

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 01/28/15
ITEM FROM FINANCE COMMITTEE MEETING OF 01/20/15

ISSUE:

9. Request for Approval of Exempt Procurement and Agreement – Software Subscription and Hardware Upgrade for Parking Division; T2 Systems, Inc. (PJ Griego)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of exempt procurement and agreement for software subscription and hardware upgrade for parking division with T2 Systems, Inc. in the amount of \$165,531.40. Budget is available in parking fund.

FUNDING SOURCE: 52152.530710/52151.572800

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	Excused		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

3-17-14

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JANUARY 12, 2015**

ITEM 9

REQUEST FOR APPROVAL OF SOFTWARE SUBSCRIPTION AGREEMENT WITH T2 SYSTEMS INC., IN THE AMOUNT OF \$165,531.40 (PJ GRIEGO)

PUBLIC WORKS COMMITTEE ACTION: APPROVED ON CONSENT

FUNDING SOURCE: 52152.530710/52151.572800

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	EXCUSED		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: December 12, 2014

TO: Public Works Committee

VIA: Robert Rodarte, Purchasing Officer
Jon Bulthuis, Transportation Director *RB 12/16/15*

FROM: Sevastian E. Gurulé, Parking Division Director *SEG*

RE: T2 Systems, Inc. Software Subscription Agreement

ITEM AND ISSUE:

Request for Approval of Software Subscription Agreement with T2 Systems, Inc. in the amount of \$165,531.40. This agreement will terminate on June 30, 2018.

BACKGROUND AND SUMMARY:

In 2003, the Parking Division purchased parking ticket writing software and hardware from T2 Systems to replace a previous system that become outdated.

As of this year, the current Parking Management software subscription agreement with T2 Systems Inc expires. The Parking Division has made a significant investment into our overall parking management system; such investments include:

- Interface with DMV
- Interface with Sungard (Police issued citation -- mandated by Resolution 2013-64)
- Interface with Justice systems (in process)
- Moving to a hosted environment
- Ebusiness solution
 - Pay a citation
 - Appeal a citation
 - Account management
 - Permits (soon to come in late 2015)

These investments have helped us perform more efficient and more effective. In addition, we are strengthening our internal controls and improving our existing internal processes which in turn help us provide and deliver a higher quality of service. As a result of our success and investment it would be to our benefit to continue with T2 Systems Inc.

The Purchasing Division recommends this Exempt Procurement approval based on the following information provided in the City of Santa Fe Purchasing Manual Section 18.7L Exemptions: Purchases of computer software including ancillary services, where such is required to match other software in use or where a unique or novel application (available from only one provider) is required to be used in the public interest. This will include applicable initial and subsequent licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider.

REQUESTED ACTION:

It is requested that this Exempt Procurement request to T2 Systems Inc., for software and hardware upgrade be approved and submitted to City Council for its consideration.

The total amount for this agreement is \$165,531.40. The termination date is June 30, 2018. The Business unit/line items are Software Subscription 52152.530710 and Data Processing 52151.572800.

Signed _____



Date _____

1/6/15

Robert Rodarte, Purchasing Officer

T2 SYSTEMS, INC.

SOFTWARE SUBSCRIPTION AGREEMENT

THIS SOFTWARE SUBSCRIPTION AGREEMENT is entered into as of December 14, 2014 ("Effective Date") and contains the subscription agreement between City of Santa Fe, New Mexico ("Subscriber") and T2 SYSTEMS, INC. ("T2"). Subscriber specific details are contained in the *Quote* executed by the Parties. Certain terms are defined in Article 13.

December



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® 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 in the manner provided for 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, 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 this Article 2 apply only if *Quote* states that T2 or an authorized T2 Systems distributor will sell hardware (the "Hardware") and related software. In addition, the provisions of Article 2 only apply to Hardware purchased through T2 or an authorized T2 Systems distributor. Any Hardware purchased from sources outside of T2 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. In no event shall T2 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. ~~T2 shall not cover repair, labor or replacement of parts that are by nature expendable.~~

Section 2.2 **Handheld Hardware Warranty.** T2 warrants to the Subscriber that the Handheld Hardware 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 **Access Revenue Control Hardware Warranty.** T2 Systems warrants that all hardware sold will be free from any defects in material and workmanship for the warranty periods described below under normal operating conditions when installed in accordance with the T2 Systems installation instructions, normal wear and tear ~~excepted.~~ *accepted.*

The warranty periods for the following products are:

- (i) Vehicle Gates: 2 years or 1 million cycles. (Whichever comes first)
- (ii) Revenue equipment (including firmware): 1 year
- (iii) Loop Detectors: 1 year

The warranty period shall start from the date of installation of the product by certified installation personnel. If a project requires a delayed warranty start date, the distributor or customer must request a delayed start date in writing five business days before the scheduled installation date. T2 Systems will review and accept on a case by case basis. No distributor shall have the authority to bind T2 Systems to any warranty beyond that extended therein.

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 return freight charges. Subscriber and/or the Distributor agree to inspect all delivered pieces of ARC 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.

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, 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. The provisions of this Article 4 apply only if the *Quote* states that T2 will provide web site development services or other custom development services (collectively, the "Professional Services").

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.

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 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, (iv) any change in applicable operating system software, or (v) the failure of Subscriber to install updates to the Software provided by T2. ~~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.~~ *any*

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 increase the Fees by five (5) percent per year, 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%)], and with reasonable attorneys' fees and other costs of collection. 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.

New Language



Section 6.6 Payment by Automated Clearing House. If applicable, Subscriber agrees that the Subscription Fee and Web Site Fee (if applicable) shall be paid by Automated Clearing House debit. Subscriber agrees to complete the ACH Authorization Agreement accompanying this Software Subscription Agreement. If Subscriber is unable to execute an ACH Authorization Agreement, Subscriber shall make payment to T2 by check, credit card or debit card in the amount payable hereunder. Furthermore, Subscriber agrees to submit such payment to T2 so that payment is received by T2 on or before the Subscription Fee due date.

Payment Options

1. Annual Subscription paid in advance
2. Monthly Subscription paid in advance. Monthly payments are subject to a 3% processing fee.
3. ACH (see 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~~

New Language



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 or three (3) months from the Effective Date of the Software Subscription Agreement, whichever is earlier, 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.~~

INITIAL
M/M

Section 7.2 Reengagement When a project does not stay on 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 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, including travel.
- c) Rebooking fees.
- d) Any necessary rework (repeat of training, additional data sample, additional PM hours) would be billed at restart.
- e) A reengagement fee of 20% of the total professional services plus travel expenses associated with the reengagement.

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.

INITIAL
M/M

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. 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, (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) the Subscription Fee, under Section 6.1 of this Agreement theretofore paid to T2 for the initial Subscription Term. If Subscriber fails to return the materials within thirty (30) 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 Subscription Fee.

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, and its exclusive remedy shall be to 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 do not execute 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 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 Time to Sue. No action, regardless of form, arising out of any of the transactions pursuant to this Agreement may be brought by Subscriber more than one year after the cause of action accrued.

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.

Article 13. DEFINED TERMS

Section 13.1 Agreement. The "Agreement" between T2 and Subscriber consists of this Software Subscription Agreement and the *Quote*.

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 in the manner 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. 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 the Hosting Services. 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 earlier of the Install Date or three (3) months from the Effective 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 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 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 ~~United States of America and of the State of Indiana~~ without regard to conflict of laws principles. *State of New Mexico*



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 **Arbitration.** Except for actions to protect Proprietary Rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in ~~Indianapolis, Indiana~~ ^{Santa Fe, New Mexico}. The arbitrator shall apply the laws of the ~~State of Indiana~~ ^{State of New Mexico} to all issues in dispute. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration.

State of New Mexico

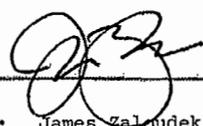


IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

T2 Systems, Inc.

City of Santa Fe, NM

By: _____

By:  _____

Name: _____

Name: James Zaloudek

Title: _____

Title: EVP of Finance

EXHIBIT: 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 A-ADDENDUM

T2 Flex Subscription	
COTERM (12/14/2014 - 6/30/2015)	13,161.86
Year 1 (7/1/2015 - 6/30/2016)	25,347.36
Year 2 (7/1/2016 - 6/30/2017)	26,614.73
Year 3 (7/1/2017 - 6/30/2018)	27,945.47
 Hardware Maintenance (Handhelds)	
Year 1	2,400.00
Year 2	2,400.00
Year 3	2,400.00
 Asset Management	
COTERM (12/14/2014 - 6/30/2015)	1,623.84
Year 1 (7/1/2015 - 6/30/2016)	3,125.59
Year 2 (7/1/2016 - 6/30/2017)	3,281.87
Year 3 (7/1/2017 - 6/30/2018)	3,445.96
 T2 Flex Hosting	
Year 1	12,000.00
Year 2	12,600.00
Year 3	13,230.00
 T2 eBusinss Subscription (Citation Payments, Permits, Waitlist, Citation Appeals, MyAccount)	
Year 1	5,061.00
Year 2	5,314.05
Year 3	5,579.67
	<hr/>
	165,531.40

Exhibit B-ADDENDUM

City of Santa Fe NM Standard Terms and Conditions

CITY OF SANTA FE (SUBSCRIBER)

T2 SYSTEMS INC. (T2)

INSURANCE:

A. T2, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Subscriber, with limits of coverage in the maximum amount which the Subscriber could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Subscriber is named as an additional insured and that the Subscriber is notified no less than 30 days in advance of cancellation for any reason. T2 shall furnish the Subscriber with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. If applicable, T2 shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for T2's employees throughout the term of this Agreement. T2 shall provide the Subscriber with evidence of its compliance with such requirement.

C. T2 shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New

Mexico Tort Claims Act. T2 shall furnish the Subscriber with proof of insurance of T2's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

INDEMNIFICATION

T2 shall indemnify, hold harmless and defend the Subscriber from ~~all~~ ^{any direct} losses,  damages, claims or judgments on account of any suit, judgment, execution, claim, and action or demand whatsoever arising from T2's performance under this Agreement as well as the performance of T2's employees, agents, representatives and subcontractors, including payments of all attorneys' fees and costs.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Subscriber in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. Seq. NMSA 1978, as amended. The Subscriber and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Subscriber and T2. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

RECORDS AND AUDIT

T2 shall maintain, throughout the term of this Agreement and for a period of three

years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Subscriber, the Department of Finance and Administration, and the State Auditor. The Subscriber shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Subscriber to recover excessive illegal payments.

APPLICABLE LAW; CHOICE OF LAW; VENUE

T2 shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, T2 agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District.

AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

NON-DISCRIMINATION

During the term of this Agreement, T2 shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by T2 hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

T2:

Subscriber:

T2 Systems, Inc.
8900 Keystone Crossing
Suite 700
Indianapolis, IN 46240
Attn: Shi McGowan
SMcGowan@t2systems.com
tel: 800-434-1502

City of Santa Fe Parking Div.
500 Market St. Suite 200
Santa Fe, NM 87501
Attn: P.J. Griego
pjgriego@santafenm.gov
tel: 505-955-6857

Price breakdown is incorporated herein by reference and is attached as the Addendum, Exhibit A.

General contract terms and conditions of the City are incorporated herein by reference and are attached as the Addendum, Exhibit B.

In witness whereof, the parties have caused this Agreement to be executed upon the date of last signature.

CITY OF SANTA FE:

JAVIER M. GONZALES, MAYOR

DATE

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR: T2 Systems Inc.

APPROVED AS TO FORM:

By:  James Zaloudek, EVP of Finance
Name and Title

 12/9/14
KELLEY A. BRENNAN,
CITY ATTORNEY

Date: 11/20/14

N.M. Taxation & Revenue
CRS #

APPROVED:

City of Santa Fe Business
Registration #

TERESITA GARCIA
ASSISTANT FINANCE DIRECTOR

52152.530710 / 52151.572800
Business Unit / Line Item



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor T2 Systems Inc.

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$165,531.40

Termination Date: June 30, 2018

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for: Software Subscription

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History** **Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ 165,531.40 of original Contract# _____ Termination Date: 06/30/2018

Reason: Software Subscription

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 165,531.40



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source Memo signed by Rodarte Date: December 2, 2014

Other _____

6 **Procurement History:** First year of 3 1/2 year contract
example: (First year of 4 year contract)

7 **Funding Source:** Software Subscription **BU/Line Item:** 52152.530710.

DATA PROCESSING 52151.572800

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** PJ Griego

Phone # _____ -6857

10 **Certificate of Insurance attached.** (if original Contract)

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments: