

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MILPITAS
AND THE CITY OF CAMPBELL FOR COMPUTER AIDED DISPATCH
SYSTEM USE AND SERVICES**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter “MOU” or “Agreement”) dated _____, 2016, is by and between the CITY OF MILPITAS, a municipal corporation (“Milpitas”), and CITY OF CAMPBELL, a municipal corporation (“Campbell”) (each a “Party” and together the “Parties”).

WHEREAS, Milpitas has contracted with TriTech Software Systems (“TriTech”) to provide Milpitas with Computer Aided Dispatch (“CAD”) software to enable Milpitas to provide information necessary for the provision of emergency services throughout Milpitas.

WHEREAS, Milpitas and Campbell find that it is in the best interest of the public to enter into this MOU for Milpitas to act as host to Campbell’s CAD system to strengthen multijurisdictional information sharing and dispatching efforts.

WHEREAS, Milpitas and Campbell, through their respective governing authorities, agree that it is in the best interest of each city to execute a Memorandum of Understanding to establish the rights, duties, and obligations of the involved parties for the utilization of a shared CAD system.

NOW, THEREFORE, in consideration of the promises and the covenants and obligations set forth in this Agreement, the Parties agree to the following:

1. DEFINITIONS.

1.1 *Agency*: The AGENCY entering into this MOU.

1.2 *Agreement or MOU*: This Memorandum of Understanding

1.3 *PSAP*: Public Safety Answering Point which means the public safety agency which receives incoming 9-1-1 phone calls and dispatches their respective public safety agencies to a call for service.

1.4 *GIS*: A Geographic Information System made of hardware and software used for storage and retrieval, mapping, and analysis of geographic data.

1.5 *Data*: Facts, detailed information, or other material provided by Parties.

1.6 *Data Record*: A unique record associated with an incident or person. This could be a single report that includes a variety of data.

1.7 *Host*: The City of Milpitas acting as the entity providing the facility to house hardware and software.

- 1.8 *Hardware*: The physical infrastructure which supports the Computer Aided Dispatch system.
- 1.9 *Computer Aided Dispatch system (CAD)*: The first point of entry for information that allows the management of call-taking, location verification, unit status, dispatching, and call disposition. This system commonly possesses the ability to interface mapping with mobile computer terminals.
- 1.10 *User Count*: Number of TriTech licenses, including CAD and mobile licenses.

2. TERM OF AGREEMENT AND TERMINATION

- 2.1 This Agreement shall take effect upon the Effective Date.
- 2.2 All amendments to this Agreement must be in writing and approved by the appropriate authorized representatives of each Party.
- 2.3 *Term of Agreement*: This agreement will be administered through the respective Chief of Police Offices from Milpitas and Campbell. Subject to compliance with the terms of this Agreement, the initial term shall be from October 30, 2016 to October 30, 2019.
- 2.4 At the end of the initial term, the Agreement will automatically renew for a two-year period until October 30, 2021 unless earlier terminated by either Party pursuant to section 2.5.
- 2.5 *Termination*: Either Party may terminate this MOU upon one hundred-eighty (180) days written notice to the other Party, unless both Parties mutually agree on another time frame. The terminating Party shall pay any TriTech cancellation fees and costs associated with the separation that the Parties are legally obligated to pay under the terms of Milpitas' then-existing Software Services Agreement with TriTech. If both Parties mutually agree to terminate this MOU, each Party will be responsible for any TriTech cancellation fees and costs associated with the separation that the Parties are legally obligated to pay under Milpitas' then-existing Software Services Agreement with TriTech based on their percentage of the TriTech licenses. The percentage of TriTech licenses shall be calculated by dividing each Party's total number of TriTech licenses by the sum of both Parties' total number of licenses for mobile computer terminals and dispatch and CAD stations. In no event shall Milpitas be responsible for any costs incurred by Campbell in building or rebuilding Campbell's CAD system following termination of this MOU.
- 2.6 *Assets*: Upon termination of this Agreement, assets associated to CAD within the Milpitas facilities will remain the property of Milpitas and assets associated to CAD within the Campbell facilities will remain the property of Campbell.

- 2.7 Construction: This Agreement was drafted jointly by the parties. They intend that any legal principle favoring construction of language for or against the drafter in case of dispute does not apply to this Agreement.

3. STATEMENT OF PURPOSE.

- 3.1 This MOU is to define financial obligations, duties, and parameters for Milpitas hosting a CAD/Mobile Computer Terminal (MCT) hosting environment for Campbell. Milpitas and Campbell agree to work in a cooperative manner that benefits public safety in their respective communities and the region. MILPITAS agrees to host computer access for a CAD and Mobile Computer Software for CAMPBELL pursuant to the terms and conditions set forth in this MOU.

4. ADMINISTRATION OF THE AGREEMENT

- 4.1 This Agreement will be administered through the respective Chief of Police offices from Milpitas and Campbell. Each Chief of Police may assign other personnel to administer the Agreement on his or her behalf.

5. DUTIES OF CAMPBELL

- 5.1 Connectivity: Campbell is responsible for the purchase, installation, and / or maintenance of equipment and costs to maintain and sustain connectivity with Milpitas CAD servers. Campbell shall maintain adequate user count and procure its own software license(s) directly from TriTech.
- 5.2 TriTech Implementation: Campbell is responsible for negotiating costs of implementation of TriTech CAD software at their facility and staff training for Campbell employees.
- 5.3 GIS: Campbell is responsible for providing its GIS data in a format required by TriTech CAD application. Currently, Campbell will be required to maintain their street centerlines and content data in a format requested by Milpitas. Campbell is responsible for building or obtaining data sets they would like to see on the CAD maps. Campbell will provide a single point of contact for assistance on map configuration and GIS issues.
- 5.4 Hardware Maintenance: Campbell is responsible for maintenance of all CAD hardware within their facilities.
- 5.5 Except as otherwise required by applicable law, Campbell agrees to treat Milpitas' CAD/Mobile information, derivatives, documentation, or any other Milpitas confidential / proprietary with the same degree of care as it uses to protect its own confidential information, but in no event with less than due care.
- 5.6 Campbell shall be subject to, and shall comply with, all terms and conditions contained in that certain Consulting Services Agreement between the City of

Milpitas and TriTech Software Systems, dated October 21, 2003, as amended, and as may be amended in the future.

6. DUTIES OF MILPITAS

- 6.1 **Hardware Maintenance:** Milpitas is responsible for technical maintenance of all CAD hardware within Milpitas facilities.
- 6.2 **Software Upgrades:** Milpitas is responsible for coordinating all software upgrades and scheduling upgrades at a date and time agreeable to both Campbell and Milpitas.
- 6.3 **GIS:** Milpitas is responsible for importing Campbell's GIS data into the CAD software. Milpitas will merge Campbell Street Centerline update files into the master TriTech centerline upload. Milpitas will offer guidance on GIS issues on how Campbell can incorporate content data into the CAD map configuration. Milpitas will provide basic support. Additional resources beyond normal maintenance and support will be discussed separately if the need arise between the two agencies.
- 6.4 **Administrative Software Rights:** Milpitas will maintain administrative rights and provide assistance with data entry in the administrative area of the software to support Campbell's operations. Campbell will be responsible for its own day-to-day CAD operations. This information will include, but will not be limited to, CAD command additions and personnel / unit additions to the software.
- 6.5 **Support:** Milpitas will provide basic support for Campbell CAD / Mobile operations. This will include training and technical support. For special project and extended troubleshooting outside of basic support, Milpitas and Campbell will either amend this Agreement or enter into a separate agreement to provide additional resources. Milpitas and Campbell agree to mutually create support escalation and detail procedures for system and configuration changes as the systems are brought online, and modify/update these procedures over the course of this Agreement as necessary.
- 6.6 **Except as otherwise required by applicable law, Milpitas agrees to treat Campbell CAD/Mobile information, derivatives, documentation, or any other Campbell confidential/propriety information with the same degree of care as it uses to protect its own confidential information, but in no event with less than due care.**

7. FUNDING

- 7.1 **Maintenance:** Each Party will pay a percentage of the maintenance fees based on their percentage of licenses for mobile computer terminals and dispatch CAD stations. The fees are determined by Trittech.

- 7.2 Hardware Upgrades: CAD hardware will be replaced or upgraded at the discretion of Milpitas. Milpitas will continue committing personnel hours during upgrades in order to reduce TriTech's personnel costs. Milpitas and Campbell will equally share the expense of hardware upgrades.
- 7.3 Campbell will reimburse Milpitas for 4 hours/week or 208 hours per year of a fully loaded System Administrator position. The current fiscal 2016-2017 fully loaded cost is \$131.88/hour. The cost will be reviewed annually to adjust for salary increases. Campbell will be notified of any changes. The cost will go toward the shared cost of maintaining servers, managing upgrades, and project management.
- 7.4 GIS: Milpitas, at its discretion, may contribute personnel hours to support Campbell's GIS. Milpitas' Information Services Director will discuss any costs with Campbell prior to committing resources where Campbell may incur any expense.

8. RELEASE OF INFORMATION

- 8.1 All data and data records shared in the CAD servers are the property of the originating Agency and shall remain confidential although it may be shared between Milpitas' and Campbell's respective police departments for law enforcement purposes only. Any public or other law enforcements requests for data or data records may only be released by the originating Agency.

9. NOTICE

- 9.1 All notices required by this Agreement will be deemed given when in writing and delivered to the party set forth below:

To Milpitas: Chief of Police
Milpitas Police Department
1275 North Milpitas Boulevard
Milpitas, CA 95035

To Campbell: Chief of Police
Campbell Police Department
70 North 1st Street
Campbell, CA 95008

10. GOVERNING LAW

- 10.1 Except to the extent preempted by federal law, this Agreement shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles.

11. ASSIGNMENT

11.1 Milpitas and Campbell may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other Party. The services to be performed and provided under this Agreement are unique and personal to the Parties. No portion of these services shall be assigned or subcontracted without written consent of the Parties.

12. ENTIRE AGREEMENT

12.1 This document represents the entire Agreement between the parties with respect to the subject matter of CAD system sharing.

13. AMENDMENT

13.1 This Agreement may only be amended by written approval signed by both parties. If an additional party is to receive services from either Milpitas or Campbell, connection with services to be provided under this Agreement, a written amendment to this Agreement shall be executed defining how that additional party is to share the costs of the service as determined by Milpitas and Campbell.

14. SEVERABILITY

14.1 In any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

15. WAIVER

15.1 No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

16. TIME IS OF THE ESSENCE

16.1 Time is of the essence of this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provisions or any other provision.

17. LIMITATION OF LIABILITY

17.1 Neither party shall be liable to the other for loss-of-profit, indirect, incidental, liquidated, or punitive damages arising out of this Agreement.

18. INDEMNITY

- 18.1 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but instead pursuant to Government Code Section 895.4, each of the Parties hereto agrees as follows:
- 18.2 Campbell shall indemnify, defend and hold harmless the City of Milpitas, its officers, agents and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, action or cause of action (including reasonable attorney's fees and cost of suit), caused by, arising out of, or resulting from, or alleged to have been caused by, arise out of, or result from, in whole or in part, the acts or omissions of Campbell in the performance of this MOU, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of Milpitas.
- 18.3 Milpitas shall indemnify, defend and hold harmless the City of Campbell, its officers, agents and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, action or cause of action (including reasonable attorney's fees and cost of suit), caused by, arising out of, or resulting from, or alleged to have been caused by, arise out of, or result from, in whole or in part, the acts or omissions of Milpitas in the performance of this MOU, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of Campbell.
- 18.4 The foregoing indemnity provisions are intended to fully allocate the parties' risk of liability to third-parties; and there shall be no rights to indemnity or contribution, in law or equity or otherwise between the parties that are not set forth in this section. The parties waive all rights to subrogation for any matters for which they are obligated to provide indemnity under the provisions of section 19. The responsibility for such defense and indemnity obligations as set forth in this provision shall survive the termination or completion of this MOU for the full period of time allowed by law.

19. INSURANCE

- 19.1 Each Party shall maintain Commercial General Liability insurance for injuries to persons or damage to property, as set forth below to the fullest extent allowed by law during the term of this MOU, and for at least five (5) years after completion of all work thereunder, conforming to the following specifications:

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as Insurance Services Office (ISO) CGL form CG 00 01 11 85 covering Commercial General Liability on an “occurrence” basis;

It is a requirement of this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this MOU shall be available to a party when that party is named as an additional insured pursuant to this MOU. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage limits specified in this MOU, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever affords greater coverage.

B. **Minimum Limits of Insurance**

Each party shall maintain limits no less than \$1,000,000 combined single limit per occurrence for bodily, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this matter or the general aggregate limit shall be twice the required occurrence limit.

C. **Deductible and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by the both parties.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- a. The parties, their agents, officers, attorneys, employees, officials and volunteers are to be covered as insureds as respects: liability arising out of activities related to this MOU performed by or on behalf of the insured, work or operations performed by or on behalf of the insured, including materials, parts or equipment furnished in connection with such work or operations, products and completed operations of the insured, premises owned, occupied or used by the insured, or automobiles owned, leased, hired or borrowed by the insured. This coverage can be provided in the form of an endorsement to the insured’s insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner’s policy.

- b. The insured's insurance coverage shall be primary insurance as respects the other party, its agents, officers, attorneys, employees, officials and volunteers. Any insurance or self-insurance maintained by the other party, its agents, officers, attorneys, employees, officials and volunteers shall be excess of the insured's insurance and shall not contribute with it.
- c. The insured's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
- d. Coverage shall not extend to any indemnity coverage for the active negligence of a party in any case where an agreement to indemnify the other party would be invalid under a Subdivision (b) of Section 2782 of the California Civil Code.

E. Acceptability of Insurers

Insurance is to be issued by an issuer with a current A.M. Best Rating of A:VII and be authorized to transact business in the State of California, unless otherwise approved by both parties.

F. Verification of Coverage

Each party shall furnish the other party with the original certificates of insurance and amendatory endorsements evidencing coverage required by this section. All certificates and endorsements are to be received and approved by the parties before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the each party's obligation to provide them. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The parties reserve the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications, at any time.

G. Subcontractors

The parties agree that any and all contracts with subcontractors for performance of any matter under this MOU shall require the subcontractors to comply with the same indemnity and insurance requirements set forth in this MOU to the extent that they apply to the scope of the subcontractors' work. Subcontractors are to be bound to the parties in the same manner and to the same extent as the the parties are bound to each other under this MOU. Subcontractors shall further agree to

include these same provisions with any sub-subcontractor. A copy of this MOU will be furnished to the subcontractor on request. The parties shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the MOU prior to commencing any work, and will provide proof of compliance to the each other.

- H. The foregoing provisions shall survive termination of this contract while coverage is still required to be in effect.
- I. The insurance requirements of this provision may be satisfied by self-insurance or a pooled risk arrangement, as long as the coverage afforded substantially complies with the requirements of this section.

20. AUTHORITY TO EXECUTE

- 21.1 By signing below, signatory warrants and represents that he / she executed this Agreement in his / her authorized capacity and that by his / her signature on this Agreement, he / she or the entity upon behalf of which he / she acted, executed this Agreement.

[signatures on following page]

IN WITNESS OF, The Parties have executed this MOU through their duly authorized representatives as of the last date set forth below:

Signed:

MILPITAS

By: _____
Tom Williams, City Manager

Date: _____, 2016

Attest:

By: _____
Mary Lavelle, City Clerk

Date: _____, 2016

Approved as to Form and Legality:

By: _____

Date: _____, 2016

CAMPBELL

By: _____
Mark Linder, City Manager

Date: _____, 2016

By: _____
Wendy Wood, City Clerk

Date: _____, 2016

By: _____

Date: _____, 2016

September 27, 2016

City of Milpitas
Attn: Mike Luu – Information Services Director
1265 N. Milpitas Blvd.
Milpitas, CA 95035

Re: Consulting Services Agreement between TriTech Software Systems and
The City of Milpitas (the "Agreement")

Dear Mr. Luu:

As you are aware, TriTech Software Systems ("TriTech"), the City of Milpitas, and the City of Campbell have been in discussions regarding the City of Campbell being added as a TriTech client to the TriTech system implemented at the City of Milpitas.

This letter serves as confirmation that, in accordance with the confidentiality provisions of the referenced Agreement, TriTech authorizes the City of Milpitas to provide applicable Confidential Information to the City of Campbell in order to facilitate the project. In addition, the City of Milpitas acting as the host for the City of Campbell system is within the parameters of the licensing provisions set forth in Section 10, subsections 10.4 and 10.5 of the Agreement. TriTech and the City of Campbell will be entering into a separate System Purchase Agreement, and Software Support Agreement, both of which reference Milpitas as the host.

TriTech understands that the City of Milpitas and the City of Campbell will also be entering into an agreement, or Memorandum of Understanding with respect to the project.

Should you have any questions, please do not hesitate to contact me at 858.799.7372, or roxanne.lerner@tritech.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Roxanne Lerner', is written over a light blue horizontal line.

Roxanne Lerner
Director of Contracts

Cc: Martha Chavez, Account Manager
Bob Brown, Sales Director