

**SERVICE AGREEMENT
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT (Agreement or Contract) is made and entered into effective the 1st day of July 2018, by and between the CITY OF FRESNO, a California municipal corporation (City or Recipient or Purchaser), and TRAPEZE SOFTWARE GROUP, INC., 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 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 7/1/18-6/30/21, 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 the Effective Date 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 the anything in this Agreement to the contrary, the parties agree that: (i) Service Provider shall be subject to the federal, state, and local government requirements set forth in **Exhibit D** as they apply to Trapeze's performance of this agreement; and (ii) the products sold and software licensed hereunder are off-the-shelf, such federal, state, and local government requirements 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 Trapeze's location during normal business hours; and
- i) not include any requirement that requires Trapeze 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

TRAPEZE SOFTWARE GROUP, INC.
A Delaware corporation

By: _____
Gregory A. Barfield, Director
Department of Transportation

By: Mark Miller
Name: MARK MILLER

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: DIRECTOR, CEO
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: Amanda Freeman 8/28/19
Amanda Freeman Date
Senior Deputy City Attorney

By: Brian Beattie
Name: BRIAN BEATTIE

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

Title: TREASURER
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention: Brian Barr, Assistant Director
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1418
FAX: (559) 488-1065

SERVICE PROVIDER:
Trapeze Software Group, Inc.
Attention: Heidi Wiebold
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

EXHIBIT A

SCOPE OF SERVICES

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

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

Trapeze Software Group, Inc.
Scope of TransitMaster™ Equipment And Software Maintenance Agreement

Trapeze Software Group, Inc. ("Seller", "Trapeze", 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

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, 2021, 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 address:
Fresno Area Express Administration Attn: Information Services Supervisor 2223 G Street 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.

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 3RD PARTY CLAIMS RESULTING FROM SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

18) NOT USED.

19) NOT USED.

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) NOT USED.

22) NOT USED.

23) NOT USED.

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

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

SCHEDULE OF COVERED SOFTWARE & EQUIPMENT

SOFTWARE

The following Software modules and workstations are released and installed as part of the FRESNO TransitMaster™ system.

Table 1 – Covered Software Modules and Workstations

Description
BASE TRANSITMASTER FIXED ROUTE CONTROL CENTER SOFTWARE
GIS AND SURVEY TOOLS
FIXED ROUTE AND PARATRANSIT SCHEDULING SYSTEM INTERFACE
BASE TRANSITMASTER COMMUNICATIONS SOFTWARE
TRANSITMASTER RADIO NETWORK CONTROLLER ("RNC") SOFTWARE FOR (2) RNC
INFO SERVER SOFTWARE
STANDARD AVL AND COMMUNICATION MOBILE SOFTWARE FOR VEHICLES, INCLUDING: <ul style="list-style-type: none"> ▪ (123) FIXED ROUTE ▪ (54) DEMAND RESPONSE
SUPPORT FOR TRANSITMASTER WORKSTATIONS
INCLUDES. BUS OPS/AVL MAP DISPATCH, MOBILE DISPATCH, SYSTEM ADMINISTRATION, AND OTHER MISCELLANEOUS TRANSITMASTER APPLICATION WORKSTATIONS
STANDARD CUSTOMER INFORMATION AND COMMUNICATION SOFTWARE FOR SIGNS <ul style="list-style-type: none"> ▪ (34) ONSTREET
LOUD AND CLEAR MOBILE SOFTWARE
ANNUNCIATOR STUDIO

Software Maintenance Program Pricing includes:

- Software modules and workstations as noted in Table 1. Workstation support assumes the number of workstations supported is already licensed.
- 24 x 7 Remote priority 1 technical support via the Trapeze Customer Care Service Desk.
- 8 am to 8 pm EST business day technical support for lower priority issues via the Trapeze 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 software updates and upgrades. Trapeze has included deployment services in the maintenance contract for two upgrades during the 5 year term of this agreement.
 - UPDATES are defined as bug fixes and patches for the then-current software version running on the FAX's TransitMaster™ system.
 - UPGRADES are defined as software releases containing new features and functionality enhancements.
- Two (2) Client Engineer visits for one (1) week each (total 10 business days) to consult, diagnose, repair, etc. annually has been provided. Expenses for the second week have been included in the maintenance schedule annually.

- Two (2) annual User Conference general session registrations per year have been provided. Expenses are the responsibility of FAX
- Monthly Web training session invitations.
- On-line tracking ability for queued service tickets.

EQUIPMENT

The following equipment covered by this Agreement includes all sub-assemblies except mobile radios. The part numbers are the master part numbers from which all serialized sub-components are referenced.

Table 2 – Covered Equipment and Quantities

Description	Seller's Part Number	Qty	Base/ Option
Mobile Data Terminal, Color (CMDT2) or newer	50T0120-001	53	Base
Integrated Vehicle Logic Unit (VI) or newer	50T0136-001	53	Base

Equipment Maintenance Program Pricing includes:

- Equipment and quantities as noted in Table 2.
- Return Material Authorization (RMA) coordination with Buyer's staff.
- Thirty (30) calendar day repair turn around time from receipt at Trapeze facility to Buyer's facility for Trapeze manufactured equipment
- On-line tracking capability for queued repairs.
- Repair at the Trapeze facility.

ATTACHMENT B

PRICING & PAYMENT SCHEDULE

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
		7/2018-6/2019	7/2019-6/2020	7/2020-6/2021	7/2021-6/2022	7/2022-6/2023
Standard SW Support - TransitMaster Fixed Route Vehicle	123					
Standard SW Support - TransitMaster Demand-Response Vehicle	54					
Standard SW Support - OnStreet Signs	34					
SOFTWARE MAINTENANCE - BASE		171,699	180,284	189,237	198,647	208,568
Standard HW Support - Fixed Route IVLU/C-MDT2 or newer	53					
HARDWARE MAINTENANCE - BASE		13,939	14,628	15,317	16,112	16,907
On site - 2nd week expenses (each year)	1					
LABOR Expenses for 2 Upgrades during the 5-Year period	2					
PROFESSIONAL SERVICES - BASE		44,000	46,200	48,510	50,937	53,482
MANAGEMENT DISCOUNT - MULTI-YEAR AGREEMENT						
DISCOUNTS - BASE		(22,964)	(24,111)	(25,306)	(26,570)	(27,896)
TOTAL ANNUAL MAINTENANCE AGREEMENT		206,674	217,001	227,758	239,126	251,061

Coverage term:

- The coverage term will span July 1st, 2018 to June 30, 2021, with two options through June 30, 2023..

Invoicing:

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

Optional Time & Materials ("T&M") Services:

- Customers with an active support agreement are eligible to request repair for hardware equipment not specifically covered under the maintenance agreement. T&M services may be initiated by 1) sending a Purchase Order to Trapeze for T&M repairs, and 2), requesting material return using the Return Material Authorization ("RMA") process, as described in Exhibit c.
- T&M services shall be directly invoiced upon completion of the work.
- After the diagnosis and testing is complete and a problem has been found, a quote for repair will be sent to the Buyer.
 - Buyer has fourteen (14) calendar days to respond to Trapeze with Buyer's desire to repair, or have Trapeze return the unit to the Buyer unrepai red.
 - If the Buyer chooses to not repair the unit, or if the Buyer exceeds the fourteen (14) calendar days without responding to Trapeze request for disposition on the unit, the unit will be returned to the Buyer. Time and Material rates and minimum fees shall apply.
- Equipment returned for repair determined by Trapeze to be No Trouble Found ("NTF") or No Fault Found ("NFF") is subject to the Time and Material rates and minimum fees.

Time & Materials Rate Schedule	
Bench Fee	\$275 minimum
Diagnosis and Testing	\$200.00/hour (1 hour minimum)
Equipment Repair Rates	\$200.00/hour plus Parts & Shipping

Other Optional Program Pricing includes:

- On-site Field Service Engineer is \$1,500 per day plus travel expenses.
- On-site Project Engineer is \$1,750 per day plus travel expenses.
- On-site Training is \$1,750 per day plus travel expenses.
- Deployment Services are \$1,750 per day, plus any applicable travel expenses
- Additional TransitMaster™ workstation license \$8,500; additional annual TransitMaster™ workstation software maintenance support \$1,750.
- The above daily labor rates are the standard rates at the time of writing this agreement, and are subject to change without notice.



ATTACHMENT C

RETURN MATERIAL AUTHORIZATION ("RMA") PROCESS

All items returned to Seller must have the following information presented prior to the issuing of a Return Material Authorization ("RMA") number. The reason for return (as specific as possible), the item(s) part number(s), serial number and Buyer contact. For vehicle installed equipment please provide the vehicle id, vehicle make model and vehicle year.

Buyers who have equipment needing repair, having received Trapeze approval for the repair shall follow the procedure outlined below:

Buyer (or authorized representative) has equipment needing repair.

Buyer (or authorized representative) provides to Seller: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto www.MyTrapeze.com and selecting "Request an RMA" on the left side. You will need to enter the following information:

- a) Serial number
- b) corresponding problem description for each device being returned
- c) return shipping address
- d) billing 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 and CRG (Customer Returned Goods) form to:

Trapeze Software Group
5265 Rockwell Dr NE
Cedar Rapids, IA 52402
Attention: RMA Department
1-877-411-8727

Packing

- Buyer (or authorized representative) places all equipment (EXCEPT IVLU's) in a nonstatic bag along with a copy of RMA form. IVLU's shall be sent in an ESD static sensitive bag. Seller will provide non-static bags at Buyer's request. Buyer shall place a copy of the CRG Form, which shall be provided by Seller at the time of the RMA request, inside the box or taped to the outside of the bag of the unit being returned. Buyer (or authorized representative) shall pack all returned units carefully, using packing peanuts and bubble wrap when necessary. 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.

Please note:

- Trapeze will provide proper packaging at a nominal fee if the units are not sent to us in original packaging or if the packaging is damaged.
- Buyer is responsible for shipping to and from Trapeze on all non-warranty/non-maintenance repairs and per the agreement on warranty/maintenance repairs.
- 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.

If you have any questions, please contact our Customer Care Department (cc@trapezegrp.com).

EXHIBIT B

INSURANCE REQUIREMENTS Service Agreement between City of Fresno (City) and Trapeze Software Group, Inc. (Service Provider) 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]**

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"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input checked="" type="checkbox"/>	<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?	<input checked="" type="checkbox"/>	<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"/>	<input checked="" type="checkbox"/>
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"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: For item #3, Trapeze may use the same

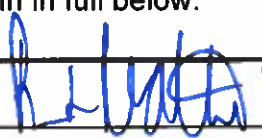
bus manufacturers and/or subcontractors.

For item #4, Trapeze has a contractual relationship

with the City of Fresno; we currently have software

licensed to the City of Fresno.

Additional page(s) attached.


Signature

AUGUST 16, 2019
Date

BRIAN BEATTIE
(Name)

Trapeze Software Group, Inc.
(Company)

5265 Rockwell Drive NE
(Address)

Cedar Rapids, IA 52402
(City, State Zip)

EXHIBIT D

FEDERAL REQUIREMENTS

Service Agreement between City of Fresno and TRAPEZE SOFTWARE GROUP INC

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

1. No Government Obligation to Third Parties

The Recipient and Contractor 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False, Fraudulent Statements or Related Acts

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 C.F.R. 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.

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. chapter 53, 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.

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.

3. Access to Third Party Contract Records

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 reasonable access at Contractor's location, during Contractor's normal business hours, 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.

4. Changes to Federal Requirements

With the exception of Contractor's ownership of its intellectual property and any bonding or liquidated damages requirements, the 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 the 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 within a reasonable time and failure to cure, shall constitute a material breach of this Contract. Notwithstanding the foregoing, should any law change during the performance of this Agreement which causes the scope, schedule, or deliverables to change, Contractor shall be allowed an equitable adjustment.

5. Civil Rights and Equal Opportunity

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. **Race, Color, Religion, 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.
3. **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.
4. **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.

6. **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).

Furthermore, prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the City makes to the prime contractor.

A DBE contract goal has not been established for this contract.

7. Federal Funding, Incorporation of FTA Terms and Federal Changes

Applicable and mandatory contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Except for Contractor's ownership of its intellectual property or any bonding or liquidated damages requirements, 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 knowingly perform any act, fail to perform any act or refuse to comply with any City of Fresno requests that would cause City of Fresno to be in violation of the FTA terms and conditions.

Except for Contractor's ownership of its intellectual property or any bonding or liquidated damages requirements, the Contractor shall at all times comply with all applicable and mandatory FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to knowingly comply within a reasonable time and failure to cure shall constitute a material breach of this Contract.

Notwithstanding the foregoing, the parties agree that the Contractor is selling an off the shelf solution. Should any laws change the performance, deliverables, or schedule of this Agreement, Contractor shall be allowed an equitable adjustment.

8. Government-Wide Debarment and Suspension

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:

1. Debarred from participation in any federally assisted award;
2. Suspended from participation in any federally assisted award;
3. Proposed for debarment from participation in any federally assisted award;
4. Declared ineligible to participate in any federally assisted award;
5. Voluntarily excluded from participation in any federally assisted award; or
6. Disqualified from participation in any federally assisted award.

By signing this Agreement, 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.

9. Lobbying Restrictions

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any City, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

10. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

11. Federal Energy Conservation Requirements

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.

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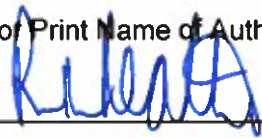
Lobbying Certification

The undersigned 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 City, 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 City, 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 sub-awards at all tiers (including subcontracts, sub-grants, 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.

BRIAN BEATTIE, TREASURER
Type of Print Name of Authorized Person and Title


Signature of Authorized Person

AUGUST 26, 2019
Date

