

SOFTWARE LICENSE AND MAINTENANCE AMENDMENT #5

This Amendment is made effective this _____ day of _____ 2019, between:

1. **Trapeze Software Group, Inc.**, a Delaware corporation, (successor in interest to Trapeze Software Group, Inc., an Arizona corporation) with a place of business at 5265 Rockwell Drive NE, Cedar Rapids, Iowa 52402, U.S.A. (Trapeze); and
2. **City of Fresno**, with its place of business at 2223 G Street, Fresno, California, 93706, U.S.A. (City, Fresno Area Express, FAX, or Licensee).

WHEREAS Trapeze and Licensee intend to amend the Software License and Maintenance Agreement made effective February 22, 2006, along with its four prior amendments (Agreement) in order to add the Trapeze OPS Sign-In Terminal (SIT) Software to the scope of the Agreement (Amendment).

Amendment to Agreement

NOW, THEREFORE, Trapeze and Licensee agree as follows:

1. The Trapeze SIT Software (New Software) is added to the scope of the Agreement. **Exhibit A-5** is added to and incorporated within the terms of the original Exhibit A of the Agreement.
2. Licensee shall pay all license fees and maintenance fees for the New Software in accordance with **Exhibit B-5**, incorporated herein and attached hereto.
3. Implementation services for the New Software are not provided herein. Implementation services for the New Software are set forth in Amendment #6.
4. The following acceptance provisions will replace the applicable clauses in Section 8 of the Agreement and apply exclusively to the New Software under this Amendment:
 - (a) **Software Acceptance**. Upon completing the delivery, installation, and testing of the New Software, Trapeze will notify Licensee in writing. Licensee will then have ten business days in which to conduct acceptance tests in order to ensure that the New Software operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the New Software unless Trapeze receives prior written notice outlining the nature of the perceived defects in or Critical Failure of the New Software, as defined in Amendment #6. Notwithstanding the above, Licensee will be deemed to accept the New Software when the Licensee puts the New Software into operational and functional use. The New Software will be deemed to be in operational and functional use when the Licensee first uses the New Software to support its then current operations in any capacity. Upon the deemed acceptance of the New Software in accordance with this

paragraph, Licensee will provide Trapeze with a written acknowledgement to confirm such acceptance.

5. The following warranty provisions will replace the applicable clauses in Section 8 of the Agreement and apply to the New Software under this Amendment:
 - (a) Software Warranty. Trapeze warrants the New Software to operate in all material respects as specified in the Documentation for a period of ninety days from the date upon which the New Software module is installed. For any breach of this warranty, Licensee's sole and exclusive remedy and Trapeze's entire obligation hereunder shall be to either repair or replace the defective New Software. This warranty does not apply to any New Software damaged as a result of any accident, negligence, use in any application for which it was not designed or intended, or modification without prior written consent of Trapeze.
6. All remaining terms, conditions, and covenants of the Agreement remain unchanged.
7. This Amendment is funded in part with financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA). For the work performed under this Amendment, Trapeze shall be knowledgeable of and in compliance with all applicable Federal Third Party Contract Clauses, as set forth in **Exhibit E-5**. Notwithstanding anything in this agreement to the contrary, the parties agree that: (i) Trapeze shall be subject to the federal, state, and local government requirements set forth in **Exhibit E-5** as they apply to Trapeze's performance of this Amendment; and (ii) the products sold and software licensed hereunder are off-the-shelf, such federal, state, and local government requirements shall:
 - (i) be in effect only to the extent that such clauses are applicable to the subject matter hereof;
 - (ii) have a DBE content requirement of 0%;
 - (iii) not include Buy America requirements unless a Buy America certificate has been signed by Trapeze in relation to this agreement;
 - (iv) not transfer ownership of any intellectual property;
 - (v) not include any bond requirements for this agreement;
 - (vi) not include any company policies that are outside of the applicable statutory requirements;
 - (vii) not include any additional rights or remedies not found in the body of the Agreement (including but not limited to additional audit rights);
 - (viii) not include any liquidated damages;
 - (ix) be applicable, for audit purposes, at Trapeze's location during normal business hours; and
 - (x) not include any requirement that requires Trapeze to give up any of its legal rights.

Any flow down requirements shall be complied with as they relate to the delivery of the work set forth in this Amendment #5. Further, should such federal, state, and local government requirements cause the scope, schedule, or deliverables to change, then the parties agree that Trapeze shall be allowed an equitable adjustment.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed by their duly authorized representatives as of the date above.

**CITY OF FRESNO,
A California municipal corporation**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collet 9/10/19 Date
Senior Deputy City Attorney

Date: 9/10/19

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____

Name: _____
Deputy

ADDRESSES

City:
City of Fresno
Dept. of Transportation/FAX
Attn: Darlene Christiansen
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1469

**TRAPEZE SOFTWARE GROUP, INC.
A Delaware corporation**

By: [Signature]

Name: JEFF MOORE

Title: VP SALES
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

By: Nathan Partington

Name: Nathan Partington

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

ATTACHMENTS:

1. Exhibit A-5: List of Software Licenses
2. Exhibit B-5: Summary Pricing for OPS Sign-In Terminal (SIT) Implementation
3. Exhibit E-5: Federal Third Party Contract Clauses for the Agreement between City of Fresno (City) and Trapeze (Contractor)

EXHIBIT A-5

List of Software Licenses

Item	Licensed Software Product	Configuration	Gross License Fee	License Date
1.	Trapeze OPS Sign-In Terminal (SIT) Software License	Base Station	\$23,254	Effective date of this Amendment
2.	Discount		(\$5,814)	
	Total		\$17,440	

Pricing Notes:

- The license for Trapeze OPS-SIT is based on up to 260 OPS employees.
- Pricing includes a 25% management discount on Software licenses.
- Pricing does not include taxes or additional hardware.
- Third party licenses, if required to operate the Software, are not included.

EXHIBIT B-5

Summary Pricing for OPS Sign-In Terminal (SIT) Implementation For Fresno Area Express (FAX)

1.0 Application Software

Item	Description	Price
1	Gross License Fee	\$23,254
2	Discount	(\$5,814)
	TOTAL (US\$)	\$17,440

Pricing Notes:

- The license for Trapeze OPS-SIT is based on up to 260 OPS employees.
- Pricing includes a 25% management discount on Software licenses.
- Pricing does not include taxes or additional hardware.
- Third party licenses, if required to operate the Software, are not included.

2.0 Software Maintenance

Item	Description	Price
1	Warranty (90 days from install into test environment)	Included
2	Year 1 Support	\$4,651

Support Notes:

- The warranty for the application begins upon Software installation into FAX's test environment.
- Maintenance fees only for Year 1 as shown above. For all subsequent years, the annual maintenance fee will be in accordance with Trapeze's then current pricing.

3.0 Payment Schedule/Billing Milestones

Milestone	Description	Payment Percentage
5.1	Execution of Agreement	100% of licenses

EXHIBIT E-5

Federal Third Party Contract Clauses for the Agreement between the City of Fresno (City) and Trapeze (Contractor)

This project is funded in part with federal assistance from the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA). The Contractor shall be knowledgeable of and in compliance with all applicable Federal Third Party Contract Clauses, as set forth below.

1. No Federal Government Obligations to Third Parties. The City 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 City, 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 or 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 A-55 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 Records and Reports.

- (a) 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.
- (b) 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 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.
- (c) Access to Records: The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- (d) Access to 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. 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 City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Not Used

6. Civil Rights Laws and Regulations. 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.

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

7. Disadvantaged Business Enterprise (DBE). For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

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:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the contractor from future bidding as non-responsible [49 C.F.R. § 26.13(b)].

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty days from receipt of each payment the recipient makes to the prime contractor [49 C.F.R. § 26.29(a)]. Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE [49 C.F.R. § 26.53(f) (1)].

Further, it is the policy of the City and the DOT that DBEs as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the City to:

- (a) Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- (b) Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
- (c) Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- (d) Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;

- (e) Help remove barriers to the participation of DBEs in DOT assisted contracts;
- (f) To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- (g) Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The City shall make all determinations with regard to whether or not a Contractor is in compliance with the requirements stated herein. In assessing compliance, the City may consider during its review of the Contractor's submission package, the Contractor's documented history of non-compliance with DBE requirements on previous contracts with the City.

Contract Assurance: The Contractor, subrecipient of 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 City deems appropriate.

8. Incorporation of FTA Terms. The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the FTA terms and conditions. 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 City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
9. Energy Conservation. 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.

10. 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:
- (a) Debarred from participation in any federally assisted Award;
 - (b) Suspended from participation in any federally assisted Award;
 - (c) Proposed for debarment from participation in any federally assisted Award;
 - (d) Declared ineligible to participate in any federally assisted Award;
 - (e) Voluntarily excluded from participation in any federally assisted Award;
or
 - (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its contract, the Contractor 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 Contractor 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 Contractor 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 Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.