TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. <u>2797.22</u>

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AUTHORIZING THE PURCHASE OF MOBILE ARCHITECTURE FOR COMMUNICATIONS HANDLING (MACH) SOFTWARE TO ASSSIT THE TOWN'S POLICE DEPARTMENT WITH DISPATCH OPERATIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Golden Beach (the "Town") Police Department (the "Police Department") utilizes an outdated, archaic method of keeping dispatch logs; and

WHEREAS, accurate dispatch logs are critical to the daily functions and the creation of reports with statistical data for Police Department; and

WHEREAS, the Mobile Architecture for Communications Handling (MACH) software will keep dispatch records in a cloud-based server, replacing the Police Department's current manual functions; and

WHEREAS, MACH will provide enhanced report generating to provide accurate and detailed information pertaining to crime statistics and job performance within the department; and

WHEREAS, the Town Council wishes to enter into an agreement with Technology Enterprise Group, Inc. ("TEG"), which provides the cloud-based server that will maintain the Police Department's dispatch records, attached hereto as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1.   Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **Approval of Agreement.** The Town Council hereby authorizes and approves the Agreement in substantially the form attached hereto as Exhibit "A" (the "Agreement").

Section 3. **Implementation**. The Town Mayor is authorized to execute the Agreement and the Town Mayor and Town Manager are directed to take all steps reasonably necessary to implement the Agreement and this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

Sponsored by **Town Administration**.

The Motion to adopt the foregoing Resolution was offered by Councilmember Bernstein, seconded by Councilmember Einstein, and on roll call the following vote ensued:

Mayor Glenn Singer	Aye
Vice Mayor Judy Lusskin	Aye
Councilmember Bernard Einstein	Aye
Councilmember Jaime Mendal	Aye
Councilmember Kenneth Bernstein	Aye

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 15th day of February, 2022.

_____
MAYOR GLENN SINGER

ATTEST:

_____
LISSETTE PEREZ
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
STEPHEN J. HELFMAN
TOWN ATTORNEY

EXHIBIT "A"

(Attach Agreement between the Town and TEG)

_____

M E M O R A N D U M
_____

		Item Number:
Date:	February 15, 2022	
To:	Honorable Mayor Glenn Singer & Town Council Members	_____3_____
From:	Alexander Diaz, Town Manager	
Subject:	**Resolution No. 2797.22 – Authorizing Purchase of Mobile Architecture for Communications Handling (MACH) software to assist the Town's police department with dispatch operations.**	

Recommendation:

It is recommended that the Town Council adopt the attached Resolution No. 2797.22 as presented.

Background:

The Town wishes to purchase the Mobile Architecture for Communications Handling (MACH) software to assist the police department with dispatch operations. This software will keep dispatch records in a cloud-based server, replacing the department's current manual functions. This system will provide enhanced report generating to provide accurate a detailed information pertaining to crime statistics and job performance within the department. This software will provide for added functionality and efficiency for the department to complete police related Information Reports.

Fiscal Impact:

The initial term of this Agreement will be for the 2022 calendar year, and then renew annually for one-year terms. The cost is a $50.00 monthly subscription fee per the 25 department computers, for a total monthly fee of $1,250.00.

SUBSCRIPTION AGREEMENT

This AGREEMENT ("Agreement") is made this **1st day of February 2022** ("Effective Date") by and between Technology Enterprise Group, Inc., a Pennsylvania corporation having an address of P.O. Box 564, Harmony, Pennsylvania 16037 ("TEG") and

Golden Beach Police Department

having an office at

1 Golden Beach Dr.
Golden Beach, FL 33160

("Subscriber").

TEG and Subscriber are also referred to herein as "Party" and collectively as "Parties".

Recitations

1. TEG is the owner of certain client and server software known as "Mobile Architecture for Communications Handling" and by the acronym "MACH", which is collaborative command and control software for use by public safety agencies.

2. Subscriber desires to use MACH for public safety purposes.

Provisions

In furtherance of the above-stated recitations, which are hereby incorporated into this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. TEG shall provide client software ("Client Software") to Subscriber for use on the computers identified in Paragraphs 2 herein and shall make MACH available to those computers identified in Paragraph 2 herein.

2. TEG hereby grants to Subscriber a nonexclusive license to use MACH on **_25_** computers owned by or under the control of Subscriber for public safety purposes during the term of this Agreement via the Client Software.

3. The initial term of this Agreement shall be from the Effective Date to **March 31, 2022**, but this Agreement shall automatically renew first for nine months until December 31, 2022 (first renewal term) and then for additional periods of one year each unless a Party provides the other Party written notice of termination at least thirty calendars days prior to the termination date of the then-current term. At the termination of this Agreement, Subscriber shall destroy all copies of the Client Software in its possession or control.

4. Subscriber shall pay to TEG a monthly subscription fee of **$0.00** per computer for the number of computers identified in Paragraph 2 above for the initial term of this Agreement. For the first renewal term of this Agreement, Subscriber shall pay to TEG a monthly subscription fee of **$50.00** per computer for the number of computers identified in Paragraph 2 above. For each additional renewal term of this Agreement, TEG shall give Subscriber notice at least sixty calendar days prior to the termination date of the then-current term as to the amount of the subscription fees for the then-upcoming renewal term as well as the subscription fees for adding additional computers throughout the term. If no such notice is given by TEG, the subscription fees for the then-upcoming renewal term will remain the same as the then-current renewal term.

(a) For each renewal term, Subscriber will notify TEG at least thirty days prior to the termination date of the then-current term of any changes to the number of computers identified in Paragraph 2 above for the renewal term so that TEG can make the appropriate adjustments to the subscription fees that are due for the renewal term.

(b) If Subscriber wishes to add to the number of computers identified in Paragraph 2 above during the term of the Agreement, Subscriber shall pay TEG a monthly subscription fee of **$50.00** per additional computer prorated based on the remaining months left in the then-current term.

5. The subscription fees shall be paid in a single lump sum within thirty calendar days of the Effective Date for the initial term and within thirty calendar days of any renewal date or change in the number of computers. In the event that Subscriber fails to timely pay a subscription fee, TEG may, at its exclusive discretion, suspend all access to MACH until the payment is made in full and the time of any such suspension shall be counted against the period of the then-current term.

6. Subscriber shall not without the prior written consent of TEG:
(a) Remove or obscure any proprietary notices including, but not limited to, any and all copyright, trademark and patent designations contained in MACH;

(b) Upload, post, email, transmit, publish, re-publish, distribute, display or otherwise make available the Client Software to any third parties;

(c) Outside the term of this Agreement, store the Client Software in any electronic, magnetic, optical or other format now known or later developed;

(d) Assign, rent, lend, lease, sell, sublicense, transfer, export from the United States, copy, reproduce, modify, adapt, translate, reverse engineer, decompile, disassemble, extract components or create derivative works of MACH or the Client Software; or

(e) Interrupt, or attempt to interrupt, the operation of MACH in any way.

7. Subscriber shall at all times comply with all applicable laws, rules, and regulations with respect to Subscriber's use of MACH.

8. TEG has the right to terminate Subscriber's use of MACH if Subscriber violates any provision of this Agreement, provided that TEG has given notice of any such violation to

Subscriber and Subscriber has not cured such violation within seven calendar days of the receipt of such notice. Any termination of use under this Paragraph shall not in any way affect Subscriber's obligations under this Agreement.

9. **DISCLAIMER OF WARRANTIES:** TEG STATES THAT THE MACH AND THE CLIENT SOFTWARE, INCLUDING ALL HARDWARE, CONTENT, SOFTWARE AND INFORMATION MADE AVAILABLE THEREON OR ACCESSED BY MEANS THEREOF, IS DISTRIBUTED ON AN "AS IS" BASIS. THERE ARE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY OR NON-INFRINGEMENT, INCLUDING, BUT NOT LIMITED TO WARRANTIES: (A) THAT THE FUNCTIONS OF MACH SHALL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (B) THAT MACH WILL MEET SUBSCRIBER'S REQUIREMENTS, (C) THAT ANY DEFECTS IN MACH SHALL BE CORRECTED, (D) THAT MACH SHALL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY OR (E) THAT MACH ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, THE UNIFORM COMMERICAL CODE AND THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT SHALL NOT APPLY TO THIS AGREEMENT.

10. **LIMITATIONS ON LIABILITY**: THE PARTIES AGREE THAT USE OF MACH IS AT THE USER'S SOLE RISK; THE USER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM THE USER'S DOWNLOADING OR OTHER USE OF THE LISTED ITEMS; THE OTHER PARTY AND ITS AFFILIATES, AGENTS, LICENSORS, AND ANY LICENSOR OF TELECOMMUNICATIONS OR NETWORK SERVICES FOR LICENSOR SHALL NOT BE LIABLE TO THE PARTY OR ANYONE ELSE FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, DIRECT, INDIRECT, ATTORNEY'S FEES, DAMAGES FOR LOSS OF PROFITS, GOODWILL OR OTHER INTANGIBLE LOSSES OR SIMILAR DAMAGES, EXCEPT WHERE SUCH LIMITATION IS UNCONSCIONABLE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Subscriber agrees that it has no ownership right or interest in MACH or the Client Software and that this Agreement shall not be construed to convey, transfer to, or vest in Subscriber or in any other person any ownership right or interest in the ownership of MACH or the Client Software.

12. Subscriber acknowledges that Subscriber's use of MACH will result in data ("Subscriber's Data") being stored on devices which may be under the control of TEG or others. TEG agrees that it has no ownership right or interest in Subscriber's Data and that this Agreement shall not be construed to convey, transfer to, or vest in TEG or in any other person any ownership right or interest in the ownership of Subscriber's Data. Subscriber hereby consents to TEG's use of Subscriber's Data to provide Subscriber use of MACH. Subscriber agrees to TEG's disclosure of Subscriber's Data to comply with any subpoena, court order, process, or governmental or regulatory body request. If TEG is obligated to respond to a

subpoena, court order, process, or request described above, Subscriber shall reimburse TEG for TEG's costs, including reasonable attorneys' fees, if any, incurred in responding to the subpoena, court order, process, or request. TEG shall promptly notify Subscriber of TEG's receipt of any such court order, process, or request.

13. Subscriber agrees that MACH and the Client Software contain elements which are confidential and proprietary to TEG and/or which are protected by copyright, trademark, trade secret, and unfair competition laws and that Subscriber will make no disclosure of the confidential or proprietary elements of MACH or the Client Software to anyone without TEG's written permission.

14. Each Party agrees that it shall assume full responsibility for compliance with all applicable United States export control laws and regulations related to its exercise of any license it receives under this Agreement.

15. A Party shall not transfer any of its rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, without the prior written consent of the other Party, but such consent shall not be unreasonably withheld. For any transfer permitted by this Paragraph, this Agreement shall be binding upon and shall inure to the benefit of the heirs, administrators, successors, and assigns of the transferring Party.

16. If any provision of this Agreement is found by any tribunal of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect.

17. The waiver by a Party of a breach or default in any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of a Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

18. All notices required by or relating to this Agreement shall be in writing and shall be sent to the other Party at its address set forth below. The Parties may from time to time amend the address to which such notices are to be sent by sending a notice to the other Party's then-effective notice address no less than thirty calendar days prior to the date on which the change is to become effective. All such notices shall be given by a form of conveyance which provides a return receipt. A notice shall be effective on its delivery date as confirmed by its return receipt.

TEG:	SUBSCRIBER:
Technology Enterprise Group, Inc.	Golden Beach Police Department
P.O. Box 564	1 Golden Beach Dr.
Harmony, PA 16037	Golden Beach, FL 33160
Attention: Tadd Geis, President	Attention: Chief Rudy Herbello

19. Nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties.

20. The rights and obligations of the Parties that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive, including without limitation, the provisions of this Agreement of Paragraphs 6, 7, 9, 11, 16, and 21-24.

21. If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, terrorism, earthquake, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of that party, that Party shall be excused from such performance to the extent that it is prevented, hindered or delayed by such causes; provided, however, that if such period of force majeure last more than thirty days, then the other Party may terminate this Agreement.

22. This Agreement shall be construed under the laws of Pennsylvania, excluding its choice of law provisions, and shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

23. The Parties agree that all disputes between them arising from or related in any way to this Agreement shall be resolved by binding arbitration before a single arbiter unless otherwise agreed to in a writing signed by both Parties.

24. The Parties agree that this Agreement comprises the entire agreement between the Parties relating to its subject matter and that this Agreement supersedes all prior and contemporaneous oral and written understandings, representations, and agreements between the Parties concerning the same subject matter and that modifications to this Agreement shall only be effective if and when they are made in a writing signed by both Parties. The Parties agree that they have had an equal opportunity to negotiate the terms and conditions of this Agreement and that this Agreement is to be neutrally construed without favor to either Party. This Agreement may be executed in counterparts, each of which shall constitute a complete original of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly and duly authorized officers or representatives:

TEG   SUBSCRIBER

By: _____   By: _____ (Sign)
     Tadd Geis, President   Chief Rudy Herbello

Date: _____   Date: _____