

**FIRST AMENDMENT TO THE AGREEMENT  
FOR PARKING CITATION PROCESSING/COLLECTION SYSTEM AND  
CUSTOMER SERVICE CENTER BETWEEN THE CITY OF SAN JOSE AND  
TURBO DATA SYSTEMS, INC.**

This First Amendment to the Agreement for Parking Citation Process/Collection System and Customer Service Center is entered as of this \_\_\_\_\_ day of September 2010, by the City of San José (“City”), a municipal corporation, and Turbo Data Systems, Inc., a California corporation (“Contractor”).

**RECITALS**

WHEREAS, on January 1, 2009, City and Contractor entered into an agreement entitled “Agreement for Parking Citation Processing/Collection System and Customer Service Center” (“Agreement”); and

WHEREAS, on November 24, 2009, pursuant to Section 3.2 of the Agreement, City executed the Notice of Exercise of Option to Extend the term of the Agreement from January 1, 2010 to December 31, 2010; and

WHEREAS, City and Contractor now desire to amend the Agreement to create two categories of Special Collection Services, Basic Special Collections and California Franchise Tax Board Special Collections, and to increase the maximum annual compensation from \$600,000 to \$680,000;

**NOW THEREFORE, the parties agree to amend the Agreement as follows:**

1. Section 4 of the Agreement is hereby amended to read as follows:

**4. COMPENSATION**

City shall pay Contractor an amount not to exceed \$680,000.00 (SIX HUNDRED AND EIGHTY THOUSAND DOLLARS) for Contractor’s services and reimbursable expenses, if any. The terms, rate and schedule of payment are set forth in the attached Revised Exhibit B, entitled “Compensation”.

2. Section 5 of Exhibit A “Scope of Services” of the Agreement is hereby amended in its entirety to read as follows:

**5 SPECIAL COLLECTIONS**

Most parking citations are resolved during normal processing by payment of the fine, by permanent suspension as a result of an administrative review, or by adjudication. There are, however, a number of citations which remain open or unresolved.

## 5.1 PROCESSING REQUIREMENTS

5.1.1 Contractor shall do each of the following in processing an unpaid parking citation:

5.1.1.1 Contractor shall mail a minimum of two (2) notices of delinquency for each unresolved citation as well as additional special notices approved by the Director, including notices for partially paid citations. Currently, in accordance with statutory requirements, a notice of delinquent parking violation is mailed thirty (30) days after issuance of a citation. If the citation remains unpaid, a courtesy advisory of pending vehicle registration hold (not required by statute) shall be mailed thirty (30) days after the first notice.

5.1.1.2 Contractor's notice program should be flexible and able to accommodate time-based as well as criteria-based selection variables to generate a specific type of notice. Examples of such criteria are: citation age, suspend status, and returned mail status. Contractor shall obtain prior written approval by the Director for the original form and any revisions to language in the notices, notice layouts, or to noticing criteria.

5.1.1.3 Contractor shall provide to the Department complete production, operational and management reports on its noticing program for reconciliation, audit, and City management oversight.

5.1.1.4 However, there are citations that remain unpaid after all the specified processing and collections efforts are completed, including DMV registration holds. These open accounts result from such things as anomalies in the California DMV registration System, failure of a new owner to re-register a vehicle, inaccurate mailing address provided to the DMV, and other similar situations. City will assign specific categories of open/unpaid citations for special collections efforts based on the criteria set forth below. Monthly, the Contractor's System shall automatically review the parking citation database and assign all citations that meet the designated criteria to its special collection component.

## 5.2 BASIC SPECIAL COLLECTIONS

5.2.1 **Assignment Criteria:** The following criteria shall be used to determine special collection assignments for unpaid parking citations:

5.2.1.1 **DMV Hold Rejects/Returned Transfers:** Any unpaid citation where the request for DMV hold was rejected or where the DMV hold was released after transfer of ownership information has been obtained from DMV.

5.2.1.2 **Aged DMV Hold:** Any unpaid citation that is on DMV hold and still unpaid 60 days after the expiration date of the previous year's registration.

5.2.1.3 **Out-of-State Unpaid:** Any unpaid citation on an out-of-state plate that remains unpaid **30 days *after the date of issuance and after***

**registered owner information was obtained** and a delinquent notice was mailed.

**5.2.1.4 Returned Mail:** Any unpaid citation whose final notice has been returned by the Post Office as undeliverable.

**5.2.1.5 Registered Owner Information:** Any unpaid citations associated with a plate for which no registered owner information has been returned from the DMV after at least four requests have been made in two month intervals.

**5.2.1.6 Declaration of Non-Ownership:** Any unpaid citation issued to a vehicle for which a declaration of non-ownership has been received and 45 days or more has elapsed since the mailing of a letter requesting payment from the person identified as the new owner.

**5.2.1.7 Lessee/Rented Vehicles:** Any unpaid citations issued to leased or rented vehicles 45 days after a letter requesting payment has been mailed to the person who leased or rented the vehicle.

**5.2.2 Basic Special Collection Services:** Contractor shall assume all costs related to the Basic Special Collection services and at a minimum provide the following services:

**5.2.2.1** Mail up to two additional collection letters requesting payment.

**5.2.2.2** Update all outstanding accounts as needed.

**5.2.2.3** Process payments collected through the basic special collection process within 24 hours of receipt and deposit payments collected through the basic special collection process within 48 hours of receipt.

**5.2.2.4** Provide on-line reports outlining the status of special collection accounts.

**5.2.2.5** Provide and appropriately staff a customer service center to handle customer inquires related to unpaid parking citations going through special collections.

**5.2.2.6** Provide a toll-free phone number specifically for basic special collection inquiries.

**5.2.2.7** Process all correspondence related to special collections.

**5.2.3 Basic Special Collection Fee:** Contractor shall be compensated a Basic Special Collections fee in the amount of 28% of the fine (or portion of a fine) collected, and shall be calculated as follows:

$$(\$ \text{ Received via special collections}) \times (0.28) = \text{Collection Fee}$$

As an example, using a \$100 outstanding amount, the collection fee would be:

$$(\$100) \times (0.28) = \$28.00$$

### **5.3 FRANCHISE TAX BOARD SPECIAL COLLECTIONS**

Even after special collections efforts set forth in Section 5.2 above are completed, there are parking citations that remain unpaid. Citations that have been issued within the last three years to California license plates and have completed all specified processing, collection efforts, basic special collection efforts and have been either rejected or removed from DMV hold are eligible for collection through the Franchise Tax Board (FTB) Interagency Offset Service. Annually, the Contractor's System shall automatically review the parking citation database and assign all citations that meet the designated criteria for FTB collection.

**5.3.1 FTB Special Collections:** The following criteria shall be used to determine FTB collection assignments:

**5.3.1.1 Special Collection Efforts:** Basic Special Collection efforts outlined in Section 5.2 above have failed, and

**5.3.1.2 California Registration:** The unpaid parking citation is issued to a vehicle registered in the State of California, and

**5.3.1.3 Date Penalty Incurred:** The date the unpaid parking citation was issued is within the last three (3) years from the date submitted to FTB, and

**5.3.1.4 Penalty Amount:** The total penalty amount totals ten (\$10) or more dollars.

**5.3.2** City reserves the right to amend the criteria used to determine which citations shall be assigned to Basic Special Collections or FTB Special Collections by providing written notice to Contractor.

**5.3.3 Franchise Tax Board Collection Services:** Contractor shall assume all costs related to special collections through the Franchise Tax Board, with the exception of the per account FTB service fee charged by the FTB, and at a minimum provide the following FTB Board collection services:

**5.3.3.1** Assist the City with completing and submitting the required participation forms.

**5.3.3.2** Retrieve social security numbers and updated mailing addresses for qualified accounts.

**5.3.3.3** Combine all outstanding citations qualifying for FTB collection assignment by license plate number, and social security number.

**5.3.3.4** Mail FTB required collection warning letters (Pre-Intercept Notice).

**5.3.3.5** Reconcile all payments received via FTB collection.

**5.3.3.6** Update all outstanding accounts as needed.

- 5.3.3.7 Process and track necessary refunds.
- 5.3.3.8 Prepare all underpaid accounts to be resubmitted for FTB collection.
- 5.3.3.9 Monthly audit of all monthly financial transactions.
- 5.3.3.10 Adhere to all system, operational and procedural FTB program requirements.
- 5.3.3.11 Provide monthly on-line reports outlining the status of FTB collection accounts.
- 5.3.3.12 Provide and appropriately staff a customer service center to handle customer inquires related to FTB collections.
- 5.3.3.13 Provide a toll-free phone number for FTB collection inquiries.
- 5.3.3.14 Process all correspondence related to FTB collections.

**5.3.4 FTB Collection Fee:** Contractor shall be compensation a FTB Special Collection Fee in the amount of 35% of the amount (or portion of thereof) collected after mailing of the FTB Pre-Intercept Notice, not to include any cost recovery fees, and shall be calculated as follows:

$$[(\$ \text{ Received via FTB collections}) / 1.35] \times (0.35) = \text{Collection Fee}$$

As an example, using an \$80 amount submitted and collected through the FTB program, the collection fee would be:

$$[(\$80.00) / (1.35)] \times (0.35) = \$20.74$$

**5.3.5 Exclusions:** Regardless of any special collection efforts of the Contractor, the City shall not pay a fee for citations collected as a result of:

- 5.3.5.1 Collection efforts of the DMV, i.e., all citations paid at the DMV.
- 5.3.5.2 Dismissals by the City or the Municipal Court.
- 5.3.5.3 When no collection activity has occurred within the twelve (12) months preceding payment for citations **or** where notices have been returned by the Post Office as undeliverable.
- 5.3.5.4 Notices sent during the period of time between the date of issuance and confirmation of a DMV hold.

3. Exhibit B, "Compensation" is hereby amended in its entirety and replaced with the attached Revised Exhibit B, Compensation and incorporated by this reference as though fully set forth herein.

4. All of the terms and conditions of the original Agreement not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

City of San José  
a municipal corporation

\_\_\_\_\_  
Johnny V. Phan  
Deputy City Attorney

By \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

TURBO DATA SYSTEMS, INC.  
A CALIFORNIA CORPORATION

By \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

## REVISED EXHIBIT B COMPENSATION

### 1. Compensation Rates

A. City shall pay Contractor a per citation fee calculated on the following monthly transaction volume basis:

Monthly Volume of Citations Processed	1) Processing Collections System and Walk-In Customer Service Center	2) Telephone Voice Response System (TVRS)	3) Electronically Automated Handheld Ticketwriters: AUTOMATION % and Discount Rate		CITATION TOTAL (Sum of 1, 2 Minus 3)
5,000 - 10,000	\$3.05	\$0.23	90% - 100%	(\$0.08)	\$3.20
			60% - 89%	(\$0.06)	\$3.22
			30% - 59%	(\$0.03)	\$3.25
10,001 and Greater	\$1.97	\$0.23			\$2.12
					\$2.14
					\$2.17

### B. Special Collections:

**B.1 Basic Special Collections:** A 28% per citation fee shall be charged for any Special Collection fee collected as defined in Exhibit A, Section 5.2.

**B.2 Franchise Tax Board Collections:** A 35% collection fee shall be charged for any FTB Special Collection fine amount collected as defined in Exhibit A, Section 5.3.

### C. Additional Fees:

Type	Fee Per Transaction: Percentage or Amount
Credit Card	No Charge
Service	No Charge
Flat Fee	There is no charge to the City. There is a \$3.00 fee for each citation paid by credit card which is paid by the violator.

### 2. Monthly Invoice

All Payments are based upon City of San José acceptance of Contractor's performance of citation processing/collection and customer service center. City shall have no obligation to pay unless Contractor has successfully performed their citations processing/collection and customer service duties at the cost proposed. Contractor shall submit to the City a monthly invoice within fifteen (15) working days from the last day of each month, in arrears, for payment for services performed under this agreement. The monthly invoice shall include the identifying agreement number and a statement of work of the number of citation fees and amount of fee collected during the month. City

shall review the monthly invoice submitted by the Contractor within ten (10) working days of receipt of the invoice, and shall notify contractor of any discrepancies or deficiencies in said invoice.

### **3. Payment to Contractor**

City shall make monthly payments to Contractor within thirty (30) calendar days (Net 30) of City's approval of Contractor's invoice. If City makes any payments or incurs any costs for which the City is entitled to reimbursement(s) from any payment otherwise due to Contractor, payment shall be deducted for such reimbursement(s) and written documentation in support of each and any reimbursement deducted upon. In the event the City does not deduct such reimbursement from payment, but submits to Contractor an invoice for reimbursement, Contractor shall reimburse the City within thirty (30) days of receipt of such notice.

### **4. Consumer Price Index (CPI) Adjustment**

Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:

A. The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the commencement of the applicable extension term ("Extension Index"), shall be compared with the Index published most immediately preceding the commencement date of the then expiring term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.

B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

C. The preceding provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 7% of the previous term's monthly compensation rate.

D. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall be  $X \times \frac{124}{115}$  (the then expiring term's monthly compensation rate) multiplied by  $\frac{124}{115}$ .

### **5. Postage Increase**

If postage rates increase during the term of the Agreement, the per-cite fee (processing/collections system) shall be raised. The following formula will be used to allocate the cost to a pre-cite fee:

number of notices and letters mailed in the previous three months divided by the number of citations processed in the three previous three months times the amount of the postal increase.