

STAFF REPORT

DATE: March 9, 2016

TO: City Council

FROM: Darren Pytel, Police Chief
Kelly Fletcher, Finance Administrator

SUBJECT: Resolution Adopting a Parking Fine Schedule, Implementation of Automated License Plate Reader Program, Parking Enforcement Technology/Collection Agreements

Recommendation

1. Hold Public Hearing for proposed parking fine increases.
2. Approve Resolution Adopting a Parking Fine Schedule (Attachment 1).
3. Provide for public comment regarding the implementation of an Automated License Plate Readers (ALPR) program.
4. Approve Resolutions authorizing the City Manager to execute the agreements with T2 and Citation Processing Services LLC to provide parking enforcement equipment and citation processing services (Attachments 3 and 4).
5. Approve Budget Adjustment (\$329,740)

Fiscal Impact

Approve the funding plan and Fiscal Year 2015/16 Budget Adjustment in the amount of \$329,740 in support of the equipment purchase, software and processing costs associated with implementation of the T-2 Parking Citations System. The recommended funding plan is outlined in the table below:

Appropriation: Equipment, Software and Annual Replacement	FY 15/16	FY 16/17	FY 17/18	Total 3 Year Project Cost
Upfront One-Time Cost Estimate	215,445	-	-	215,445
Ongoing Annual Cost Estimate	114,295	157,281	159,146	430,722
Total Cost	\$ 329,740	\$ 157,281	\$ 159,146	\$ 646,167
Funding Plan:	FY 15/16	FY 16/17	FY 17/18	Total 3 Year Project Cost
Fund 209 - Downtown Parking Fund equipment purchase	210,000	5,000	5,000	220,000
Fund 001 - Funding from discontinuing the Red Light Camera program (ongoing)	97,500	60,000	60,000	217,500
Increased Parking Fines (ongoing)	22,240	92,281	94,146	208,667
Total Funding Recommendation	\$ 329,740	\$ 157,281	\$ 159,146	\$ 646,167

Funding Recommendation

The recommendation to fund this project is utilizing a combination of one-time fund balance appropriations, re-assignment of current expenditures and new revenue derived from increased parking citation fines.

One-Time Funding

One-Time Fund balance appropriations include a total of \$220,000 in appropriations from fund 209 – Downtown Parking Fund. The revenue source for this fund is received from the timed Parking at the downtown parking lot kiosks. This fund has received on average \$82,000 per year over the past three fiscal years. This revenue source has established a fund balance adequate to make these one-time appropriations and continue a remaining balance estimate of approximately \$220,000.

Re-assignment of Current Appropriations

Prior to Fiscal Year 2014/15, the City had been under a contractual agreement of \$60,000 per year with a vendor to provide Red Light Camera services. In early fall of 2014, this agreement was terminated therefore leaving a remaining appropriation of \$37,500 in FY 2014/15 and \$60,000 per year, in the future available for re-assignment. It is being recommended that this money be re-assigned to the annual on-going costs for the upgraded equipment and software related to parking enforcement.

Parking Citation Fine Increase

Proposed change in citation fines is projected to generate an additional \$95,610 per year in parking fines, based on current annual citations written.

Proposed Fine Increase and Revenue Projection							
TYPE	DAVIS Current Fine	DAVIS Proposed Fine	DAVIS Proposed Fine Compared to Average	% Below Average		Estimated Revenue Increase base don 2013 & 2014 Average Citations Issued	
CC Parking Violations (general)	\$43.00	\$50.00	(\$3.36)	-6.3%		13,250	\$ 92,750.00
Disabled Parking Violation	\$283.00	\$308.00	(\$47.64)	-13.4%		100	\$ 2,500.00
CVC Blocking Driveway	\$43.00	\$55.00	(\$0.50)	-0.9%		30	\$ 360.00
						Total Estimated Revenue Increase	
							\$95,610.00

Council Goal

This effort supports the following Goals/Objectives/Tasks:

- Ensure Fiscal Resilience
 - When appropriate, examine other service delivery models, such as contracting.
- Build and Promote a Vibrant Downtown. It is not called out as a specific task.
- Ensure a Safe and Healthy Community. It is not called out as a specific task.

Background and Analysis

In late 2012, City Council appointed a Downtown Parking Task Force to chart a course towards improving downtown parking conditions. The Task Force held ten publicly noticed meetings during the course of the 2013 calendar year. A collective package of 19 recommendations was unanimously approved by the Task Force in late 2013.

In March 2014, City Council approved a subset of the recommendations, characterized as “Phase 1” recommendations. Recommendation #9, “Upgrade Parking Enforcement Technology” is the subject of this staff report. However, three other Phase 1 recommendations are dependent on the acquisition of ALRP technology and parking management software (i.e. parking enforcement technology), including:

1. Recommendation #7: Extending evening parking enforcement from 6:00 p.m. to 8:00 p.m., Monday through Saturday (ALRP is needed to do parking enforcement after dark).
2. Recommendation #8: Establish a tiered-fine citation system (ALRP and new citation writing computers are needed to determine prior citation history at time of citation issuance).
3. Recommendation #10: Invest in electronic information systems (real-time parking availability information is obtained using ALRP technology).

Successful implementation of this recommendation also enables future efficiencies in parking management such as paperless parking permits, faster citation review processing, and capabilities for parking-related transportation demand management strategies.

This staff report consists of three separate, but related items relating to “Upgrading Parking Enforcement Technology.” Staff’s first recommendation is that Council conduct a public hearing and, after the close of the hearing, approve the Resolution, as explained below, which would increase parking fines (**Attachment 1**). The increased parking fine revenue is needed to pay for ALPR technology. Staff then recommends Council allow for public comment regarding the implementation of an ALPR program, as required by California Civil Code Section 1798.90.55. Finally, staff recommends approving the Resolutions allowing the City Manager to execute agreements with T2 to upgrade parking enforcement technology and to provide citation processing services (**Attachments 3 and 4**).

Parking Citation Fine Increase

The Davis Police Department provides parking enforcement services for the City of Davis. The most common violations are for timed parking, disabled parking and blocking driveway access.

Seven area jurisdictions, including Woodland and UC Davis, were surveyed for similar parking citation fees and they ranged from \$45 to \$63, with an average of \$53 per citation. When looking at these particular types of violations and the fines currently charged in Davis, compared to other jurisdictions in the greater Sacramento area, it is apparent that our fines are well below average.

Staff recommends the following increases to citation fines:

- General Parking Violations – from \$43.00 to \$50.00

- Disabled Parking Violation – from \$283.00 to \$308.00
- Blocking Driveway Citations – from \$43.00 to \$55.00

These increases would be consistent with the current fines at our neighboring UC Davis Campus (\$50) and still below the average of the agencies surveyed. This proposed change in citation fines is projected to generate an additional \$95,610 per year in parking fines, based on current annual citations written.

The proposed increase is anticipated to partially fund complete replacement of the current outdated parking enforcement technology system which has essentially been unchanged for 20 years. The new system will include ALPR technology, “e-permitting”, streamlined citation processing/collection and on-line citizen access/inquiry/payment.

The attached Resolution (**Attachment 1**) supersedes the existing Parking Fine Schedule and adopts the revised Schedule (**Exhibit 1A**), to be effective on April 15, 2016. A 10-day public notice preceded Council consideration of this item.

Automated License Plate Reader Program

California law requires that public agencies intending to operate an ALPR system provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency prior to implementation. California law further requires that the public agency adopt a policy on the use of ALPR technology, including security measures for safeguarding information. This policy is available to the public and will be posted on the City’s web site, as required by Civil Code section 1789.90.53. The Davis Police Department has adopted a policy governing the use of ALPR technology (**Attachment 2**), which includes the following provisions;

- The ALPR system shall be restricted to legitimate law enforcement uses for the purpose of furthering legitimate law enforcement goals and enhancing public safety. Such uses and goals include, but are not limited to, parking management, providing information to officers that will assist in on-going criminal investigations, crime prevention, crime detection, the apprehension of wanted persons, ensuring the safety of vulnerable individuals through the recovery of missing and endangered persons, and improving the quality of life in our community through the identification and removal of stolen or unregistered motor vehicles.
- Permitted/Impermissible Uses

The ALPR system, and all data collected, is the property of the Davis Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public

road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.

Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose. Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- Criminal prosecution,
- Civil liability, and/or administrative sanctions, up to and including termination.

Citation Services/Collection Services Contract Award

On June 1, 2015, the City opened a public notice for a comprehensive city-wide parking revenue and collection system request for proposals (RFP).

Scope of Services listed in the RFP

The City of Davis, CA is actively seeking qualified and experienced firms to provide a turn-key comprehensive City-wide Parking Enforcement and Revenue Collection System to the City of Davis utilizing a license plate recognition (LPR) system; herein referred to as LPR, or System. The System will primarily be used to enforce timed parking and permit zones throughout the City. The areas that will ultimately be included in the new System will be at the City's sole discretion. The City seeks to achieve an efficient, customer-friendly parking system that will increase net program revenue by reducing infrastructure repair and maintenance and personnel costs over time.

The System will include a unified citation and parking permit solution including LPR for three parking enforcement scooters (at full build-out), four handheld citation issuing devices with portable printers, and pricing options for both local and hosted server(s).

System functions will minimally include:

Citation and electronic permit ("e-permit") issuance with the ability to do tiered parking fines, payment processing, delinquent notices, collections, appeals, DMV notification, short-term e-permits (i.e. visitor, construction, etc.), out-of-state vehicle citation processing, full inquiry and reporting including ad-hoc, ability to produce "hotsheet" or scofflaw lists, provision for handheld enforcement for field officers to issue citations including associated photo capture, provision for manual citation processing (traditional parking tickets), electronically mark tires, access a list of vehicles eligible for immobilization or towing, access parking permit data, and interface to City finance system for transfer of financial information. Public access website for credit card payments, contesting, permit applications and citation inquiry.

The due date was Friday July 10, 2015, by 5:00 p.m.

Responses

The City received 4 responses, which are summarized below.

- VenTek International
 - VenTek's offering comprised of:
 - Handheld Enforcement Devices
 - Management Software
 - Insight Dashboard
 - Online Citation Processing
 - Online Permitting
 - Mobile Device Payment
 - LPR System
 - Total one-Time charges = \$85,417 (for hardware) with base monthly recurring charges of \$3,871 or \$46,452/year. Collection services would be handled by third party vendor or collections agency – this was not factored into bid price.

- Gtechna
 - Solution comprised of:
 - Mobile cameras
 - Android enforcement handhelds and printers
 - Pay by phone and web based integration
 - Web services for appeals
 - Web services for issuing and managing permits
 -
 - Bid
 - Hardware = \$61,916.25
 - Software = \$86,339.
 - Warranty = \$29,329.
 - Services = \$32,304
 - Annual fee \$21,262.

- CiteZONE.com
 - Solution comprised of:
 - Web based citation processing
 - Handheld computer system
 - LPR System (CiteZone does not do electronic chalking, they offered to build a system)
 - Bid
 - 18 – \$25,000 per vehicle for LPR
 - \$7,200 for Handheld computer system
 - \$150/month per handheld computer system
 - Base processing fee of \$.70/citation, 33% of collections and \$.25/letter

- T2
 - Solution comprised of:
 - Handheld computer system
 - Genetec AutoVu ALPR system with e-chalking
 - E-permit solution
 - Citation processing and Collections
 - Bid
 - \$23,939/Annual
 - \$45,275 for AutoVu
 - \$11,235 software
 - \$71,769 for professional services (e-permit, processing, collections)

Evaluation

As specified in the RFP, evaluation of the proposals was conducted by city staff (Police and Finance Departments) using the following criteria:

- Experience and Qualifications
- Implementation Plan and Approach
- Hardware and Software Specifications
- System Delivery
- Special Considerations
- Maintenance and Support
- Firm's Financials
- References
- Price and Financial Impact to the City

Each of the four proposals is unique in respect to hardware, software, service options and price, which makes a side-by-side comparison difficult; each proposal had to be evaluated individually.

Based on the written proposals, CiteZONE and T2 were initially selected for system demonstration. CiteZONE does not currently have an e-chalking solution (ALPR enforcement of timed-parking zones). One of the basic requirements for the RFP was demonstrated ability to do ALPR timed-zone parking enforcement combined with e-permitting. VenTek was not selected because they do not have full citation processing services; they sell software which can be used to do collections. A third party collection agency would still need to be used. Additionally, they did not provide any California references for their proposed solution. Gtechna also does not have full citation processing services; they too offer collections software, but not services.

Based on the proposals, and a thorough review of the system and services offered, the evaluation committee unanimously selected T2 (and Citation Processing Services, LLC, a wholly owned subsidiary of T2) for commencement of contract negotiations, which were completed on February 8, 2016 (Exhibits 3A, 3B, 3C, 4A, 4B, 4C, G).

The scope of services and hardware includes;

- Citation Payments
- Online Appeals

- Handheld GPS Tracking
- Online Permit Sales
- Online Permit Waitlists
- Permit Approval/Visitor Requests
- Online Permit Fulfillment
- 4 handheld computers for issuing citations and handheld printers
- ALPR technology for 3 parking scooters
- Citation processing and collections (currently being handled by City Finance Department)
- System configuration and training

The attached Resolutions (**Attachment 3 and 4**) authorize the City Manager to execute agreements with T2 and Citation Processing Services, LLC.

Attachment:

- Attachment 1 - Resolution Increasing Parking Fines and Exhibit A - Parking Fine Schedule
- Attachment 2 – Davis PD ALPR Policy
- Attachment 3 - Resolution Authorizing City Manager to Execute Agreement with T2 Flex
 - Attachment 3A - Exhibit A - T2 Flex Agreement
 - Attachment 3B - Exhibit B - T2 Flex Agreement Statement of Work
 - Attachment 3C - Exhibit C - T2 Pricing (Attachment B to T2 Flex Agreement)
- Attachment 4 – Resolution Authorizing City Manager to Execute Citation Processing Services, LLC Agreement.
 - Attachment 4A - Exhibit A - Citation Processing Services, LLC Agreement
 - Attachment 4B - Exhibit B - Citation Processing Services Statement of Work
 - Attachment 4C - Exhibit C – Citation Processing Services Pricing (Attachment D to Citation Processing Services Agreement)
- Attachment 5 – Budget Adjustment Parking citation

RESOLUTION NO. 16-XXX, SERIES 2016

RESOLUTION ADOPTING A PARKING FINE SCHEDULE

WHEREAS, Section 40203.5 of the California Vehicle Code authorizes the City Council to establish a schedule of penalties for parking violations and late payment penalties; and

WHEREAS, Section 22.08.020 of the Davis Municipal Code provides for the establishment by resolution of the City Council of a comprehensive schedule of civil fines and penalties for parking violations and late payment penalties ("Parking Fine Schedule"); and

WHEREAS, the City Council intends to have this Resolution take effect on April 15, 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis hereby adopts the Parking Fine Schedule attached hereto as Exhibit A and incorporated herein by reference.

PASSED AND ADOPTED by the City Council of the City of Davis this 15th day of March, 2016 by the following vote:

AYES:

NOES:

Dan Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Exhibit A

Parking Fine Schedule

Parking Citations	Statutes	
Parking on School Grounds	21113(a)CVC	\$50.00
Obstruction of Bikeways/Paths/Trails	21211(B)CVC	\$50.00
Advertising Vehicles	22.04.090 (A) CC	\$50.00
Truck Use -- Regulation as to Use	22.04.110 (B) CC	\$50.00
Removal-Parking Enforcement Markings	22.06.040 CC	\$108.00
Within 20 Feet of Safety Zone	22.08.030 (A) CC	\$50.00
Within 20 Feet of Crosswalk	22.08.030 (B) CC	\$50.00
Within 20 Feet of Traffic Signal	22.08.030 (C) CC	\$50.00
Stopping, Standing in Parkway	22.08.040 CC	\$50.00
Street Storage for Vehicle	22.08.050 (A) CC	\$50.00
Display Vehicle for Sale on Street	22.08.060 (A) CC	\$50.00
Use of Street for Repair, Washing Vehicle, Etc	22.08.060 (B) CC	\$50.00
Parallel Parking - One Way Streets	22.08.070 (A) CC	\$50.00
Angle Parking - Regulations	22.08.080 (B) CC	\$50.00
Parking Adjacent to Schools	22.08.100 (B) CC	\$50.00
Commercial Truck Parking	22.08.110 CC	\$50.00
Parking on Narrow Streets	22.08.120 (B) CC	\$50.00
Parking on City Property	22.08.130 (B) CC	\$50.00
Parking on Private Property	22.08.140 CC	\$50.00
Municipal Parking Structure	22.08.150 CC	\$50.00
Parking in County Parking Lot	22.08.160 CC	\$50.00
Parking On City Property - General	22.08.170 CC	\$50.00
Parking In School District Parking Lot	22.08.180 CC	\$50.00
Parking Space Markings	22.08.190 CC	\$50.00
Emergency Parking Restrictions	22.08.200 (B) CC	\$50.00
Peddler's Vehicles, Carts, Etc	22.08.210 CC	\$50.00
Bicycle Parking Zones	22.08.220 CC	\$50.00
Curb Marking -- Red	22.08.230 a 1 CC	\$50.00
Curb Marking -- Yellow	22.08.230 a 2 CC	\$50.00
Curb Marking -- White	22.08.230 a 3 CC	\$50.00
Curb Marking -- Green	22.08.230 a 4 CC	\$50.00
45 Min Parking, Mon-Fri, 7am-4pm, W 14th Street	22.08.245 CC	\$50.00
One Hour Zone 8am - 6pm	22.08.250 CC	\$50.00
Parking Time Zone 1hr 8am-10pm	22.08.260 CC	\$50.00
2 Hr Parking, Mon-Fri, 8 Am-6pm, T District	22.08.265 CC	\$50.00

Parking Time Zone 1hr 5pm-10pm	22.08.270 CC	\$50.00
90 Minute Parking	22.08.275 CC	\$50.00
Two Hour Zone 8am - 6pm	22.08.280 CC	\$50.00
90 Min Parking, Mon-Sat, 8am-6pm, H Street	22.08.285 CC	\$50.00
Two Hour Parking 9am-Noon	22.08.290 CC	\$50.00
2 Hr Parking, Mon-Fri, 7 Am-4pm, S District	22.08.295 CC	\$50.00
Three Hour Parking	22.08.300 CC	\$50.00
Electric Vehicle Parking Only	22.08.305 CC	\$50.00
No Parking Anytime	22.08.310 CC	\$50.00
No Stopping, Standing, Parking 7am-6pm	22.08.320 CC	\$50.00
No Stp,Stnd,Prkg 2-6am Except Sat/Sun/Hol	22.08.340 CC	\$50.00
No Stop,Stnd,Prkg 2am-6am On Tuesday	22.08.350 CC	\$50.00
No Stop,Stnd,Prkg 2am-6am On Thursday	22.08.360 CC	\$50.00
No Stop,Stnd,Prkg 2am-6am On Friday	22.08.365 CC	\$50.00
No Stop,Stnd,Prkg 5am-8am Saturdays Only	22.08.380 CC	\$50.00
No Stop,Stnd,Prkg 2am-9am Monday-Friday	22.08.390 CC	\$50.00
No Stop,Stnd,Prkg 9am-5pm	22.08.400 CC	\$50.00
No Stop,Stnd,Prkg 745am-845am School Day	22.08.410 CC	\$50.00
Parking Proh Between 8am-5pm	22.08.420 CC	\$50.00
No Stop,Stnd,Prkg 130pm-330pm School Day	22.08.430 CC	\$50.00
Display Of Warning Device Br Disabled Commercial Vehicle	22.08.440 CC	\$50.00
Loading Zone Only - No Parking	22.09.030 CC	\$50.00
Standing In Passenger Loading Zone	22.09.040 CC	\$50.00
Bus Stop	22.09.050 CC	\$50.00
Taxicab Stands	22.09.060 (C) CC	\$50.00
Temporary Parking Permits	22.11.060 CC	\$50.00
Preferential Parking Permit	22.12.140 (A) CC	\$50.00
Providing False Information For Permit	22.12.140 (B) CC	\$233.00
Unlawful Use Of Permit	22.12.140 (C) CC	\$233.00
Altered, Copied, Forged Permits	22.12.140 (D) CC	\$233.00
Parking in Fire Lane-Pub/Priv Fac Retail	22500.1 CVC	\$88.00
Parking Within Intersection	22500(A) CVC	\$50.00
Parked Within Crosswalk	22500(B) CVC	\$50.00
Parking Within Safety Zone	22500(C) CVC	\$50.00
Parking Limit-Fire Station	22500(D) CVC	\$50.00
Blocking Driveway	22500(E) CVC	\$55.00
Parking on Sidewalk	22500(F) CVC	\$50.00
Obstruction Causing Hazard	22500(G) CVC	\$50.00
Double Parking	22500(H) CVC	\$50.00

Parking in Bus Zone	22500(I) CVC	\$258.00
Parking in Tube or Tunnel	22500(J) CVC	\$50.00
Parking on Bridge/Overpass	22500(K) CVC	\$50.00
Blocking Access to Curb Ramp	22500(L) CVC	\$258.00
Parked Over 18" From Right Curb	22502(A) CVC	\$50.00
Parked Over 18" - One Way Street	22502(E) CVC	\$50.00
Posted No Parking - State Highway	22505(B) CVC	\$50.00
Parked in Disabled Zone	22507.8(A) CVC	\$308.00
Obstructing Disabled Space	22507.8(B) CVC	\$308.00
Parking Lines - Disable Space	22507.8(C) CVC	\$308.00
Fire Hydrant - Within 15'	22514 CVC	\$50.00
Engine Running - No Driver	22515 CVC	\$50.00
Locked Vehicle - Person Inside	22516 CVC	\$50.00
Stop/Park on Freeway	22520 CVC	\$50.00
Vending on Freeway Right-of-Way	22520.5 CVC	\$50.00
Parking Within 7.5' Of Railroad	22521 CVC	\$50.00
Vehicle Abandonment - Highway	22523(A) CVC	\$108.00
Vehicle Abandonment	22523(B) CVC	\$108.00
Blocking/Entering Intersection	22526 CVC	\$58.00
Parking Lot Operator Using Street	22951 CVC	\$50.00
Park on a Park or Greenway	27.02.030 CC	\$50.00
Parking on Open Space Areas	27.03.120 CC	\$50.00
Administrative Fee for Proof of Placard	40226 CVC	\$28.00
Fire Lanes	902.2.4 CFC	\$88.00

Late Fees are 100% of Original Fine Amount

Correctable Parking Citations	Statutes	
Illegal/Damage Plate	4457	\$38.00
w/proof of correction		\$13.00
Wrong Registration Displayed	4462(B) CVC	\$38.00
w/proof of correction		\$13.00
Altered License Plates	4464 CVC	\$38.00
w/proof of correction		\$13.00
Special Equipment Plates	5011 CVC	\$38.00
w/proof of correction		\$13.00
Display of ID Plates	5017 CVC	\$38.00
w/proof of correction		\$13.00
Transfer/Retain Plates	5109 CVC	\$38.00
w/proof of correction		\$13.00
Display of License Plates	5200 CVC	\$117.00
w/proof of correction		\$13.00

Improper Plate Location	5201 CVC	\$38.00
w/proof of correction		\$13.00
Covered License Plate	5201(E) CVC	\$38.00
w/proof of correction		\$13.00
Registration Tabs	5204(A)	\$117.00
w/proof of correction		\$13.00
Registration Required	4000(A)	\$58.00
w/proof of correction		\$13.00

DAVIS POLICE DEPARTMENT

**Automated License Plate Readers
(ALPR)
Policy and Procedure 2.41**

DEPARTMENT MANUAL

Index as:

Automated License Plate Readers (ALPR)

Parking Enforcement, ALPR

I. POLICY

An ALPR system is a computer-based system that utilizes special cameras to capture license plate information. The ALPR system captures an infrared image of a license plate and converts it to a text file using Optical Character Recognition (“OCR”) technology. The Davis Police Department uses ALPR as part of comprehensive parking management system, including electronic vehicle chalking to enforce time limit parking restrictions and electronic parking permit management.

ALPR text can also be compared to various hot lists generated by local, state, and federal law enforcement agencies, including the National Crime Information Center (“NCIC”), and generates an alert when there is a hit. The ALPR system identifies license plates and will not identify the person operating the motor vehicle. The Department may, as a separate step and for legitimate law enforcement purposes per the Federal Driver’s Privacy Protection Act, and as set forth in this Policy, undertake to identify the owner of a vehicle in the event the ALPR system generates an alert, such as by running the license plate number through the State of California Department of Motor Vehicle (DMV) database.

The ALPR system shall be restricted to legitimate law enforcement uses for the purpose of furthering legitimate law enforcement goals and enhancing public safety. Such uses and goals include, but are not limited to, parking management, providing information to officers that will assist in on-going criminal investigations, crime prevention, crime detection, the apprehension of wanted persons, ensuring the safety of vulnerable individuals through the recovery of missing and endangered persons, and improving the quality of life in our community through the identification and removal of stolen or unregistered motor vehicles.

The Department may utilize hot lists which further the above specified goals of the ALPR system, where there is a legitimate and specific law enforcement reason for identifying a vehicle associated with an outstanding arrest warrant, vehicles related to missing persons investigations, vehicles associated with AMBER Alerts, stolen vehicles, vehicles that are reasonably believed to be involved in the commission of a crime, vehicles which are registered to or are reasonably believed to be operated by persons who do not have a valid operator's license or who are on the revoked or suspended list, vehicles with expired registrations, vehicles registered to persons who are subject to a restraining order issued by a court or by the Parole Board, or who are subject to any other duly issued order restricting their movements, vehicles registered to persons wanted by a law enforcement agency who are of interest in a specific investigation, or vehicles registered to

persons who are on any watch list issued by a State or Federal agency responsible for homeland security when information has been received concerning a specific individual.

The Department shall implement specific security measures as agreed to by the Department and T2 Systems, Inc, who hosts ALPR technology for the Davis Police Department. The Agreement with T2 Systems, Inc. is specifically incorporated by reference.

II. DEFINITIONS

ALPR – Automated License Plate Recognition System, or Automated License Plate Reader

ALPR System – The system in its entirety, including all ALPR cameras, software, and collected data

Alert – An audible and/or visual signal activated upon the read of a license plate by the ALPR system that has NOT BEEN VISUALLY VERIFIED by the officer against the photo in the ALPR system.

Tentative Hit – An alert by the ALPR system that HAS BEEN VISUALLY VERIFIED by the officer against the ALPR hotlist and photo but HAS NOT BEEN VALIDATED by the officer or dispatch as a live query transaction OR CONFIRMED AS VALID with the original entering agency.

Live Query Transaction – A hit by the ALPR system that HAS BEEN VALIDATED as active but HAS NOT BEEN CONFIRMED as valid by the entering agency.

Confirmation (Confirmed Hit) – A hit by the ALPR system that HAS BEEN CONFIRMED as valid and active by the original entering agency through secondary check.

Hotlist – Data files extracted from law enforcement databases which contain listings of stolen license plates, stolen vehicles, wanted persons, and other vehicles/persons actively being sought by a law enforcement agency such as Amber/Silver Alert vehicles/persons. These data extracts are generally facilitated numerous times per day in an effort to provide current data.

III. PROCEDURE

A. Management

The Davis Police Department, by and through the Police Chief, is solely responsible for the day-to-day operation and management of the ALPR system and for all tasks ancillary to its operation and management. The Chief of Police shall assign Department personnel to operate and manage the ALPR system on a day-to-day basis.

The following personnel will have regular access to the ALPR system:

- Police Chief
- Deputy Police Chief
- Police Intelligence Resource Manager
- Parking Supervisor
- Police Services Specialist

The Police Chief may also authorize representatives from T2, Inc. (parking management system), Genetec AutoVu (ALPR system) and PCS Mobile (wireless transmission services) to

access the ALPR system for training and maintenance services as provided for in written agreements.

The Police Chief, through his or her designee, shall ensure that the ALPR system is operated in conformity with this Policy and other Department policies, procedures, rules and regulations.

B. Operations

1. Installation and Functioning

ALPR cameras may be mounted on marked parking enforcement vehicles. ALPR equipment will passively read the license plates of parked motor vehicles using ALPR optical character recognition technology. The ALPR data may be used as part of the comprehensive parking management system (electronic vehicle chalking and e-permit management plan). Data may also be compared against various hot lists uploaded or created by the Davis Police Department. Scanned data files collected by the system will, on an ongoing basis, be automatically uploaded from the ALPR camera to the Department's ALPR database.

2. Hot Lists

Designation of hot lists to be utilized by the ALPR system shall be made by the Chief or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. These sources may include:

- NCIC Stolen Vehicle files, as available;
- NCIC Stolen plates and Stolen Canadian plates, as available;
- NCIC Wanted persons, as available;
- NCIC Missing or Endangered person files, as available;
- NCIC Supervised Release (Federal Probationers), as available;
- NCIC Nationwide Domestic Violence Protection Orders, as available;
- NCIC Violent Gang and Terrorist Organization File, as available;
- NCIC Sexual Offender;
- DMV Records of Suspended/Revoked Registrations.

3. Training - No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training. Training shall be provided by T2, Inc and Genetec AutoVu as part of the services agreement. Follow up training may be provided by the Parking Supervisor.

4. Login/Log-Out Procedure - To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data. A routine check to ensure the equipment is working properly should be done at the beginning of each shift by the user logging into the system.

5. Auditing and Oversight - To ensure proper oversight into the use of the system and adherence to this policy, all activities (plate detections, queries, reports, etc.) are automatically recorded by the system for auditing purposes. System audits shall be conducted by the Parking Supervisor at least every six months during the first two years subsequent to implementation and no less than annually thereafter. The audit report shall

include an explanation regarding any data retained longer than one-year (e.g. data retained as evidence in a criminal case).

6. Permitted/Impermissible Uses

The ALPR system, and all data collected, is the property of the Davis Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose. Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:
 - Criminal prosecution,
 - Civil liability, and/or administrative sanctions, up to and including termination.

7. Required Steps Preliminary to Police Action Based on a Hot List

Hot lists utilized by the Department's ALPR system may be updated by agency sources more frequently than the Department may be uploading them, and the Department's ALPR system will not have access to real time data. Further, there may be errors in the ALPR's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, an officer shall undertake the following:

- Verification of current status on hot list. An officer must receive confirmation, from someone or some system within the Department that the license plate is still stolen, wanted, or otherwise of interest before proceeding.
- Visual verification of license plate number. Officers shall visually verify that the license plate on the vehicle of interest matches identically with the image of the license plate number captured (read) by the ALPR, including both the alphanumeric characters of the license plate and the state of issue, before proceeding with a traffic stop.

8. Use in Connection With Serious Crimes/Incidents - Use of the ALPR should be considered to conduct license plate canvasses in the immediate wake of any homicide,

shooting, robbery, kidnapping, sexual assault or AMBER ALERT, or other major crime or incident.

C. Database Access and Privacy Concerns

1. The ALPR system database and software resides in a data center featuring full redundancy and access controls. The data remains property of the Davis Police Department, and is managed according to this Policy.
2. The ALPR system is governed by the Permitted/Impermissible Uses as outlined in this Policy.
3. The ALPR data contains no Personally Identifiable Information (PII) that may be used to connect license plate detection to an individual. It is only with permissible purpose that an investigator may make this connection (using other systems) and this access is already governed by the Federal Driver's Privacy Protection Act (DPPA).
4. All investigative queries into collected ALPR data are logged by user and available for auditing and review by the Department as outlined in this Policy.
5. The ALPR system has a full audit log, which contains the following information
 - a. The date and time the information is accessed.
 - b. The license plate number or other data elements used to query the ALPR system.
 - c. The username of the person who accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.
 - d. The purpose for accessing the information.

D. Data Retention

All data and images gathered by an ALPR are for the official use of the Davis Police Department and because such data may contain confidential CLETS information, it is not open to public review, except as part of the parking citation review/appeal process, which viewing is limited to vehicle information regarding the offender and their vehicle. ALPR information gathered and retained by this Department may be used and shared with prosecutors or others only as permitted by law. The sale, sharing, or transfer of ALPR information, except as permitted by law, is prohibited. All ALPR data downloaded to the server will be stored for a period of one-year, and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances, the applicable data should be downloaded from the server onto portable media and booked into evidence.

Darren Pytel
Police Chief
02/16

RESOLUTION NO. _____ SERIES 2016

**RESOLUTION APPROVING T2, INC. SOFTWARE SUBSCRIPTION AGREEMENT,
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

WHEREAS, On June 1, 2015, the City opened a public notice for a comprehensive city-wide parking revenue and collection system request for proposals (RFP); and

WHEREAS, the City received four responses to the RFP and the City conducted a comprehensive analysis of each of the four responses; and

WHEREAS, T2, Inc. provides a comprehensive parking solution, including citation writing hardware, “e” permitting, “e” chalking for timed zone enforcement; and

WHEREAS, the City negotiated a contract with T2, Inc. with terms that are acceptable to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby approves T2 Software Subscription Agreement in substantially the form attached as Exhibit “B” to this resolution

Section 2. The City Manager is hereby authorized and directed to execute the T2 Software Subscription Agreement on behalf of the City, subject to any minor changes approved by the City Attorney. The City Manager is hereby further authorized and directed to take such further actions and execute such documents as are necessary to carry out said Agreements on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Davis this 15th day of March 2016, by the following vote:

AYES:

NOES:

ABSENT:

Daniel M. Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

T2 SYSTEMS, INC.

SOFTWARE SUBSCRIPTION AGREEMENT

THIS SOFTWARE SUBSCRIPTION AGREEMENT is entered into as of (DATE) (“**Effective Date**”) and contains the subscription agreement between CITY OF DAVIS (“**Subscriber**”) and T2 SYSTEMS, INC. (“**T2**”). Subscriber specific details are contained in the *Quote* attached hereto as Exhibit B, and incorporated by this reference. Certain terms are defined in Article 13.

Article 1. SOFTWARE SUBSCRIPTION

Section 1.1 **Software Subscription.** T2 grants to Subscriber a non-exclusive right to use: (i) one Production Copy of the T2 Flex®: Professional Edition Software for its Authorized Concurrent Users and (ii) copies of the handheld ticket-writer software equal to the number of handheld ticket-writer Hardware units purchased by Subscriber, if applicable. T2 grants the Subscription(s) for the Authorized Purposes and no other purposes. At no time may the number of user accounts for the Software exceed the number of Authorized Concurrent Users. T2 has the right to monitor number of Concurrent Users. Subscriber may increase the number of Authorized Concurrent Users by written amendment to this Agreement increasing the number based on the unit price for Concurrent Users as set forth in the *Quote*.

Section 1.2 **Term.** The Subscriptions granted in this Article 1 and Article 4 are for the term specified in Section 7.1.

Section 1.3 **Warranty of Functionality.** T2 warrants to Subscriber that:

For a period of ninety (90) days after T2 installs the T2 Flex® Software, including the handheld ticket-writer Software if applicable, at the Subscriber’s premise or installs it on the Hosted System, whichever the case may be, the Software will provide at least the functionality contained in the then-current product literature as posted on T2’s corporate website, including but not limited to the Flex Online Help webpage that shall be maintained for not less than the Term of this Agreement, and will perform without errors which would significantly affect its ability to provide that functionality. This warranty is contingent upon Subscriber advising T2 of any failure of the T2 Flex® Software to perform within ninety (90) days after the Installation Date. The notice to T2 shall specifically identify the error or errors. T2’s services in connection with the correction of the errors shall be provided without charge to Subscriber. T2 does not warrant that the operation of the T2 Flex® Software will be uninterrupted or error free. Further, T2 does not warrant that the T2 Flex® Software will operate on any particular configuration of software, operating system or computer system.

Section 1.4 **No Other Warranties.** The warranties made by T2 in Section 1.3 with regard to both the T2 Flex ® Software and the handheld ticket-writer Software are in lieu of all other representations or warranties, express or implied, including without limitation any implied warranties of design, merchantability, or fitness for any specific or general purpose and those arising by statute or by law, or from a course of dealing, or usage of trade, all of which are disclaimed.

Section 1.5 **Installation.** Except as provided in Section 3.2, T2 shall install the Software and confirm that the Software is working properly. Once the Software is installed, the Subscriber shall verify that the installation is complete and the Software is working properly.

Article 2. HARDWARE

Section 2.1 **Applicability.** The provisions of Article 2 only apply to the Hardware specifically listed in the *Quote* (the “**Hardware**”) as Hardware purchased through T2 or an authorized T2 Systems distributor. Any Hardware purchased from sources outside of T2 or an authorized T2 Systems distributor will be the sole responsibility of the Subscriber. T2 will not be responsible for the failure of the software to perform to the extent that such failure to perform is due to the failure of a third party function, such as Internet availability required for the connection between the Hardware and Flex or the wireless network availability required for the T2 Software to be able to send and receive data. T2 shall not be liable for the failure of the software to perform if such failure arises due to the combination of the software with third party hardware or software, provided, however, that T2 covenants that it will use its best efforts to ensure that the software appropriately integrates with third party hardware or software used by Subscriber. T2 shall not cover repair, labor or replacement of parts that are by nature expendable.

Section 2.2 **Hardware Warranty.** T2 warrants to the Subscriber that the Hardware, as listed in the *Quote*, will be free from defects in workmanship and materials, under normal use, for one year (365) days from the date the Hardware is delivered.

Section 2.3 **Intentionally Omitted.**

Section 2.4 **Exclusive Remedy.** Should a Hardware Error occur during the warranty period and you notify T2, Subscriber’s sole and exclusive remedy shall be, at T2’s sole option and expense, to repair or replace the Hardware parts which have been found to be defective. At T2’s sole discretion, parts may be repaired as opposed to being replaced. T2 may replace parts with others of like kind and quality. T2 will provide service at any T2 service center or at such other location as may be designated by T2. Subscriber agrees to follow the Return Materials Authorization Process as set forth in Section 2.8.

Section 2.5 **Hardware Repair Limitations.** T2’s liability for Hardware repairs under this Agreement shall be limited to the actual cash value of the

Hardware in operating condition at the time of the claim. Except as otherwise expressly agreed by T2, nothing herein shall obligate T2 to repair or replace aesthetic or structural items including, but not limited to, damage to the case or screen from dropping, warping of any kind to housing, case or frame of the Hardware. Subscriber agrees that it is responsible for repair costs associated with worn out or damaged touch screens or LCD modules. This Agreement only applies to the operation of the Hardware under the conditions for which it was designed, and does not cover damage resulting from external causes such as, but not limited to, damage resulting from a collision with any object or from fire, flooding, sand, dirt, windstorm, hail, earthquake, act of God, damage from exposure to weather conditions not anticipated or contemplated by the manufacturer's specifications, battery leakage, theft, misuse, abuse, damage from failure of, or improper use of, any electrical sources or connection to other products not recommended for interconnection by the Hardware manufacturer. Subscriber shall perform all preventative maintenance recommended by the Hardware manufacturer to maintain the Hardware in operating condition and Subscriber agrees that any loss or damage resulting from the failure to provide the Hardware manufacturer's recommended maintenance is not covered by this Agreement.

Section 2.6 **Obsolete Hardware.** While it is T2's intention to support Hardware for as long as is technically and financially feasible, T2 reserves the right to discontinue maintenance and support of obsolete Hardware six months after providing written notice to Subscriber. After that time, T2 will offer repair services on the then-current standard rates for time and materials for the obsolete Hardware so long as parts and labor are reasonably available.

Section 2.7 **Engineering Modifications.** All products of T2 Systems are subject to design and/or appearance modifications which are production standards at the time of shipment. T2 Systems may, but shall not be required, to, modify, or update products shipped prior to a current production standard.

Section 2.8 **Return Materials Authorization (RMA) Process.** In the event that Subscriber experiences a malfunction with respect to the Hardware, Subscriber shall call T2 technical support in order to determine the cause of the malfunction. If T2 technical support determines that the Hardware does require service, the technician will instruct Subscriber as to the proper return procedure. A Return Material Authorization Number (RMA) must be obtained before product is returned. Subscriber shall return the damaged Hardware, together with a description of the malfunction, to T2 or other service location as directed by the T2 technician. Subscriber shall remove the Flash ROM or RAM cards prior to shipping the Handheld Hardware to the appropriate T2 service center. Subscriber is responsible for all freight and insurance charges inbound to the service center. T2 is responsible for all freight and insurance charges outbound from the service center. T2 Systems is not responsible for removal, installation, or any incidental expenses incurred in replacing the defective item or shipping the product to or from the distributor or customer.

Section 2.9 **Restocking Fee for Returned Hardware.** The Subscriber may return handheld and T2 Point of Sale hardware within 30 days of delivery

if the goods are in an unsoiled, undamaged, new, and re-saleable condition. The Subscriber may cancel access and revenue control hardware within three (3) weeks of T2 receiving a purchase order. T2 charges a minimum of 25% restocking fee on all equipment that is returned unless the delivered goods were damaged or found malfunctioning upon arrival by purchaser. The credit will be issued only after the equipment is inspected and determined by an Employee of T2 to be in unsoiled, undamaged, new and re-saleable condition. The Subscriber will pay for all freight charges to T2's plant unless the delivered goods were damaged or found malfunctioning upon arrival, in which case the seller shall pay all freight charges. Subscriber and/or the Distributor agree to inspect all delivered pieces of Hardware immediately and report any visible damage within 48 hours to T2. Failure to report damage in this time frame will result in the inability to replace damaged goods. Hidden damage (i.e. electrical issues, board malfunctions, etc.) must be reported within 7 days.

Section 2.10 **Limitation of Liability.** THE WARRANTIES AND REMEDIES SET FORTH IN THIS Article 2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, CORRESPONDENCE WITH DESCRIPTION, SATISFACTORY QUALITY AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY T2. T2 SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, LOSS OF INFORMATION OR DATA, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE OR USE OF THE HARDWARE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER THEORY, EVEN IF T2 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS SUBSCRIPTION AGREEMENT IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. T2'S ENTIRE LIABILITY SHALL BE LIMITED TO REPLACEMENT, REPAIR, OR REFUND OF THE PURCHASE PRICE PAID, AT T2'S OPTION.

Article 3. HOSTING SERVICES

Section 3.1 **Applicability.** The provisions of this Article 3 apply only if *Quote* states that T2 will provide hosting services ("**Hosting Services**").

Section 3.2 **Software Installation.** T2 shall install the Software on the Hosting System.

Section 3.3 **Access.** In consideration of the payment of the Hosting Fee, T2 will provide Subscriber access to the Software via the Hosting Services and Hosting System. Subscriber may access the Hosting System using Subscriber's remote access equipment. T2 shall undertake commercially reasonable efforts to provide

Subscriber with consistent service in a shared hardware environment (i) insulated from changes in the Internet, and (ii) sufficient to access the Software on T2 Application Server through the Internet twenty-four (24) hours per day, seven (7) days per week, except for routine maintenance performed pursuant to notice to Subscriber. T2 shall monitor T2's Application Server and undertake commercially reasonable efforts to restore promptly all failures of service at no additional charge to Subscriber. Subscriber shall be solely responsible for (i) providing Internet devices and supported browsers, and (ii) Internet connections, at Subscriber's sole cost and expense.

Section 3.4 Hours of Operation. Generally, connectivity will be available seven (7) days per week, twenty-four (24) hours per day. Subscriber's access is subject to outages for scheduled maintenance activities and outages attributable to failure of the Subscriber's telecommunications provider to provide an Internet connection. Whenever practical, scheduled maintenance activities will be performed outside the hours of 8:00 a.m. and 8:00 p.m ET. Notice of scheduled maintenance shall be provided to Subscriber via email not less than 72 hours prior to such scheduled maintenance.

Section 3.5 Maintenance and Updates. T2 shall provide maintenance for the Hosting System, including updates and patches and shall install any updates or enhancements for the Software that are released by T2 to its Subscribers. T2 will notify Subscriber when the updated version is available.

Section 3.6 Improvements. In order to maintain the quality of the Hosting Services provided by T2 hereunder, T2 reserves the right to change the hours of operation and other facilities and procedures relating to access and use of its Hosting Services. T2 will provide Subscriber with ten (10) days notice prior to any planned improvements that may materially affect the Hosting Services.

Section 3.7 Passwords and Security. Subscriber will control the issuance of passwords and user IDs for the use of the Software by Subscriber's Authorized Concurrent Users. Subscriber shall be responsible for the confidentiality of all those passwords. Subscriber acknowledges that it will be responsible for all liabilities incurred through use of any password assigned to Subscriber, and that any transactions under Subscriber's password will be deemed to have been performed by Subscriber.

Section 3.8 Ownership of Data. Subscriber shall maintain ownership of any Subscriber Data provided to T2 or input to the Software pursuant to this Agreement. T2 shall not supplement, modify or alter any Subscriber Data except as directed or requested by Subscriber (other than technical modifications necessary to upload/format the Subscriber Data to the Web Site).

Section 3.9 Limitation of Liability. T2's total liability, if any, with respect to the subject matter of the Hosting Services (including, but not limited to, liability arising out of contract, tort, strict liability, breach of warranty or otherwise), is limited to the fees paid by Subscriber for the Hosting Services in the three (3) months prior to the act that gave rise to the liability; *provided, however*, that this limitation does not apply to damages to Subscriber directly caused by willful or malicious misconduct by

T2 or its employees or by any claims brought against Subscriber based upon a violation of third party rights by the Software, which are covered by Section 10.4. T2 WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE SERVICE), WHETHER OR NOT FORESEEABLE AND EVEN IF T2 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL APPLY TO ANY ACTION OR ARBITRATION HEREUNDER.

Section 3.10 **Warranties.** EXCEPT AS MAY BE OTHERWISE SPECIFICALLY SET FORTH IN THE QUOTE OR THIS AGREEMENT, T2 MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE HOSTING SERVICES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 3.11 **Performance.** ALTHOUGH T2 WILL TAKE REASONABLE STEPS TO PROVIDE ERROR-FREE AND CONTINUOUS HOSTING SERVICES, T2 DOES NOT REPRESENT, WARRANT OR GUARANTEE THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. AS A RESULT, THE HOSTING SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND.

Article 4. PROFESSIONAL SERVICES.

Section 4.1 **Applicability.** T2 will provide project management services for the implementation of both T2 Flex and Genetec AutoVu, as more particularly described in the *Quote* (collectively, the “**Professional Services**”). The Professional Services shall be provided pursuant to a Project Plan to be provided by T2 within 30 days of the Effective Date of this Agreement, and shall be completed in not more than 120 day from submission of the Project Plan.

Section 4.2 **Web Site.** T2 shall provide a Web Site for Subscriber. T2 and Subscriber contemplate that the Web Site will be enhanced over time and unless T2 is providing Hosting Services, the Web Site will be hosted by Subscriber.

Section 4.3 **License.** Subject to payment by Subscriber of any Web Site Fee which is due, T2 grants to Subscriber a non-exclusive right to use the Web Site prototype and any additional enhancements or customization in connection with the use of the Software under the same Terms and Conditions.

Section 4.4 **Web Site Development.** If the Subscriber determines that the Web Site requires additional enhancements or customization, T2 shall provide development services relating to the Web Site. T2’s services in assisting Subscriber in this regard shall be provided on a Time and Materials Basis, pursuant to the terms of, and only following a written amendment to this Agreement.

Section 4.5 **Indemnity.** To the fullest extent permitted by law, T2 shall defend, indemnify and hold the Subscriber, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of T2, its officials, officers, employees, subcontractors, contractors or agents in connection with the performance of the Professional Services, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

Article 5. TECHNICAL SUPPORT

Section 5.1 **Technical Support Services.** T2 offers the Subscriber technical support as described in Section 13.9.

Section 5.2 **Technical Support Hours.** T2 offers Technical Support from 8:00 a.m. EST to 8:00 p.m. EST Monday through Friday excluding holidays. The Target Response Time is two (2) hours.

Section 5.3 **Updates and Enhancements.** To the extent that T2 releases an updated or enhanced version of the Software during the Subscription Term, T2 will make the updated version available for download by Subscriber at no additional charge. Subscriber shall be permitted to use the updates and enhancements to the extent provided in Article 1.

Section 5.4 **Technical Support Exclusions.** T2 will not be responsible for failure to correct a problem to the extent that, despite its best efforts, T2 is unable to replicate the problem, or if the problem is caused by: (i) misuse of the Software, (ii) failure by Subscriber to utilize compatible computer and networking hardware and software, (iii) interaction with software or firmware not provided by T2 (despite T2's best efforts to provide integration with such software or firmware), (iv) any change in applicable operating system software, or (v) the failure of Subscriber to install updates to the Software provided by T2. A Subscriber who is not current with their account will not be eligible for technical support. In any such event, T2 will advise Subscriber and, upon request, will provide such assistance as Subscriber may reasonably request with respect to such problem at T2's then-current standard rates for time and materials, provided that such assistance will only be provided pursuant to separate written agreement between T2 and Subscriber.

Section 5.5 **Cooperation.** Subscriber acknowledges (i) that certain services or obligations of T2 hereunder may be dependent on Subscriber providing certain data, information, assistance, or access to Subscriber's systems, (collectively, "**Cooperation**"), and (ii) that Cooperation may be essential to the performance of such

services by T2. The parties agree that any delay or failure by T2 to provide services hereunder which is caused by Subscriber's failure to provide timely Cooperation reasonably requested by T2 shall not be deemed to be a breach of T2's performance obligations under this Agreement.

Section 5.6 **Supported Versions of Flex.** T2 requires all T2 Flex instances hosted by the Subscriber or hosted by T2 on behalf of Subscriber for either production or for testing to be the current or next most recently released T2 Flex application software version. T2 reserves the right to upgrade any T2 hosted T2 Flex instance with 24 hour notice to the Subscriber. Notice may be provided via email or phone.

Article 6. PAYMENT

Section 6.1 **Fees.** The Subscription Fee, Web Development/eBusiness, Hosting Services Fee, Professional Services Fee, Hardware Fee and any additional agreed upon fees (collectively, the "**Fees**") shall be payable according to the terms set forth in the **Quote**. Partial periods shall be prorated. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated by T2 for cause or by Subscriber for convenience prior to the expiration of the Guaranteed Minimum Commitment (as set forth in the **Quote**), the unpaid balance for the Guaranteed Minimum Commitment shall accelerate and be due and payable in full immediately upon acceleration.

Section 6.2 **Change in Fees.** T2 will not increase the Fees for the Initial Term of this Agreement. Thereafter, in the event the Agreement is extended, the Fees shall not be extended by more than five (5) percent per year, and shall only be extended provided T2 notifies Subscriber in writing at least sixty (60) days prior to a renewal period. If T2 fails to provide a sixty (60) day notice, then the increase in fees will not become effective until the beginning of the first month following the sixty (60) day period after T2 notified Subscriber of the increase.

Section 6.3 **Certain Taxes.** If applicable, in addition to the consideration provided herein, Subscriber agrees to pay amounts equal to any sales, use, excise or other taxes or any custom duties levied against or imposed: (i) upon the subscription of the Software to Subscriber, or (ii) upon the Authorized Production Copies and the permitted back-up copies used by Subscriber, or (iii) upon the support provided under Article 5, or (iv) resulting from this Agreement, or any activities hereunder; but Subscriber shall not be obligated to pay any taxes based on T2's net income. If Subscriber claims an exemption from any such taxes, Subscriber shall provide to T2 an appropriate exemption certificate. If Subscriber challenges the applicability of any tax, Subscriber shall nevertheless pay the same to T2 and Subscriber may thereafter challenge the tax and seek a refund thereof. Subscriber agrees to indemnify and hold harmless T2 from any cost, fee, penalty or expense (including counsel fees) in connection with any assertion by any taxing authority that T2 has failed to collect and remit their sales or use tax on transactions hereunder or to pay any property taxes on the copies of the Software

in Subscriber's possession but shall have no such obligation to T2 with respect to any amount paid by Subscriber to T2 and not remitted to the relevant taxing authority.

Section 6.4 **Invoices.** Invoices for payment of amounts due to T2 under this Agreement shall be itemized in reasonable detail. If Subscriber does not dispute any part of an invoice, Subscriber shall pay the amounts due within thirty (30) days of receipt. If Subscriber disputes one or more items of an invoice, Subscriber shall: (i) pay T2 within thirty (30) days of receipt of the invoice the amounts for items not disputed; and (ii) notify the Finance Department of T2 within those thirty (30) days in writing of its dispute of one or more items of the invoice, identifying the item or items in dispute and setting forth in reasonable detail the basis for each dispute. Failure to so notify the Finance Department of T2 of each item in dispute and the basis therefore shall be deemed acceptance of those items, and Subscriber shall forthwith pay T2 therefore.

Section 6.5 **Failure to Make Payment.** If Subscriber fails to make any payments within thirty (30) days after the amount is due pursuant to this Agreement, then the amount, without the necessity of any notice or action by T2 shall become due and payable together with interest thereon from the date of nonpayment at twelve percent (12%) per annum [or the highest rate permitted by law if less than twelve percent (12%). The non-exclusive subscription granted pursuant to Article 1 of this Agreement may be terminated by T2 with thirty (30) days prior written notice in the event Subscriber fails to make any payments when due under this Agreement.

Payment Options

1. Subscriber shall pay the Annual Subscription amount in advance, in accordance with invoices delivered as set forth in Section 6.4 above.

Section 6.7 **Late Charges.** If Subscriber does not make timely payment of the Subscription Fee to T2 of any amount payable hereunder, in addition to the remedies available to T2 at law or equity, T2 may collect interest on the sum then owing at the rate of 12% per month from the due date until payment by Subscriber; provided, however, that in no event shall the aggregate interest charges exceed the maximum rate of interest which could be charged under applicable law and T2 may suspend services until all amounts due are collected. If payment is not received within thirty (30) consecutive days, T2 has the right to suspend services provided hereunder.

Article 7. TERM AND TERMINATION

Section 7.1 **Term.** The term of the Subscriptions granted in Article 1 and the provision of support under Article 5 shall commence on the Installation Date and shall continue for the period set forth in the *Quote* ("**Initial Term**"). If the Subscriber delays installation beyond the timeline in the *Quote*, the Subscriber may incur additional installation fees. If a delay in installation is caused by T2, the initial term of this Agreement shall commence at the date the Software is installed and the Subscriber executes the installation verification acknowledgement. Except as may be otherwise provided in the *Quote*, the term of the Subscriptions and support shall be automatically

renewed for an additional term of one (1) year effective immediately after the expiration of any then-current term, unless either T2 or Subscriber gives notice of non-renewal to the other at least sixty (60) days in advance of the expiration of the then-current term.

Section 7.2 Reengagement When a project is unreasonably delayed from the agreed upon schedule as defined in a mutually agreed upon Project Plan because the Subscriber did not meet their deliverables, or if the Subscriber requests a new date for scheduled installation, training or other on-site project management work less than 7 days after a committed date has been scheduled, the Subscriber will be responsible for:

- a) Acceleration of payment for all Professional Services completed to date (i.e., I&T, project management costs, eBiz, interfaces, etc.).
- b) All hard costs actually incurred by T2, including travel.
- c) Rebooking fees actually incurred by T2.
- d) Any necessary rework (repeat of training, additional data sample, additional PM hours) would be billed at restart.

T2 shall only bill Subscriber for those additional costs actually incurred, and shall use its best efforts to avoid incurring any additional costs and to avoid any need for additional work.

Section 7.3 Termination. Subscriber may terminate the Subscriptions granted in this Agreement, any support under Article 5, any Professional Services, and any Hosting Services by notice of non-renewal given in accordance with Section 7.1 or by notice given in accordance with the provisions of Article 11. T2 may terminate the Subscriptions granted in the Agreement and any support under Article 5 by notice of non-renewal given in accordance with Section 7.1, by termination as provided in Section 6.5 or upon fifteen (15) days prior written notice in the event Subscriber uses the Software in a manner not permitted under the Agreement. Nothing in this agreement or any other agreement between the parties shall prohibit T2 from contracting with, or providing goods (including software) or services to, any other party to service the same end users contemplated by this agreement.

Section 7.4 Return of Materials. Upon termination of the Subscription of the Software or Handheld Software for any reason, Subscriber shall destroy all copies of the Software or Handheld Software and any other materials received from T2 and furnish T2 a written statement certifying that through Subscriber's best efforts, and to the best of Subscriber's knowledge, all copies of the Software or the Handheld Software, including all copies of Client Components, and any other materials received from T2, have been destroyed.

Section 7.5 Return of Subscriber Data. Upon termination of the Subscription of the Software, T2 shall, at Subscriber's request, return Subscriber's data in

an Oracle standard database export format within thirty (30) days of Subscriber's request. To accommodate special requests to receive data in any other format, Subscriber will be responsible for additional time and materials required to accommodate this request. All special requests will be scoped by T2 and then an initial estimate provided to the Subscriber.

Section 7.6 **Outstanding and Future Payment Obligations.** All payment obligations between the parties that are outstanding as of the effective date of termination, or which accrue hereunder prior to the effective date of termination or which accrue for services that are completed after the effective date of termination shall survive the termination of this Agreement.

Article 8. SUBSCRIBER DATA

Section 8.1 **Confidential Treatment.** All Subscriber Data which is submitted by Subscriber to T2 pursuant to this Agreement will be safeguarded by T2 to the same extent that T2 safeguards data relating to its own business; *provided, however*, if Subscriber Data is publicly available, is already in T2's possession from a source other than Subscriber or otherwise known to it, or was rightfully obtained by T2 from third parties, T2 shall bear no responsibility for its disclosure, inadvertent or otherwise. Upon reasonable notice, Subscriber may inspect T2's facilities during regular T2 business hours to assure Subscriber of T2's compliance with this obligation.

Section 8.2 **Obligation of Subscriber to Protect.** The Software creates and stores databases of personal information of end-users and data relating to Subscriber on the computer system on which the Software is installed. Subscriber agrees to take all steps which it deems are appropriate to provide adequate security for that information.

Article 9. RESTRICTIONS ON USE OF THE SOFTWARE

Section 9.1 **No Distribution.** Subscriber may not distribute or sublicense the Software to any person.

Section 9.2 **No Sublicense; Persons Authorized to Use.** Subscriber may not resell accounts or sublicense persons to use the Software other than Authorized Concurrent Users.

Section 9.3 **No Reverse Engineering.** Subscriber agrees that it will not create or attempt to create or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs for the Software or any part thereof from the object program or from other information made available under the Agreement (whether oral, written, tangible or intangible).

Section 9.4 **Limited Copies.** Subscriber is authorized to make copies of the Software, to the extent copies are reasonably required for back-up and archival purposes or for internal business operations. Subscriber agrees that while the Agreement is in effect, or while it has custody or possession of any property of T2, Subscriber will not copy or duplicate, or permit anyone else to copy or duplicate, any physical, magnetic, electronic or other version of the Software, beyond the number of authorized Production Copies subscribed pursuant to this Agreement, and Client Components which are installed on Authorized Concurrent Users' devices. Subscriber may modify the documentation as necessary for its internal purposes, but shall not alter or remove any proprietary notice in the documentation, including but not limited to T2's name, logo and copyright notice.

Section 9.5 **Export.** Subscriber shall not permit any copy (in any medium) of all or any portion of the Software to be transmitted to or located outside of the United States except with T2's prior written consent and compliance by Subscriber with any applicable export or import requirements.

Section 9.6 **Passwords.** Subscriber shall not: (i) transmit or share identification and/or password codes to persons other than the Authorized Concurrent Users for whom such codes were generated; (ii) permit Authorized Concurrent Users to share identification and/or password codes with others; or (iii) permit the identification and/or password codes to be cached in proxy servers and accessed by individuals who are not Authorized Concurrent Users.

Article 10. PROPRIETARY PROTECTION

Section 10.1 **T2 Confidential Information.** Subscriber and Subscriber's subsidiaries recognize that the source code for the Software, and all specifications, techniques, manuals (other than end-user materials), system documentation and other materials relating to the operation of the Software which are disclosed or made available to Subscriber by T2 pursuant to this Agreement (collectively, "**T2 Proprietary Material**") are confidential, proprietary and trade secret and are protected by law. The Agreement does not give Subscriber the right to have access to any source code for the Software.

Section 10.2 **Other Proprietary Information.** T2 and Subscriber each may provide the other information which it treats as confidential or proprietary and which either (a) it has marked "Confidential" or "Proprietary," or (b) a reasonable person in the circumstances would understand to be confidential or proprietary ("**Proprietary Material**"). The receiving party agrees: (a) not to use Proprietary Material it receives from the disclosing party for any purpose other than performing its obligations and exercising its rights under this Agreement; (b) to exercise at least the same care to maintain the confidentiality of the Proprietary Material as it does its own confidential information of the same type; and (c) not to disclose the Proprietary Material to any third party, except that it may disclose Proprietary Material (i) on a confidential basis to its affiliates and its and its affiliates' attorneys, accountants, consultants, lenders, potential lenders and financial, tax, technical and other advisors who agree to keep it confidential,

(ii) when required to comply with applicable laws or governmental regulations, including but not limited to the California Public Records Act (Calif. Gov't Code §6250 *et seq.*), (iii) in response to a subpoena or other legal process provided that, if permitted by law, it first notifies the disclosing party and, to the extent possible, gives the disclosing party a reasonable opportunity to challenge the disclosure and (iv) on tax returns or in connection with any examination or audit thereof. "Proprietary Material" shall not include information received from a party which: (i) is in the other party's possession without actual or constructive knowledge of an obligation of confidentiality with respect thereto, prior to disclosure by the party; (ii) is or subsequently becomes part of a public domain through no fault of the other party; (iii) is disclosed to the other party by a third party having no obligation of confidentiality with respect thereto, and provided the other party did not have actual or constructive knowledge that such information was wrongfully disclosed by such third parties; or (iv) is independently developed by the other party.

Section 10.3 Reproduction of Marks. Subscriber agrees that any copies made of the Software, Handheld Software, any other T2 Proprietary Material and any other material obtained from T2 shall preserve unaltered patent, trademark, copyright, proprietary or confidentiality notices contained therein.

Section 10.4 Patent and Copyright Indemnity. T2 warrants that the Software and any materials developed by T2 and provided by T2 to Subscriber will not infringe on any United States copyright or patent. Should any legal action be made against Subscriber based on infringement of a United States copyright or patent as a result of the Software or the Professional Services, Subscriber shall promptly notify T2 and T2 shall defend the action at its expense. T2's liability in that event will be limited to defending the action and payment of any resulting court costs and damages finally awarded against Subscriber in the action. T2's obligations pursuant to this Section 10.4 shall not apply to any infringement caused by or resulting from Subscriber modifications or attempted modifications to any relevant system, or from Subscriber's failure to implement changes or updates furnished by T2 to Subscriber during the term of this Agreement.

Article 11. CORRECTION OF ERRORS

Section 11.1 Correction of Functionality of the Software. The liability of T2 for the functionality of the Software is limited, except as provided below in this Section, to the warranty provided in Section 1.3. If, thirty (30) days after the giving of the required notice described in Section 1.3, the Software fails to so conform, and the failure to conform is occasioned by T2's error and not operator error, faulty data or hardware failures, then, Subscriber may, at its election at any time thereafter while the failure remains uncured, send T2 a written notice that: (i) T2 has continued to fail to correct the failure; and (ii) Subscriber has elected to terminate the subscription of the Software. Upon the continuance of that failure for a period of thirty (30) days after such written notice of the continuance of such failure to correct and Subscriber's election to terminate has been given to T2 by the Subscriber ("cure period"), Subscriber may, and its exclusive remedy shall be to, terminate the subscription granted pursuant to the Agreement within sixty (60) days after the expiration of the cure period by the

destruction of the materials described in Section 7.4, and have returned to it, (to the extent the amounts have not been previously refunded) all unearned Fees paid to T2 by Subscriber as of that date, and shall be refunded all payments for Hardware, which shall be required to be returned to T2. If Subscriber fails to return the materials within sixty (60) days after the expiration of the cure period, Subscriber shall have waived its right to terminate the subscription and to receive a refund of the Fees.

Section 11.2 **Correction of Support Errors.** T2's liability under Article 5 is limited as provided in this Section 11.2. T2 commits to use commercially reasonable efforts repair "minor" bugs, which are errors that support a "work around" solution (a "**Minor Error**"), in the next production release of the Software, which would typically occur in ninety (90) days or less. New production releases (beta releases) are heavily tested by T2's technical staff and, typically, by beta site Subscribers, meaning that "critical" bugs, which are errors that would stop a Subscriber from processing (a "**Critical Error**" and together with a Minor Error, an "**Error**") rarely make it into a production release. Nevertheless, if a Critical Error makes it into a production release, T2 commits to use commercially reasonable efforts to distribute a software patch within forty-eight (48) hours of T2's receipt of notice of the Critical Error. If an Error continues for a period of sixty (60) days after that detailed written notice has been given to T2 by Subscriber ("cure period"), Subscriber may terminate the subscription of the Software by certifying destruction of the Software and other materials in the manner provided in Section 7.4 within thirty (30) days after the expiration of the cure period and, upon such certification, have returned to it the prorated consideration representing Subscriber's payment of the Subscription Fee for the days remaining in the then current Subscription Term computed from the date of T2's receipt of the termination notice.

Section 11.3 **Correction of Hardware Errors.** T2's liability under Article 2 is limited as provided in this Section 11.3. If after giving T2 notice of the Hardware Error, T2 fails to repair or replace the faulty Hardware, then, Subscriber may, at its election at any time thereafter while the Hardware Error remains uncured, send T2 written notice that (i) T2 has continued to fail to correct the Hardware Error and (ii) Subscriber has elected to terminate the Hardware Support services. If the Hardware Error continues for a period sixty days (60) after that detailed written notice has been given to T2 by Subscriber ("cure period"), Subscriber may, and its exclusive remedy shall be to request that T2 return the Hardware and have returned to it the prorated consideration representing Subscriber's payment for the Hardware repair and support.

Section 11.4 **Correction of Professional Services Errors.** Subscriber shall notify T2 within thirty (30) days' time after T2 advises Subscriber of its completion of the work in question when the Professional Services are not completed in accordance with the Subscriber's specifications. The notification shall include the detailed variances and the information necessary for T2 to verify the variances. T2, upon actual receipt of the notification and verification of the detailed variances, shall modify the work at no additional cost to the Subscriber so that it shall conform to the Subscriber specifications. The passage of the thirty (30) day period after T2 advises the Subscriber that the work is completed without the notification described herein shall constitute final satisfaction of the express warranty and the warranty period described above.

Article 12. REMEDIES

Section 12.1 **Waiver of Jury Trial.** Each party hereto hereby waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any claim, litigation or proceeding directly or indirectly arising out of, under or in connection with this Agreement.

Section 12.2 **Intentionally Omitted.**

Section 12.3 **No Other Liability** Except to the extent provided in Section 2.2, Section 3.9 and Article 11, T2 and its third party licensors shall not be responsible for any claims against Subscriber by any other party nor shall T2 or its third party licensors be liable for any property damage, personal injury, loss or inaccuracy of data, loss of profits or revenues, interruption of business, out-of-pocket expenses or any other direct, indirect, special, consequential or incidental damages, however caused, whether based on contract, tort (including negligence), strict liability, warranty, statutory rights or any other basis arising out of Subscriber's use of the Software, the provision of support, consulting or the marketing, delivery or supporting thereof, or otherwise arising pursuant to this Agreement. In the event any of the foregoing limitations of liability are void or are not effective, Subscriber agrees that the liability of T2 and its third party licensors for damages, if any, shall not exceed the Subscription fees paid by Subscriber to T2 for the three (3) months preceding the earliest event giving rise to the liability. With respect to Professional Services, in the event any of the foregoing limitations of liability are void or not effective, Subscriber agrees that T2's liability shall in no case exceed the amounts paid to T2 by Subscriber under this Agreement for Professional Services, or parts thereof, involved in the claim and not otherwise reimbursed. If only a part of the Professional Services is the subject of a claim, then T2's liability shall be limited to the amount which T2 may have theretofore allocated to that part of the Professional Services of this Agreement, in the *Quote*, in any invoice of statement rendered, or to the amount as may be allocated by T2 in its good faith discretion to the part of the Professional Services. T2 shall not be liable for any lost profits or for any claim or demand against Subscriber by any other party.

Section 12.4 **Insurance.** Contractor shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required herein. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

(a) Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its

subcontractors to procure and maintain the same insurance for the duration of this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(b) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(c) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (a) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(e) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

(f) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; and (b) the insurance coverage shall be primary

insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

(g) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

(h) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (a) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City; and (b) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

(i) Separation of Insureds; No Special Limitations. All insurance required herein shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

(j) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (b) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

(k) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

(l) Verification of Coverage. Contractor shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Article 13. REPORTING OF CLAIMS. CONTRACTOR SHALL REPORT TO THE CITY, IN ADDITION TO CONTRACTOR’S INSURER, ANY AND ALL INSURANCE CLAIMS SUBMITTED BY CONTRACTOR IN CONNECTION WITH THE SERVICES UNDER THIS AGREEMENT. **DEFINED TERMS**

Section 13.1 **Agreement.** The “Agreement” between T2 and Subscriber consists of this Software Subscription Agreement, the *Quote* and T2’s Response to RFP for Revenue Collection and Enforcement System, including all representations made therein.

Section 13.2 **Authorized Hosting Provider.** An “Authorized Hosting Provider” means T2 or its subcontractors.

Section 13.3 **Authorized Purposes.** Subscriber’s “Authorized Purposes” are the use of the Software for the Subscriber’s internal parking business operations.

Section 13.4 **Authorized Concurrent Users.** The number of “Authorized Concurrent Users” is set forth in the *Quote*. Subscriber may increase the number of Authorized Concurrent Users by written amendment to this Agreement, based on the Concurrent User unit price provided for in the *Quote*.

Section 13.5 **Client Components.** The “Client Components” are components of the Software, which T2 makes available for downloading by Authorized Concurrent Users onto a personal computer or other personal electronic storage device solely for Authorized Purposes.

Section 13.6 **Cooperation.** “Cooperation” is defined in Section 5.5.

Section 13.7 **Critical Error.** A “Critical Error” is defined in Section 11.2.

Section 13.8 **Effective Date.** The “Effective Date” is the date of this Agreement.

Section 13.9 **Technical Support.** “Technical Support” includes:

Service	T2 Hosted Customers	Self Hosted Customers
Assistance with upgrading T2 Flex Software	Included	Excluded
Assistance with upgrades to Oracle database releases	Included	Excluded
Assistance with installation of Oracle patches	Included	Excluded

Access to Crystal Reports library of 400+/- reports	Included	Included
Authorized Concurrent Users may participate in on-line T2 Systems training on Software upgrades	Included	Included
Database rebuilds or repairs	Included	Excluded

Section 13.10 **Professional Services.** “Professional Services” shall have the meaning set forth in Section 4.1.

Section 13.11 **Guaranteed Minimum Commitment.** Subscriber shall be liable for the remainder of the current annual subscription fee once each annual term commences. Notwithstanding anything to the contrary contained herein, if the Software Subscription Agreement is terminated by T2 Systems for cause or by Subscriber for convenience prior to the expiration of the Guaranteed Minimum Commitment, the unpaid balance for the Guaranteed Minimum Commitment shall accelerate and be due and payable in full immediately upon acceleration.

Section 13.12 **Hardware Error.** “Hardware Error” shall mean a defect in the Hardware that prevents Subscriber and its Authorized Concurrent Users from accessing the Software through the Hardware.

Section 13.13 **Hardware Fee.** “Hardware Fee” shall mean the fee set forth in the *Quote* for the initial term of this Agreement. The Hardware Fee is subject to change as provided in Section 6.2.

Section 13.14 **Hosting Error.** “Hosting Error” shall mean a defect in the Hosting System that prevents Subscriber and its Authorized Concurrent Users from accessing the Software through the Hosting Services.

Section 13.15 **Hosting Services Fee.** “Hosting Services Fee” shall mean the fee set forth in the *Quote* for the initial term of this Agreement. The Hosting Fee is subject to change as provided in Section 6.2.

Section 13.16 **Hosting Services.** “Hosting Services” shall mean that T2 will install, operate, and maintain the Software on T2’s Application Server, and provide to Subscriber access to T2’s Application Server sufficient for Subscriber to exercise its subscription rights granted herein and for the Authorized Concurrent Users to communicate with, access and use the Software by way of the Internet.

Section 13.17 **Hosting System.** “Hosting System” shall mean the computer and network equipment owned and maintained by T2 or its designated third party and the operating software licensed by T2 or its designated third party.

Section 13.18 **Installation Date.** “Installation Date” shall mean the date the Flex application goes into production mode.

Section 13.19 **Minor Error.** A “Minor Error” is defined in Section 11.2.

Section 13.20 **Production Copy.** A “Production Copy” is an executable code copy of the Software which is used on a computer system to process live data. Copies of all or a portion of the Software whether on multiple computers or on a computer system will constitute a single Production Copy so long as a single database is used by all of the copies of the Software. The number of Production Copies authorized under this Agreement is one, unless otherwise set forth in the *Quote*.

Section 13.21 **Professional Services Fee.** “Professional Services Fee” shall mean the fee set forth in the *Quote* for the initial term of the Professional Services. The Professional Fee is subject to change as provided in Section 6.2.

Section 13.22 **Proprietary Material.** “Proprietary Material” shall have the meaning set forth in Section 10.1.

Section 13.23 **Remote Access Equipment.** “Remote Access Equipment” shall mean the equipment necessary for Subscriber to access the services on the Internet. The Remote Access Equipment is to be provided by Subscriber.

Section 13.24 **Subscriber.** The “Subscriber” is identified in this agreement.

Section 13.25 **Subscriber Data.** “Subscriber Data” shall mean the data provided to T2 by Subscriber and the Authorized Concurrent Users, including data regarding Authorized Concurrent Users.

Section 13.26 **Subscription Fee.** The “Subscription Fee” for the initial Subscription Term is set forth in the *Quote*. The Subscription Fee for the terms after the initial Subscription Term may be changed as provided in Section 6.2.

Section 13.27 **Subscription Term.** The initial “Subscription Term” commences on the Install Date and extends for the period specified in the *Quote*. Each subsequent Subscription Term is for a period of one (1) year.

Section 13.28 **Software.** The “Software” is specified in the *Quote* and consists of T2 Flex® and all related software components including but not limited to, handheld ticket-writer software as specified in the *Quote*.

Section 13.29 **Target Response Time.** The “Target Response Time” is the time period during support hours in which T2 will strive to communicate with the Subscriber acknowledging a support request by the Subscriber.

Section 13.30 **Quote.** The Software Subscription Agreement is the document executed by T2 and Subscriber which incorporates the “*Quote*” by reference.

Section 13.31 **Standard Technical Support.** “Standard Technical Support” includes responses to questions of error by email or telephone.

Section 13.32 **T2 Proprietary Material.** “T2 Proprietary Material” is defined in Section 10.1.

Section 13.33 **Time and Materials Basis.** “Time and Materials Basis” means an hourly basis at the rate specified in the *Quote*, together with reimbursement of expenses.

Section 13.34 **Web Site.** “Web Site” means the Web Site prototype provided by T2, and subsequently customized at Subscriber’s request.

Section 13.35 **Web Site Fee.** The “Web Site Fee” for the Web Site is identified in the *Quote*.

Section 13.36 **Wrap-Up Period.** “Wrap-Up Period” shall have the meaning set forth in *Quote*

Article 14. MISCELLANEOUS

Section 14.1 **Escrow of Source Code.** T2 entered into a source code escrow agreement with Lincoln Parry Software, Inc. (the “**Escrow Agreement**”) providing for the deposit of the source code programs for the executable version of the Software into an escrow account. The Escrow Agreement further provides, subject to the terms and conditions for which Subscriber agrees to be bound, that the escrow agent may release the source code to Subscriber upon the occurrence of one of the release event(s) specified therein. T2 will provide a copy of the Escrow Agreement to the Subscriber upon request. The Escrow Agreement provides that the Trustee shall deliver a copy of the source code to the Subscriber only if the Subscriber has satisfied the procedures and conditions set forth in the Escrow Agreement, including, the execution of the Non-Disclosure Covenant attached thereto. Upon release of the source code, the Subscriber is authorized to copy, modify, and create derivative works based on the source code for the sole purpose of debugging and maintaining the Software. The Subscriber shall remain entitled to keep a copy of the source code so long as the Subscriber continues to pay the Subscription Fee under this Agreement. Also, Subscriber shall pay to T2, within fifteen (15) days of receipt of invoice, the annual administrative fee of Lincoln Parry Software, Inc. Subscriber shall remain obligated to pay T2 the Subscription Fee notwithstanding the release of the source code for the Software from the escrow.

Section 14.2 **Notices.** Any notices or other communications required or permitted to be given or delivered under the Agreement shall be in writing and shall be delivered to T2 at its address specified on its web site or to Subscriber at its address specified in the *Quote* or to such other address as either party may, from time to time, designate to the other in writing. All notices to T2 shall be to the attention of the CEO of T2. Any notice given shall be deemed to have been received on the date on

which it is delivered personally, by courier service or by facsimile or, if mailed, on the third business day next following the mailing thereof.

Section 14.3 **No Partnership.** Nothing in this Agreement shall be deemed to create a partnership, joint venture or agency relationship.

Section 14.4 **Survival.** The provisions of Section 1.4, Section 3.9, Section 3.10, Section 4.5, Section 6.3, Section 6.5, Section 7.4, Section 7.6, Article 8, Article 10, Article 11, Article 12, Section 14.4 and Section 14.6, and all obligations of Subscriber to pay or reimburse T2, or for T2 to reimburse the Subscriber for payments previously made as required pursuant to this Agreement for any amounts arising under this Agreement, shall survive any termination of either this Agreement or the non-exclusive subscription granted hereunder.

Section 14.5 **Publicity.** Subscriber agrees that T2 may identify Subscriber as a customer in the customer lists or other similar communications. T2 agrees not to use Subscriber's name in any other public releases or in any case histories except with Subscriber's prior consent which Subscriber agrees not to unreasonably withhold or delay.

Section 14.6 **Governing Law.** Regardless of the place of execution, delivery, performance or any other aspect of this Agreement, this Agreement and all of the rights of the parties under this Agreement shall be governed by, construed under and enforced in accordance with the substantive law of the State of California without regard to conflict of laws principles. Venue shall be in Yolo County, California.

Section 14.7 **Severability.** If any provision in the Agreement shall be held to be in contravention of applicable law, the Agreement shall be construed as if that provision were not a part thereof and in all other respects the terms of the Agreement shall remain in full force and effect.

Section 14.8 **No Waiver.** No waiver of any covenant or condition or the breach of any covenant or condition of the Agreement shall be deemed to constitute a waiver of any subsequent breach of the covenant or condition nor justify or authorize a non-observance upon any occasion of that covenant or condition or any other covenant or condition of the Agreement.

Section 14.9 **Entire Agreement.** The Agreement (consisting of this Software Subscription Agreement and the *Quote*) constitutes the entire agreement between the parties hereto with regard to the Software, any Hosting Services, any Development Services, and any support of the Software.

Section 14.10 **Additional Work.** If Subscriber requires additional work and/or integrations not included in this Agreement and attached Quote, T2 and Subscriber shall negotiate the additional work, mutually agree on the scope and compensation, and document the terms in either a separate Agreement or an amendment to this Agreement per the purchasing requirements of the Subscriber.

Section 14.11 Piggyback Cooperative Purchasing. Subscriber agrees to allow this contract to be used for purposes of piggyback purchasing. Under piggyback purchasing, Subscriber and T2 agree to open the contract for the use of other public or state agencies with the stipulation the other state agencies will be offered the same prices, terms, and conditions as that of Subscriber. The contract is mandatory for Subscriber and optional for all other state agencies.

Section 14.12 Living Wage Ordinance. T2 agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If T2 employs six (6) or more employees, and receives \$25,000 or more from the Subscriber pursuant to this Agreement and any other contracts with the Subscriber during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code Section 15.20.060 during the term of this Agreement.

Prior to commencement of any work under this Agreement, T2 and all subcontractors that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the Subscriber that T2 and any subcontractors are providing all eligible employees the minimum compensation required pursuant to Davis Municipal Code Section 15.20.060. Additionally, prior to commencement of any work, T2 shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

T2 shall maintain all records and documents necessary to establish whether T2 is subject to Chapter 15.20. If T2 is subject to the requirements of Chapter 15.20, T2 shall further be required to maintain monthly records of T2's employees, including records showing the hourly rate paid to each employee, the amount paid by T2 for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this subsection shall be made available to the Subscriber upon request. The failure to produce these records within three (3) business days following request by the Subscriber shall be a default under this Agreement.

T2 shall include the requirements of Chapter 15.20 in any and all agreements with subcontractors hired to provide services pursuant to this Agreement. Any and all subcontractors retained by T2 to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for services provided to the Subscriber pursuant to this and any other City contracts during a 12-month period shall be required to comply with the terms of Chapter 15.20. Failure by a subcontractor subject to the requirements of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default by T2 under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

T2 Systems, Inc.

Subscriber

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to form:

Harriet A. Steiner
City Attorney

EXHIBIT A: PCI AND PA DSS COMPLIANCE

I. DEFINITIONS

A **Self Hosted Subscriber**'s instance of T2 Flex and the T2 Credit Card Solution is installed entirely on the Subscriber's site(s). A **T2 Hosted Subscriber**'s instance of T2 Flex and the hosted components of the T2 Systems Credit Card Solution are installed and run in the T2 Hosting Environment. A T2 Hosted Subscriber has both hosted and Non-Hosted Components.

The **Standard Network** is part of the T2 Hosting Environment and contains T2 Flex servers, T2 e-Business Solutions Servers, and other equipment. T2 Hosted Subscribers who do not process payments through the Hosting Environment use only the Standard Network. The Standard Network uses standard, commercially reasonable security practices to control and protect the transmission of data to and from the Hosting Environment.

The **Payment Network** is part of the T2 Hosting Environment and is used solely for payment processing. T2 Hosted Subscribers who process payments through the Hosting Environment use the Standard Network for routine Flex T2 e-Business Solutions operational processes and the Payment Network for payment processing. The Payment Network is secured to the Payment Card Industry Data Security Standard (PCI DSS). T2 Systems is responsible for maintaining PCI DSS compliance of the T2 Hosting Environment Payment Network.

Non-Hosted Components are considered to be any software components of T2 Flex, T2 e-Business Solutions, and/or the T2 Systems Credit Card Solution installed on hardware located at the Subscriber site(s) and any hardware located at the Subscriber site(s). Non-Hosted Components are not part of the T2 Hosting Environment, the Standard Network, or the Payment Network, and are not the responsibility of T2 Systems.

The **T2 Hosting Environment** includes the T2 servers, networking equipment, and related devices located at T2's data center, and the software and data that reside on that equipment. There are two networks within the T2 Hosting Environment: Standard and Payment.

II. T2 SYSTEMS RESPONSIBILITIES

T2 Systems shall provide Payment Card Industry Payment Application Data Security Standard (PCI PA-DSS) validated software for processing credit card payments (T2 Systems Credit Card Solution), including a PA-DSS Implementation Guide containing guidelines for installing and configuring the T2 Systems Credit Card Solution to support Payment Card Industry Data Security Standard (PCI DSS) compliance. T2 Systems shall maintain the PCI PA-DSS validation of the T2 Systems Credit Card Solution its PA-DSS Implementation Guide.

- **Note:** Use of PCI PA-DSS validated software and its PA-DSS Implementation Guide does not guarantee merchant's PCI DSS compliance. For complete and current PCI DSS requirements, Subscribers should reference the Payment Card Industry Security Standards Council™ (PCI SSC) website at www.pcisecuritystandards.org.

For both the Standard and Payment Networks, T2 is responsible for the security of the data once it is inside the Hosting Environment and for using commercially reasonable data security practices to control and protect the transmission of data to and from the Hosting Environment.

T2 Systems shall maintain the Payment Network in a validated PCI DSS compliant environment, including use of PCI PA-DSS validated software for processing credit card payments, the T2 Systems Credit Card Solution, configured as directed by its PA-DSS Implementation Guide.

III. SUBSCRIBER RESPONSIBILITIES

Subscribers are responsible for providing and maintaining a Payment Card Industry Data Security Standard (PCI DSS) compliant environment at their site(s) in which components of the T2 Systems Credit Card Solution may be installed, and for validation of that environment as required by their payment gateway, merchant bank, payment brand, or other entity with which the Subscriber is contracted to process payments.

The Subscriber is responsible for configuring T2 Systems Credit Card Solution according to the PA-DSS Implementation Guide.

Once the T2 Systems Credit Card Solution has been implemented at the Subscriber site(s), Subscribers are responsible for maintaining Non-Hosted Components of the T2 Systems Credit Card Solution, including implementation in a timely manner of any updates to the T2 Systems Credit Card Solution software and/or PA-DSS Implementation Guide provided by T2 Systems.

Please note: Acceptance of a given payment application by the PCI Security Standards Council, LLC (PCI SSC) only applies to the specific version of that payment application that was reviewed by a PA-QSA and subsequently accepted by PCI SSC (the “Accepted Version”). If any aspect of a payment application or version thereof is different from that which was reviewed by the PA-QSA and accepted by PCI SSC – even if the different payment application or version (the “Alternate Version”) conforms to the basic product description of the Accepted Version – then the Alternate Version should not be considered accepted by PCI SSC, nor promoted as accepted by PCI SSC.

No vendor or other third party may refer to a payment application as “PCI Approved” or “PCI SSC Approved”, and no vendor or other third party may otherwise state or imply that PCI SSC has, in whole or part, accepted or approved any aspect of a vendor or its services or payment applications, except to the extent and subject to the terms and restrictions expressly set forth in a written agreement with PCI SSC, or in a PA-DSS letter of acceptance provided by PCI SSC. All other references to PCI SSC’s approval or acceptance of a payment application or version thereof are strictly and actively prohibited by PCI SSC.

When granted, PCI SSC acceptance is provided to ensure certain security and operational characteristics important to the achievement of PCI SSC’s goals, but such acceptance does not under any circumstances include or imply any endorsement or warranty regarding the payment application vendor or the functionality, quality, or performance of the payment application or any other product or service. PCI SSC does not warrant any products or services provided by third parties. PCI SSC acceptance does not, under any circumstances, include or imply any product warranties from PCI SSC, including, without limitation, any implied

warranties of merchantability, fitness for purpose or noninfringement, all of which are expressly disclaimed by PCI SSC. All rights and remedies regarding products and services that have received acceptance from PCI SSC, shall be provided by the party providing such products or services, and not by PCI SSC or any payment brands.

IV. NEWLY DISCOVERED SECURITY VULNERABILITIES

T2 Systems shall provide notice to the Subscriber of any newly discovered security vulnerabilities in the T2 Systems Credit Card Solution and, for T2 Hosted Subscribers, in the T2 Hosting Environment Payment Network, and provide network security updates, software updates, and/or updates to the PA-DSS Implementation Guide to remedy those vulnerabilities as soon as is reasonable and practical following discovery of the vulnerability.

T2 Systems is not responsible for providing notice to T2 Subscribers regarding security vulnerabilities in non-T2 software or hardware that do not require changes to the T2 Systems Credit Card Solution, the T2 Systems Credit Card Solution PA-DSS Implementation Guide, and/or the T2 Hosting Environment Payment Network that do not affect configuration of hosted or Non-Hosted Components.

For Non-Hosted Components, Subscribers are responsible for installing software updates provided by T2 Systems to remedy any newly discovered security vulnerabilities in the T2 Systems Credit Card Solution and for making any changes identified in updates to the PA-DSS Implementation Guide as soon as is reasonable and practical.

Subscribers are responsible for notifying T2 Systems as soon as is reasonable and practical should the Subscriber discover a security vulnerability in or related to the T2 Hosting Environment Payment Network (T2 Hosted Subscribers only), the T2 Systems Credit Card Solution, and/or the T2 Systems Credit Card Solution PA-DSS Implementation Guide.

V. INFORMATION SECURITY BREACH

Subscribers are responsible for notifying T2 Systems should an information security breach of or relating to the T2 Systems Credit Card Solution and/or T2 Systems Hosting Environment Payment Network (T2 Hosted Subscribers only) occur as soon as law enforcement and contractual obligations to other payment entities require and/or allow. T2 Hosted Subscribers shall follow the instructions in the most recent version of the T2 Hosting Environment Hosted Subscriber Security Incident Response Plan. The Plan will be e-mailed to T2 Hosted Subscribers annually or as it is updated.

T2 Systems shall notify Subscribers of any security breach of or relating to the T2 Systems Credit Card Solution and/or T2 Systems Hosting Environment Payment Network as soon as law enforcement and contractual obligations to other Subscribers and payment entities require and/or allow. Notification of T2 Hosting Environment breaches not related to a security vulnerability in the T2 Systems Credit Card Solution may be made to T2 Hosted Subscribers only.

T2 Systems shall cooperate with law enforcement and assist with the investigation of any security breach of or relating to the T2 Systems Credit Card Solution and/or T2 Systems Hosting Environment Payment Network.

VI. TERMINATION OF SERVICES (T2 HOSTED SUBSCRIBERS ONLY)

T2 Hosted Subscribers

- who persist in material deviations from the PA-DSS Implementation Guide not approved by the T2 Systems Chief Information Officer, or
- who persist in material non-PCI DSS compliant security practices, or
- who fail to implement updates to the T2 Systems Credit Card Solution software and/or PA-DSS Implementation Guide in a timely manner, or
- who fail to report a security breach as required by the T2 Hosting Environment Hosted Subscriber Security Incident Response Plan, or
- whose operation is deemed by T2 Systems to be a material risk to the security of the T2 Hosting Environment,

may be disconnected from the T2 Hosting Environment Payment Network or the T2 Hosting Environment in its entirety at the discretion of the T2 Systems Chief Information Officer.

EXHIBIT B

**QUOTE FOR T2 SYSTEMS PARKING REVENUE COLLECTION AND
ENFORCEMENT SYSTEM**

[ATTACHED BEHIND THIS COVER PAGE]



City of Davis, CA

**Payment: Software
and Hardware**

ANNUAL SUBSCRIPTIONS

Annual T2 subscription fees include the following.

- T2 Flex Professional Edition Solution allowing for permits and citations to be managed for one database.
- Hosting Fees.
- Access to T2 Recorded Training Library.
- FlexPort solution for the public to purchase permits and review their parking account.
- Citation mobile enforcement software for supported iOS and Android devices. Allows for officers to access citation history, permit history and issue citation and/or warnings.
- Citation eTicketbook software for supported Microsoft Windows laptops. Allows for officers to issue citations from a laptop and includes integration with AutoVu.
- California DMV Updates Processing Service. T2 will manage the vehicle owner inquiries and hold/releases for in-state license plates.

Annual Genetec AutoVu fees include the following.

- SMA Base package
- Hosting Fees
- Extended Warranty with Return and Repair Coverage
- Mobile Assurance Mobility Basecamp
- Mobile Assurance Basecamp Server
- Preventative Maintenance Visits (2 per year)
 - ▨ Travel costs are estimated at \$200 per trip and will be invoiced after the visit.

City of Davis will be invoiced upfront annually for annual subscription fees.

HARDWARE

T2 is providing the following hardware:

- Datamax O'Neil Apex 3i printer bundles
 - Printer, charger, case, and communication cable
 - 3 year comprehensive warranty
 - Printer car charger
- Point of Sale Bundle
 - Receipt Printer
 - Electronic Cash Drawer

- Barcode Scanner

The City of Davis is responsible for providing the iOS and/or Android T2 approved devices and associated cellular connectivity for citation issuance. The mobile enforcement software and upgrades will be provided by T2.

T2 is providing the following hardware for Mobile LPR.

- AutoVu SharpX City Dual Base Kit
- Panasonic CF-19 Toughbook. Complete Kit
- Wireless Card for Cellular Connectivity (City of Davis is responsible for cellular fees.)

PROFESSIONAL SERVICES

T2 will provide the City of Davis with a project team to implement T2 products and services. The T2 project team consists of a project manager, implementation consultant and web developer.

Travel costs are estimated at \$5,000 and will be invoiced separately.

Professional Services includes the following:

- T2 Flex: Standard Implementation
- Project Management for T2 Flex and Genetec AutoVu
- T2 Flex: AutoVu Integration Configuration
- T2 Flex: Mobile Enforcement Configuration
- T2 Flex: eTicketBook Configuration
- T2 Flex: California DMV VPN Manager Configuration
- T2 FlexPort: Standard Implementation
- Internet Payment Gateway (IPG) implementation – pricing may change depending on the preferred IPG to use for purchasing permits on the City’s website
- T2 FlexPort: Authentication Configuration
- Report/Letter Template Bundles (5 templates per bundle)
- Processing Setup
- Registration to 2016 Connect Conference
- Installation and configuration of Genetec AutoVu. (T2 will subcontract the work to PCS Mobile.)

PRICING

Annual Fees

Description	Qty.	Unit \$	Y1 Total	Y2 Total	Y3 Total
T2 Systems					
T2 Flex: Professional Edition - 3 concurrent Users Enforcement, Permits <i>A 30% discount was applied to years 1, 2 and 3</i>	3	\$ 2,748.00	\$ 5,770.80	\$ 6,059.34	\$ 6,362.31
T2 Flex: California DMV VPN Manager	1	\$ 3,000.00	Waived	Waived	Waived
eBusiness Citation Payment and Appeals (Allows for public to pay and appeals citations online.)	3	\$ 760.00	Waived	Waived	Waived
eBusiness Permit Sales (Allows for public to purchase, renew and request permits online.)	3	\$ 860.00	\$ 2,580.00	\$ 2,709.00	\$ 2,844.45
eBusiness Accounts (Allows for public to view their parking account online.)	3	\$ 480.00	\$ 1,440.00	\$ 1,512.00	\$ 1,587.60
Access to T2 Recorded Training Library (City staff will have access to watch recorded trainings on T2)	1	\$ 395.00	\$ 395.00	\$ 395.00	\$ 395.00
T2 California DMV Updates Processing Service (T2 manages California DMV owner inquiries, errors, holds and releases.)	1	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00
T2 Mobile Enforcement Software	1	\$ 750.00	\$ 750.00	\$ 787.50	\$ 826.88
T2 eTicketBook with AutoVu Integration	3	\$ 1,850.00	\$ 5,550.00	\$ 5,827.50	\$ 6,118.88
Check Payment Solution (Integrations with Pay Stations and Mobile Payments)	1	\$ 300.00	Waived	Waived	Waived

Genetec AutoVu					
Genetec AutoVu - SMA Base Package	3	\$ 200.00	\$ 600.00	\$ 630.00	\$ 661.50
Genetec AutoVu - Hosting Fee	1	\$ 3,540.00	\$ 3,540.00	\$ 3,717.00	\$ 3,902.85
Extended Warranty for AU-K-CXX kit with Return and Repair Coverage	3	\$ 4,300.00	\$ 12,900.00	\$ 13,545.00	\$ 14,222.25
Mobile Assurance® Mobility BaseCamp	3	\$ 100.00	\$ 300.00	\$ 315.00	\$ 330.75
Mobile Assurance® BaseCamp Server	1	\$ 1,500.00	\$ 1,500.00	\$ 1,575.00	\$ 1,653.75
Preventative Maintenance Visit include Travel (2 visits per year)	3	\$ 200.00	\$ 600.00	\$ 630.00	\$ 661.50
Sub Total			\$ 41,925.80	\$ 43,702.34	\$ 45,567.71

Estimated Travel and Shipping Fees

Description	Unit	\$
T2 Estimated Travel Expenses for Installation (2 Trips)		\$4,000.00
PCS Mobile Preventative Maintenance Visit Travel Cost	\$	400.00
PCS Mobile Estimated Travel Expenses for Installation	\$	600.00
Hardware Estimated Shipping Charges	\$	800.00

Professional Services

Description	Qty.	Unit \$	Y1 Total	Y2 Total	Y3 Total
T2 Systems					
T2 Hardware					
T2 Flex Point of Sale Bundles (Receipt Printer, Cash Drawer, Barcode Scanner, MSR Keyboard)	1	\$ 1,517.00	\$ 1,517.00	\$ -	\$ -
Datamax O'Neil Apex 3i Printer Bundle	4	\$ 750.00	\$ 3,000.00	\$ -	\$ -
Datamax O'Neil Apex 3i Communication Cable (Only one cable needed per site.)	1	\$ 30.00	\$ 30.00	\$ -	\$ -
Datamax O'Neil Apex 3i Printer Case	4	\$ 125.00	\$ 500.00	\$ -	\$ -
Printer car charger	3	\$ 106.00	\$ 318.00	\$ -	\$ -
T2 Professional Services					
T2 Flex: Standard Implementation	1	\$ 28,000.00	\$ 28,000.00	\$ -	\$ -
Project Management for T2 Flex and Genetec AutoVu	1	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -
T2 Flex: AutoVu Integration Configuration	1	\$ 3,000.00	\$ 3,000.00	\$ -	\$ -
T2 Flex: Mobile Enforcement Configuration	1	\$ 200.00	\$ 200.00	\$ -	\$ -
T2 Flex: eTicketBook Configuration	3	\$ 200.00	\$ 600.00	\$ -	\$ -
T2 Flex: California DMV VPN Manager Configuration	1	\$ 1,920.00	\$ 1,920.00	\$ -	\$ -
T2 FlexPort: Standard Implementation	1	\$ 12,000.00	\$ 12,000.00	\$ -	\$ -
T2 FlexPort: Authentication Configuration	1	\$ 1,950.00	\$ 1,950.00	\$ -	\$ -
Report/Letter Template Bundles (5 templates per bundle)	2	\$ 1,495.00	\$ 2,990.00	\$ -	\$ -
IPG implementation - pricing subject to change	1	\$3,900	\$3,900	\$ -	\$ -
Processing Setup	1	\$ 6,000.00	\$ 6,000.00	\$ -	\$ -
Registration to 2016 Connect Conference	1	\$ 995.00	Waived		
T2 Sub Total			\$ 70,925.00		

Description	Qty.	Unit \$	Y1 Total	Y2 Total	Y3 Total
Genetec AutoVu - PCS Mobile					
Genetec Security Center (GSC) Base Package Software					
GSC AutoVu Standard Base Package	1	\$ 995.00	\$ 995.00		
Mapping License for Security Center	1	\$ 1,000.00	\$ 1,000.00		
Interface to Pay By Plate System	1	\$ 5,000.00	\$ 5,000.00		
Mapping License	3	\$ 500.00	\$ 1,500.00		
PCS Mobile Installation					
Mobile Installation	3	\$ 2,000.00	\$ 6,000.00		
Security Center Installation and Configuration	1	\$ 1,800.00	\$ 1,800.00		
Custom Development	1	\$ 1,000.00	\$ 1,000.00		
Genetec AutoVu - Hardware					
AutoVu SharpX City Dual Base Kit	3	\$ 32,500.00	\$ 97,500.00		
Panasonic CF-19 Toughbook. Complete Kit.	3	\$ 6,000.00	\$ 18,000.00		
Wireless Card for Cellular Connectivity	3	\$ 275.00	\$ 825.00		
PCS Mobile Sub Total			\$ 133,620.00	\$ -	\$ -

Pricing Notes

T2 Systems has made every effort to insure that all relevant information pertaining to the requested software, hardware and implementation services has been included in this quotation. Please check this quotation carefully. Our goal is to provide the most accurate information possible.

Your Subscription Fee provides for the use of the Software, fixes, patches and updates to the Software and Support Services.

Performance bond has not been included. If a performance bond is required, additional fees apply.

Maintenance and Support

Normal business hours for Support staff are Monday-Friday from 5am to 5pm PST, excluding T2 approved holidays. Support for critical issues is available 24x7x365 via our emergency support process.

Payment Terms (Excluded CCS and PermitDirect)

- Ongoing T2 Flex software (including handheld software) and hosting fees are invoiced annually and payable on the anniversary of the date the Flex software is accessible by your organization (Activation Date).

- Travel and Shipping costs are an estimate. Actual travel and shipping costs will be invoiced separately.
- Upon receipt of a purchase order, T2 will invoice 50% of the value for all terms listed under Professional Services. An additional 25% will be invoiced when the first sample is delivered, and the remaining 25% at go-live of Flex on the activation date. FlexPort development will be billed 50% upon receipt of purchase order and the remaining 50% upon delivery. Credit card processing and internet payment gateway relationships are handled by the customer. Data conversion and interfacing will be billed 50% upon purchase order. T2 will bill an additional 25% when first sample is delivered and the remaining 25% upon completion. Handheld and T2 Flex Point of Sale hardware will be invoiced 100% upon shipment.



STATEMENT OF WORK

**PERMITS AND ENFORCEMENT SOLUTION
CITY OF DAVIS, CA**

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Introduction/Background

T2 Systems has been engaged to partner with your organization to implement the T2 Flex Permits & Enforcement (PE) Solution according to the details in this document. The implementation project will be led by a T2 Project Manager who will work directly with a single contact to set timelines and deliverables to ensure a successful project. The full team's participation is crucial as many of the deliverables are time sensitive.

This Statement of Work (SOW) outlines the scope of work required to implement the PE Solution. Any exhibits or attachments hereto shall be governed by the terms of your contract. The SOW is developed in conjunction with your quote and is valid for the same duration. The SOW governs the deliverables and process for the project engagement.

Scope of Work

The scope of work outlines T2 System’s deliverables required for successful completion of the PE Solution implementation project. Throughout the implementation T2 Systems will make our best effort to understand your business processes, recommend industry best practices, and configure standard T2 Flex features to deliver the PE Solution that meets your needs. T2 Systems will implement and configure T2 Flex in the T2 hosting environment and ensure that all necessary policies and controls are followed to comply with PCI requirements.

In Scope

The following items are considered to be in scope for this project. Anything not addressed is considered to be out-of-scope and therefore not included as part of this project. Change requests must be submitted in writing to the T2 Project Manager. This process is detailed later in this document. Please refer to the System Overview document for further details.

T2 Permits & Enforcement Solution

The following components are considered in scope as part of the T2 Flex PE Solution.

Standard Components

- **Customer Manager**
- **Vehicles Manager**
- **Financial Management**
- **Letter Manager**
 - T2 Systems will help set up two standard letters.
- **Email Management**
- **Query Manager**
- **Report Manager**
 - T2 Systems will make five modifications to existing standard reports.
- **Dashboards**
- **Task Scheduler**
 - T2 Systems will create up to five tasks.
- **User Management**

- Self Service Training

Permit Components

- Permits Manager
- Waitlist Management

Enforcement Components

- Citation Manager
- Appeals Manager
- Boot and Tow Manager

Project Deliverables

The following components are considered in scope as part of the implementation.

- **Pre-site and Go-live Visit** – T2 Systems will complete two onsite visits with your organization.
- **Data Conversion** – As part of the implementation, T2 Systems will convert the following data:
 - All citations with a balance greater than \$0 (unpaid citations).
 - Two years paid citation history from one input source.
- **Enforcement Equipment** – If enforcement equipment is purchased through T2, such as industrial handhelds or printers, T2 Systems will provide training and help with the configuration of this equipment.
 - **Note:** T2 Systems will assist with the Flex configuration for consumer mobile devices, but will not configure the actual consumer mobile device.
- **Training** – During the implementation project T2 Systems will provide training on using the T2 PE solution. This training may be provided via any combination of online, remote, or on-site training.

FlexPort Deliverables

Standard FlexPort Components

The following components are considered in scope as part of T2 FlexPort.

- Internet Payment Gateway (IPG)
- Standard Authentication

Note: T2 Systems will help configure the IPG in FlexPort settings, however, it is your responsibility to obtain the appropriate FlexPort configuration information from your IPG.

Enforcement Solution

The following components are considered in scope as part of the FlexPort Standard Enforcement Solution.

- Citation Payments
- Online Appeals
- Handheld GPS Tracking

Permits Solution

The following components are considered in scope as part of the FlexPort Standard Permits Solution.

- Online Permit Sales
- Online Permit Waitlists
- Permit Approval/Visitor Requests
- Online Permit Fulfillment

Accounts

The following components are considered in scope as part of the FlexPort Accounts Solution.

Note: Each individual component may not be applicable for your organization. T2 Systems will implement the following components that are applicable for your organization.

- Parking Account Management
- Online Invoice Management
- Towing Partner Portal
- Recurring Credit Card Billing

Project Management

Project Methodology Overview

T2 Systems project methodology is followed in all engagements, and ensures that a project is completed on schedule. As part of the T2 Systems project methodology, each party shall designate a Project Manager, who shall work together to facilitate an efficient delivery of the items identified in this SOW.

The T2 Systems Project Manager will be responsible for project planning, scheduling, and issue/risk resolution. The T2 Systems project team will consist of various T2 subject matter experts, who will be utilized throughout the project as necessary.

Your designated Project Manager will be responsible for identifying and coordinating your resources necessary to meet the project schedule. In addition, your Project Manager will provide other assistance and information as the project demands.

T2 System’s project methodology includes tasks that are dependent on your project team meeting certain obligations. Failure to meet these obligations may result in a delay to the project and/or additional fees.

Project Details

Project Kick-off

The Project Kick-off is the first major milestone. During the Project Kick-off, the Project Managers will introduce the various team members and their particular role in the project. The Project Managers will work together to gather information to develop a detailed project schedule and identify any resource requirements required.

Project Schedule

The project schedule is defined during the project kick-off. The schedule will be the document of record for what deliverables each resource has on the project on the date in which the deliverable is scheduled to be completed.

At the conclusion of each milestone identified in the schedule, T2 Systems will request your Project Manager provide a sign off/approval on the deliverable. You will have ten (10) business days to either signoff, or provide feedback on outstanding items preventing acceptance. If no feedback has been received in the timeframe, acceptance will be assumed.

Schedule and costs are based on continuous engagement of T2 resources on the project, as will be agreed to in the project kick-off meeting. In the event that the project is delayed, for reasons outside of T2 systems’ control, your organization may be subject to paying additional fees and/or risk the delay of the project delivery dates and go-live.

Information Gathering

T2 Systems will work with you to get an understanding of your business processes. T2 Systems will review daily, weekly, and monthly business practices as well as the department’s policies and procedures. T2 Systems will deliver a Business Process Review (BPR), as part of the PE Solution, for your approval/sign-off before beginning configuration.

Configuration

Once the Information Gathering is complete, T2 Systems will work with your project manager to configure the PE Solution within T2 Flex.

Training

Training is an important part to a successful implementation. It is important that your team members participate in training throughout the project. A number of classes are provided on-line and provide an important foundation to understanding implementation impacts.

Testing

Testing is an important part of a successful project. Once configuration is complete, T2 Systems will work with you to walk through the department’s process within T2 Flex to ensure the transactions function appropriately.

Change Requests

You may request changes to planned deliverables or timelines defined in this SOW. Change requests may result in a change to the price, schedule and other terms and conditions contained herein.

Any changes, including but not limited to, in deliverables and timelines, will be submitted in writing through a T2 Systems change request. You will be provided with updated pricing and schedule impacts, as applicable, and will be required to approve the updated changes. Your Project Manager must approve all change requests, regardless of their impact on the schedule or the price.

Assumptions, Constraints, and Risks

- The risk of delayed deliverables is reduced if you have flexibility with your go live date.
- Much of the work done by T2 Systems will be performed remotely, other than onsite specifications defined in the quote.
- Data integrity problems are a risk that, if encountered, can cause delays to project timing. Data integrity issues are often caused by inconsistent data and its usage.

RESOLUTION NO. _____ SERIES 2016

**RESOLUTION APPROVING THE CITATION COLLECTION SERVICES, LLC
AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENT**

WHEREAS, On June 1, 2015, the City opened a public notice for a comprehensive city-wide parking revenue and collection system request for proposals (RFP); and

WHEREAS, the City received four responses to the RFP and the City conducted a comprehensive analysis of each of the four responses; and

WHEREAS, T2, Inc. provides a comprehensive parking solution, including citation collection services through its wholly owned subsidiary, "Citation Collection Services, LLC"; and

WHEREAS, the City negotiated a contract with Citation Collection Services, LLC with terms that are acceptable to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby approves Citation Collection Services, LLC Agreement in substantially the form attached as Exhibit "E" to this resolution

Section 2. The City Manager is hereby authorized and directed to execute the Citation Collection Services, LLC Agreement on behalf of the City, subject to any minor changes approved by the City Attorney. The City Manager is hereby further authorized and directed to take such further actions and execute such documents as are necessary to carry out said Agreements on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Davis this 15th day of March 2016, by the following vote:

AYES:

NOES:

ABSENT:

Daniel M. Wolk
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

AGREEMENT FOR COLLECTION SERVICES

THIS AGREEMENT is made and entered into this ___ day of March, 2016, by and between the CITY OF DAVIS, a municipal corporation existing under the laws of the State of California, hereinafter referred to as “City,” and CITATION COLLECTION SERVICES, LLC, an Indiana limited liability company, hereinafter referred to as “Consultant.”

RECITALS

WHEREAS, City has authority pursuant to certain laws and ordinances and/or regulations to assess and collect fines and citations for violations of these laws, ordinances and/or regulations.

WHEREAS, Consultant is a duly licensed collection agency and desires to perform and assume responsibility for the provision of certain services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing services in collecting unpaid fines and citations to public clients and is familiar with the plans of the City with respect to providing the Services, as defined below.

WHEREAS, the City desires to engage Consultant to render such collection services on behalf of the City in collecting unpaid fines and citations as set forth in this Agreement.

NOW, THEREFORE, City and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, services, and incidental and customary work necessary to fully and adequately perform the collection services on behalf of City (“Services”). The Services are more particularly described in **Exhibit A** and in this Section 1. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Referred Accounts. Pursuant to the terms and conditions of this Agreement, City shall provide to Consultant, from time to time, those Accounts which City desires Consultant to assist in the collection of (or actually collect) on behalf of City. All Accounts submitted to, and accepted by, Consultant shall be referred to as “Referred Accounts.”

1.3 Collection of Referred Accounts. Consultant agrees to undertake the collection of each Referred Account in accordance with the level of service selected by City which shall be described in more detail in a Statement of Work (“SOW”) in the form attached hereto as **Exhibit A** (collectively, the “Collection Services”).

1.4 Collection Services. During the Term of this Agreement, Consultant agrees to employ such lawful means, methods, and procedures as in Consultant's judgment, discretion and experience, it believes will best effect the collection of the Referred Accounts. Consultant may use outside contractors or vendors to perform certain portions of the Collection Services and/or gather information about Referred Accounts and the obligors thereon. Consultant will pursue court action to obtain/perfect civil judgments against those violators who do not pay their fines when, in its judgment and discretion, it believes such action is necessary and will aid in its collection efforts.

1.5 Authority to Settle Referred Accounts. City hereby authorizes Consultant to collect, litigate, compromise, or settle each Referred Account. However, unless otherwise authorized by City in writing, any such settlement shall be in conformance with the minimum amounts as set forth on the applicable SOW related to the Referred Account in question.

1.6 Transfer of Accounts. All Accounts will be forwarded to Consultant using the systems and procedures designed by Consultant. Upon request of Consultant, City will provide certified copies or originals of violation notices, tickets, citations, assessment letters, and any other documents necessary for use by Consultant in collection of the Referred Accounts. Consultant agrees to keep all such documents confidential and to not use or disclose them (or the information contained therein) for any purpose other than the performance of the Collection Services.

1.7 Exclusivity of Collection Services. City agrees that Consultant shall be the exclusive third-party collector of all Referred Accounts during the Term of this Agreement and during any applicable retention period set forth in Section 1.9. If City refers an Account to Consultant, which becomes a Referred Account, City may continue to exercise its collection efforts with respect to such Referred Account; provided, however, that Consultant shall be entitled to payment pursuant to the terms of this Agreement for all collections made against such Referred Account, irrespective of who makes such collection.

1.8 Rejected and Returned Accounts. Consultant may reject any Account or return any Referred Account to City at any time for any reason (or no reason) in its sole discretion. After an Account is rejected or a Referred Account is returned to City at Consultant's request, Consultant shall not be entitled to any additional fees with respect thereto. Consultant will return to City such Referred Accounts which it determines, in its sole judgment and discretion, to be uncollectible. If City wishes to remove a Referred Account from CCS (the "Returned Accounts"), City will notify Consultant in writing at least 10 days in advance (the "Return Notice"). Section 1.9 shall govern the collection on any Returned Accounts. Within thirty (30) days of the expiration of the one (1) year period set forth in Section 1.9 for Returned Accounts, Consultant agrees to return each such Returned Account to City.

1.9 Retention of Returned and Referred Accounts The parties agree that upon receipt by Consultant of a Return Notice under Section 1.8, for a period of one (1) year from the date of Consultant's receipt of such Return Notice, Consultant may retain for collection, in accordance with the terms hereof, at its sole discretion, any Returned Account. In addition, upon the expiration of this Agreement or earlier termination of this Agreement by Consultant due to a breach by City, Consultant shall have the right, at its sole discretion, to retain for collection, pursuant to the terms and conditions of this Agreement, any Referred Account upon which a

partial payment has been made within the prior one (1) year period or which is subject to an agreed upon payment plan.

1.10 Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. The City shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.11 Timing of Services. Consultant shall perform the Services expeditiously and in accordance with the terms of this Agreement.

1.12 Term. The term of this Agreement shall be three (3) years, commencing on the date first written above. The Agreement will automatically renew for additional one (1) year terms unless written notice is provided to the other party at least ninety (90) days prior to the expiration of the then current term. The initial term and any renewal terms are collectively referred to as the "Term."

2. PROJECT COORDINATION.

2.1 City's Representative. The City hereby designates the City Manager to act as its representative for the performance of this Agreement. The City Manager shall have the power to act on behalf of the City for all purposes under this Agreement. The City Manager hereby designates Darren Pytel as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates Jim Zaloudek to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement. Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom the City has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with City staff in the performance of the Services and shall be available to City staff at all reasonable times.

3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the City; such personnel shall at all times be under Consultant's exclusive direction and control.

Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and approval. Consultant shall furnish City with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. The City's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 INTENTIONALLY OMITTED

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City of Davis Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant's sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from providing the Services by the Consultant and shall not be re-employed to perform any of the Services pursuant to this Agreement.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the

indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.10.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.10.3 INTENTIONALLY OMITTED.

3.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

3.10.4.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (a) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City; and (b) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.10.5 Separation of Insureds; No Special Limitations. All insurance required herein shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and

volunteers; or (b) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.10.8 Verification of Coverage. Consultant shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (a) adequate life protection and life saving equipment and procedures; (b) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (c) adequate facilities for the proper inspection and maintenance of all safety measures.

3.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.13 Use of Recycled Paper. Consultant shall comply with the City's policy on the use of recycled paper, as set forth in **Exhibit E** of this Agreement.

4. FEES AND PAYMENT.

4.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates set forth in **Exhibit D**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Collection Fees. During the Term of this Agreement and during any applicable retention period set forth in 1.8, Consultant shall be entitled to the fees, costs and expenses set forth in the SOW.

4.3 Payments to and from Customer. Consultant shall remit each payment it collects on a Referred Account to Customer, minus Consultant's fees and any other amounts owed to Consultant, on or before the 20th day of each month following the month in which the amount was actually collected. City shall remit, or cause to be remitted, all amounts owed Consultant under this Agreement, if any, within thirty (30) days of receipt of notice thereof from Consultant. A late fee of one percent (1%) per month shall be assessed on all past due amounts from City based upon the aggregate amount of all past due monies. Consultant shall also be entitled to reasonable attorneys fees and other costs of collection incurred in attempting to collect past due amounts from City.

4.4 Direct Payments. City agrees to immediately notify Consultant of any payments on a Referred Account made directly to City, and Consultant will be entitled to the fees specified in this Agreement as if Consultant had actually collected the Referred Account. Any such amounts may be deducted from City's next monthly payment from Consultant.

4.5 City's Right to Withhold Payment. The City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement on account of payment disputes with the City, provided that the City continues to make payment of undisputed amounts.

4.6 Payment Disputes. If the City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and Consultant shall attempt to resolve the disagreement. The City's payment of any amounts shall not constitute a waiver of any disagreement and the City shall promptly pay all amounts not in dispute.

4.7 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses except as specifically set forth in **Exhibit D**.

4.8 Extra Work. At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City Manager.

4.9 INTENTIONALLY OMITTED.

4.10 Living Wage Ordinance.

4.10.1 Consultant agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If Consultant employs six (6) or more employees, and receives \$25,000 or more from the City pursuant to this Agreement and any other contracts with the City during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code Section 15.20.060 during the term of this Agreement.

4.10.2 Prior to commencement of any work under this Agreement, Consultant and all subconsultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subconsultants are providing all eligible employees the minimum compensation required pursuant to Davis Municipal Code Section 15.20.060. Additionally, prior to commencement of any work, Consultant shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

4.10.3 Consultant shall maintain all records and documents necessary to establish whether Consultant is subject to Chapter 15.20. If Consultant is subject to the requirements of Chapter 15.20, Consultant shall further be required to maintain monthly records of Consultant's employees, including records showing the hourly rate paid to each employee, the amount paid by Consultant for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this subsection shall be made available to the City upon request. The failure to produce these records within three (3) business days following request by the City shall be a default under this Agreement.

4.10.4 Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subconsultants hired to provide services pursuant to this Agreement. Any and all subconsultants retained by Consultant to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for services provided to the City pursuant to this and any other City contracts during a 12-month period shall be required to comply with the terms of Chapter 15.20. Failure by a subconsultant subject to the requirements of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default of the Consultant under this Agreement.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in a timely fashion or in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without the City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within seven (7) days after written notice thereof, the City may, at its sole option, take possession of any documents and data (as more

specifically described in Section 6.1) or other materials (in paper and electronic form) prepared or used by Consultant in connection with the Services and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event the City elects to terminate, the City shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant in connection with providing the Services, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, the City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by the City, plus (2) payment for Additional Work satisfactorily completed and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against the City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by the City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. The City shall be the owner of the following items produced pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of the City.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the City. The City shall have the unrestricted authority to publish, disclose,

distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to City. Consultant shall deliver to the City all materials prepared by Consultant in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from the City.

6.1.4 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by the City to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or the City without the written consent of the City before any such release.

6.2 Assignment; Successors. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 Indemnification.

6.3.1 Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to the negligence, recklessness, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services or this Agreement, including without limitation the payment of all expert witness fees and outside attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. With the exception of those cases arising out of, pertaining to, or incident to the negligence, recklessness, or willful misconduct of Consultant, in no event will Consultant be liable in any way for any indirect, special, consequential, incidental, punitive, exemplary or aggravated damages of any kind whatsoever, including but not limited to, damages for loss of income, business, profit, anticipated revenue, failure to realize expected savings, or otherwise.

6.3.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of the Consultant's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 6.3.1 that may be brought or instituted against the City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding.

6.3.3 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

6.6 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Citation Collection Services, LLC
8900 Keystone Crossing, Suite 700
Indianapolis, IN 46240
Attn: Jim Zaloudek

City: City of Davis Police Department
2600 5th Street
Davis, CA 95618
Attn: Darren Pytel

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 INTENTIONALLY OMITTED.

6.9 Construction; References; Captions. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and

subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

6.10 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

6.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

6.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

6.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

6.14 Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided City with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist the City in affirming compliance with this Section.

6.16 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.17 Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

6.18 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

6.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

6.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

6.21 Entirety of Agreement. This Agreement contains the entire agreement of the City and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

IN WITNESS WHEREOF, the City and Consultant have entered into this Agreement as of the date first stated above.

CITY OF DAVIS

CONSULTANT

By: _____

By: _____

Its: _____

Its: _____

Approved as to form:

Harriet A. Steiner
City Attorney

EXHIBIT A

SCOPE OF SERVICES

[Attached behind this cover page]

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY

[NOT APPLICABLE]

EXHIBIT C

INTENTIONALLY OMITTED

EXHIBIT D

PAYMENT

[Attached behind this cover page]

EXHIBIT E

USE OF RECYCLED PAPER

All paper used for any reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as specified herein. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

Definitions.

Postconsumer Material means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purpose of collection, recycling, and disposition.

Recovered Paper Material means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wastes, cutting and other converting wastes, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standard. The following categories of paper must contain the minimum percentages of material listed under both “Recovered Material” and “Postconsumer Material” included within the total “Recovered Material” percentage. When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

Paper Category	Minimum Percentage of “Recovered Material”	Minimum Percentage of “Postconsumer Material”
High-speed Xerographic	50	10
Bond Paper	50	10
Cover Stock	50	10
Envelopes	50	10



Citation Processing and Collections Statement of Work

Exhibit A

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The Statement of Work and any Exhibits or Attachments hereto shall be governed by the terms and conditions of the Citation Processing and Collection Services Agreement between T2 Systems (T2), CITATION COLLECTION SERVICES (CCS) and the City of Davis, CA (AGENCY).

SCOPE

This Statement of Work (SOW) outlines the deliverables to be completed for the successful project implementation and on-going services for the City of Davis, CA. Deliverables not addressed in this SOW are considered to be out-of-scope, and therefore not included.

T2 will provide the following activities through Citation Collection Services, LLC ('CCS') a wholly-owned subsidiary of T2.

Project Methodology

Each party shall designate a Project Manager who shall work together to facilitate an efficient delivery of the SOW. The T2 Project Manager will be responsible for project planning, scheduling, and issue/risk resolution.

The Agency's Project Manager will be responsible for identifying and coordinating Agency resources necessary to meet the project schedule.

T2 will assign a dedicated Business Analyst (BA) who is dedicated to the success of the project.

Time is of the essence and all parties must participate as required to meet the timeframe.

Project Schedule

During the project kick-off meeting, the T2 Project Manager, in conjunction with the Agency's Project Manager, will determine the project schedule.

Change Control

Customer may request changes to this SOW or planned deliverables. Change request may result in a change to the price, schedule and other terms and conditions contained herein.

Assumptions, Constraints, and Risks

Much of the CCS work will be performed remotely. Any requirements for project resources to come onsite may result in additional consulting fees and related travel expenses.

Data integrity problems are a risk that, if encountered, can delay project timing. Data integrity issues are often the result of problems with consistency in the data and its usage.

System Configuration

T2 will configure T2 Flex based on best practices and with input and final approval by the Agency's staff.

Data Conversion

T2 will convert data from the Agency's existing system including DMV status. Data conversion services include converting all data currently in process including:

- Open (Unpaid) Citations (maximum five years)
- Closed (Zero balance) Citations (24 months history).

The Agency will be responsible for providing the data in a usable format from the current vendor's database.

Software Included:

T2 Flex

- T2 will provide access to a T2 Flex hosted service application.
- T2 will include software updates and database maintenance at no additional cost.
- T2 will provide access to Flex Online Help documentation.
- T2 will provide access to the T2 HUB for account information and support case management.
- User level is determined by AGENCY.
- Access is limited to employees of AGENCY only.

Training

During the implementation project T2 will provide to Agency employees role-specific software training via any combination of online, remote, or on-site training.

T2 will provide access to Agency employees to T2's library of recorded training from the T2 customer website, available 24/7.

On-going Citation Processing Services

Data Entry from Handwritten Citations

- T2 will data enter all parking citations into Flex within forty-eight (48) business hours of receipt from the Agency.
- The Agency will scan and email handwritten citations to T2 on a regular basis. The Agency will store handwritten citations.
- The Agency will have the capability to edit citations.
- The Agency will be notified of any issues regarding citation data entry.

- A copy of the manually issued citation will be scanned and linked to the citation record.

Automated Citations issued by Enforcement Devices

Citations issued by the mobile device will be imported into T2 Flex in real-time. If there is a loss in communication (Wi-Fi or cellular internet connection), citations will be downloaded once communication is restored.

California DMV Communication

- CA DMV Inquiry: T2 will provide daily communication for registered owner information.
 - The registered owner information will be available to the Agency within the T2 Flex database.
 - The Agency agrees to use the registered owner address information provided data only for the purpose of processing and collecting parking citations
 - Errors that are returned by DMV during the R/O inquiry may be handled by T2 and processed accordingly.

CA DMV Registration Holds/Releases

- T2 will identify vehicle license plates that are eligible for hold/release.
- T2 will communicate holds and releases on a daily basis weekends and holidays excluded.
 - The hold/release status can be viewed directly from the citation record within Flex.
- T2 will provide reporting of the data to the Agency.

Out of State DMV Communication

- DMV (Out-Of-State) Inquiry: T2 will communicate on a weekly basis to obtain registered owner information.
 - The registered owner information will be available to the Agency within T2 Flex.
 - The Agency agrees to use the registered owner address information provided data only for the purpose of processing and collecting parking citations.
 - Errors that are returned by DMV during the R/O inquiry will be handled by T2 and processed accordingly.
- Registered Owner changes: T2 and/or the Agency will have the ability to make any necessary changes due to a bad address or change in the owner within T2 Flex.

Payment Processing

- T2 will provide a payment solution for parking citation payments made online.
 - T2 will provide a payment gateway for online credit card payments into a T2 merchant account.

- Payment methods options include American Express, Discover, MasterCard, and Visa.
- A Credit Card Convenience Fee is charged to the person making the payment.
- All payments (credit card and mailed payments) are disbursed into the Agency's account once a month. Reporting of payments is available to the Agency.
- T2 will process Mail Payments.
 - T2 and the Agency will agree upon the bank account used for lockbox processing.
 - Lockbox payments are processed within 24 to 48 hours of receipt, weekends, holidays, and exceptions excluded.
 - T2 will retain an image archive and retrieval system for payments received daily.
- T2 will provide a daily report of payments.
- Payments made in person may be accepted by Agency staff and updated directly into T2 Flex.
- T2 will allow partial payments.
 - A notice will be sent to the customer notifying of a partial payment.
 - T2 will provide the Agency with partial payment reports.

Bank Deposits

- Payments processed by T2 or the remittance process are deposited into an account established and maintained by the Agency or an account mutually agreed upon between the Agency and T2.
- Deposits are made same day using electronic depositing.
- The Agency is responsible for any bank fees or charges, custom post office box or courier services or fees requested as outlined in the Agreement.

Bank Returned Checks

- Charges or fees for bank returned items or NSF fees are established by the Agency. These fees may be included within Flex as part of the fees due. The Agency will assume responsibility for notification to T2 of any NSF checks deposited to Agency bank.
- T2 will follow-up on any reopened accounts and additional fees that have been included to the citation/account as directed by the Agency.

Dismissals/Voids

Any cancellations, dismissals, voids, corrections and/or other relevant information pertaining to the citation(s) status taken by the Agency may be forwarded to T2 for processing or the Agency may update this information directly into T2 Flex.

Correspondence Processing

- T2 is responsible for generating, printing and mailing letters, notices and delinquent parking violation notices.
- Correspondence is approved by the Agency in advance of production.
- T2 will send the following notices on behalf of the Agency:
 - Delinquent notice or 1st notice, that meets the requirement set forth in CVC 40207. The Agency will approve the timeframe for these letters.
 - Appeal disposition letters.
- T2 will design and configure all correspondence templates during implementation.
 - The Agency will approve what information is included within the letters.

(Optional) Service Appeal Process – Administrative Review Requests – First Level

- T2 will manage and process initial review requests.
- T2 will provide the online Appeal Solution to provide the ability for citizens to submit their review request online.
- Appeal information is integrated into T2 Flex in real time and will be available to the Agency.
- Mailed written reviews envelope postmark dates will determine if the appeal is submitted on time.
- Written reviews for first level will be entered into T2 Flex within 24 to 48 hours excluding weekends and holidays.
- These citations will be placed on “administrative hold” by placing the citation on Appeal in T2 Flex.
- Designated Agency personnel will have access to the Agency’s T2 Flex database in order to finalize appeal decisions.
 - The Agency will update and review data in T2 Flex in real time.
 - T2 will provide the Agency reporting to show the appeal status, including open and closed reviews, through dashboard reporting or emailed reports.
- Review result letters may be sent out by T2 or the Agency. Results sent out by T2 are sent out within 24 to 48 hours of the result and an electronic copy will be maintained in Flex.

(Optional) Service Appeal Process - Administrative Hearings – Second Level

- T2 Systems will assist with the administration of the Agency’s administrative hearings.
- The online solution will provide access to submit administrative hearings online.
- The online solution will provide directions and documents required for indigent situations.
- Administrative hearings may be scheduled within T2 Flex and hearing schedules (dockets) reports are available.

Toll-Free Telephone Service

T2 will provide a Customer Service Call Center for consumers via a toll free phone number. The call center includes courteous, professional agents who are specially trained on parking issues with inbound call scripts customized to your statuses and environment.

T2 will provide IVR functionality including

- Allowing a caller to be transferred to our Customer Service Call Center.
- English and Spanish assistance
- Payments with a credit card that are updated immediately and deposited into a T2 merchant account.
 - A Credit Card Convenience Fee is charged to the person making the payment.
- Credit card payments are reconciled and disbursed monthly. Reporting of credit card payments is available to the Agency.

Reporting

T2 will provide daily, weekly, monthly or ad hoc reporting depending on the agency needs.

Reporting capabilities will include exporting to PDF or excel, automated scheduling to generate daily, monthly, and exported or emailed to users. Dashboard functionality with graphical displays are included for data analysis and as a reporting options.

Standard Reports

Include the following from the list below:

- Citations – Status Summary
- Revenue and Deposit Reports
- Monthly Deposit Report
- Citation Statistics by Status Group
- Officer Detail Log Report
- Citation Issuance count
- Open Appeals
- Voided Citations
- DMV Reconciliation Report
- Citation Payments by Date Range
- Citation Payments Detail Report
- Collection Agency Detail Reports
 - Accounts Assigned
 - Cash Receipts Report

- Collection Activity
- Month to date/Year to date analysis

Surcharges

- It is the responsibility of the Agency to identify and outline all surcharges (fees) mandated by CVC 40200.3 and required for reporting purposes.
- T2 will provide a monthly Surcharge Disbursement Report based the requirements outlined by the Agency.
- The Agency will assume distribution responsibility for disbursement of surcharges funds to the County.
- The Agency and T2 will mutually agree upon distribution methods to the County.

Collection Agency Collections

CCS will perform outbound collection procedures on individual debts including:

- Third party, FDCPA (Fair Debt Collection Practices Act) compliant letter services and outbound/inbound collection call center services
- State licensed
- Experienced staff
- Non-confrontational and professional approach that reflects positively on your organization
- Skip Tracing – access to a database with personal information
- Real time bankruptcy information to ensure that no FDCPA violation is committed when pursuing an individual who has petitioned for bankruptcy, verify the legitimacy of the bankruptcy status, and improve collection efficiency and results

Agency Collection Services Details

- CCS will assume responsibility for all citations the Agency has identified and escalated to a collection status for open citations aged 36 months and not in an appeal disposition. The backlog will be transferred upon start of this project.
 - Ongoing citations will be aged at 120 days and transferred to CCS for collections on a weekly basis.
- Citations that meet the criteria of delinquent collections will be pursued using T2's collections process that may include the Franchise Tax Board (FTB).
- The Agency must approve and support credit reporting.
- Citations sent to collections will be transferred to collections with the balance remaining in Flex. Prior to transfer, the contingency fee of 30% per citation may be added to each citation. Payments can be made at the Agency or CCS. CCS will

remit net funds to the Agency, the amount paid less the 30% per citation fee. If the citation is collected at the Agency, collection/contingency fees remain applicable.

- CCS is authorized to collect on the citations' balance using collection best-practices. This can include, but is not limited to, additional letter notifications and outbound calling. These collection best-practices are already included in the fee quoted.
- T2/CCS will provide a query to export the citation data to be escalated to CCS for collections. The Agency will generate this file on a weekly basis. In advance of generating this file, the data will be matched with current Registered Owner information.
- CCS limits the number of citations that can have a fee waived per month. Six (6) citations per month can have their service fees waived.
- In the event the Agency needs to recall a citation that has already been escalated for collection, the Agency will notify CCS via email at ccsclientservices@t2systems.com to limit unauthorized recalls, the Agency will name specific individuals on the Agency's behalf to complete the recall. All other requests will be denied. Once the initial letter has been sent, the Agency can use one of their six (6) citation waivers per month to remove the service fee.
- CCS will send one (1) PL-95 collection letter per citation. Assuming the citation holder does not pay from the PL-95, CCS will begin collection best practice procedures.
- CCS will provide a daily file of payments to import into the Agency's T2 Flex database that have been made through CCS. The file will contain the citation number, payment date and citation amount. The file will be imported via the T2 Flex Task Scheduler using the Citation Payments Received task.
- CCS will obtain from the Agency a daily payment import file of payments received at the Agency. It will contain the citation number, payment date and citation amount. It will be imported into the collections software.
- CCS will provide the Agency with a monthly reconciliation report on the 3rd Friday of each month. The report will provide statistics on citations collected, dollar amount collected, and associated fees. Also, an electronic check will be issued in the total amount collected, net of fees.
- CCS will assess fees to the parker for insufficient funds. A flat \$20.00 fee would be assessed to the citation holder for insufficient funds. CCS will retain this fee for bank services.
- CCS will provide a Project Manager that will be responsible for the project planning, scheduling, and status reporting. In addition, Project Manager will act as the project's single point of contact with regards to change management and issue/risk control.



City of Davis, CA

**Exhibit D Payment:
Citation Processing
and Collections**

CITATION PROCESSING FEES

Description	Unit \$
Processing fee per citation	\$ 0.75
First notice, including postage	\$ 1.05
Second notice, including postage	\$ 1.05
Disposition letter, including postage	\$ 1.10
Other notices, including postage	\$ 1.10
Paid By Customer	
Credit card convenience fee per citation	\$ 3.95
Payment Plan	\$ 5.00
FTB/Collections	
Social Security Number Search for FTB	\$ 4.00
FTB Collections	15%
Delinquent Collections	30%
Out of State Processing	30%

NOTES

T2 Systems has made every effort to insure that all relevant information pertaining to the requested software, hardware and implementation services has been included in this quotation. Please check this quotation carefully. Our goal is to provide the most accurate information possible.

CCS (T2 subsidiary) will provide the City of Davis with citation processing services. CCS processing services include obtaining owner information, generating notices, taking payment, and delinquent collections.

- Notices include postage.
- All increases in the postage rate will be passed onto the City of Davis. Costs will be increased equal to the postage increase anytime the US Postal Services increases the cost for postage.
- Citation ticket stock, envelopes and paper ticket books are not included.
- City of Davis will pay all bank and courier fees as needed.
- City of Davis will pay any FTB or state controller office fees.
- Delinquent citations are aged at 120 days. T2 recommends exploring options allowing the City of Davis to add the collection fee to the citation amount due.
- City of Davis will be invoiced monthly for citation processing services rendered.
- All conversion costs have been included within professional services pricing.

Maintenance and Support

Normal business hours for Support staff are Monday-Friday from 5am to 5pm PST, excluding T2 approved holidays. Support for critical issues is available 24x7x365 via our emergency support process.

Payment Terms (CCS)

T2's standard payment terms apply unless mutually agreed upon. Services to be billed separately.

Minimum Commitment

If the City of Davis does not meet its annual minimum commitment (15,000 citations), the City of Davis shall be billed the appropriate processing fee for the difference between the number of citations issued and the minimum commitment.