Software Removal</li> </ul> </li> </ul>	Included
<ul style="list-style-type: none"> <li>• Proactive Reliability               <ul style="list-style-type: none"> <li>○ Hard Drive Error Monitoring</li> <li>○ Hard Drive SMART Stats Monitoring</li> <li>○ Hard Drive Free Space</li> <li>○ Hardware/Software Raid Failure Monitoring</li> <li>○ Windows File Corruption</li> <li>○ Bad Process Detection</li> </ul> </li> </ul>	Included

## Cyber Security Services

CYBERSECURITY SERVICES	Qty
24 x 7 Security Operations Center	Included
24 x 7 Security Expert Team on Standby	Included
AI - Enabled End User Endpoint Protection	Included
Machine-learning algorithms examining End User behavior, flagging Irregular activity	Included
Dark-Web Monitoring & Scanning	Included
Monthly Technology "Cybersweeps"	Included
Annual Cybersecurity Risk Reviews	Included
Advanced Endpoint Security for Desktops and Laptops	Included
Intrusion Prevention Services	Included
Ongoing Security Scanning with Real Time Alerts	Included
Secured Remote access to your server from home	Included
Security Awareness Training	Included
Password Management Solution	Included
Business Continuity and Disaster Recovery backup solution	Included

Client agrees that the following is not included as covered in this agreement. This page is for reference only.

**“Project / Integration Work”** Defined as any service designated to add or increase functionality or capacity; in other words, any work that is not designed to support existing systems, revenue producing activities, or persons. Projects are outside the scope of this agreement and as such will be quoted and invoiced separately. Project / Integration work will be identified to The Client as such before any work is performed. **Most of the time, we will exercise our right to NOT CHARGE YOU if you have been a super reasonable client, because we want to celebrate with you on the growth of your business, and we will move you to that AWSOME NEW OFFICE without charging extra. Except for cabling, cabling is hard; we will quote that for you.**

**“Line of Business Applications”** Defined as applications such as custom accounting packages, CRM software, ERP software, etc. that are not specifically mentioned herein fall outside the normal purview of this Agreement. Reasonable attempts will be made to correct connectivity issues to such applications; however, problems specific to the application configuration or network problems caused by the applications are excluded, except as may be accomplished within time spent “onsite” with Client per this Agreement.

**“Hardware Replacement Cost”** Defined as the equipment cost associated with hardware replacement that falls outside of this agreement. Hardware replacement can take the form of warranty, extended warranty, manufacturer’s support contract, on-site spares, or purchases as needed. Hardware replacement options will be discussed as part of the Audit deliverables to be sure an appropriate hardware strategy exists for all critical equipment. **ALL labor for replacing failed hardware IS COVERED under the agreement, just understand that you have to pay for the cost of the equipment, and then we cover the installation and configuration!**

**“Cabling”** Defined as the cost associated with running cables to or from devices for the purposes of resolving connectivity to areas not currently serviced by a physical cable. Reasonable attempts will be made to correct connectivity issues to new or existing devices. Cabling projects are outside the scope of this agreement and as such will be quoted and invoiced separately. Any cabling work will be identified and agreed upon by the Client before any work is performed.

**“Incident Response”** Defined as the activities involved in identifying, investigating, and mitigating incidents that compromise the security, integrity, or availability of data, systems, or networks. Reasonable efforts will be made to prevent incidents and respond to minor security issues as part of routine services. However, formal incident response projects, which may include detailed forensic analysis, extensive system remediation, and coordination with external parties, are outside the scope of this agreement. Such incident response services will be quoted and invoiced separately. Any incident response work will be identified and agreed upon by the Client before any work is performed.

**We Guarantee that bad stuff will happen, but we will be there to fix it...  
Quickly, I PROMISE!**

Consultant will provide all customary, scheduled, and routine services required under this Agreement in a reasonably prompt and timely manner. In addition, Consultant shall meet or exceed the following requirements in responding to specific requests for service:

Trouble	Priority	Response Time	Resolution Time	Escalation Threshold
<b>Critical Emergency</b> – During business hours (Service not available to all users and functions unavailable).	1	Within 1 hr	ASAP – Best Effort	4 hours
<b>Urgent</b> – During business hours (large number of users or business critical functions affected)	2	2 hours	ASAP – Best Effort	8 hours
<b>High</b> – During business hours (Limited degradation of service, limited number of users or functions affected, business process can continue)	3	Within 8 business hours	ASAP – Best Effort	24 hours
<b>Normal</b> – During business hours (Small service degradation, business process can continue, one user affected)	4	Within 24 business hours	ASAP – Best Effort	48 hours
<b>Low Priority</b> – During business hours (Maintenance needed, no noticeable degradation to any users)	5	Next Available	Not Applicable	Not Applicable

Value Added Items*	Premier Services
Virus Free Network	Included
99.99% Up-Time (See Definition Below)	Included
Guarantee Against Duplicated Billing	Included
99.99% Up-Time on Internal Email Systems	Included
Guarantee That Remote Access Systems Always Work	Included
Guarantee Satisfaction	Included
Guarantee Against Firewall Intrusion	Included

#### Disclaimer

\* **“Value Added Items”** Consultant does not guarantee that these things will not happen. Consultant does guarantee that if these things do happen, company will never have to pay to remediate the issue when the cause is due to a failure on the Consultants part to prevent the problem.

**SUPPORT AGREEMENT / BILLING INFORMATION**

<b>Contract Date:</b>	9/11/2024	<b>Bill To:</b>	Wes Heathcock
<b>Company:</b>	Town of Loomis	<b>Billing email:</b>	loomis1330@bill.com
<b>Primary Contact:</b>	Carol Parker	<b>Phone</b>	(916) 824-1512
<b>Effective Date:</b>	9/11/2024	<b>Payment Terms:</b>	Net 15
<b>Renewal Date:</b>	8/5/2029	<b>Billing Cycle:</b>	Monthly
<b>Contract Length:</b>	Approx. 60 Months	<b>Monthly Billing Amount:</b>	\$6,450 /Month
<b>Contract Name</b>	Cyber Gold	<b>One time Onboarding Fee</b>	**WAIVED** \$2,000 USD
<b>Account Mgr:</b>	Erik Hvezda	<b>New Contract / Add on:</b>	New Contract

**AGREEMENT**

<b>COVERED IN THIS AGREEMENT</b>	<b>Qty</b>
Laptop (Monitoring Capabilities Dependent on Connections to Internet)	Included
Company's Primary Office Network	Included
Company's Servers	Included
Monitoring of Desktops Included	Included
Devices Supported @ \$PRICE per Seat \$215 per seat. 30 Seats at start of contract *a seat is a Server, or a user's computer + 1 active email.	

<b>SUPPORT COVERED</b>	<b>Costs</b>
Remote PC Management/Help Desk (7am-5pm M-F)	Included
Remote Network Management (7am-5pm M-F)	Included
Remote Server Management (7am-5pm M-F)	Included
24X7X365 Security Monitoring	Included
24x7x365 Network Monitoring	Included
Lab Labor (8am-5pm M-F)	Included
Vendor Management (7am-5pm M-F)	Included
Off-Site Secure Backups	Included
On-Site Support (7am-5pm M-F)	Included
Misc. Notes: At time of signing: 30 seats *a seat is a Server, or a user's computer + 1 active email	

**Following items included in addition to contract:**

This document is not valid until approved by a Company executive below. Authorized By: (Must be a Company Executive not Sales personnel)

**Company:** \_\_\_\_\_

**Consultant:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Signature)

**By:** \_\_\_\_\_  
(Signature)

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

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

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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