

## SERVICE AGREEMENT CITY OF FRESNO, CALIFORNIA

THIS AGREEMENT (Agreement or Contract) is made and entered into effective the 1st day of July 2023, by and between the CITY OF FRESNO, a California municipal corporation (City or Recipient or Purchaser), and TRAPEZE SOFTWARE GROUP, INC. dba Vontas, a Delaware corporation (Service Provider or Contractor).

### RECITALS

WHEREAS, City desires to obtain professional transit equipment and software maintenance services for its licensed TransitMaster™ equipment and software (Project); and

WHEREAS, Service Provider is engaged in the business of furnishing such services as passenger transportation management solutions and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Service Provider acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for the City by its Director of Transportation (Administrator) or designee.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. Service Provider shall perform the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through June 30, 2026, subject to any earlier termination in accordance with this Agreement. This Agreement allows City the unilateral right to exercise two (2), one-year options, in accordance with the terms provided for in **Exhibit A**. The services of Service Provider as described in **Exhibit A** are to commence upon July 1, 2023 and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) Service Provider's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total not to exceed the current fee set forth per year, paid in advance on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**. Such fee includes all expenses incurred by Service Provider in performance of the services.

(b) Detailed statements shall be rendered on an as needed basis for services performed for all charges in excess of or addition to the total annual "base" charge reflected in the pricing payment schedule in **Exhibit A**, Attachment B, Pricing and will be payable in the normal course of City business. City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Service Provider's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of City to Service Provider upon the earlier of : (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) ninety (90) calendar days' prior written notice with or without cause by either party to the other party; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement. During the ninety (90) calendar day notice period, the applicable maintenance fees will remain payable. Prior to Agreement being terminated for cause, City shall allow Service Provider adequate opportunity to cure.

(b) Immediately upon any termination or expiration of this Agreement, Service Provider shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments on a prorated basis and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms of this Agreement, Service Provider shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Service Provider shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

(d) Upon any breach of this Agreement by Service Provider, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct damages, for the breach of the Agreement as awarded by a court of competent jurisdiction. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any terms or conditions of this Agreement.

(f) Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other materials prepared or assembled by Service Provider pursuant to this Agreement pursuant to the City's data shall not be made available to any individual or organization by Service Provider without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Service Provider shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.

(b) Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) Service Provider acknowledges that City is subject to the California Public Records Act (California Government code Sections 6250 et. seq.) (Act) regarding the disclosure of public records. This Agreement constitutes a public record available for public inspection. If Service Provider, in the course of work under this Agreement, provides proprietary information (Confidential Information) to City, such Confidential Information shall be clearly marked by Service Provider with the legend, "Company Confidential," "Trade Secret," or another appropriate proprietary legend. If City receives a request for information, the City will notify Service Provider of such request. In the event City discloses Service Provider's Confidential Information (following notification to Service Provider) that is legally required to be disclosed under the Act in response to a Public Records Act request from a third party pursuant to the Act, Service Provider agrees to release and hold City harmless from any and all liability owing to Service Provider as a result of such disclosure. Notwithstanding the other provisions of this Article, nothing received by City hereunder shall be construed as Confidential Information which

(i) is or becomes available to the public other than by a breach of this Agreement by a party hereto; (ii) is rightfully received by one party hereunder from another party not obligated to this Agreement, and without confidential limitations; (iii) is known by or independently developed by the receiving party; (iv) is approved for release by that party designating the information as confidential; or (v) has been developed by City under this Agreement.

(e) The user documentation and training materials pertaining to the system as supplied by Service Provider (Documentation) whether proprietary to Service Provider or a third party, is licensed to City. Ownership of any intellectual property contained in the Documentation shall remain the sole and exclusive property of Service Provider or any applicable third party as the case may be. City shall not copy, modify, reverse engineer, or disassemble the Documentation or permit others to do such to the Documentation; provided, however, that City may make copies of the Documentation as necessary for back up, testing, integration and data-warehousing purposes to operate the System. City shall not transfer the license granted hereby or possession of the Documentation except as part of or with the equipment, such transfer being subject to the restrictions contained herein.

(f) This Section 5 shall survive expiration or termination of this Agreement.

6. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Service Provider represents to City that Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the

standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of Service Provider or any subcontractors from said industry and professional standards.

7. Indemnification. To the furthest extent allowed by law, Service Provider shall indemnify and defend City and each of its officers, officials, employees, and agents from any third party suits, actions, and claims, all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including personal injury, death at any time and tangible property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise solely out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Service Provider, its principals, officers, employees, or agents in the performance of this Agreement (Third Party Claim), provided that:

(a) City shall promptly give written notice to Service Provider after obtaining knowledge of any potential or actual Third Party Claim against City if recovery being sought against Service Provider is due to the indemnity set forth above;

(b) Service Provider will have the right to defend City against any such Third Party Claim with counsel of Service Provider's choice. In addition, City may retain separate co-counsel, at its sole cost and expense, to monitor the defense of the Third Party Claim, provided however, that Service Provider shall have the right to control the defense of such Third Party Claim in Service Provider's sole discretion.

(c) City will not consent to the entry of any judgment with respect to such Third Party Claim without the prior written consent of Service Provider.

(d) City will not enter into any settlement with respect to such Third Party Claim without the prior written consent of Service Provider.

(e) City shall cooperate with all reasonable request of Service Provider in connection with the defense of such Third Party Claim; and

(f) To the extent reasonably possible, City shall use its good faith efforts to mitigate any losses against which Service Provider is obligated to indemnify City pursuant to this Section.

If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall require each subcontractor to indemnify, and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement, provided the subject matter of the indemnity occurred during the term of the Agreement.

## 8. Insurance.

(a) Throughout the life of this Agreement, Service Provider shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance

as stated in **Exhibit B** shall maintain limits of liability of not less than those amounts stated therein.

(b) If at any time during the life of the Agreement or any extension, Service Provider or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Service Provider shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Service Provider of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability under the provisions of this Agreement regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability under the provisions of this Agreement nor limit the liability of Service Provider, its principals, officers, agents, employees, or persons under the supervision of Service Provider, vendors, suppliers, invitees, Service Providers, sub- Service Providers, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, Service Provider shall promptly furnish City with a copy of an insurance certificate on the Accord form as required under this Agreement, including all endorsements. This requirement shall survive expiration or termination of this Agreement.

(e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall require each subcontractor/sub-Service Provider to provide insurance protection in favor of the City, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsement certificates, which shall be on file with Service Provider and City prior to the commencement of any services by the subcontractor.

#### 9. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, Service Provider shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, Service Provider shall have the obligation and duty to promptly notify City in writing of any change to the information provided by Service Provider in such statement.

(b) Service Provider shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). Service Provider shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of



interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Service Provider shall promptly notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, Service Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Service Provider represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(e) Service Provider and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Service Provider shall remain responsible for complying with Section 9(a), above.

(f) If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

10. Recycling Program. In the event Service Provider maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Service Provider at its sole cost and expense shall:

- (i) Promptly establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Promptly contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of Service Provider's expenses for those charges in excess of the total annual "base" charge reflected in the pricing and payment schedule in **Exhibit A**, Attachment B, shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request at Service Provider's offices, during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Service Provider pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of

time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

12. Nondiscrimination. To the extent required by controlling federal, state, and local law, Service Provider shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Service Provider agrees as follows:

(a) Service Provider will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Service Provider will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Service Provider shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Service Provider's employment practices including, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

(d) Service Provider will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, Service Provider is acting solely as an independent contractor. Neither Service Provider, nor any of its officers,

agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Service Provider and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Service Provider shall be solely responsible, indemnify, and defend the City from all matters relating to employment and tax withholding for and payment of Service Provider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Service Provider may be providing services to others unrelated to City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee. Notwithstanding the foregoing, Service Provider may assign its rights and interests by way of internal merger or acquisition with notice to City.

(b) Service Provider hereby agrees not to assign the payment of any monies due Service Provider from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Service Provider directly to Service Provider.

17. Compliance With Law. In providing the services required under this Agreement, Service Provider shall at all times comply with all applicable laws of the United States, the State



of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California. The parties specifically exclude the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses as awarded by a court of competent jurisdiction.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral including those terms which may be contained on City's Purchase Order. This Agreement may be

modified only by written instrument duly authorized and executed by both City and Service Provider. No other terms, conditions, representation, warranties, or guarantees shall form a part hereof or have any legal effect whatsoever.

29. Federal Clauses. Notwithstanding anything in this Agreement, including any exhibit hereto, to the contrary, the parties agree that: (i) Service Provider shall be subject only to those federal, state, and local government requirements set forth in **Exhibit D** that are applicable to Service Provider's performance of this agreement; and (ii) the products sold and software licensed hereunder are off-the-shelf and (iii) such federal, state, and local government requirements in Exhibit D shall:

- a) be in effect only to the extent that such clauses are applicable to the subject matter hereof;
- b) recognize that no DBE contract goal has been established for this contract;
- c) not transfer ownership of any intellectual property;
- d) not include any bond requirements for this agreement;
- e) not include any company policies that are outside of the applicable statutory requirements;
- f) not include any additional rights or remedies not found in the body of the Agreement (including but not limited to additional audit rights);
- g) not include any liquidated damages;
- h) be applicable, for audit purposes, at Service Provider's location during normal business hours; and
- i) not include any requirement that requires Service Provider to give up any of its legal rights.

Further, should such federal, state, and local government requirements cause the scope, schedule, or deliverables to change, then that parties agree that Service Provider shall be allowed an equitable adjustment.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

City OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Gregory A. Barfield, Interim  
Director, Dept. of Transportation

APPROVED AS TO FORM:  
City Attorney ANDREW JANZ

By:  9/21/2023  
10FC5444CAA84DB...  
Brandon M. Collet Date

Supervising Deputy City Attorney

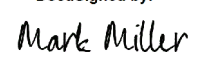
ATTEST:  
TODD STERMER, CRM MMC  
City Clerk

By: \_\_\_\_\_

Deputy

Addresses:  
CITY:  
City of Fresno  
Attention: Carolina Ilic, Assistant Director  
2223 G Street  
Fresno, CA 93706  
Phone: (559) 621-1499  
FAX: (559) 488-1065

TRAPEZE SOFTWARE GROUP, INC.  
doing business as VONTAS  
a Delaware Corporation

By:  9/18/2023  
B25A5F15383E44E...

Name: Mark Miller

Title: Chief Executive Officer  
(If corporation or LLC., Board Chair,  
Pres. Or Vice Pres.)

By:  9/19/2023  
9202BA902AF142F...

Name: Geoff Allan

Title: Chief Financial Officer  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

SERVICE PROVIDER:

Trapeze Software Group, Inc., dba  
Vontas  
5265 Rockwell Dr  
Cedar Rapids, IA 52402  
Phone: 319-743-4522

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Federal Requirements
5. Exhibit E - Non-Lobbying Certification
6. Exhibit F - Buy America

**EXHIBIT A**

**SCOPE OF SERVICES**

**Service Agreement between City of Fresno and  
TRAPEZE SOFTWARE GROUP, Inc., dba VONTAS**

PROFESSIONAL TRANSIT EQUIPMENT AND SOFTWARE MAINTENANCE SERVICES FOR ITS  
LICENSED TRANSITMASTER™ EQUIPMENT AND SOFTWARE

(follows next page)

**Exhibit A**

Trapeze Software Group, Inc., **dba VONTAS**

Scope of TransitMaster™ Equipment And Software Maintenance Agreement

Trapeze Software Group, Inc., dba VONTAS ("Seller", "Trapeze", "Vontas" or "CONSULTANT") hereby agrees to furnish "TRANSITMASTER" Systems Equipment and Software and other named maintenance services consisting of the necessary parts, labor, and testing of all City of Fresno ("Buyer", "City", "Fresno Area Express", or "FAX") Buyer-owned Equipment and Software listed in Attachment A in accordance with the terms and conditions of the Agreement to which this Exhibit A is attached and this Exhibit A. Buyer agrees to use Seller as the maintenance vendor for all Equipment and Software listed. Buyer agrees to purchase and pay for such services subject to the following terms and conditions:

WHEREAS Buyer wishes to participate in Seller's annual maintenance program;

WHEREAS Seller is the owner of the rights to certain software identified under Attachment A (Collectively "Software"), including copyright, trademark, trade secret and other intellectual property rights;

WHEREAS Seller has granted Buyer certain rights regarding the Software that enable Buyer to use the Software under the terms and conditions specified under the granted license; and

WHEREAS, The Equipment and Software covered by this Exhibit are identified in Attachment A, Schedule of Covered Equipment and Software, and pricing for this coverage is identified in Attachment B, Pricing Schedule.

NOW, THEREFORE, the parties agree as follows:

**1) DEFINITIONS.**

- A. **Rogue Unit**: Equipment that exhibits a recurring problem subject to the following:
- i. The undesired symptom reported is the same for three (3) sequential removals, and
  - ii. The undesired interval is seven (7) operating days

or less.

- B. **Turnaround Time**: Commences on the date of receipt by Seller's Service Center, and continues to the date of

shipment back to Buyer.

- C. **No Fault Found ("NFF") / No Trouble Found ("NTF")**: Equipment which requires no repair, replacement or adjustment by Seller in order to return it to a serviceable level in accordance with Article 8, NO FAULT FOUND ("NFF") / NO TROUBLE FOUND ("NTF") EQUIPMENT RETURNS.

- D. **Updates and Upgrades**: Those improvements to the Equipment or Software that Seller generally makes available as part of the annual maintenance program.

- E. **Priority One (1) Variance**: An Equipment or Software performance anomaly resulting in the loss or use of critical system functions to the extent that such loss affects the safety of the public and/or personnel.

- F. **Priority Two (2) Variance**: An Equipment or Software deficiency of lesser severity than a Priority One (1) that does not substantially reduce the capability of the system to accomplish its primary system functions (e.g., vehicle communications and AVL). Priority Two (2) Variances indicate functional and/or performance deficiencies, but the system is still capable of accomplishing its primary system functions with a satisfactory degree of safety and effectiveness. A Priority One (1) Variance for which an acceptable workaround has been established shall be reassigned to a Priority Two (2).

- G. **Service Notification**: A notification or bulletin provided by Seller that describes a change to Equipment or Software.

- H. **Trade Secrets**: Any information proprietary to either party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that (1) is or becomes generally known to the public through no fault of the recipient; (2) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (3) the recipient independently develops through persons who have not had access to such information; or (4) the disclosing party approves for unrestricted release by written authorization.

- I. **Trapeze Equipment ("Equipment")**: The Trapeze proprietary equipment units identified in Attachment A of this Exhibit.

- J. **Trapeze Software ("Software")**: The Trapeze proprietary software applications identified in Attachment A of this Exhibit.

**2) MAINTENANCE SERVICES PROVIDED.** Seller agrees to provide the following Equipment and Software maintenance services during the term of this Agreement:

- A. Seller shall maintain the Equipment and Software in conformity, and in all material respects, with the descriptions and specifications of the Equipment and Software in effect at the time of the execution of this Agreement including this Exhibit;
- B. Seller shall send Buyer mailings regarding Updates and Upgrades of the Equipment and Software;
- C. Seller shall provide phone support to Buyer's authorized callers to assist with troubleshooting of installation, configuration, and operational problems of covered Equipment and Software.
  - i. Calls received for Priority One (1) Variances shall be returned within one (1) hour.
  - ii. Calls received for Priority Two (2) Variances shall be returned within four (4) hours.
  - iii. Calls received for Priority Three (3) shall be returned within one (1) business day.
  - iv. Calls received for Priority Four (4) shall be returned within two (2) business days.

The toll free number for all calls to Seller is 1-877-411-8727.

Buyer shall provide Seller with remote access to Buyer's computers on which the Software is installed. Seller shall provide Updates and Upgrades to the Software via remote connection or



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at its sole discretion, load the software onto the system while on site. All media used to load software on-site shall remain in the possession and control of Seller. Should the Buyer request any on-site maintenance services, Seller reserves the right to charge its standard applicable service fees plus expenses related to such services.

Seller does not represent or warrant that (a) the Equipment or Software shall meet any or all of Buyer's particular requirements; (b) the operation of the Equipment or Software shall be error-free or uninterrupted.

**3. TERM OF THIS AGREEMENT.** The term of this Agreement shall commence on the Effective Date set forth in the Agreement, and shall continue through June 30, 2026, unless (1) this Agreement is cancelled in accordance with Article 4 of the Agreement, Termination, Remedies, and Force Majeure; or (2) if Buyer elects to exercise renewal option(s) pursuant to Article 4 OPTION TO RENEW, then, in that event, upon expiration of the term of renewal.

**4. OPTION TO RENEW.** Option to Renew for two (2) additional (1) year periods is provided for in Attachment B. Buyer must exercise the option to renew prior to expiration of this Agreement including this Exhibit. If more than one (1) option to renew is contained in Attachment B, Buyer must exercise any subsequent option to renew prior to the expiration of the then current option.

**5. PAYMENT AND PRICING TERMS.** Buyer shall pay Seller on a "firm fixed price" basis, in US dollars, in accordance with the Maintenance Plan Fees, attached to and, by this reference, incorporated into this Agreement including this Exhibit. Terms of payment shall be net thirty (30) days from date of invoice. If Buyer determines that an invoice does not comply with the terms of this Agreement including this Exhibit, Buyer shall notify Seller in writing, via certified mail, within seven (7) business days of receipt of invoice. Buyer shall pay all undisputed portions of the invoices submitted by Seller within the payment terms stated herein.

In the event Buyer declines, for any reason, to pay any invoice(s) when due, in addition to any other rights reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. In addition, Seller reserves the right to assess a monthly fee of two percent (2%) of the open balance payable to Seller by Buyer. Buyer understands and agrees that the two percent (2%) fee constitutes an administrative cost rather than a penalty.

Time and Material rates are subject to change with notice and are set forth under Attachment B. Time and Material rates shall apply to any repair services for any Equipment covered under Article 8, NO FAULT FOUND / NO TROUBLE FOUND EQUIPMENT RETURNS, and any Equipment and Software covered under Article 7, EQUIPMENT AND SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE.

Seller shall invoice Buyer at the address set forth below for services provided hereunder.

| Invoice a dress:   |
|--|
| Fresno Area Express Administration<br>Attn: Information Services Supervisor<br>2223 G Street<br>Fresno, CA 93706 |
|  |

**6. TAXES AND FEES.** The prices stated do not include any state, federal or local sales or excise taxes, or duties, now in force or which may

be enacted in the future, and may be applicable to the sale, delivery or use of goods. Buyer expressly agrees to pay Seller, in addition to the prices stated, the amount of any such taxes which may be imposed upon or payable by Seller. Buyer shall provide tax exemption certificate if Buyer is tax exempt.

**7. EQUIPMENT AND SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE.**

In the event that Equipment and Software covered under the Agreement is (i) subjected to any of the conditions below by Buyer or any Third Parties or (ii) excluded from maintenance services by notification of Seller, such Equipment and Software shall be excluded from maintenance service coverage.

- A. Equipment or Software subjected to carelessness or negligence;
- B. Equipment or Software subjected to cannibalization or vandalism;
- C. Equipment or Software subjected to alteration or repair in a manner which conflicts with Seller's written repair procedures, specifications, and license terms;
- D. Equipment or Software subjected to inadequate packing, storage or handling;
- E. Equipment or Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to, Acts of War (declared or undeclared), terrorism, or the public enemy;
- F. Software altered as a result of Third Party service bulletins; and
- G. Equipment or Software excluded from maintenance services through a ninety (90) calendar day notification by Seller.

The parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects or performance issues in the Trapeze Software or the Trapeze Equipment which are caused by the actions or omissions of the Buyer, its employees, contractors or vehicle riders.

**8. NO FAULT FOUND ("NFF") / NO TROUBLE FOUND ("NTF")**

**EQUIPMENT RETURNS.** Equipment returned for repair under this Agreement including this Exhibit and subsequently determined by Seller to be NTF or NFF is subject to the Time and Material pricing contained in Attachment B.

**9. ROGUE UNIT.** Seller shall apply special testing and repair to any Rogue Unit at no additional charge to Buyer. Any special testing and repair shall not be subject to Article 13, TURN AROUND TIME ON EQUIPMENT RETURNS.

**10. EQUIPMENT RETURNS.** Buyer shall send all Equipment covered by the Agreement directly to the designated Seller Service Center outlined in the Return Materials Authorization ("RMA") Request Process, Attachment D. Upon repair, Seller shall return the Equipment to Buyer's designated receiving facility, or other locations as designated by Buyer's applicable Return Order. Cost of shipping to the designated Seller Service Center shall be borne by Buyer. Cost of shipping the repaired Equipment to the Buyer's facilities shall be borne by Seller unless the Equipment is deemed NFF / NTF.

**11. EQUIPMENT PARTS SUBSTITUTION.** Seller reserves the right to substitute functionally equivalent parts for those parts returned to Seller for repair.

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**12) REPAIR/ DIAGNOSIS DOCUMENTATION.** Prior to delivery to Seller of Equipment to be repaired, Buyer shall provide Seller with Buyer's normal return order, which shall include the following information:

- A. Date of performance anomaly;
- B. Vehicle Number;
- C. Detailed system description of performance anomaly;
- D. Type number, part number, and serial number of the Equipment;
- E. Buyer Return/ Repair Order Number; and,
- F. Ship To address and Contact Name for return of Equipment to Buyer.

**13) TURNAROUND TIME ON EQUIPMENT RETURNS.** Seller shall provide a Turnaround Time of thirty (30) calendar days for Equipment listed in Attachment A which is returned to Seller in accordance with Attachment D.

**14) DOCUMENTATION OF SOFTWARE DIFFICULTY.** Upon the identification of a possible fault or difficulty within any of the Software to be supported hereunder, Buyer shall promptly issue a trouble report to Seller that shall include the following information:

- A. Date of performance anomaly;
- B. Software module in question and location of where Software is installed;
- C. Detailed system description of performance anomaly;
- D. Part number or version number of Software and severity/ impact to Buyers operations; and
- E. Contact name and phone number.

The trouble report information shall also be communicated verbally to Seller at 1-866-778-5572. Seller shall forward the trouble report to the designated repair technician.

**15) CHANGES TO EQUIPMENT AND SOFTWARE.** Seller may issue Service Notifications indicating recommended or mandatory changes to the Equipment and Software covered under this Agreement.

**16) CHANGES TO AGREEMENT.** Seller and Buyer may, by mutual agreement and subsequent written amendment, make changes to this Agreement including this Exhibit. Implementation of any change not covered under this Agreement including this Exhibit shall be chargeable in accordance with Seller's current pricing. In addition, Buyer shall be entitled to acquire a license to new products at Seller's then current license fees. Upgrades and new products will be provided with updated documentation where available and appropriate.

**17) LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE FEES PAID TO SELLER DURING INITIAL 3 YEAR TERM. IF OPTIONAL MAINTENANCE YEARS ARE EXERCISED, THE LIABILITY CAP SHALL BE INCREASED IN THE AMOUNT OF EACH OPTIONAL MAINTENANCE YEAR FOR YEARS 4 AND

5, AT SUCH TIME AS EACH OPTIONAL YEAR IS EXERCISED. THE FOREGOING LIABILITY CAP DOES NOT APPLY TO 3<sup>rd</sup> PARTY CLAIMS RESULTING FROM SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**18) NOTUSED.**

**19) NOTUSED.**

**20) PATENT, PROPRIETARY RIGHTS, COPYRIGHT AND TRADEMARK INDEMNITY.** Seller shall retain all rights in patents, copyrights, trademarks, and trade secrets. Furthermore, neither the Agreement nor the delivery of any work hereunder shall be construed as granting, either by estoppel or otherwise, any right in, or license under, any present or future data, drawings, plans, ideas or methods disclosed in this Agreement or under any invention, patent, copyright or trade secret now or hereafter owned or controlled by Seller. Software utilized under this Agreement is proprietary and ownership of the software remains with Seller and/or its subcontractors, as the case may be. Subject to Article 5 of the Agreement, Buyer agrees to: (1) take reasonable steps to maintain Seller's and subcontractors rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where Buyer may disclose the software to designated federal representatives under a nondisclosure agreement executed by both parties, (3) not use or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates, patches or Upgrades, on any equipment other than the equipment on which it was originally installed, without Seller's written consent.

Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright which covers, or alleges to cover, the product described herein in the form sold by Seller. Seller agrees that it will pay all sums, which, by final judgment or decree in any such suits, may be assessed against Buyer on account of such infringement, provided that Seller shall be given (i) prompt written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of Buyer to continue the use, as contemplated, of the product so purchased. If, in any such suit so defended, the product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for Buyer, or replace the same with a non-infringing product, or modify said product so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing product and refund the purchase price less a reasonable allowance for use, damage or obsolescence.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR PATENT AND/OR COPYRIGHT INFRINGEMENT.

**21) NOTUSED.**

**22) NOTUSED.**

**23) NOTUSED.**

**24) DISPUTES.** The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by

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negotiation in good faith between executives who have the authority to settle the dispute. Either Party shall give the other Party written notice of any dispute not resolved in the ordinary course of business. Within seven (7) business days after delivery of such notice, the Party receiving notice shall submit to the other a written response thereto.

All reasonable requests for information made by one Party to any other shall be honored in a timely fashion. All negotiations conducted pursuant to this Article (and any of the Parties' submissions in contemplation hereof) shall be kept confidential by the Parties and shall be treated by the Parties and their representatives as compromise and settlement negotiations under the Federal Rules of Evidence and any similar state rules.

~~25) **NOT USED.**~~

~~26) **TRADE SECRETS.**~~ Buyer acknowledges that all Trade Secrets relating to or concerning the TransitMaster™ system, including any modifications made thereto, are owned by Trapeze or Trapeze has the applicable rights of use and Buyer will maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without Seller's prior written consent. Buyer shall prohibit any persons other than Buyer employees from using any components of the TransitMaster™ system and Buyer shall restrict the disclosure and dissemination of all Trade Secrets reflected in the TransitMaster™ system to Buyer employees who are bound to respect the confidentiality of such Trade Secrets. These obligations of confidentiality will survive termination of the Agreement.

~~27) **MEDIA AND PUBLICATION.**~~ Upon reasonable notice and consultation with the Buyer, Seller shall be entitled to publish press releases and other general marketing information related to the Agreement and the work done hereunder. Except for the foregoing, and subject to the strict requirements of the law, neither party will communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work performed under the Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

~~28) **DATA/DATABASE OWNERSHIP.**~~ The license to use the Seller's TransitMaster™ database is granted to Buyer solely for the development of internal reports by Buyer and for the integrated operation of Trapeze Equipment and Trapeze Software components. Unless expressly included herein, all other access rights to the Seller's TransitMaster™ database are excluded from this Agreement, and the Buyer shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Seller's TransitMaster™ database. However, Buyer shall retain ownership of the raw data that is inputted into the Seller's TransitMaster™ database, and export this raw data (i) when needed to support business activities and (ii) created directly by Buyer's employees.

~~29) **NOT USED.**~~

**ATTACHMENT A to Exhibit A****SCHEDULE OF COVERED SOFTWARE & EQUIPMENT****SOFTWARE**

The following Software modules and workstations are released and installed as part of Fresno Area Express d/b/a FAX TransitMaster™ system.

Table 1 – Covered Software Modules and Workstations

| Item | Description  |
|------|--|
| 1    | BASE TRANSITMASTER™ FIXED ROUTE CONTROL CENTER SOFTWARE  |
| 2    | GIS AND SURVEY APPLICATION TOOLS   |
| 3    | FIXED ROUTE AND DEMAND RESPONSE OPERATIONS SCHEDULING SYSTEM INTERFACE   |
| 4    | BASE TRANSITMASTER™ COMMUNICATIONS SOFTWARE  |
| 5    | STANDARD AVL AND COMMUNICATION MOBILE SOFTWARE FOR VEHICLES, INCLUDING: <ul style="list-style-type: none"> <li>• (123) FIXED ROUTE</li> <li>• (54) DEMAND RESPONSE</li> <li>• (4) Non-Rev AVL only</li> <li>• (2) BUS-IN-A-BOX (“BIAB”)</li> </ul> |
| 6    | LOUD AND CLEAR MOBILE SOFTWARE   |
| 7    | ANNUNCIATOR STUDIO   |
| 8    | APC INTERFACE SOFTWARE   |
| 9    | TRANSITMASTER™ RADIO NETWORK CONTROLLER (“RNC”) SOFTWARE   |
| 10   | TRANSITMASTER™ WORKSTATIONS SOFTWARE INCLUDES: BUSOPS/AVL MAP, MOBILE DISPATCH, SYSTEM ADMINISTRATOIN, AND OTHER MISCELLANEOUS TRANSITMASTER™ APPLICATIONS NOT DEFINED   |
| 11   | GTFS-RT INTERFACE SOFTWARE   |
| 12   | HERE MAP DATA FOR TURN-BY-TURN MOBILE APPLICATION – (177 LICENSES)   |
| 13   | AUTOMATED PASSENGER COUNTING (“APC”) INTERFACE SOFTWARE – (123 LICENSES)   |
| 14   | DEVICE MANAGEMENT APPLICATION – (177 LICENSES)   |
| 15   | VEHICLE INTELLIGENCE APPLICATION – (123 LICENSES)  |
| 16   | SIERRA WIRELESS AIRLINK – (177 LICENSES)   |

**Software Maintenance Program Pricing includes:**

- Software modules as noted in Table 1
- 24 x 7 Remote priority 1 technical support via the Vontas Customer Care Service Desk
- 8 am to 8 pm EST business day technical support for lower priority issues via the Vontas Customer Care Service Desk
- Central System and mobile vehicle system software support
- Licensed Software interface support (in-vehicle interfaces are included; central system interfaces may be separately priced)
- Software license for one (1) Software update and upgrades including Vontas deployment, configuration, and training services for (1) Software upgrade during the 3-year maintenance term, as described in Attachment D (additional upgrades, ancillary training services costs, and configuration of new feature sets may be separately priced).
- One (1) Vontas Customer Engineer on-site for two (2) business weeks annually to engage in consultative services

- Two (2) annual ThinkTransit Conference general session registrations per year (FAX responsible for expenses)
- On-line tracking ability for queued service tickets

## EQUIPMENT

The following Equipment installed as part of the Fresno Area Express d/b/a FAX TransitMaster™ system.  
Table 2 – Covered Equipment and Quantities

| Item | Description                                    | QTY |
|------|--|-----|
| 1    | STANDARD HW SUPPORT - FIXED ROUTE xVI-VLU/MDT  | 123 |
| 2    | STANDARD HW SUPPORT – BIAB                     | 2   |
| 3    | STANDARD HW SUPPORT – DEMAND RESPONSE xVLU/MDT | 54  |

### Equipment Maintenance Program Pricing includes:

- Equipment and quantities as noted in Table 2
- Return Material Authorization (“RMA”) coordination with FAX’s staff
- Thirty (30) calendar day repair turnaround time from receipt at Vontas facility to FAX’s facility
- On-line tracking capability for queued RMAs
- Repair at the Vontas facility



**ATTACHMENT B to Exhibit A****Pricing & Payment Schedule**

The following three (3) year pricing - with optional years four (4) and five (5) - includes all future Software and Hardware costs of both preventive and corrective maintenance as outlined in this agreement:

| Item Description                                  | Quantity | ANNUAL PRICE   |                |                |                |                |
|---|----------|----------------|----------------|----------------|----------------|----------------|
|   |          | Year 1         | Year 2         | Year 3         | Year 4         | Year 5         |
|   |          | Base           | Base           | Base           | Option         | Option         |
|   |          | Maintenance    | Maintenance    | Maintenance    | Maintenance    | Maintenance    |
|   |          | 7/2023-6/2024  | 7/2024-6/2025  | 7/2025-6/2026  | 7/2026-6/2027  | 7/2027-6/2028  |
| Standard SW Support - OnRoute Fixed Route Vehicle | 123      |                |                |                |                |                |
| Standard SW Support - Paratransit Vehicle         | 54       |                |                |                |                |                |
| Standard SW Support - Non-Revenue Vehicle         | 4        |                |                |                |                |                |
| Standard SW Support - BIAB                        | 2        |                |                |                |                |                |
| Software Maintenance Base                         |          | 196,724        | 206,475        | 216,780        | 227,578        | 239,044        |
| APC Interface - Dilax                             | 123      | 6,519          | 6,765          | 7,134          | 7,503          | 7,872          |
| GTFS-RT   | 1        | 18,541         | 19,468         | 20,441         | 21,463         | 22,537         |
| Here Map (TbT)                                    | 177      | 2,655          | 2,655          | 2,832          | 3,009          | 3,186          |
| Device Management                                 | 177      | 0              | 28,143         | 29,559         | 30,975         | 32,568         |
| Vehicle Intelligence                              | 123      | 13,161         | 55,350         | 58,056         | 61,008         | 64,083         |
| Modem Airlink                                     | 177      | 25,090         | 35,046         | 36,816         | 38,763         | 40,710         |
| Software Maintenance - Additional Modules         |          | 65,966         | 147,427        | 154,838        | 162,721        | 170,956        |
| Standard HW Support - Fixed Route V8/TMDT         | 177      |                |                |                |                |                |
| Standard HW Support - BIAB                        | 2        |                |                |                |                |                |
| Hardware Maintenance Base                         |          | 58,433         | 61,363         | 64,476         | 67,770         | 71,070         |
| OnRoute Software Upgrades                         | 1        | 42,000         | 44,100         | 46,305         | 48,620         | 51,051         |
| Additional On-site Labor & Travel Days            | 5        | 11,025         | 11,576         | 12,155         | 12,763         | 13,401         |
| Professional Services Base                        |          | 53,025         | 55,676         | 58,460         | 61,383         | 64,452         |
| Management Discount                               |          | (36,666)       | (46,152)       | (48,466)       | (50,907)       | (53,461)       |
| Discounts Base                                    |          | (36,666)       | (46,152)       | (48,466)       | (50,907)       | (53,461)       |
| <b>Total Annual Maintenance Agreement</b>         |          | <b>337,482</b> | <b>424,788</b> | <b>446,088</b> | <b>468,547</b> | <b>492,060</b> |

Figure 1. three (3) year pricing with optional years four (4) and five (5)

**Coverage term:**

- The *base* coverage term will span July 1, 2023, to June 30, 2026. (See Figure 1 for per annum pricing details). *Optional* years will continue coverage to June 30, 2028.

**Invoicing:**

- Invoicing occurs annually, typically 90-days in advance of the coverage term anniversary date except for the first year
- Additional charges may apply more frequent billing (PLUS 1.5% quarterly).
- Coverage is not in effect until payment is received by Vontas
- Lapses in coverage are subject to additional charges to bring coverage current

**ATTACHMENT C to Exhibit A**

**RETURN MATERIAL AUTHORIZATION ("RMA") PROCESS**

Buyers (or authorized representative) who have equipment needing repair, shall follow the procedure outlined below:

Buyer (or authorized representative) provides to Seller: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto <https://collaborate.vontas.com/home> and selecting "Request an RMA" on the left side. You will need to enter the following information. Please note one RMA per serialized item is required.

- a) Part Number
- b) Serial Number
- c) Failure description
- d) Return shipping address

A complete and accurate description of the condition or problem of the component or unit and the initial trouble shooting shall be done by the Buyer (or authorized representative).

The Buyer (or authorized representative) shall ship the unit to:

Trapeze Software Group, Inc. dba: Vontas  
5265 Rockwell Dr. NE  
Cedar Rapids, IA 52402  
Attention: RMA Department  
1-888-392-0337

**Packing**

- Buyer (or authorized representative) shall pack all returned units carefully, using appropriate packing material. All returns are Buyer property and must be protected during shipping and through the entire return process.
- Use the values on the commercial invoice for entering the 'Value for Customs' on shipping forms (for international shipments).
- Do not enter a 'Total Declared Value for Carriage' (for international shipments).
- Mark the RMA number on the top of the outside boxes.
- Attach one copy of the commercial invoice to each box (for international shipments).
- Attach the waybill.
- If the quantity or serial numbers are not filled out correctly on the commercial invoice, customs may hold the shipment, or the shipment may be refused.

**Please Note**

- Buyer is responsible for shipping to and from Vontas on all non-warranty/non-maintenance repairs and per the agreement on warranty/maintenance repairs.
- Refer to contractual T's & C's regarding damaged equipment and repair turn times.

If you have any questions, please contact our Customer Care Department ([customercare@vontas.com](mailto:customercare@vontas.com)).

## ATTACHMENT D to Exhibit A

*Example Statement of Work for TransitMaster™ Software Upgrade***General Description of Project:**

This Statement of Work ("SOW") describes the typical tasks to be performed by Vontas for a TransitMaster™ ("TM") Fixed Side (Dispatch) Software upgrade for the TM system installed at FAX. Tasks involve the backup of the existing TM Software version and associated databases, the installation of the upgraded TM software, the configuration and operational state verification of the upgraded TM software. A refined SOW will be provided to FAX specific to the software version to be implemented.

**Implementation Goals and Objectives**

The primary goal of each TM Software upgrade is to migrate FAX to an upgraded TM Software version to take advantage of new features and functionality and achieve operational efficiencies. FAX will work in conjunction with Vontas to integrate the new Software and system configurations into their existing TM environments while ensuring that fleet downtime is minimized and service operations unaffected during the production environment upgrade. To further assist with the TM Software upgrade, Vontas will also provide services for training, data migration, limited testing, and Software deployment.

Following the notice to proceed, Vontas will provide remote project management and technical support services to complete the Software upgrade. Vontas will also provide training and support for Acceptance Testing activities, and to answer general questions and supporting issue resolution, as necessary.

FAX agrees that the TM Software upgrade will be completed independent of any other product upgrade(s), including Trapeze Back Office.

FAX caused delays exceeding two (2) weeks may result in suspension of the TM Software upgrade and rescheduling the upgrade to a later appointment in the Vontas Upgrade Calendar.

**Professional Services*****Personnel***

To ensure a successful completion of the TM Software upgrade, Vontas will utilize the following professional services personnel:

- **Project Manager:** The centralized point of contact for the upgrade project. The project manager is responsible for coordinating project schedules, deliverables and resources required to deliver the new TM solution.
- **Customer Engineer:** The technical implementation resource tasked with leading the project and ensuring technical project deliverables are developed in accordance with the project schedule and requirements. The customer engineer will be the lead technical resource providing configuration, validation, training, and consultative services.
- **Network Engineer:** The resource tasked with coordinating the evaluation of FAX's physical network for the TM upgrade and the main Vontas point of contact for all network and infrastructure design for the TM system and its role in Software upgrade implementation. Services provided by the network

engineer include analyzing existing network infrastructure, providing recommendations and planning for a solution that best meets FAX's architecture requirements.

## Implementation Methodology

This project will be executed in a phased approach, with key activities for each phase identified below.

| Phase                                   | Key Activities   |
|---|--|
| <b>Initiation</b>                       | <ul style="list-style-type: none"> <li>• Create preliminary work plan and project schedule</li> <li>• Deliver project kick-off meeting</li> </ul>  |
| <b>Planning</b>                         | <ul style="list-style-type: none"> <li>• Conduct data and network review</li> <li>• Deliver project documentation: <ul style="list-style-type: none"> <li>○ Project Schedule</li> <li>○ Network Assessment</li> <li>○ Acceptance Test Plan</li> <li>○ Training Agenda</li> </ul> </li> </ul>   |
| <b>Execution</b>                        | <ul style="list-style-type: none"> <li>• Remotely install test environment</li> <li>• Support test environment integration</li> <li>• Delivery of training new features and functionality pre-production</li> <li>• Acceptance Testing activities, with Vontas support</li> <li>• Production Upgrade Deployment Plan</li> <li>• On premises production environment upgrade</li> <li>• Post upgrade dispatch support</li> </ul> |
| <b>Monitoring &amp; Project Closure</b> | <ul style="list-style-type: none"> <li>• Remote monitoring &amp; support</li> <li>• Complete project acceptance</li> </ul>   |

## Project Phases

### Initiation

#### *Kick-Off*

Following contract execution, Vontas and FAX will hold a remote project kick-off meeting to align stakeholders on project scope and timelines as well as review roles, responsibilities, key risks and preliminary project schedule. Project teams from both Vontas and FAX are expected to attend the kick-off meeting. Vontas and FAX Subject Matter Experts (SMEs) will meet, discuss, and define the project schedule and review FAX operations pertaining to the Software upgrade implementation. The kick-off meeting is expected to take up to two (2) hours, and upon completion, a preliminary project schedule will be agreed upon by both parties.

Other project activities will not commence until the project kick-off meeting will be completed and agreement between Vontas and FAX reached on the preliminary project schedule, as well as any specific project milestones. Following the completion of the remote kick-off meeting, additional meetings will be arranged to finalize the remaining project activities.

## Planning

### Network Assessment

Vontas will provide FAX remote network services in the form of two (2) conference calls to review FAX's current TransitMaster™ system, including (as applicable) WDV's, app server(s), and database server(s) needed to support the TM upgrade. Following completion of the review, Vontas will share a draft TM network assessment document with FAX to review and provide comments.

### Acceptance Testing Plan

During the Execution phase, Vontas will work with FAX to perform Acceptance Testing and test the new upgraded Software solution. To support this testing, Vontas will provide an Acceptance Testing Plan document validating key Software features and functionality with emphasis on the following areas:

- Dispatch user interface with new map features and functionality tiles
- Incident reports and service adjustments
- System administration and configuration

In addition to test cases, the Acceptance Testing Plan document will also include details around testing timelines and processes, as well as roles and responsibilities related to the Acceptance Testing activities.

The Acceptance Testing Plan will define the roles and responsibilities of FAX and Vontas regarding pre-delivery release testing (performed by Vontas) and User Acceptance Testing (performed by FAX). Once agreed upon, the Acceptance Testing Plan will define and limit the appropriate testing applicable to the TransitMaster™ upgrade.

### Training Agenda

Vontas will provide FAX with an agenda outlining specific training activities related to the features and functionality of the newly upgraded Software. The training session(s) will be focused on upskilling FAX's dispatch controllers, system administrators, and vehicle operations on the TransitMaster™ dispatch system and the newly organized "tiled" user interface (UI) for transit operations. The training content will also benefit those FAX employees who would like to become more proficient with the features and functionalities of the TransitMaster™ system.

The Training Agenda will include session descriptions inclusive of suggested TransitMaster™ training topics and duration. User manuals, documentation, webinars and/or training materials will be listed where applicable. Depending on FAX staff responsibilities, target audiences may overlap.

### Document Review

FAX will have five (5) business days to complete a review of the Planning phase documents, after which the Vontas project manager will coordinate a meeting with the FAX project team to review any comments. Following this meeting, Vontas will revise the documents as necessary to address comments and feedback and will provide a finalized version of the documents, as well as a finalized project schedule.

## Execution

### Test Environment

The first objective of the TM upgrade is to verify the status of the Software in FAX's Test Environment. This environment will serve as a testing and training platform in the introduction of the upgraded TM software. All services will be provided remotely during this phase of the project.

In parallel, Vontas will create a testing environment within the Vontas ITS deployment lab which simulates FAX's ITS environment. This will require FAX to provide a current backup of their production TransitMaster™ databases.

### *Typical Pre-Production TM Training (may vary depending on upgrade)*

Once Vontas has validated that the upgraded TM Software is working properly in FAX's test environment, Vontas will provide the following training to support FAX users regarding the new features and functionality available in the upgraded version of TransitMaster™:

Dispatcher Workstation Operations – "Train-the-Trainer": new features and functionality (2 days)



Vontas will provide up to two (2) days of training to FAX managers, dispatch personnel and/or dispatch supervisors. This training will be on-site, and it will use FAX's environment to review and provide training for the new features and functionality of TM Bus Operations ("TM BusOPS"). Dispatch training shall focus on the new AVL map application, incident reporting, service adjustments user interface refresh, as well as other key new features.

#### System Overview and Administration – (2 days)

Vontas will provide up to two (2) half-day sessions to FAX system administrators and up to one (1) full day session for Advanced System Administrator training. These sessions shall be on-site using FAX's test TM to review and provide training of the new features and functionality of TransitMaster™ system configuration, incident reports configuration, and their links to TM BusOPS.

When appropriate and mutually agreed to, online Webinars may be conducted in place of on-site training. All training and supporting training materials and system manuals will be provided in English. Vontas will work with FAX to schedule training around the transit agency operations to minimize the operational impact of the training.

#### Acceptance Testing

Acceptance Testing will commence after the test environment upgrade and training are completed. With Vontas support, FAX shall complete Acceptance Testing of the TM system and its new features and functionality, as well as integration points to Vontas Back Office Software. The TM system interfaces with existing operations procedures to create an integrated transit solution, where core test features include Mobile Software, Incident Reports, Service Adjustments, and Reporting.

During Acceptance Testing, FAX will document and prioritize any defects encountered during the testing period (if any exist). Following the completion of a round of testing, FAX will supply Vontas with a complete list of all perceived defects, which Vontas will assess for root cause and resolve where appropriate based on the severity levels defined below:

- **Critical** – system cannot function, or site is down (e.g., results in the failure of fundamental business process or in the shutdown of the system being tested).
- **Major** – system is still functioning but is causing major business risk to MiWay. The defect(s) cannot be addressed through a work around solution.
- **Minor** – system is still functioning but is causing minor or short-term inconveniences with a satisfactory process available to meet business needs.

FAX will identify the priority of each defect and indicate the desired resolution sequence (1 = soonest resolution desired). Vontas will make best reasonable effort to resolve defects of the same severity levels based on sequential order.

If no defects are identified during Acceptance Testing, the upgraded Software will be deemed "production ready" and all TM Software will be deployed in FAX's production environment. If defects are identified, Vontas will evaluate and work to resolve them, after which FAX will be asked to validate their resolution by executing another round of Acceptance Testing. Once testing and training have been completed, the Production Upgrade activities will begin.

#### Production Upgrade

The Production Upgrade will commence with Vontas providing FAX a detailed deployment plan for approval and consideration of resources needed to carry out the production upgrade activities, as well as operational expectations during all production upgrade on-site work.

Deployment activities involve transitioning from FAX's production databases to the newly converted upgrade system version. During the deployment and production upgrade, Vontas, with FAX assistance, will also configure each server with the upgraded version of TransitMaster™. Note that mobile Software may be upgraded as well if required or deemed necessary during system testing.

Many critical activities are completed during the production upgrade. Vontas shall provide one (1) customer engineer on-site for up to four (4) days to perform the production upgrade and post-upgrade dispatch support, which includes the following activities:

- Transition server data (database conversion) to the new TM version, including Application and DataMart servers
- Signup import & merge, if applicable
- Creating & stage Mobile Route files
- Replicating set-up, if applicable
- Configuration of Cloud TM WVDs, if applicable
- Validating FTP service
- Validating dispatch functionality
- Validating system administration functionality
- Validating real time systems, if applicable
- Validating error logs

Upon completion of the Production Upgrade, the project will enter the performance monitoring period.

### Monitoring and Project Closure

Following the completion of Production Upgrade activities, FAX will have fourteen (14) calendar days in which to monitor and evaluate the performance of the newly upgraded TM system. Vontas will require remote access to the FAX TM application server during the monitoring period.

The objective of this final project phase is to validate the performance of the new TM Software and to assess system stability in a production capacity. During this phase of the project, FAX and Vontas personnel will utilize the upgraded software features and functionality for a period of fourteen (14) calendar days in the production environment and make note of system performance.

#### Testing Defect Review and Resolution

Should a critical defect be experienced during the monitoring period, the monitoring phase will be stopped. Once a defect is resolved, FAX will test and validate the resolution by executing retests and regression testing of the affected test cases to ensure nothing else is impacted. The monitoring period will resume for the remaining duration, resulting in a total fourteen (14) calendar day availability test period.

#### Project Closure

Once the new Software solution is accepted, on-going support will be transitioned to and supported through Vontas' long-term maintenance support program. At this time, the project will be considered complete and project closure will be processed.

## Responsibilities and Deliverables

| Phase             | Vontas Responsibilities   | FAX Responsibilities   | Deliverables   |
|-------------------|---|--|--|
| <b>Initiation</b> | <ul style="list-style-type: none"> <li>• Lead project kick-off meeting</li> <li>• Work with FAX in the development of the project schedule</li> </ul>   | <ul style="list-style-type: none"> <li>• Assist in developing the project schedule</li> <li>• Participate in kick-off meeting and discussion</li> </ul>  | <ul style="list-style-type: none"> <li>• Kick-off meeting</li> <li>• Preliminary project schedule</li> </ul> |
| <b>Planning</b>   | <ul style="list-style-type: none"> <li>• Remote network review</li> <li>• Lead project documentation efforts</li> <li>• Network assessment</li> <li>• Acceptance Test Plan with use cases</li> <li>• Training Agenda</li> </ul> | <ul style="list-style-type: none"> <li>• Assist in developing the project documents</li> <li>• Support data and network review</li> <li>• Review and approve Network assessment, Acceptance Test Plan and Training Agenda</li> </ul> | <ul style="list-style-type: none"> <li>• Project documentation</li> </ul>                                    |

| Phase                                   | Vontas Responsibilities   | FAX Responsibilities  | Deliverables   |
|---|---|---|--|
| <b>Execution</b>                        | <ul style="list-style-type: none"> <li>• Install and configure test environment TM Software</li> <li>• Deliver pre-production training</li> <li>• Support Acceptance Testing activities</li> <li>• On-site production upgrade</li> <li>• Post upgrade dispatch support</li> </ul> | <ul style="list-style-type: none"> <li>• Provide Vontas access to TM servers</li> <li>• Participate in training</li> <li>• Conduct Acceptance Testing</li> <li>• Review and approve Production Deployment Plan</li> <li>• Support production upgrade</li> </ul> | <ul style="list-style-type: none"> <li>• Training</li> <li>• Production Deployment Plan</li> <li>• TM Software deployed into production</li> </ul> |
| <b>Monitoring &amp; Project Closure</b> | <ul style="list-style-type: none"> <li>• Support FAX during fourteen (14) day monitoring period</li> <li>• Support and resolution efforts, if applicable</li> </ul>   | <ul style="list-style-type: none"> <li>• Actively monitor and review TM Software performance</li> <li>• Provide Vontas with final acceptance of services and deliverables</li> </ul>  | <ul style="list-style-type: none"> <li>• Project acceptance</li> </ul>   |

**EXHIBIT B:**

**INSURANCE REQUIREMENTS**  
**Service Agreement between City of Fresno (City)**  
**and Trapeze Software Group, Inc. (Service**  
**Provider), dba Vontas**  
**TRANSITMASTER™ EQUIPMENT AND SOFTWARE MAINTENANCE**

**MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Technology Liability (Errors and Omissions) insurance appropriate to Service Provider's profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by Service Provider in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

**MINIMUM LIMITS OF INSURANCE**

Service Provider, or any party the Service Provider subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;

- (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
- 2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
- 3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
- 4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
- 5. **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:
  - (i) \$2,000,000 per claim/occurrence; and,
  - (ii) \$4,000,000 policy aggregate

#### **UMBRELLA OR EXCESS INSURANCE**

In the event Service Provider purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Service Provider shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Service Provider shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Service Provider shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration, and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability Insurance Policies are to contain, or be endorsed to contain, the following provisions:

- 1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Service Provider shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed



manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Service Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Service Provider's insurance and shall not contribute with it. Service Provider shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Service Provider and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

If the Technology Liability insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Service Provider.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Service Provider, Service Provider must purchase "extended reporting" coverage for a minimum of five years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice by certified mail, return receipt requested, has been given to City. Service Provider is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Service Provider shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Service Provider shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Service Provider, its principals, officers, agents, employees, persons under the supervision of Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

**SUBCONTRACTORS** - If Service Provider subcontracts any or all of the services to be performed under this Agreement, Service Provider shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no side agreement is required, Service Provider shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and Service Provider shall ensure that City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Service Provider, and City, prior to commencement of any work by the subcontractor.

#### **VERIFICATION OF COVERAGE**

Service Provider shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker.

**EXHIBIT C:****DISCLOSURE OF CONFLICT OF INTEREST****Service Agreement between City of Fresno  
and TRAPEZE SOFTWARE GROUP,  
dba VONTAS****PROFESSIONAL TRANSIT EQUIPMENT AND SOFTWARE MAINTENANCE SERVICES  
FOR ITS LICENSED TRANSITMASTER™ EQUIPMENT AND SOFTWARE**

|   |  | YES*                     | NO                       |
|---|--|--------------------------|--------------------------|
| 1   | Are you currently in litigation with the City of Fresno or any of its agents?  | <input type="checkbox"/> | <b>X</b>                 |
| 2   | Do you represent any firm, organization, or person who is in litigation with the City of Fresno?   | <input type="checkbox"/> | <b>X</b>                 |
| 3   | Do you currently represent or perform work for any clients who do business with the City of Fresno?  | <b>X</b>                 | <input type="checkbox"/> |
| 4   | Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno? | <b>X</b>                 | <input type="checkbox"/> |
| 5   | Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?                 | <input type="checkbox"/> | <b>X</b>                 |
| 6   | Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?   | <input type="checkbox"/> | <b>X</b>                 |
| * If the answer to any question is yes, please explain in full below. |  |                          |                          |

## Explanation:

For item #3, we may use the same bus  
manufacturers and or subcontractors.  
For #4, we have software licensed to  
Fresno.

☐ Additional page(s) attached.

  
 Signature  
 9/20/2023  
 Date  
 Peter Aczel  
 Name  
 Trapeze Software Group, Inc., dba Vontas  
 Company  
 5265 Rockwell Dr.  
 Address  
 Cedar Rapids, IA 52402  
 City, State, Zip

**EXHIBIT D:**  
**FEDERAL CONDITIONS**  
**FOR PROFESSIONAL SERVICES**  
**GREATER THAN \$250,000**  
**Service Agreement between City of Fresno and TRAPEZE SOFTWARE GROUP**  
**INC, dba VONTAS**  
**PROFESSIONAL TRANSIT EQUIPMENT AND SOFTWARE MAINTENANCE**  
**SERVICES FOR ITS LICENSED TRANSITMASTER™ EQUIPMENT AND**  
**SOFTWARE**

This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Federal Transit Administration, which requires that this contract/agreement contain the following clauses:

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

(1) The City and contractor/vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

(1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies, "49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

(2) The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. § 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

(3) The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **ACCESS TO RECORDS AND REPORTS**

(1) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(2) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(3) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

(4) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **FEDERAL CHANGES**

(1) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **TERMINATION**

(1) Termination for Convenience: The City of Fresno may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract close out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to be paid by contractor. If the contractor has any property in its possession belonging to the City of Fresno, the contractor will account for the same, and dispose of it in the manner the City of Fresno directs.

(2) Termination for Default: If the contractor does not deliver supplies in accordance with

the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract or if the contractor fails to comply with any other provisions of the contract, the City of Fresno may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(3) If it is later determined by the City of Fresno that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of, or are beyond the control of the contractor, the City of Fresno, after setting up a new delivery or performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

### **CIVIL RIGHTS**

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

(1) Nondiscrimination – In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the



Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor also agrees to include these requirements in each subcontract financed whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

#### **INCORPORATION OF FTA 4220.1F TERMS**

(1) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein

notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the City of Fresno to be in violation of the FTA terms and conditions.

(2) Flow Down – The incorporation of FTA terms has unlimited flow down.

## **SUSPENSION AND DEBARMENT**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the CITY. If it is later determined by the CITY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

(1) The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of California. In the event of litigation between the two parties, proper venue shall be laid in a court of competent jurisdiction in the County of Fresno, State of California.

(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)’s

Maintenance Manager. This decision shall be final and conclusive unless with ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Maintenance Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Maintenance Manager shall be binding upon the contractor and the Contractor shall abide by the decision.

(3) Pending final resolution of a dispute in hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

### **LOBBYING**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(3) The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**The certificate titled *Non Lobbying Certification* must be completed and returned with your bid. This certificate is labeled "EXHIBIT E"**

### **CLEAN AIR {If Required}**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**CLEAN WATER {If Required}**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**FLY AMERICA {If Required}**

Fly America Requirements:

(1) Definitions. As used in this clause- "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. "United States" means the 50 States, the District of Columbia, and outlying areas. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(2) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) If available, the contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(4) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

Stated Reason(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(5) The contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

#### **SEISMIC SAFETY {If Required}**

(1) The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### **ENERGY CONSERVATION {If Required}**

(1) The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE {If Required}**

(1) Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **ADA ACCESS**

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.

§ 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

#### **BUY AMERICA**

(1) The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

(2) A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification

with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**The certificate titled *Buy America Certification* must be completed and returned with your bid. This certificate is noted as Exhibit F**

### **NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT**

(1) The Contractor agrees that if a current or prospective legal matter that may affect the Federal Government emerges, the Contractor shall promptly notify the City of the legal matter in accordance with 2 C.F.R. §§ 180.220 and 1200.220.

(2) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(3) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(4) *Additional Notice to U.S. DOT Inspector General.* The contractor must promptly notify the City and U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(5) The Contractor further agrees to include the above clause in each subcontract, at every tier, financed in whole or in part with Federal assistance provided by the FTA.

### **SAFE OPERATION OF MOTOR VEHICLES {If Required}**

(1) *Seat Belt Use* - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company- owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or City.

(2) *Distracted Driver* - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official



business in connection with the work performed under this agreement.

**PROMPT PAYMENT {If Required}**

The Prime Contractor shall pay any Subcontractor for work that has been satisfactorily performed no later than thirty (30) days from the date of the Prime Contractor's receipt of each payment made by the City of Fresno. Additionally, within thirty (30) days of satisfactory completion of all work required of the Subcontractor, the Prime Contractor shall release any retainage payments withheld to the Subcontractor.

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The Contractor agrees to comply with 2 CFR 200.216 and Public Law 115-232, Section 889, and may not 1) procure or obtain; 2) extend or renew a contract to procure; or 3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system for this federally funded agreement. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.



**EXHIBIT E:**

NAME: Trapeze Software Group, Inc. dba Vontas

*Professional Transit Equipment and Software Maintenance Services for ITS Licensed TransitMaster  
Trapeze Software Group, Inc., dba VONTAS*

**NONLOBBYING CERTIFICATION  
LOBBY RESTRICTIONS**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature of Contractor's Authorized Official

Peter Aczel

Name and Title of Contractor's Authorized Official

9/20/2023

Date

**Exhibit F**

*Professional Transit Equipment and Software Maintenance Services for ITS Licensed  
TransitMaster Trapeze Software Group, Inc., dba VONTAS*

BIDDER'S NAME Trapeze Software Group, Inc. dba Vontas  
(Submit with Bid Proposal)

**BUY AMERICA CERTIFICATION**  
**49 C.F.R. § 661.6, for the Procurement of Steel, Iron, or Manufactured  
Products**

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date 9/20/2023  
Signature   
Company Name Trapeze Software Group, Inc., dba Vontas  
Name Peter Aczel  
Title General Manager