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# **SYSTEM PURCHASE AGREEMENT**

**TRITECH SOFTWARE SYSTEMS**

**AND**

**CITY OF SALINAS, CA**

**SYSTEM PURCHASE AGREEMENT  
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# SYSTEM PURCHASE AGREEMENT

**Client:** City of Salinas  
Salinas Police Department

**Address:** 222 Lincoln Ave.

**City, State, Zip:** Salinas, CA 93901

**Phone, Fax:** (831) 758-7286

**Contact Name:** Chief of Police

## 1.0 INTRODUCTION

1.1 This Agreement, is made by and between TriTech Software Systems, a California corporation, hereinafter referred to as “TriTech”, with offices at 9477 Waples Street, Ste. 100, San Diego, California 92121, and the City of Salinas, a California charter city and municipal corporation, hereinafter referred to as “Client”. TriTech and Client may also be referred to collectively as the “Parties”, or individually as a “Party”.

1.2 This Agreement is for the purchase of Records Management System (Inform RMS), and Field-Based Reporting system (Inform FBR), including applicable Interfaces, and reporting and analytics (TriTech.com IQ and TriTech.com Analytics), and applicable services, third party software, and equipment (the “Project”) as more fully described in this Agreement and the Addenda hereto.

1.3 In consideration of the terms, promises, mutual covenants and conditions contained in this Agreement, Client and TriTech agree as follows:

## 2.0 ADDENDA

2.1 The following documents are attached as Addenda to this Agreement and incorporated by reference as though set forth in full:

- (a) Addendum A-1 Statement of Work
- (b) Addendum A-2 Number of TriTech Software Licenses, Installation and Shipping Instructions
- (c) Addendum A-3 TriTech Services, Support and Maintenance Fees, and Miscellaneous

(d)	Addendum A-4	Equipment
(e)	Addendum A-5	System Software
(f)	Addendum A-6	Subcontractor Software, Hardware and Services, if applicable
(g)	Addendum A-7	Payment Terms
(h)	Addendum A-8	Contract Price Summary
(i)	Addendum A-9	System Planning Document
(j)	Addendum A-10	Initial Draft Project Schedule
(k)	Addendum B	TriTech Master Three Party Source Code Escrow Agreement
(l)	Addendum C	Subcontractor Warranty, Support and Maintenance Agreements, if applicable
(m)	Addendum D	Subcontractor License Agreements, if applicable
(n)	Addendum E	Critical and Urgent Priority Software Errors
(o)	Addendum F	TriTech.com Subscription Service License & Use Agreement (if applicable)

### **3.0 DEFINITIONS**

3.1 “Acceptance” or “Accept” means the processes described in the ACCEPTANCE section of this Agreement.

3.2 “Archive Server” or “Reporting Server” means a Server or other storage unit on which Client’s data resides for archival purposes.

3.3 “Commercially Reasonable” means efforts that a reasonable business entity would make under similar circumstances in accordance with commonly accepted commercial practice.

3.4 “Contract Price” means the total of the purchase price of the items as specified in Addendum A-8, including, as applicable, equipment, software licenses, services, fees, expenses and other items acquired under this Agreement, and if included as a line item in Addendum A-8, any applicable sales, use, value added, or other such governmental charges.

3.5 “Deliverable” means an item of equipment, software, services and other items acquired under this Agreement as listed in the addenda hereto.

3.6 “Delivery” with respect to the System means physical delivery of substantially all components of each Subsystem to the Designated Location. Delivery shall be deemed to have occurred despite the absence of incidental components provided that Installation of the Subsystem, training and system configuration can begin with the items then delivered. A separate Delivery shall occur with respect to each such Subsystem.

3.7 “Demonstration of Licensed Functionality (“DOLF”)” means the verification of configuration procedures for a Subsystem, conducted as described in the Statement of Work.

3.8 “Designated Location(s)” means the physical site(s) at which a Subsystem is installed as specified in Addendum A-1, Statement of Work.

3.9 “Disaster Recovery Computer System” means a server operating in a standby mode used to maintain a duplicate copy of the program and data contained in the Primary Computer System.

3.10 “Documentation” means any standard user manuals or other related instructional and/or reference materials, provided by TriTech or other Software Vendors, including on-line help information and Release Notes issued in connection with Updates. In case of a conflict between written documentation (user manuals or Release Notes in printed or CD-ROM format) and on-line help information, the printed and CD ROM documentation will control.

3.11 “Equipment” means the computer system equipment specified in Addendum A-4 of this Agreement. TriTech may substitute equipment for that specified in Addendum A-4 provided that such equipment will meet the requirements of the Specifications and this Agreement. (For Definitional purposes, Equipment (Addendum A-4) is differentiated from hardware supplied by Subcontractors (Addendum A-6).)

3.12 “Functional Acceptance Test (“FAT”)” means the pre-Go Live test process for a Subsystem as further defined in Section 11.2 and the Statement of Work.

3.13 “Go Live” means the event that occurs when the Client first uses a Subsystem for Live Operations. A separate Go Live may take place with respect to each Subsystem, each Interface, and each Modification.

3.14 “Help Desk” means the TriTech function consisting of receiving calls from Client concerning System problems and assisting Client with respect to the manufacturers of Equipment, Software and other items acquired under this Agreement under the applicable warranties and/or maintenance support agreements.

3.15 “Installation” with respect to Subsystems means the process of running the Subsystem under a procedure to demonstrate basic interoperability of the applicable Subsystem components at the Designated Location for that Subsystem. “Installation”, with respect to the Modifications, means the process of running each Modification under a procedure to demonstrate basic interoperability with the applicable Subsystem at its Designated Location(s). “Installation”, with respect to the Interfaces, means the process of running each Interface under a procedure to demonstrate basic interoperability of the Interface with the applicable Subsystem and the hardware and/or Software with which it is interfaced at its Designated Location(s).

3.16 “Interface”, collectively or individually, means the interface software described in Addendum A-2.

3.17 “Live Operations” means use of a Subsystem (e.g., the TriTech Software less Interfaces and Modifications) as the primary means of performing its functions. Use of a Subsystem in parallel with Client’s existing system for a period not in excess of thirty (30) days where the existing system is the primary means of performing its functions and the Subsystem is being run in a test environment shall not be deemed Live Operations.

3.18 “Modifications” means changes or additions to Software from the standard version thereof prepared hereunder. The Modifications, if applicable, are described in the appropriate Statement of Work, Addendum A-1. The TriTech Software is not custom software, and as such, at TriTech’s discretion Modifications or enhancements to the standard version will be made available in a subsequent version release available to all TriTech clients; or as applicable, made available as a separate module or function, separately licensed and priced.

3.19 “Object Code” means any instruction or set of instructions of a computer program in machine-readable form.

3.20 “Primary Computer System” means the live operations production system.

3.21 “Prime Contractor” means that TriTech shall (i) act as the central point of contact, providing project management services, including coordination and monitoring of all Subcontractor activities with respect to the Project, (ii) subcontract with certain Vendors that provide hardware, Software and/or services in connection with the Project (as more fully described in the Statement of Work), and (iii) pass through to Client warranties received from the Vendors thereof. Prior to Acceptance, should any Subcontractor hereunder be in default, through no fault of Client or its agents, a third party, or an event of Force Majeure, TriTech shall either continue to perform the duties of the Subcontractor to fulfill the obligations for the Subcontractor in accordance with the Statement of Work, or provide an alternative solution. Provided, however, that in no event will TriTech’s responsibility exceed the price for such Subcontractor’s portion of the Contract Price.

3.22 “Project Schedule” means the schedule developed in conjunction with the Statement of Work that provides the schedule for tasks to be completed by TriTech and the Client, and all Deliverable items to be provided by TriTech hereunder.

3.23 “Server” means a computer in a local area network that runs administrative software which controls access to all or part of the network and its resources and makes such resources available to computers acting as workstations on the network. With respect to the CAD System, this term includes, without limitation, the Primary Computer System and the Disaster Recover Computer System.

3.24 “Software” means collectively or individually the computer programs provided under this Agreement, including, without limitation, the programs for each Subsystem.

3.25 “Software Error” means an error in coding or logic that causes a program not to substantially function as described in the applicable Specifications. In the event TriTech (or

another Software Vendor) is unable to reproduce the Software Error at its facilities, TriTech will, at Client's request, visit Client's premises at Client's expense. If it is determined that the problem was caused by Equipment, Software, services, network or other items not supplied or not authorized by TriTech, Client shall reimburse TriTech for its labor costs for such on site visit, at TriTech's then current rates for consulting.

3.26 "Software Support" means Telephone Support, Software Error Correction, and Software Update services provided by TriTech (and/or other Software Vendors) for the Software, either under warranty or under an annual Software Support Agreement, as more fully described in said Agreement.

3.27 "Software Support Agreement" means collectively or individually agreements of that name (or a similar name) for the rendering of Software Support services entered into between the Parties coincident with this Agreement and renewed from time to time thereafter.

3.28 "Source Code" means the original mnemonic or high-level statement version of Software.

3.29 "Specifications" means (i) TriTech's response to the functional requirements in the City's RFP and Functional Acceptance Test document(s) ("FAT") with respect to each Subsystem; (ii) the Interface Requirements Document ("IRD") and applicable acceptance test document for each Interface, or Operational Scenario Document(s) for each Modification; and (iii) the published specifications for the Equipment, which documents are incorporated by reference herein as though set forth in full.

3.30 "Statement of Work" or "SOW" means the document that defines the implementation process for the Project, including specific tasks that are the responsibility of TriTech and the Client.

3.31 "Subcontractor" means one of the entities identified in the Statement of Work as subcontractors to TriTech, if applicable.

3.32 "Subcontractor Hardware" means the hardware supplied by a Subcontractor as part of its Subsystem, and identified in Addendum A-6, if applicable.

3.33 "Subcontractor Software" means software supplied by a Subcontractor as part of its Subsystem and listed in Addendum A-6, if applicable.

3.34 "Subsystem" means each of the applications described in the Statement of Work, including its Equipment, other hardware and software. In most cases, the Subsystem software will share Equipment. (For the avoidance of doubt, the CAD System is a Subsystem under this Agreement.)

3.35 "Subsystem Software" means individually or collectively the Software provided under this Agreement for each of the Subsystems.



3.36 “System” means collectively all Subsystems that make up the integrated Computer System referred to in paragraph 1.2 of this Agreement and more fully described in the Statement of Work.

3.37 “System Software” means the software identified in Addendum A-5 which includes, without limitation, operating system software, DBMS Software, and communications software.

3.38 “Task Completion Report” or “TCR” means the document presented by TriTech’s Project Manager to the Client for signature upon completion of a Deliverable.

3.39 “Telephone Support” means the service provided by TriTech for access to the TriTech Customer Service Department by telephone, on a twenty-four (24) hour a day, seven (7) day per week basis, or as applicable on a Normal Customer Service Business Hour basis (7:30 a.m. through 7:30 p.m., Monday through Friday, excluding TriTech holidays).

3.40 “TriTech Business Hours” means TriTech’s corporate business hours of 8:30 a.m. to 5:30 p.m. (Pacific Time), Monday through Friday, excluding TriTech holidays.

3.41 “TriTech Software” means the Object Code version of the software specified in Addendum A-2 of this Agreement, and any Modifications provided hereunder.

3.42 “Update” means revisions or additions to Software provided by the Vendor thereof. The term "Update" does not include separate modules or functions that are separately licensed and priced, or new products that are developed and marketed as separate products by the Vendor.

3.43 “Use” means copying of any portion of Software from a storage unit or media into a computer or Server and execution of the software thereon. This term shall be construed to refer to a grant of reproduction rights under 17 U.S.C. 106(1), and shall not be construed to grant other rights held by the copyright owner, including without limitation the right to prepare derivative works.

3.44 “User” means the operator of a Subsystem Workstation that is configured to access and/or utilize the capabilities and features of the Subsystem Software.

3.45 “Vendor” means any supplier of hardware, software or services under this Agreement, including TriTech, Subcontractors, System Software suppliers and Equipment suppliers. With respect to software, this term means the owner of the intellectual property rights, including copyright, to the software.

3.46 “Warranty Period” means the period starting at Final System Acceptance for the TriTech Software and ending one (1) year thereafter. The Warranty Period for Interfaces and any Modifications will also end on the same date.

3.47 “Workstation” means any computer input station that utilizes the functionality of a Subsystem, whether the software resides locally or on a Server.

## **4.0 TERM**

4.1 This Agreement shall commence on the last date of signature below, and terminate on the date of Final System Acceptance, unless (i) extended at the mutual written agreement of the Parties, or (ii) otherwise terminated in accordance with Section 16 herein. The timeframe for Delivery shall be set forth in the mutually agreed upon Project Schedule, and any mutually agreed upon amendments thereto.

4.2 Upon execution of this Agreement, Client shall issue a written notice to proceed.

4.3 The following provisions shall survive termination of this Agreement: Section 3 Definitions; Section 6 Software License (provided that Client remains a licensed end user of the TriTech Software); Section 7 Delivery, Installation, Title and Risk of Loss; Section 12 Confidentiality and Proprietary Rights; Section 16 Default and Termination with respect to each Party's obligations upon termination; Section 17, Liability; Section 18 Insurance; Section 19 Copyright and Trade Secret Infringement; Section 25 Waiver; Section 27 Applicable Law.

## **5.0 PRICES AND PAYMENT**

5.1 Unless otherwise stated herein, all dollar amounts contained in this Agreement are in U.S. dollars. The Contract Price for the purchased and/or licensed items hereunder is \$1,345,274.97 (not including travel) as more completely specified in Addendum A-8. Client shall pay the Contract Price without deduction or offset on the terms specified in Addendum A-7, pursuant to invoices issued by TriTech which shall be due upon receipt unless otherwise stated in the invoice.

5.1.1 Client's notice to proceed and Purchase Order will be required prior to the furnishing of the Deliverables hereunder.

5.1.2 For each payment milestone identified in Addendum A-7, TriTech's Project Manager will provide the Client with a TCR for signature. The Client signed TCR will initiate TriTech's invoicing of the payment milestone; TriTech shall reference the milestones on the face of the invoices it prepares and submits.

5.1.3 The Contract Price for the Deliverables and Services defined in Addendum A-2 through Addendum A-8 is based on a firm fixed price, subject to the following adjustments: (i) any changes in the scope of work will be documented in a mutually agreed upon written change order; and (ii) in the event that Client in its sole discretion chooses to delay implementation of any Deliverable for more than six (6) months beyond the Go Live date set forth in the Project Schedule, and the then current pricing for such Deliverable(s) including applicable Services has increased since the date of execution of this Agreement, such then current pricing will apply. A change order for signature by both Parties will be processed to adjust the Contract Price.

5.2 All amounts due and payable to TriTech hereunder shall, if not paid when due, bear a late charge equal to one and one-half percent (1-1/2%) per month, or the highest rate

permitted by law, whichever is less, from thirty (30) days after their due date until paid. The **remittance address for payments** only is:

TriTech Software Systems  
P.O. Box 203223  
Dallas, TX 75320-3223

5.2.1 In the event that Client is in arrears on payments due to TriTech of more than ninety (90) days from the due date, TriTech in its sole discretion may elect to stop work on the Project for non-payment until Client becomes current on payments due. In such event the Project Schedule will be adjusted accordingly, and TriTech shall not be considered to be in default for delays caused by Client's non-payment.

5.3 If Client desires to finance the Contract Price or any part thereof, it shall notify TriTech as soon as possible, but no later than the date of contract signing, and shall work diligently to secure said financing so as not to delay Delivery. TriTech shall be under no obligation to deliver any item hereunder until it receives a valid purchase order or firm letter of commitment from such financing company. Should Client finance the Contract Price, TriTech shall not be obligated to refund any deposit until the lease or loan has been funded and TriTech has been paid in full. For purposes of this Agreement, the term "finance" includes but is not limited to leasing.

5.4 If Client desires to purchase any of the items specified in this Agreement via a lease or other financing option, this Agreement shall be incorporated by reference in the lease agreement or financing agreement and the terms and conditions herein shall supersede such agreements or any purchase order, assignment agreement, or other contract of the lessor or lender. Notwithstanding a lease or other financing option, Client shall continue to be fully obligated under this Agreement.

## **6.0 SOFTWARE LICENSES**

6.1 In consideration for, and subject to, the payment of the license fee(s) specified in Addendum A-8 of this Agreement, and the other promises, covenants and conditions herein, Client is granted the following licenses to the Software:

6.1.1 The TriTech Software: A nontransferable, nonexclusive right and license to Use the TriTech Software and the Documentation for said Software for Client's own internal use for the applications described in the Statement of Work, at the Designated Location, in the quantity set forth in Addendum A-2, and on the Equipment set forth in Addendum A-4. Client may make additional copies of the TriTech Software as reasonably required for archival, or backup purposes, provided that such copies contain all copyright notices and other proprietary markings contained on the original, and are kept confidential in accordance with Section 12.0 herein. Additional TriTech Software licenses purchased after the execution of this Agreement shall also be licensed in accordance with the provisions of this Section 6.0.

6.1.1.1 Each copy of the TriTech Software provided under this license that is not identified in Addendum A-2 of this Agreement as a Disaster Recovery license may be used on only one Primary Computer System at any one time.

6.1.1.2 Each copy of the TriTech Software provided under this license and identified in Addendum A-2 of this Agreement as a Disaster Recovery license may be used in a standby mode on only one Disaster Recovery System at any one time as a backup in the event of a failure, malfunction or other out of service condition of its Primary Computer System. In the event its Primary Computer System fails to operate, the Disaster Recovery System and the Designated Application Software identified as a Disaster Recovery license may be enabled to function in its place. When the Primary Computer System returns to its normal operational mode, the Disaster Recovery System and the Designated Application Software identified as a Disaster Recovery license must be returned to its standby mode.

6.1.1.3 Client shall be entitled to have a copy of the TriTech Software residing on the Primary Server(s), and the Archive or Reporting Server.

6.1.1.4 Notwithstanding anything to the contrary in this Section, the TriTech Software is designed to enable Client to develop original applications which interface with the TriTech Software. The development and use of such interfacing applications is specifically permitted under the licenses herein and shall not be deemed derivative works provided that they are not, in fact, derived from the TriTech Software or the ideas, methods of operation, processes, technology or know-how implemented therein. Other than the licenses granted herein, Client shall not acquire any right, title or interest in the TriTech Software by virtue of the interfacing of such applications, whether as joint owner, or otherwise. Likewise, TriTech shall not acquire any right, title or interest in such Client developed non-derived applications, whether as owner, joint owner or otherwise.

6.1.2 TriTech.com IQ and TriTech.com Analytics Subscription: The terms and conditions for use of the TriTech.com IQ and TriTech.com Analytics Subscription service are set forth in the TriTech.com Subscription Service Use & License Agreement attached as Addendum F, if applicable.

6.1.3 Subcontractor Software: The licenses set forth in the License Agreements included in this Agreement in Addendum D, if applicable.

6.1.4 System Software: The licenses set forth in the applicable vendor's license agreements that accompany such software. Third party products providing supplemental software code to the TriTech Software and not subject to separate licensing provisions shall be licensed in accordance with the provisions of this Section 6.

6.2 Each Workstation and Server that is configured to utilize the functionality of any Subsystem Software must have a full-user license under this Agreement.

6.3 Title to all Software provided to Client under this Agreement remains with the Vendor of such Software. The applicable software Vendor retains all rights to its specific Subsystem Software and the associated Documentation not expressly granted in this Agreement.

6.4 Software (including without limitation Subsystem Software) may not be used to operate a service bureau or time-sharing service, outsourcing service, application service provider service or other services or businesses that provide computer-aided vehicle dispatching to third parties. Notwithstanding the above, Client shall be entitled to Use Subsystem Software at the applicable Designated Location for the purpose of the application(s) described in the Statement of Work for itself and other agencies/entities in the area within Monterey County, CA provided that the Subsystem Software is installed and operated at only one physical location. Should the City elect to join a Joint Powers Authority (JPA) or other Intergovernmental Agreement (IGA), the City will be permitted to transfer all existing City licenses to the JPA/IGA upon execution of a written Consent to Assignment to be entered into between TriTech, Client, and the JPA/IGA; TriTech's consent will not be unreasonably withheld. The Software shall not be used for other than the application(s) described in the Statement of Work.

6.5 Client shall not Use, copy, rent, lease, sell, sublicense, create derivative works from/of, or transfer the Software or any Subsystem Software or Documentation, or permit others to do said acts, except as provided in this Agreement or the applicable software license agreement. Any such unauthorized Use shall be void and may result in immediate and automatic termination of the applicable license, at the option of the applicable Vendor. In such event, Client shall not be entitled to a refund of the license fees paid hereunder.

6.6 The Software licenses granted in this Agreement or in connection with it are for Object Code only and do not include a license or any rights to Source Code except as otherwise provided under Section 15.0 (Source Code Escrow). Without limiting the generality of the foregoing, except as provided in Section 15.0, Client is specifically prohibited from accessing, copying, using, modifying, distributing or otherwise exercising any rights to such Source Code, even if such Source Code is loaded on the Equipment. The loading and/or using of Source Code to any Subsystem Software by TriTech or its employees, agents or Subcontractors on the Equipment or any other computer system equipment at the Designated Location or any other location associated with Client shall not constitute a waiver of this provision, or any express or implied license or other permission to copy, use or exercise other rights to the Source Code.

6.7 Client may not export any Software or Documentation outside the United States without further prior written agreement of TriTech or the applicable Subcontractor. In the event of such agreed export, Client agrees to comply with the requirements of the United States Export Administration Act of 1979 and any amendments thereto, and with all relevant regulations of the Office of Export Administration, U.S. Department of Commerce.

6.8 These licenses are effective until surrendered or terminated hereunder or under the terms of the applicable software license agreements.

6.9 Client may surrender any software licenses provided in connection with this Agreement at any time by performing the actions described in paragraph 16.4 of this Agreement,

or the applicable software license agreement. Such surrender shall not affect TriTech's right to receive and retain the Contract Price and other fees, charges and expenses earned hereunder.

## **7.0 DELIVERY, INSTALLATION, TITLE AND RISK OF LOSS**

7.1 TriTech will Deliver the items purchased and/or licensed hereunder and perform the services pursuant to the Statement of Work, subject to the provisions of the FORCE MAJEURE/EXCUSABLE DELAY section (23.0) of this Agreement, and further subject to delays caused by the actions or omissions of Client, including, but not limited to, delays in approval of the Specifications and/or Acceptance Test Procedures, training, system configuration, DOLF participation and/or Acceptance testing. Unless specifically identified as a TriTech task in the Statement of Work, Installation of Workstations into consoles, furniture or similar work area components at Client's Designated Location is the responsibility of Client.

7.1.1 Acceptance by Client of the services to be provided under this Agreement does not operate as a release of TriTech from its obligations and responsibilities in the performance of the services to be provided under this Agreement.

7.1.2 TriTech resources are allocated for each project based upon the mutually agreed upon Project Schedule. Client requested changes to the Project Schedule, including but not limited to training dates, or the Go Live date, or additional on-site meetings requested by Client will require TriTech to reallocate resources to accommodate the schedule change. Such changes to the Project Schedule must be mutually agreed upon in writing, and may result in additional fees for reallocation of resources, including applicable travel expenses.

7.2 TriTech will provide the Client with training for the System as specified in the Statement of Work and according to the agreed upon Project Schedule. If the Client is not available for training at the scheduled time, a revised training schedule will be established based upon the mutual agreement of TriTech and the Client. Any delay in performance of this Agreement resulting from such changes to the training schedule shall be deemed to be an Excused Delay under Section 23.0 herein and shall not result in a breach of this Agreement by TriTech.

7.3 Implementation of Live Operations with any Subsystem shall not occur (except for operations necessary to conduct Acceptance Tests pursuant to the Acceptance Test Procedure referred to in Section 11.0) until completion of the applicable Acceptance Test Procedure and Acceptance of the Subsystem by Client.

7.4 Implementation of the Interfaces and Modifications will be based upon the mutually agreed upon Project Schedule.

7.5 Client shall perform the Client Required Actions as defined in the Statement of Work.

7.6 Title to all Software provided under this Agreement shall remain with the Vendor thereof. TriTech retains a security interest in the items acquired hereunder as more fully provided in the SECURITY INTEREST section of this Agreement.

7.7 Risk of loss of any Deliverable shall be borne by TriTech until Delivery of the Deliverable to Client. Thereafter, the risk of loss shall be borne by Client.

7.8 Client shall pay all freight charges associated with Delivery of the System if applicable, according to the payment terms in Addendum A-7.

## **8.0 SITE PREPARATION**

8.1 Client agrees to provide, at its own expense, those required facilities and equipment specified in Addendum A-9 (the System Planning Document), or in the applicable Documentation or otherwise specified by TriTech in writing, to meet the hardware/software configuration requirements and the requirements for proper electrical power quality and other computer facility resources. Client shall also provide and maintain during the term of this Agreement, a high speed data connection (as more fully defined in the System Planning Document), a separate data quality telephone modem line and a dedicated voice line (in each case as specified by TriTech) for maintenance and software support purposes in each physical area where a Server or interface equipment is located. Such facilities and equipment shall be in place and operational prior to Delivery of the items purchased and/or licensed under this Agreement.

8.2 TriTech shall assist Client in meeting its obligations under this section by providing the necessary guidelines and specifications for site preparation.

## **9.0 SECURITY INTEREST**

9.1 TriTech retains and Client hereby grants to TriTech a purchase money security interest in the Software licenses, Equipment, and other items acquired hereunder and in all accessions to, replacement of, and proceeds from said items, as security for the payment of the Contract Price. As used in this paragraph, "proceeds" include whatever is receivable or received when proceeds or collateral is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes, without limitation, all rights to payment, including return premiums, with respect to any insurance related thereto. (Nothing herein shall be deemed to grant or constitute a right to Client to transfer any Software licensed hereunder to any third party.) Client shall, at TriTech's request, sign a financing statement and such other documents as TriTech reasonably requires to perfect its security interest. Such security interest shall be released upon full payment of the Contract Price.

9.2 Until full payment of the Contract Price is made, Client shall maintain the items purchased/licensed under this Agreement in good order and repair at Client's expense, except as otherwise provided under the warranty provisions of this Agreement or any applicable third party warranty, and shall use such items in a manner that will not subject them to waste or deterioration.

9.3 Client shall not, without the prior written consent of TriTech, sell, lease, encumber or otherwise dispose of the items purchased under this Agreement until TriTech's security interest hereunder has been released. (Nothing in the foregoing shall be deemed to grant

or imply any license or other right to Client to sell, lend, rent, lease or otherwise transfer the TriTech Software to a third party.)

9.4 Should Client (i) fail to pay any amount specified in this Agreement when it becomes due, (ii) fail to perform any provision of this Agreement to be performed by it, (iii) make an assignment for the benefit of creditors, (iv) suffer the appointment of a receiver for any substantial part of its assets, (v) institute any proceedings for dissolution or full or partial liquidation, or (vi) commence proceedings in bankruptcy for liquidation or reorganization, Client shall be in default of this Agreement under Division 9 of the Uniform Commercial Code, and TriTech shall have the rights and remedies afforded a secured party by the chapter of “Default” of Division 9 of the Uniform Commercial Code then in effect, subject to paragraph 15.1 herein. In conjunction with the above-named chapter, but not by way of limitation, TriTech may:

9.4.1 Require Client to disassemble the Equipment, other hardware, and permanently remove the Software from Client’s computers or other storage media or locations and make all such items available to TriTech at Client’s premises or such other location as is mutually agreed by the Parties.

9.4.2 Render said Software unusable.

9.4.3 Apply the proceeds received from the sale or other disposition of the equipment or software acquired hereunder, in addition to the items specified in Division 9 of the Uniform Commercial Code, against payment of reasonable attorneys’ fees and legal expenses incurred by TriTech as a result of Client’s default.

## **10.0 SERVICES AND KEY PERSONNEL**

10.1 TriTech and/or its Subcontractors will provide those services specified in the Statement of Work, which is attached hereto and incorporated herein by reference. Any services desired by Client in addition to those specified in this Agreement or the Statement of Work will be subject to the availability and scheduling of TriTech (or Subcontractor) personnel and to TriTech’s (or the Subcontractor’s) then-current rates, plus expenses. Prior to performing any of the aforementioned additional services, TriTech will provide a written quotation detailing the associated price to be paid for such services.

10.2 The work to be performed shall include the furnishing of all labor, materials, Equipment, drawings, engineering and services specified in this Agreement or Statement of Work. (Nothing herein shall be construed as providing Source Code to any Software except as provided in Section 15.0 of this Agreement (Source Code Escrow). The TriTech Documentation is provided via soft copy. If the Client requires hard copies of Documentation (e.g., User’s Guides, System Administration Manuals), Client shall compensate TriTech for the actual costs related to production of such copies.

10.3 TriTech shall appoint a competent TriTech Project Manager to act as its representative and single point of contact, and to monitor its employees and Subcontractors in the Delivery and Installation of the Subsystems provided under this Agreement. Client will be provided resumes of all Key Personnel prior to assignment. Key Personnel are the proposed



Project Manager(s), and Business Analyst(s), and Trainer (if not the Business Analyst). The Business Analyst typically provides the training for Inform RMS. In the event that the Client has a concern with the resume of the Business Analyst/Trainer, TriTech’s Project Manager will coordinate and meet with the Client Project Manager to address the Client’s concerns up to and including proposing an alternate Business Analyst/Trainer if appropriate. The respective Project Managers will also meet as may be reasonably required to discuss any operational issues or the status of the Project. Except as provided below, TriTech shall not change TriTech Project Managers without Client’s prior written approval, which approval shall not be unreasonably withheld or delayed. TriTech’s initial Key Personnel for this project will be:

NAME	TITLE
Vidas Germanas	Project Manager
Allen Anderson	Business Analyst, Trainer

10.3.1 In the event that any Key Personnel becomes unavailable as a result of death, illness, disability, termination of employment or other unforeseen circumstance, TriTech shall notify Client with as much written notice as is reasonably possible; and shall provide a proposed replacement of equal experience and qualifications. Additionally, the Client may request removal of any Key Personnel from TriTech’s Project team upon written notice to TriTech stating the reason for such removal. TriTech will provide resumes of proposed replacement personnel for Client’s approval which shall not be unreasonably withheld. In either event, TriTech shall have a reasonable time period to provide a replacement.

10.4 Travel costs incurred by TriTech in connection with services rendered under this Agreement shall be paid by Client, payable upon receipt of TriTech’s invoice for such costs. Travel costs submitted for reimbursement will be actual costs. An estimated amount for travel costs for the Project has been included in Addendum A-3. Should TriTech determine that the travel expenses for the Project will exceed the estimated amount, TriTech will provide reasonable notice to Client. TriTech’s Business Travel Policy will be followed. Client’s written pre-approval for any increase in the estimated travel fees will be required.

## 11.0 ACCEPTANCE

11.1 General. Testing of the System and Subsystems shall occur throughout the Project life cycle as further defined in the Statement of Work (SOW). Prior to conducting the Functional Acceptance Test (“FAT”) process as defined below, the Client shall receive for review, standard FAT documents for the System and Subsystems. Upon review by the Client of the FAT documents, TriTech shall conduct the FAT with the Client’s participation in accordance with the Project plan. Individual test cases within the FAT shall have a pass/fail criteria and with results reported to the Client when the individual tests are complete with a Test Report. Client shall not suspend testing when problems are experienced and restart an FAT when the problems are corrected unless the problems prevent continuing with FAT testing. If FAT testing must be suspended pending corrective action, Client shall promptly advise TriTech by the fastest available means.

11.2 FAT. Following completion of the DOLF process (which is further defined in the SOW) for the applicable Subsystem, the FAT process, as further defined in the SOW will begin. During the FAT process, in addition to the standard FAT documents provided by TriTech, Client will test System functionality against TriTech's response to the City's functional requirements included in its RFP. Any FAT issues detected will be categorized, based on the operational impact to Client as Pre-Go Live Issues to be corrected prior to Go Live, or Post-Go Live Issues that do not affect the Go Live readiness of the System and will be corrected following Go Live. TriTech and the Client will mutually agree upon the Go Live date for the System.

11.3 Final Subsystem Acceptance – Inform RMS and Inform FBR Subsystems. Upon Go Live for the Subsystem(s), the Client shall utilize the Subsystem(s) together for a sixty (60) day Acceptance test period ("the Acceptance Test Period") to verify operational system and Subsystem functionality in a live environment. If no Critical Priority or Urgent Priority Software Errors (as those terms are defined in Addendum E) are reported during such sixty (60) day period, the Subsystems shall be deemed to have achieved Final Acceptance. In the event that a Critical Priority or Urgent Priority Software Error occurs during the Acceptance Test Period, TriTech shall commence actions in accordance with the Software Support Agreement to correct the reported error.

11.3.1 In the event that a Critical Priority Software Error occurs between day one (1) and day sixty (60) of the Acceptance Test Period, the Acceptance Test Period will be stopped and restarted at day one (1) once the Software Error has been resolved in accordance with the Software Support Agreement.

11.3.2 In the event that an Urgent Priority Software Error occurs between day one (1) and day fifteen (15), the Acceptance Test Period will be stopped and restarted from day one (1) once the Software Error has been resolved in accordance with the Software Support Agreement. If the Software Error occurs between day fifteen (15) and day sixty (60), the Acceptance Test Period will be stopped and restarted from the day the resolution has been provided in accordance with the Software Support Agreement; however, in no event shall the Client have less than ten (10) days to test the correction.

## **12.0 CONFIDENTIALITY AND PROPRIETARY RIGHTS**

12.1 The copyright to the Software and Documentation (including without limitation the Subsystem Software and Documentation) is owned by the Vendor thereof. Said software and documentation is licensed, not sold. Nothing in this Agreement shall be construed as conveying title in the Software or Documentation to Client.

12.2 Provided that Client's confidential business information and confidential data is marked with the legend "CONFIDENTIAL INFORMATION", "PROPRIETARY INFORMATION", or a substantially similar legend, TriTech agrees to maintain Client's confidential business information and confidential data, including patient identifying data, to which TriTech gains access in confidence and to not disclose such information except as required to perform hereunder or as required by law. If such confidential or proprietary information is disclosed to TriTech orally, Client shall, within five (5) business days of the

disclosure, document the disclosure in writing, which writing shall be marked with the above-described legend. Notwithstanding the above, the applicable Vendor shall own the copyrights, trade secrets, patent rights and other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired as a result of or in connection with this Agreement to make modifications and enhancements to Software or Documentation. Client shall acquire no intellectual property ownership rights to Software or Documentation as a result of such use, whether as author, joint author, or otherwise. Client shall retain all ownership of the Client's data.

12.2.1 TriTech maintains a security program for security managing access to client data – particularly HIPAA and CJIS information (“Security Approved Personnel”). This includes 1) a pre-employment background check; 2) security training required by Federal CJIS regulations; and 3) criminal background checks/fingerprints required by Federal or State regulations. TriTech will work with the Client to provide required documentation (such as the CJIS Security Addendum Certification form and VPN documents). TriTech will provide Client with documentation describing 1) TriTech's password compliance with CJIS; 2) CJIS level encryption components and how and where data is encrypted; 3) deployment strategies for products (what products have to live in a physically secure environment); and 4) internal product audit tools for monitor access and security changes within TriTech's product (the Client must use other tools to do this within the Client's network).

12.2.1.1 If required by the Client, TriTech will provide paper fingerprint cards for such Security Approved personnel with the fingerprinting performed in the state of the TriTech staff's job assignment. If the Client requires fingerprints submitted in a form other than paper prints (such as Live Scan) or that such fingerprints be performed at the Client's site, the Client will reimburse TriTech for the cost of TriTech Security Approved Personnel traveling to the Client's site or for a vendor (such as Live Scan) to travel to the applicable TriTech office location. This provision will apply during the installation of the Project and for the duration of the Client's Software Support Agreement.

12.3 Client understands and agrees that the Software and Documentation (including without limitation Subsystem Software and Documentation) including, but not limited to, the Source Code, Object Code, the OSDs, IRDs and ATPs, Functional Description Documents (FDDs), the Statement of Work, the software design, structure and organization, software screens, the user interface and the engineering know-how implemented in the software (collectively “Vendor Proprietary Information”) constitute the valuable properties and trade secrets of the Vendor thereof, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to the vendor a competitive advantage.

12.3.1 The material presented in TriTech's training courses represents the confidential and proprietary information of TriTech, not intended for public disclosure or disclosure to third parties. Clients may videotape training sessions provided on-site at the Client's facilities by TriTech staff for the Client's own internal use only. The Client shall notify TriTech in advance if the Client will videotape training sessions. The Client is responsible for managing access to and copying of any TriTech provided training materials or Client-made videotapes of TriTech training sessions following the applicable training course.

12.4 Client agrees during the term of this license, and thereafter, to hold the Vendor Proprietary Information, including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for Client's exercise of the license rights granted hereunder.

12.4.1 Without limiting the generality of the foregoing, except as provided in Section 15.0 (Source Code Escrow), in the event Source Code is loaded on the Equipment, or other computer system equipment at any Designated Location or any other location in connection with TriTech's performance under this Agreement, or for any other purpose, Client shall keep such Source Code strictly confidential and shall not, without the written authorization of TriTech (and, if applicable, the concerned Subcontractor), access, use, copy, modify, distribute, disclose or otherwise exercise or permit the exercise of any rights to such Source Code by any person, including but not limited to Client's employees, agents or contractors. This provision is intended by the Parties to prohibit, among other things, Client access to Source Code by any person and for any reason unless expressly authorized by Section 15.0 (Source Code Escrow) herein.

12.5 Client shall not attempt or authorize others to attempt to learn the trade secrets, technology, ideas, processes, methods of operation, know-how and/or confidential information contained in the Software by duplication, decompilation, disassembly, other forms of reverse engineering, or other methods now known or later developed.

12.6 Client shall inform TriTech promptly in writing of any actual or suspected unauthorized Use, copying, or disclosure of the Vendor Proprietary Information.

12.7 Client acknowledges that the information contained in Addenda to this Agreement which is marked with the legend "PROPRIETARY DATA" is likewise Vendor Proprietary Information, including but not limited to itemized line item pricing as TriTech does not publish its commercial price list; System Planning Document which addresses product specific requirements/plans; and the Project Schedule which provides further definition of TriTech's implementation processes; all of which may not be copied, disclosed, distributed or otherwise disseminated to third parties without the written authorization of TriTech or the concerned Subcontractor. Client shall comply with said legend in all respects to the extent permitted by applicable law, and shall promptly inform TriTech of any unauthorized disclosure of such information.

12.8 If any Vendor Proprietary Information is subject to any Federal or State statutes(s) providing for public access or disclosure of public records, documents or other material, Client shall (i) provide to TriTech (and, if applicable the concerned Subcontractor) written notice of any request or other action by a third party under said statute(s) for release, access, or other disclosure thereof, (ii) provide to TriTech (and, if applicable the concerned Subcontractor) a reasonable opportunity to respond to and/or oppose such action in the appropriate forum and (iii) take such steps as are permitted under said statutes to assert in response to such action any exemptions or other protections available thereunder to prevent, restrict and/or control the public release, access and/or disclosure of the Vendor Proprietary Information.

12.9 The confidentiality obligations specified in this Section 12 shall survive the termination or rescission of this Agreement.

### **13.0 LIMITED WARRANTIES**

13.1 The TriTech Software. TriTech warrants that, during the Warranty Period, the TriTech Software will perform in conformity with the Specifications. If, during the Warranty Period, Client determines that a warranty defect exists in the TriTech Software, Client shall notify TriTech during Normal TriTech Customer Service Hours (7:30 a.m. to 7:30 p.m., CST, Monday through Friday, excluding TriTech holidays). TriTech shall, at its option, correct the defect, or replace the TriTech Software.

13.1.1 TriTech further warrants and represents that the TriTech Software does not contain any “back door”, “time bomb”, “Trojan horse”, “worm”, “drop dead device” or other program routine or hardware device inserted and intended by TriTech to provide a means of unauthorized access to, or a means of disabling or erasing any computer program or data, or otherwise disabling the TriTech Software. (Nothing herein shall be deemed to constitute a warranty against viruses. The provisions of paragraph 13.1.2.5, below, shall constitute the agreement of the Parties with respect to viruses.) Client’s sole remedy with respect to the foregoing warranty shall be to receive an Update to the TriTech Software that does not contain any of the above-described routines or devices.

13.1.2 If the TriTech Software is unable to function as warranted due to any one or more of the following factors, additional charges may be imposed by TriTech for actions necessary to correct or work around such factors:

13.1.2.1 Modification of the TriTech Software, System Software or Equipment by Client or a third party whether or not permitted hereunder.

13.1.2.2 Misuse or neglect, including without limitation failure to use the TriTech Software as described in the Documentation, or other instructions provided by TriTech.

13.1.2.3 Software not provided by TriTech, not specified as compatible in the Documentation, or Client not following the procedures for loading third party software on a Workstation or Server as set forth in paragraph 13.5 of this Agreement and further defined in the System Planning Document (Addendum A-9 hereto).

13.1.2.4 Equipment which does not meet the configuration requirements specified in the Documentation, by failure of Client to provide and maintain the site and facility requirements described in Section 8.0 herein, or the use of “clones” (generic “look-alike” equipment) as substitutes for the Equipment listed in Addendum A-4.

13.1.2.5 Computer viruses that have not been introduced into Client’s system by TriTech. Client shall maintain up-to-date virus checking software and shall check all software received from TriTech or any other person or entity for viruses before introducing that software into any part of the System including, but not limited to, Workstations or Servers. If

desired by Client, TriTech will provide Updates on media rather than direct downloading to facilitate this virus checking. If, despite such check, a virus is introduced by TriTech, TriTech will provide a virus-free copy of the TriTech Software, and will, at its expense, reload said software (but not Client's data) on Client's Equipment. Client shall be responsible for reloading its data and, to that end, shall practice reasonable back-up procedures for the System to mitigate the consequences of any virus.

13.1.2.6 Equipment or software provided by third parties with which the TriTech Software interfaces or operates (including but not limited to system software), including but not limited to problems caused by changes in such equipment or software. If such changes occur which require modifications or other actions with respect to the TriTech Software, such modifications or actions shall (unless identified in the Addendum A-3 as a line item in this Agreement) be subject to the mutual written agreement of the Parties, including but not limited to, additional charges by TriTech at its then current rates for engineering and technical support.

13.1.2.7 After the Warranty Period, TriTech's obligations with respect to operation of the items purchased and/or licensed hereunder shall be as specified in the MAINTENANCE AND SOFTWARE SUPPORT section of this Agreement.

13.1.2.8 If mapping information is supplied with the TriTech Software, TriTech makes no representation or warranty as to the completeness or accuracy of the mapping data provided with the TriTech Software. The completeness or accuracy of such data is solely dependent on the information supplied by the Client or the mapping database vendor to TriTech.

13.2 Problems in the TriTech Software or transmission of data caused by wireless services are not warranted by TriTech, or covered under the terms of this Agreement. Client's use of services provided by wireless service providers or carriers, and the security, privacy, or accuracy of any data provided via such services is at Client's sole risk.

13.3 Client is responsible for maintaining the required certifications for access to Client's state CJIS system(s), NCIC and/or other local state, federal and/or other applicable systems.

13.4 TriTech.com IQ and TriTech.com Analytics. Any warranties for the TriTech.com IQ and TriTech.com Analytics subscription service are set forth in the TriTech.com Subscription Service Use & License Agreement provided at Addendum F, if applicable.

13.5 Equipment, System Software and Subcontractor Hardware and Software, and any other items provided under this Agreement and not manufactured by TriTech (collectively "Third Party Items"). Third Party Items are warranted by the manufacturers or Vendors thereof, not by TriTech. TriTech shall pass through to Client any warranties on Third Party Items granted to it. If, during the warranty period for Third Party Items Client determines that they do not perform as warranted, Client shall contact TriTech using the procedures described in the Software Support Agreement. TriTech shall perform Help Desk functions by receiving calls and providing reasonable assistance to Client in determining the causes of the reported problem and in assisting Client in making claims under applicable third party warranties. Reasonable assistance consists of an evaluation of the reported problem in order to determine if the problem

is being caused by a TriTech Software issue or an issue with a Third Party Item that needs to be addressed by the applicable Vendor. As part of the evaluation process, TriTech will share with the Client non-proprietary information related to the diagnosis such as error messages, database trace information and other information that led TriTech to diagnose the Third Party Item as the likely cause and which may aid the Client in seeking a resolution from the applicable manufacturer or Vendor. For issues involving Windows O/S software (Microsoft) that generally affect the operation of the TriTech Software and are not caused by a Client specific installation or configuration of the O/S, TriTech will work with Microsoft to coordinate the resolution. Notwithstanding the foregoing, TriTech warrants that, during the Warranty Period for the TriTech Software, the TriTech Software shall be compatible with the Third Party Items (i.e., shall communicate, share data and otherwise work together without additional software or hardware not provided under this Agreement) provided that all Subsystem components are used and maintained by Client as specified or instructed by TriTech, or the respective Vendors thereof, provided further that such items have not been changed since the Delivery thereof such that the TriTech Software is no longer compatible without modification.

13.5.1 Client Provided Hardware. During the Warranty Period TriTech warrants that the TriTech Software will function in accordance with the Specifications on Client provided hardware/equipment, provided that such Client hardware/equipment meets TriTech's specifications and configuration requirements.

13.5.2 Notice: The design of keyboards, computer desks, chairs and other items in the workplace ("ergonomic characteristics") affect the comfort, efficiency and safety of such items with respect to people who use them. Such ergonomic characteristics are determined by the manufacturer of such items, and the manner of their use in the workplace. To the extent allowed by law, TriTech disclaims all warranties, express or implied, with respect to the ergonomic characteristics of said items. Client shall adopt and regularly practice generally accepted workplace safety practices to promote safety and prevent injury from the use of such items and shall hold TriTech harmless from and against all claims, actions or proceedings related to the ergonomic characteristics of such items and injuries related to or caused therefrom.

**13.6 TRITECH MAKES AND CLIENT RECEIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## **14.0 MAINTENANCE AND SOFTWARE SUPPORT**

14.1 The TriTech Software. Annual Software Support shall begin upon the date of Go Live for the TriTech Software and end thirteen (13) months thereafter, under the terms of the Software Support Agreement to be entered into between the Client and TriTech coincident with this Agreement. On or before expiration of the then current support term, and at each annual anniversary thereof, TriTech shall provide to Client a Software Support Renewal Notice for signature and payment of the then-current Software Support fees. TriTech reserves the right to change the terms and conditions for Software Support at the time of renewal by written notice to, and agreement of the Client. The rendering by TriTech of Software Support for the coming year

shall be subject to Client executing the Software Support Renewal Notice and paying the applicable Software Support fee(s).

14.1.1 If Client fails to keep an annual Software Support Agreement for the TriTech Software in effect, any later resumption of annual Software Support services by TriTech shall be subject to payment by Client of all past unpaid annual Software Support fees in addition to the Software Support fee for the current support year. Client acknowledges and agrees that the preceding clause is reasonable in light of the fact that the expenses incurred and resources devoted by TriTech to further development, enhancement and support of the TriTech Software must be spread over TriTech's customer base and fairly shared by all TriTech Software users.

14.1.2 Notwithstanding anything to the contrary herein, Software Support for the TriTech Software shall be subject to and conditional on Client's implementation and use of a version of the TriTech Software that is the most current production version thereof made available to Client. If Client does not implement the most current production version when it is made available, TriTech shall only be obligated to provide Software Support for Client's version of the TriTech Software for a period of twenty-four (24) months thereafter.

14.1.3 Unless listed as a line item in Addendum A-3, TriTech Software Support shall not include design, engineering, programming, testing, implementation or other services rendered necessary by changes in Equipment, System Software or Subcontractor Hardware or Software ("Third Party Changes"). Any such services shall be subject to additional charges by TriTech and the mutual written agreement of the Parties as to the terms and conditions under which such services are rendered. Absent such agreement, TriTech shall be under no obligation, express or implied, with respect to Third Party Changes or modifications to the TriTech Software resulting therefrom.

14.2 TriTech.com IQ and TriTech.com Analytics. Support terms for the TriTech.com IQ and TriTech.com Analytics subscription service are set forth in the TriTech.com Subscription Service Use & License Agreement provided at Addendum F, if applicable.

14.3 System Software. Maintenance and support for System Software sold or licensed hereunder shall be subject to and provided in accordance with any maintenance agreements between Client and the supplier thereof, or other third party maintenance providers. If Client determines that an item of System Software provided under this Agreement does not perform as provided in the applicable specifications, Client may, provided that a current Software Support Agreement with TriTech is in force, contact TriTech using the procedures described in the Software Support Agreement. TriTech shall thereupon provide Help Desk services to Client with respect to the reported problem. For issues involving Windows O/S software (Microsoft) that generally affects the operation of the TriTech Software and is not caused by a Client specific installation or configuration of the O/S, TriTech will work with Microsoft to coordinate the resolution. Notwithstanding the above, TriTech is not and shall not be a party to such third party maintenance agreements nor shall TriTech have any obligation or liability thereunder, other than as stated above. Client is responsible for maintaining licensing, including updates for System Software.



14.4 Subcontractor Hardware and Software. The initial twelve (12) month maintenance and support period for those Vendors identified in Addendum A-6 will be provided to Client by the respective vendors as Subcontractors to TriTech. Client shall contact TriTech in accordance with the procedures in the Software Support Agreement to report any errors or defects detected with respect to such items. TriTech shall assist Client in determining the nature of the problem, and will contact the appropriate Vendor for resolution. TriTech will follow-up with the Vendor, and maintain contact with both the Vendor and Client to coordinate problem resolution within a commercially reasonable time. Support and maintenance will be provided in accordance with the respective Vendor's support and maintenance agreements, attached hereto at Addendum C. At the conclusion of such initial annual maintenance and support period, annual maintenance and support shall be subject to and provided in accordance with any maintenance agreements between Client and the respective Vendors. TriTech shall not be a party to such maintenance and support agreements. Thereafter, provided that Client maintains in force an annual TriTech Software Support Agreement, Client may contact TriTech in accordance with the Software Support Agreement, and TriTech shall provide Help Desk services to Client with respect to the reported problem.

14.5 Equipment. Maintenance and support for Equipment sold hereunder is not included under this Agreement. However, since proper computer equipment maintenance is required for proper system operation, Client agrees to acquire and keep in force computer and peripheral equipment maintenance agreements for the equipment used to operate the TriTech Software or to provide such maintenance in-house with qualified personnel. If Client determines that an item of Equipment provided under this Agreement does not perform as provided in the applicable specifications, Client may, provided that a current Software Support Agreement with TriTech is in force, contact TriTech using the procedures described in the Software Support Agreement. TriTech shall thereupon provide Help Desk services to Client with respect to the reported problem. Notwithstanding the above, TriTech is not and shall not be a party to such third party maintenance agreements nor shall TriTech have any obligation or liability thereunder.

14.6 If, at any time after installation of the System, Client desires to load on a Workstation or Server any software not provided by TriTech, it shall, before loading such software, follow the procedures regarding third party software compatibility in the TriTech Documentation, and contact the TriTech Customer Service Department at the telephone numbers listed in the Software Support Agreement for assistance as required. **Such action shall not constitute approval, express or implied, for the loading of specific software on a Workstation or Server, nor any express or implied warranty, representation or other obligation by TriTech with respect to such software, including but not limited to its suitability, operability or capability to meet Client's needs or expectations.** Client agrees that if the loading of such third party software degrades the performance of the System, Client shall immediately uninstall such software. Client shall absolve, discharge and release TriTech from any obligations or liabilities related to operation or performance of the System, the TriTech Software, Subcontractor Software, or any other item provided by TriTech under this Agreement, including but not limited to any liabilities for damages related thereto in connection with the installation of such third party software.

## 15.0 SOURCE CODE ESCROW

15.1 TriTech Software. Subject to payment of the applicable escrow fees by Client and Client's execution of the applicable escrow documents, TriTech shall, on or before the occurrence of Go Live for the TriTech Software (less Interfaces and Modifications), enroll Client as a Preferred Beneficiary of the applicable TriTech Source Code escrow account with Iron Mountain Intellectual Property Management (the "Escrow Agent"). A copy of TriTech's Master Preferred Escrow Agreement with Iron Mountain is attached at Addendum B. Client shall pay all escrow fees and expenses associated with the Escrow, including but not limited to first year fees (which are included as a line item in the Contract Price), renewal year fees, and fees for additional services, if any, selected by Client. Each month, TriTech shall deposit in Escrow updated Source Code containing (i) all Updates to the TriTech Software released during the preceding month and (ii) any TriTech Software Modification and/or Interfaces released for live operations during the preceding month. Source Code Escrow shall be kept in effect until (i) Client gives TriTech written notice of termination of the escrow, (ii) the escrow is canceled by the Escrow Agent due to non-payment of escrow charges by Client, or (iii) this Agreement is terminated. Source Code released under the terms of the Source Code Escrow Agreement shall be deemed part of the TriTech Software hereunder, subject to the terms and conditions of this Agreement, including but not limited to the license terms in Section 6.0, except as modified below.

15.1.1 Source Code shall be released to Client only upon the occurrence of and only during the duration of one of the following conditions:

15.1.1.1 TriTech's persistent and uncured failure to carry out or provide for the carrying out of material warranty obligations imposed upon it pursuant to this Agreement or any Software Support Agreement between the Parties with respect to the TriTech Software, which failure persists for a period of 30 days after written notice from Client to TriTech asserting such failure and the intention to demand a release of Source Code from escrow, or

15.1.1.2 TriTech's failure to continue to do business in the ordinary course without providing an alternate source of warranty or Software Support by a ready, willing and able assignee.

15.1.2 The escrowed Source Code and other material released to Client hereunder shall be subject to all of the terms and conditions of this Agreement, including without limitation the Confidentiality provisions herein, except as specifically modified in this paragraph. Without limiting the generality of the foregoing, the Source Code shall, except for periods of actual use, be kept in a secure, locked container and/or a secure protected computer file with access limited only to those with a need to know for purposes of software maintenance. Any person or entity granted access shall be required to agree in writing to comply with this paragraph. TriTech shall, upon request, be provided with a copy of such agreement(s).

15.1.3 Provided that a release of Source Code is rightfully made hereunder, Client is granted a license to copy and Use the Source Code for the sole purpose of software maintenance. For purposes of these Source Code Escrow provisions, the term "software

maintenance” means correction of software errors and preparation of software modifications and enhancements. If Client creates new and original computer code not derived from the TriTech Software or the ideas, processes, methods of operation, technology or know-how implemented therein, in the process of software maintenance, the intellectual property rights (including copyright, patent and trade secret) in and to that specific new and original code shall be owned by Client. However, if Client’s enhancements or other modifications result in the creation of a derivative work from the TriTech Software, or a work based upon the ideas, processes, methods of operation, technology or know-how implemented therein, the intellectual property rights (including copyright, patent and trade secret) in and to such work shall be owned by TriTech and Client’s rights to use such work shall be limited to those granted with respect to the TriTech Software in this Agreement. No rights to distribute Source Code or derivative works therefrom are granted hereunder.

15.2 Subcontractor Source Code Escrow. If Client desires to enter into Source Code escrow agreements for the Subcontractor Software provided hereunder, such agreements shall be entered into directly between Client and the licensors thereof. TriTech shall not be a party to such Subcontractor Source Code escrow agreements.

## **16.0 DEFAULT AND TERMINATION**

16.1 TriTech may terminate this Agreement and the TriTech Software licenses granted herein at any time if (i) Client fails to comply with any material term or condition of this Agreement unless (a) in the case of failure to pay monies due to TriTech, Client cures such failure within fifteen (15) days after written notice of such failure by TriTech or (b) in other cases, Client cures such failure(s) within thirty (30) days of such notice or in the case of failures not reasonably susceptible to cure within thirty (30) days, Client commences action to cure such failure within such period and continues such action with due diligence until the failure is cured, or (ii) Client’s normal business operations are disrupted or discontinued for more than thirty (30) days by reason of insolvency, bankruptcy, receivership or business termination. Such termination shall not affect TriTech’s right to receive and retain the Contract Price and other fees, charges and expenses earned hereunder.

16.1.1 In the event of termination in accordance with paragraph 16.1 above, TriTech’s subcontractors providing software licenses hereunder may also terminate such licenses granted to Client with respect to this Agreement.

16.2 Client may terminate this Agreement if (i) TriTech (or a Subcontractor) fails to comply with any material term or condition of this Agreement unless (a) TriTech (or the applicable Subcontractor) cures such failure within thirty (30) days after written notice thereof from Client or (b) in the case of failures not reasonably susceptible to cure within thirty (30) days, TriTech (or the applicable Subcontractor) commences action to cure such failure within such period and continues such action with due diligence until the failure is cured, or (ii) TriTech’s normal business operations are disrupted or discontinued for more than thirty (30) days by reason of insolvency, bankruptcy, receivership or business termination and no successor or assignee is appointed who is ready, willing and able to assume and perform TriTech’s executory obligations under this Agreement.

16.3 Termination Without Cause. In the event that Client desires to terminate this Agreement without cause, Client shall provide thirty (30) days prior written notice to TriTech. In such event TriTech shall be paid for all fees and expenses earned under this Agreement up to the date of such termination. Any resumption of the Project shall be subject to negotiation of a new Agreement.

16.4 Upon termination, Client shall permanently remove and destroy all copies of the Software from its computer system, media, or other locations, destroy all copies of the Documentation and associated materials and certify to TriTech in writing that Client has performed said actions and has not retained or permitted others to retain any such copies whether on a computer system or Server, hard copy or CD-ROM, magnetic or other media, backup or archival copies, or otherwise. Client shall perform these same procedures for removal and destruction of System Software and Subcontractor Software, and the associated Documentation, and so notify TriTech.

## **17.0 LIABILITY**

17.1 TriTech shall indemnify, defend, save, and hold Client harmless from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission of TriTech, its employees, agents, contractors, or any subcontractor as a result of TriTech's or any subcontractor's performance pursuant to this Agreement; however, TriTech shall not be required to indemnify Client for any claims or actions caused to the extent of the negligence or wrongful act of Client, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Client, or its employees, agents or contractors, TriTech's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

17.2 Notwithstanding the foregoing, the total liability of TriTech for any claim or damage arising from or otherwise related to this Agreement, whether in contract, tort, by way of indemnification or under statute shall be limited to direct damages which shall not exceed (i) the Contract Price or (ii) in the case of bodily injury, personal injury or property damage for which defense and indemnity coverage is provided by TriTech's insurance carrier, the coverage limits of such insurance.

17.3 Except for actions for copyright, trade secret, or trademark infringement, no arbitration, action or proceeding arising out of any claimed breach of this Agreement or transaction may be brought by either Party more than four (4) years after the cause of action has accrued.

17.4 Client shall indemnify and hold TriTech harmless from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission of Client's or, its employees, agents, contractors, or any subcontractor's as a result of the use or misuse of the TriTech Software. However, Client should not be required to indemnify TriTech for any claims or actions caused to the extent of the

negligence or the wrongful act of TriTech, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of TriTech, or its employees, agents or contractors, Client's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

**17.5 IN NO EVENT SHALL EITHER PARTY OR ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE WHETHER IN CONTRACT OR IN TORT FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER A PARTY HAS NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.**

## **18.0 INSURANCE**

18.1 TriTech shall maintain in force the following insurance coverages:

**General Liability** – Having an A.M. Best rating of A-Class VIII or better; bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable).

The coverage afforded to the additional insureds under TriTech's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, TriTech shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. TriTech shall disclose to Client any policy or policies carrying a deductible of more than \$25,000.00, and such are subject to review by Client of TriTech's financials.

**Umbrella or Excess** – Coverage limits of not less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the aggregate on a follow - form basis having an A.M Best rating of A-Class VIII or better.

**Auto Liability** – Coverage limits of One Million and 00/100 (\$1,000,000.00) combined single limit for bodily injury and property damage having an A.M Best rating of A - Class VIII or better. Automobile Liability Symbol 1 (any auto), if the Company owns automobiles. An entity without autos shall have "Non -owned and Hired" coverage (Auto Symbols 8 & 9). Client and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

**Workers' Compensation** – TriTech shall provide Workers' Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including

resulting death) as required by the State of California and Employer's Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers' Compensation in favor of the City of Salinas is required and shall be evidenced via policy or endorsement.

**Professional Liability** – Coverage limits of not less than Two Million and 00/100 Dollars (\$2,000,000) per claim having an A.M Best rating of A-Class VIII or better.

18.2 TriTech shall provide a certificate of insurance (Certificate of Insurance) evidencing the coverage and endorsements naming Client as an additional insured under the applicable policies.

18.3 The Certificate of Insurance shall include a thirty (30) day notice of cancellation.

## **19.0 COPYRIGHT & TRADE SECRET INFRINGEMENT**

19.1 TriTech will at its expense defend against any claim, action or proceeding by a third party ("Action" herein) for infringement by the TriTech Software of copyright or trade secrets, provided that Client immediately notifies TriTech in writing of such Action and cooperates fully with TriTech and its legal counsel in the defense thereof. TriTech may in its discretion (i) contest, (ii) settle, (iii) procure for Client the right to continue using the TriTech Software, or (iv) modify or replace the TriTech Software so that it no longer infringes (as long as the functionality and performance described in the Specifications substantially remains following such modification or replacement.) Client may participate in the defense of such Action at its own expense. If TriTech concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Client's use of the TriTech Software is permanently enjoined as a result of a judgment of a court of competent jurisdiction in such Action, then TriTech will return to Client the TriTech Software license fee(s) paid by Client under this Agreement less a prorated portion of said fee(s) for Client's use of the TriTech Software (calculated by multiplying the ratio of the number of months of actual Use in Live Operations to thirty-six (36) months times the license fees paid) and the licenses granted in this Agreement shall terminate. In addition, in the event such Action results in a money judgment against Client which does not arise, wholly or in part, from the actions or omissions of Client, its officers, directors, employees, contractors, agents, or elected officials, or a third party, TriTech will, subject to Section 17.0 herein, indemnify Client therefrom to the extent indemnification for such judgment is not provided under Client's insurance policies (unless Client is self-insured in which case the preceding clause shall not apply).

19.2 Notwithstanding the above, TriTech shall have no duty under this section 19.0 with respect to any claim, action or proceeding arising from or related to infringements (i) by System Software, Subcontractor Hardware or Software, or Equipment, (ii) arising out of modifications to the TriTech Software and/or Documentation not made by or under the direction of TriTech, (iii) resulting from use of the TriTech Software to practice any method or process which does not occur wholly within the TriTech Software, or (iv) resulting from modifications to the TriTech Software or Documentation prepared pursuant to specifications or other material furnished by or on behalf of Client. This section 19.0 states the entire obligation of TriTech

regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

## **20.0 DISPUTE RESOLUTION**

20.1 The Parties desire to first attempt to resolve certain disputes, controversies and claims arising out of this Agreement or any Addenda hereto before a Party begins litigation. Prior to commencing litigation, at the written request of either Party, the Parties agree to meet onsite at either TriTech's or the Client's location as determined by the Parties, and negotiate in good faith to resolve any dispute arising under this Agreement. Each Party shall be responsible for its associated travel costs. If the above negotiations do not resolve the dispute within sixty (60) days of the initial written request, either Party may take appropriate legal action.

## **21.0 SALES, USE AND PROPERTY TAX**

21.1 Client shall be solely responsible for payment or reimbursement to TriTech of all sales, use, value added or similar taxes imposed upon this Agreement by any level of government, whether due at the time of sale or asserted later as a result of audit of the financial records of either Client or TriTech. Client shall also pay any personal property taxes levied by government agencies based upon Client's use or possession of the items acquired or licensed in this Agreement.

## **22.0 SEVERABILITY**

22.1 If any term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the term, clause, sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement so adjudged to be invalid or unenforceable.

## **23.0 FORCE MAJEURE/EXCUSABLE DELAY**

23.1 Neither Party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in Delivery or performance as a result of war, acts of terrorism, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond its reasonable control), the actions or omissions of the other Party or its officers, directors, employees, agents, contractors or elected officials and/or other similar occurrences beyond the Party's reasonable control ("Excusable Delay" herein). In the event of any such Excusable Delay, Delivery or performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay. The Party affected by an Excusable Delay hereunder, shall provide written notice to the other Party of such delay as soon as reasonably possible.

## **24.0 CONSTRUCTION AND HEADINGS**

24.1 The division of this Agreement into sections and the use of headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe,

affect, modify, or alter the meaning of such sections or subsections.

## **25.0 WAIVER**

25.1 The failure or delay of any Party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a present or future waiver of such provisions nor the right of either Party to enforce each and every provision.

25.2 No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of or excuse for any other, different or subsequent breach.

## **26.0 ENTIRE AGREEMENT**

26.1 This Agreement and its Addenda or Amendment(s) represent the entire agreement between the Parties hereto and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement.

## **27.0 APPLICABLE LAW**

27.1 Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of California without regard to its conflict of laws provisions. The Parties agree that the venue for any legal proceedings arising under this Agreement will be in the applicable court located in Monterey County, CA.

## **28.0 ASSIGNMENT**

28.1 Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, except as otherwise provided in this section 28.1. For purposes of this Agreement, it is agreed, but not by way of limitation, that TriTech's withholding of consent is not unreasonable if the proposed assignee is a person, company or other entity which competes with TriTech directly or indirectly, whether itself or through a parent, subsidiary, or entity which is owned or controlled by a competitor of TriTech. Further, TriTech may require the proposed assignee to execute and agree to be bound by this Agreement. In the event of a merger or acquisition of all or substantially all of TriTech's assets, TriTech may assign this Agreement to an entity ready, willing and able to perform TriTech's executory obligations hereunder, upon the express written assumption of the obligations hereunder by the assignee.

## **29.0 NON-COLLUSION**

29.1 TriTech warrants that it has no interest, and shall not acquire any interest, direct



or indirect, which would conflict in any manner or degree in its performance under this Agreement. To the best of TriTech's knowledge, no officer, agent or employee of the Client who shall participate in any decision relating to this Agreement, currently has, or will have in the future, a personal or pecuniary interest in TriTech's business.

### **30.0 NON-EXCLUSIVE AGREEMENT**

30.1 This Agreement is non-exclusive and both Parties expressly reserve the right to contract with other entities for the same or similar services, subject to Section 12 Confidentiality and Proprietary Rights of this Agreement.

### **31.0 RIGHT TO AUDIT AND ACCESS TO RECORDS**

31.1 TriTech shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the Client under this Agreement on file for at least three (3) years following the date of final payment to TriTech by the City. Any duly authorized representative(s) of the City shall have access to such records upon prior written notice for the purpose of inspection, audit, and copying at reasonable times during TriTech's usual and customary business hours. Any audit shall be in accordance with generally accepted professional standards for auditing. TriTech shall provide proper facilities to City's representative(s) for such access and inspection. TriTech's financial information shall be considered Confidential Information in accordance with Section 12 of this Agreement.

### **32.0 COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

32.1 In the performance of the services to be provided under this Agreement, TriTech shall comply with all applicable federal, state and local laws, rules and regulations, including obtaining and maintaining any applicable license or registration required for the performance of the services under this Agreement.

### **33.0 NONDISCRIMINATION**

33.1 TriTech shall comply with all applicable employment laws and regulations. TriTech is an equal opportunity employer. It is the policy of TriTech to prohibit discrimination of any type and to afford equal employment opportunities to employees and applicants, without regard to race, color, religion, sex, ancestry, national origin, age, affectional preference, disability, marital status, veteran status, or status with regard to public assistance. TriTech will take action to employ, advance in employment and treat all qualified candidates without discrimination in all employment practices.

### **34.0 INDEPENDENT CONTRACTOR**

34.1 It is expressly understood and agreed by both Parties that in the performance of this Agreement, TriTech is an independent contract and not an employee of the City. TriTech expressly warrants that it shall not represent, at any time or in any manner, that TriTech is an employee or servant of the Client.

## **35.0 NOTICES**

35.1 All notices required to be given under this Agreement shall be made in writing by (i) first-class mail, postage prepaid, certified, return receipt, (ii) by regularly scheduled overnight delivery, (iii) by facsimile or e-mail followed immediately by first-class mail, or (iv) by personal delivery, to the address set forth below, or such other address as provided in writing. Such notices shall be deemed given three (3) days after mailing a notice or one (1) day after overnight delivery thereof.

To Client:  
Chief of Police  
City of Salinas Police Department  
222 Lincoln Avenue  
Salinas, CA 93901

To TriTech:  
TriTech Software Systems  
9477 Waples Street, Ste. 100  
San Diego, CA 92121  
Attn: Contracts

With a Copy to:  
City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, CA 93901

## **36.0 CONFLICT OF INTEREST**

36.1 TriTech warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. TriTech further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, TriTech shall promptly notify Client of the existence of such conflict of interest so that Client may determine whether to terminate this Agreement. TriTech further warrants its compliance with the Political Reform Act (California Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to TriTech as the result of TriTech's performance of the work or services pursuant to the terms of this Agreement

## **37.0 ORDER OF PRECEDENCE**

37.1 The following documents shall comprise the Agreement between the Parties concerning the subject matter of this Agreement, and in the event of any dispute arising from or related to this Agreement, shall have the following order of precedence:

A. This Agreement and all Addenda and other documents attached to or incorporated by reference herein. In the event of a conflict between this Agreement and an Addendum, this body of this Agreement shall take precedence;

B. The applicable Client approved OSDs, IRDs and ATPs.

C. TriTech's response dated January 14, 2016 to post-proposal submission Follow-Up Questions.

D. TriTech's proposal dated October 9, 2015, incorporated herein by reference.

E. Client's Request for Proposals for Law Enforcement RMS dated August 20, 2015, incorporated herein by reference.

## **38.0 GENERAL TERMS**

38.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto, but nothing in this paragraph shall be construed as a consent to any assignment of this Agreement by either Party except as provided in the ASSIGNMENT section of this Agreement.

38.2 This Agreement shall not become a binding contract until signed by an authorized officer of each Party, and it is effective as of the date so signed.

38.3 This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

38.4 The provisions contained herein shall not be construed in favor of or against either Party because that Party or its counsel drafted this Agreement, but shall be construed as if all Parties prepared this Agreement.

38.5 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders.

38.6 A facsimile of this Agreement, its exhibits and amendments, and notices and documents prepared under this Agreement, generated by a facsimile machine (as well as a photocopy thereof) shall be treated as an original.

38.7 This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

38.8 Each Party represents and warrants that it has the right, power and authority to enter into this Agreement. Each Party further represents and warrants that it has given any and all applicable notices, and obtained any and all consents, powers, and authorities necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

**38.9 EACH PARTY'S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.**

**CITY OF SALINAS**

**TRITECH SOFTWARE SYSTEMS**

\_\_\_\_\_  
Accepted By (Signature)

\_\_\_\_\_  
Accepted By (Signature)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
City Attorney (Signature)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## ADDENDUM A

### PROPRIETARY INFORMATION<sup>1</sup>

#### SUMMARY OF CONTENTS

<u>Addendum No.</u>	<u>Description</u>
A-1	Statement of Work, with attached Subcontractor Statements of Work which are incorporated herein by reference
A-2	Number of TriTech Software Licenses, Installation and Shipping Instructions
A-3	TriTech Services, Support and Maintenance Fees, and Miscellaneous
A-4	Equipment
A-5	System Software
A-6	Subcontractor Software, Hardware and Services, if applicable
A-7	Payment Terms
A-8	Contract Price Summary
A-9	System Planning Document
A-10	Initial Draft Project Schedule

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<sup>1</sup> THESE ADDENDA CONTAIN TRADE SECRET AND OTHER PROPRIETARY INFORMATION OF TRITECH SOFTWARE SYSTEMS. THE INFORMATION CONTAINED HEREIN SHALL NOT BE COPIED OR DISCLOSED TO THIRD PARTIES OR USED FOR ANY PURPOSE NOT DIRECTLY RELATED TO PERFORMANCE OF THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF AN OFFICER OF TRITECH SOFTWARE SYSTEMS.

**ADDENDUM A-1**

**PROPRIETARY INFORMATION**<sup>1</sup>

STATEMENT OF WORK

**(Attached)**

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<sup>1</sup> THESE ADDENDA CONTAIN TRADE SECRET AND OTHER PROPRIETARY INFORMATION OF TRITECH SOFTWARE SYSTEMS. THE INFORMATION CONTAINED HEREIN SHALL NOT BE COPIED OR DISCLOSED TO THIRD PARTIES OR USED FOR ANY PURPOSE NOT DIRECTLY RELATED TO PERFORMANCE OF THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF AN OFFICER OF TRITECH SOFTWARE SYSTEMS.

## ADDENDUM A-2

### PROPRIETARY INFORMATION<sup>1</sup>

#### NUMBER OF TRITECH SOFTWARE LICENSES, INSTALLATION AND SHIPPING INSTRUCTIONS

Inform RMS, Inform FBR

Description	Unit Price	Quantity	Total Price
Inform FBR Concurrent User		40	
Inform RMS Accident		1	
Inform RMS Barcode Handheld Reader Software		4	
Inform RMS Disaster Recovery System		1	
Inform RMS Equipment Maintenance		1	
Inform RMS Evidence and Barcoding		1	
Inform RMS GIS (Without CAD)		1	
Inform RMS Intelligence, Internal Affairs and Narcotics		1	
Inform RMS Server Software (B - 51-120 Users)		1	
Inform RMS Test or Training System		1	
Inform RMS Concurrent User		50	
NCIC/State Message Switch Server Software - Inform RMS		1	
NCIC/State Software Inform RMS Concurrent User		50	
	<b>Subtotal</b>		<b>\$ 340,246.00</b>

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ADDENDUM A-2 (Continued)

**PROPRIETARY INFORMATION<sup>1</sup>**

TriTech.com IQ

Description	Unit Price	Quantity	Total Price
TRITECH.COM IQ ANALYTICS 5 Concurrent User Bundle One Year Subscription		1	
TRITECH.COM IQ Dashboard Designer 1 Concurrent User One Year Subscription		1	
TRITECH.COM IQ Search (B - 11-40 Concurrent Users) One Year Subscription		1	
	<b>Subtotal</b>		<b>\$ 8,300.00</b>

CrimeView

Description	Unit Price	Quantity	Total Price
CrimeView Desktop		2	
CrimeView Dashboard, Advanced Reports, NEARMe, Crimemapping.com		1	
			<b>\$ 28,225.00</b>

Custom Interfaces

Description	Unit Price	Quantity	Total Price
CopLink Interface		1	
AFIS Interface		1	
Inform RMS Data Publisher for CARFAX		1	
CARFAX Name Query		1	
Dataworks Plus Conversion		1	
Inform RMS Publisher for Court Probable Cause		1	
CryWolf Data Publisher		1	
Livescan - Two-way		1	
Parole LEADS Name Query		1	
	<b>Subtotal</b>		<b>\$ 228,200.00</b>

<sup>1</sup> THESE ADDENDA CONTAIN TRADE SECRET AND OTHER PROPRIETARY INFORMATION OF TRITECH SOFTWARE SYSTEMS. THE INFORMATION CONTAINED HEREIN SHALL NOT BE COPIED OR DISCLOSED TO THIRD PARTIES OR USED FOR ANY PURPOSE NOT DIRECTLY RELATED TO PERFORMANCE OF THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF AN OFFICER OF TRITECH SOFTWARE SYSTEMS.



ADDENDUM A-2 (Continued)

INSTALLATION AT DESIGNATED LOCATION AND SHIPPING INSTRUCTIONS

Deliver To:

City of Salinas Police Department  
222 Lincoln Ave.  
Salinas, CA 93901

## ADDENDUM A-3

### PROPRIETARY INFORMATION<sup>1</sup>

#### TRITECH SERVICES, SUPPORT AND MAINTENANCE FEES AND MISCELLANEOUS

Description	Unit Price	Quantity	Total Price
Inform RMS 3-Day Workshop and Consultation		3	
Inform RMS Administration Review and Training - (B - 51-120 concurrent users)		1	
Inform RMS Business Analysis and Consultation Services (100 Hours) (B - 51-120 Users)		1	
Inform RMS DOLF (B - 51-121 Users)		1	
Inform RMS Output Designer Workshop 3 Day		2	
Inform RMS Routing/GIS Server Implementation		1	
Inform RMS Server Installation and Configuration		1	
Inform RMS Standard Functional Acceptance and Integration Testing - (B -51-120 users)		1	
Remote Implementation Services for Inform RMS GIS		1	
RMS Position Installation (up to 5 workstations)		1	
Inform RMS System Orientation and Analysis - (B - 51-120 users)		1	
Onsite Go Live Support Services for Inform RMS (1 person, 2 days, single shift)		1	
Onsite Go Live Support Services for Inform RMS (1 person - 2 days, 24 hour coverage)		1	
Inform RMS User Training - Field Officers (3 Days)		10	
Inform RMS User Training - Human Resources & Training (3 Days)		1	
Inform RMS User Training - Investigations (3 Days)		3	
Inform RMS User Training - Property and Evidence Training (3 Days)		1	
Inform RMS User Training - Records (3 days)		3	
Report Writing Training (3 days)		2	
		<b>Subtotal</b>	<b>\$ 188,425.00</b>

<sup>1</sup> THESE ADDENDA CONTAIN TRADE SECRET AND OTHER PROPRIETARY INFORMATION OF TRITECH SOFTWARE SYSTEMS. THE INFORMATION CONTAINED HEREIN SHALL NOT BE COPIED OR DISCLOSED TO THIRD PARTIES OR USED FOR ANY PURPOSE NOT DIRECTLY RELATED TO PERFORMANCE OF THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF AN OFFICER OF TRITECH SOFTWARE SYSTEMS.

ADDENDUM A-3 (Continued)

**PROPRIETARY INFORMATION<sup>1</sup>**

Custom Data Conversion Services

Description	Unit Price	Quantity	Total Price
RMS Data Conversion – RMS Data, Quetel, ApplicationXTender		1	
<b>Subtotal</b>			<b>\$ 124,775.00</b>

Software Modification Services

Description	Unit Price	Quantity	Total Price
Inform FBR accident sketching tool development		1	
TriTech Mugshot Solution (TIPS)		1	
Associates Functionality		1	
<b>Subtotal</b>			<b>\$ 87,500.00</b>

TriTech.com IQ Services

Description	Unit Price	Quantity	Total Price
TRITECH.COM IQ 1/2 Day Admin Training (Remote)		1	
TRITECH.COM IQ 1/2 Day End User Training (Remote)		1	
TRITECH.COM IQ ANALYTICS 1 Day Dashboard End User Training (Remote)		1	
TRITECH.COM IQ ANALYTICS 1/2 Day Reporting End User Training (Remote)		1	
TRITECH.COM IQ ANALYTICS Set Up Services (Remote)		1	
TRITECH.COM IQ Setup and Conversion Services (Up to 5 years for TT Products)		1	
<b>Subtotal</b>			<b>\$ 5,300.00</b>

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ADDENDUM A-3 (Continued)

**PROPRIETARY INFORMATION<sup>1</sup>**

CrimeView Services

Description	Unit Price	Quantity	Total Price
CrimeView Desktop Training		1	
CrimeView Desktop Installation		1	
CrimeView Dashboard Training - 1 Day		1	
CrimeView Dashboard Remote Training - 1/2 day		1	
CrimeView Reporting Remote Training - 1/2 Day		1	
CrimeView End User Training - 1 Day		1	
CrimeView Dashboard, Advanced Reports, NEARMe, Crimemapping.com - Installation Services		1	
<b>Subtotal</b>			<b>\$ 85,025.00</b>

Project Related Services

Description	Unit Price	Quantity	Total Price
Systems Integration Fee		1	
Project Management Fee		1	
<b>Subtotal</b>			<b>\$ 211,789.17</b>

Estimated Travel Expense – To be Billed as Incurred

**\$69,800.00**

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ADDENDUM A-3 (Continued)

**PROPRIETARY INFORMATION<sup>1</sup>**

Annual Software Support Fees – Year 1

Description	Support Type	Total Price
IQ CrimeView Desktop License (2)	8 x 5	
AFIS Interface	24 x 7	
Carfax Data Upload	24 x 7	
Carfax Query	24 x 7	
CopLink Interface	24 x 7	
Court Probable Cause	24 x 7	
CryWolf Data Publisher	24 x 7	
Livescan - Two-way	24 x 7	
Parole LEADS Query	24 x 7	
Inform RMS Disaster Recovery System Maintenance		
Inform RMS Test or Training System Maintenance		
Inform FBR User	24 x 7	
Inform RMS Accident	24 x 7	
Inform RMS Barcode Handheld Reader Software	24 x 7	
Inform RMS Equipment Maintenance	24 x 7	
Inform RMS Evidence and Barcoding	24 x 7	
Inform RMS GIS (Without CAD)	24 x 7	
Inform RMS Intelligence, Internal Affairs and Narcotics	24 x 7	
Inform RMS Server Software (B - 51-120 Users)	24 x 7	
Inform RMS User	24 x 7	
NCIC/State Message Switch Server Software - Inform RMS/Inform Jail	24 x 7	
NCIC/State Software Inform RMS Concurrent User	24 x 7	
<b>Annual Software Support Year 1 Total</b>		<b>\$ 122,122.12</b>
<b>Annual Software Support Year 1 Discount</b>		<b>(\$122,122.12)</b>

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ADDENDUM A-3 (Continued)

**PROPRIETARY INFORMATION<sup>1</sup>**

IQ Annual Subscription	8 x 5	
CrimeView Annual Subscription	8 x 5	
<b>Recurring Fees Year 1</b>		<b>\$ 33,525.00</b>

Easy Street Draw	8 x 5	
<b>Third Party Product Annual Support Year 1</b>		<b>\$ 4,678.70</b>

Annual Software Support Fees Year 1 (Begins at Go Live). The Software Support fee for the initial term of TriTech annual Software Support, beginning at Go Live and ending thirteen (13) months thereafter, is included in the Contract Price of this Agreement. Thereafter, annual Software Support fees will be invoiced in accordance with the Software Support Agreement entered into between TriTech and Client coincident with this Agreement. For convenience, recurring subscription fees following year 1 will be invoiced at the time of annual support renewal.

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## **ADDENDUM A-4**

### **EQUIPMENT**

Client will be responsible for providing all Equipment required for this Project. Client provided Equipment shall meet TriTech's minimum recommended specifications.

## **ADDENDUM A-5**

### **SYSTEM SOFTWARE**

Client will be responsible for providing all System Software required for this Project. Client provided System Software shall meet TriTech's minimum recommended specifications.

NOTE: Additional Client responsibilities regarding licensing requirements for System Software for continued maintenance, including system expansion, are provided in the System Planning Document.



**ADDENDUM A-6**

**PROPRIETARY INFORMATION<sup>1</sup>**

**SUBCONTRACTOR SOFTWARE, HARDWARE AND SERVICES, THIRD PARTY  
SOFTWARE AND SERVICES**

<b>Description</b>	<b>Unit Price</b>	<b>Quantity</b>	<b>Total Price</b>
Coplogic Interface		1	
Easy Street Draw		1	
			<b>\$ 31,154.50</b>

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## ADDENDUM A-7

### PAYMENT TERMS

#### Payment Milestones

20%	Due upon Completion of Project Kick-Off Meeting	\$261,557.03
30%	Due Upon Completion of DOLF	\$392,335.55
15%	Due Upon Completion of Pre-Go Live End User Training	\$196,167.78
10%	Due Upon Go Live	\$130,778.52
25%	Due Upon Final System Acceptance	\$326,946.29
100%	Subcontractor and Third Party Software and Services due at delivery - there may be multiple deliveries (includes tax for Easy Street Draw)	\$37,489.80
		\$1,345,274.97
	*Estimated Travel - billed as incurred	\$69,800.00

\*Actual travel expenses will be billed as incurred. Should TriTech determine that the travel expenses for the Project will exceed the estimated amount listed at Addendum A-3, TriTech will provide reasonable notice to Client. TriTech's Business Travel Policy will be followed. Client's written pre-approval for any increase in the estimated travel fees will be required.

## ADDENDUM A-8

### CONTRACT PRICE SUMMARY<sup>2</sup>

Inform RMS, Inform FBR Software	\$340,246.00	
CrimeView Desktop	\$3,000.00	
TriTech.com IQ Year 1 Subscription	\$8,300.00	
CrimeView Dashboard Year 1 Subscription	\$25,225.00	
Custom Interfaces	\$228,200.00	
Inform RMS, Inform FBR Services	\$188,425.00	
Custom Data Conversion Services	\$124,775.00	
Software Modification Services	\$87,500.00	
TriTech.com IQ Services	\$5,300.00	
CrimeView Services	\$85,025.00	
Project Related Services	\$211,789.17	
Subcontractor and Third Party Software and Services	\$31,154.50	
Third Party Support Year 1 - Easy Street Draw	\$4,678.70	
	Subtotal	\$1,343,618.37
Tax (Easy Street Draw)	\$1,656.60	
	Project Implementation Total	\$1,345,274.97

\*Estimated Travel - billed as incurred \$69,800.00

\*Actual travel expenses will be billed as incurred. Should TriTech determine that the travel expenses for the Project will exceed the estimated amount listed above, TriTech will provide reasonable notice to Client. TriTech's Business Travel Policy will be followed. Client's written pre-approval for any increase in the estimated travel fees will be required.

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<sup>2</sup> Shipping costs, travel costs and any applicable sales, use value added or similar taxes shall be paid by Client. Unless such costs or taxes are listed as a line item herein, they shall be invoiced separately, payable on receipt of the invoice therefor.

**ADDENDUM A-9**

**PROPRIETARY INFORMATION**<sup>1</sup>

**SYSTEM PLANNING DOCUMENT**

Attached

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**ADDENDUM A-10**

**PROPRIETARY INFORMATION**<sup>1</sup>

**INITIAL DRAFT PROJECT SCHEDULE**

Attached

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**ADDENDUM B**

**TRITECH MASTER PREFERRED  
SOURCE CODE ESCROW AGREEMENT**

(ATTACHED)

## **ADDENDUM C**

### **SUBCONTRACTOR WARRANTY, SUPPORT AND MAINTENANCE AGREEMENTS**

(ATTACHED)

Not applicable to this Project. The only Subcontractor application for this Project is an interface from CopLogic (existing vendor of the Client).

## **ADDENDUM D**

### **SUBCONTRACTOR LICENSE AGREEMENTS**

(ATTACHED)

Not applicable to this Project. The only Subcontractor application for this Project is an interface from CopLogic (existing vendor of the Client).



## ADDENDUM E

### DEFINITION OF CRITICAL AND URGENT PRIORITY SOFTWARE ERRORS

The following table defines Critical and Urgent Priority Software Errors. Software Errors will be corrected in accordance with the Software Support Agreement.

#### Inform RMS

Priority	Issue Definition	Response Time
<p><b>Priority 1 – Critical Priority</b></p>	<p>Normal Customer Service Hours Support for live operations on the production system: A system down event which severely impacts the ability of Users to log on the system, or severely impacts the ability of Users to book or release inmates. This is defined as the following:</p> <ul style="list-style-type: none"> <li>• TriTech Inform RMS or Inform FBR server software inoperative</li> <li>• Loss of ability for all Inform RMS or Inform FBR users to log on to system</li> <li>• Loss of transactional data &amp; transactional data corruption</li> </ul> <p>This means one or more critical server components are non-functional disabling Inform RMS or Inform FBR, workstations. These Software Errors are defined in <i>Special Note #1</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be immediately answered and managed by the first available representative but not longer than 5 minutes.</p> <p><i>After Normal Customer Service Hours: Unless optional 24x7 support is contracted, support for Inform RMS, and Inform FBR is not managed after Normal Customer Service Hours.</i></p> <p><i>If optional 24x7 support is contracted, after Normal Customer Service Hours: Thirty (30) minute call back after Client telephone contact to 800.987.0911.</i></p> <p>Support after Normal Customer Service Hours is not provided for Inform IQ and Inform Analytics.</p> <p>Priority 1 issues must be called in via 800. 987.0911 in order to receive this level of response.</p>
<p><b>Priority 2 – Urgent Priority</b></p>	<p>Normal Customer Service Hours Support for live operations on the production system: A serious Software Error with no workaround not meeting the criteria of a Critical Priority, but which severely impacts the ability of Users from performing a common function, or severely impacts the ability of Users to book or release inmates. Such errors will be consistent and reproducible.</p> <ul style="list-style-type: none"> <li>• Loss of ability for Inform RMS users to enter Case (Incident, Arrest and Custody) records into the system</li> <li>• Loss of ability to transfer Inform FBR Reports</li> </ul> <p>A significant number of the Inform RMS, or Inform FBR workstations are negatively impacted by this error (e.g., does not apply to a minimal set of Inform RMS or Inform FBR workstations). These Software Errors are defined in more detail in <i>Special Note #2</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800. 987.0911 will be immediately answered and managed by the first available representative but not longer than 5 minutes.</p> <p><i>After Normal Customer Service Hours: Unless optional 24x7 support is contracted, support for Inform RMS, and Inform FBR is not managed after Normal Customer Service Hours.</i></p> <p><i>If optional 24x7 support is contracted, after Normal Customer Service Hours: One (1) hour call back after Client telephone contact to 800.987.0911.</i></p> <p>Priority 2 issues must be called in via 800. 987.0911 in order to receive this level of response</p>

*Special Note #1:* Priority 1 - Critical Priority issues meeting the previously noted criteria are defined as follows:

1. Inform RMS System:
  - a. The Inform RMS System Server is down and unavailable for queries.
  - b. The Inform RMS is inoperable due to data corruption caused by TriTech Software.

*Special Note #2:* Priority 2 - Urgent Priority issues, meeting the previously noted criteria, are defined as follows:

1. Inform RMS, and Inform FBR:
  - a. Inform RMS - Inability to create and save reports.
  - b. Inform FBR – Inability to enter and transfer reports into RMS.
  - c. Inability to create UCR/NIBRS State Reports.

## **ADDENDUM F**

### **TRITECH.COM SUBSCRIPTION SERVICE USE & LICENSE AGREEMENT**

(Attached if applicable)