SOFTWARE LICENSE AND MAINTENANCE AMENDMENT #4

THIS AMENDMENT is made effective this _____ day of _____, 2017 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 2333 "G" Street, Fresno, California, U.S.A 93706, ("Fresno Area Express" or "Licensee").

WHEREAS Trapeze and Licensee intend to amend the Software License and Maintenance Agreement made effective February 22, 2006 ("the Agreement"), along with its three prior amendments, in order to add the Trapeze GTFS (Static) and Trapeze GTFS-RT (Real Time) Software to the scope of the Agreement;

NOW THEREFORE Trapeze and Licensee agree as follows:

Amendment to Agreement

1. The Trapeze GTFS (Static) and GTFS-RT (Real Time) Software ("New Software") are added to the scope of the Agreement. Exhibit A-4 is therefore added to and incorporated within the terms of the original Exhibit A of the Agreement.

2. Licensee shall pay all license fees, implementation services fees, expenses, and maintenance fees for the New Software in accordance with Exhibit B-4, attached hereto.

3. Implementation services for the New Software shall be provided by Trapeze in accordance with the Statement of Work, attached hereto as Exhibit C-4.

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:

    Software Acceptance. Upon completing the delivery, installation, and testing of the New Software, Trapeze will notify Licensee in writing. Licensee will then have ten (10) 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 Significant Failure of the New Software. 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.

    A "Significant Failure" will mean a failure of the New Software to function in accordance with the requirements of the Documentation, where such a failure causes the New Software to be inoperable or significantly impairs the functionality of the New Software such that there is a critical impact on business operations. Failures that are, without limitation, the result of any operator error, Licensee's or

its subcontractors actions or omissions, abuse or misuse of the products or invalid or incorrect data entry by call takers or operators will not be considered in evaluating successful operation.

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:

Software Warranty. Trapeze warrants the New Software to operate in all material respects as specified in the Documentation for a period of ninety (90) 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 the prior written consent of Trapeze.

6. The following indemnity provision will be added to Section 8 of the Agreement and apply to the entire Agreement:

Indemnity

To the furthest extent allowed by law, Trapeze shall indemnify and defend Licensee and each of its officers, officials, employees and volunteers from any and all third party loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and tangible and real property damage), and from any and all third party claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses, as such may be awarded by a court of competent jurisdiction) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Trapeze, its principals, officers, employees or volunteers in the performance of this Agreement.

If Trapeze should subcontract all or any portion of the services to be performed under this Agreement, Trapeze shall require each subcontractor to indemnify and defend Licensee 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 for the duration of applicable statutory limitation periods under the governing law.

7. The insurance requirements set forth in Exhibit D-4 shall be added apply to the Agreement and all Amendments.

8. All remaining terms, conditions, and covenants of the Agreement remain unchanged.

9. In the event of a conflict between the terms of Agreement and this Amendment #4, the terms of this Amendment #4 shall control.

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: _____
      Bruce Rudd,
      City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _Amanda Freeman_ 6/16/17
      Amanda B. Freeman   Date
      Deputy City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _. _____
            Deputy

Addresses:
CITY:
City of Fresno
Attention: Bruce Robinson
Information Services Supervisor
2223 G St.
Fresno, CA 93706
Phone: (559) 621-7433

Trapeze Software Group, Inc.

A Delaware corporation

By: _Nathan Partington_

Name: Nathan Partington

Title: Vice President - Finance
      (If corporation or LLC., Board Chair,
      Pres. or Vice Pres.)

REVIEWED BY:

_____
   Dimitar Demirevski, Senior Legal Counsel

CONSULTANT:
Trapeze Software Group, Inc.
Attention: Legal Department
5265 Rockwell Drive NE, Cedar Rapids,
Iowa 52402
Phone: 319-743-1000
FAX: 319-743-1015

EXHIBIT A-4

Item	Licensed Software Product	Configuration	Gross License Fee	License Date
1.	Trapeze GTFS (Static)	Base Station	$13,312	Effective date of this Amendment
2.	Trapeze General Transit Feed Specification (GTFS-Real Time)	Base Station	$70,000	Effective date of this Amendment

Licenses are provided to the City of Fresno, CA for a fixed route operation of 106 fixed route vehicles with a 15% growth allowance: up to 122 fixed route vehicles.

EXHIBIT B-4

Summary of Pricing for GTFS Static and GTFS RT Feeds
for
Fresno Area Express (FAX)

1.0 Application Software

Item		GTFS (Static)	GTFS-RT	Grand Total
1	Gross License Fee	$ 13,312.00	$ 70,000.00	$ 83,312.00
2	Professional Services	$ 8,850.00	$ 27,700.00	$ 36,550.00
3	Expenses	$ -	$ -	$ -
	TOTAL (US$)	$ 22,162.00	$ 97,700.00	$ 119,862.00

Pricing Notes:
1. Prices in US dollars and in effect for 90 days
2. Applicable taxes are not included.
3. Licenses are for 106 Fixed Route Vehicles (including 15% growth allowance: up to 122 Fixed route Vehicles)

2.0 Software Maintenance

Item	Description	GTFS (Static)	GTFS-RT	Grand Total
1	Warranty (90 days from installation)	Included	Included	Included
2	1st Year Maintenance	$ 2,662.00	$ 14,000.00	$16,662.00
			Grand Total	$16,662.00

Maintenance Notes:
1. The warranty for the application begins upon Software Installation and will apply to each software module separately.
2. 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

BILLING MILESTONE	BILLING MILESTONES DESCRIPTION	MILESTONE INVOICED (USD)
#1	Contract Amendment signed by authorized signee from Fresno Area Express	$27,770.66
#2	Contract Amendment signed by authorized signee from Trapeze Software Inc.	$27,770.67
#3	Upon completion of Project Kick Off Meeting	$27,770.67
#4	Upon completion of Software Installation of GTFS Static software	$22,500.00
#5	Upon completion of Software Installation of GTFS Real-Time software	$8,750.00
#6	Upon GOOGLE's quality review & approval of real-time feed	$5,250.00
	TOTAL	**$119,862.00**

EXHIBIT C-4

Statement of Work
General Transit Feed Specification- Static (GTFS) & Real Time (GTFS-RT) Implementation Services

Overview

The core of this implementation starts with the schedule package. Trapeze FX shall serve as the data source used to populate the General Transit Feed Specification (GTFS) schedule data files. As part of this implementation Fresno Area Express (FAX) will be provided with the tool to export the GTFS static data file set. FAX will then be responsible for making the file set available in a zip format to the required server for access by Google & 3rd Party developers.

GTFS Real-Time (GTFS-RT) is an extension of the GTFS static data file set in that identifiers are used in the GTFS-RT feed referencing back to the GTFS files. Because of this dependency, the GTFS schedule data portion of the project must be executed first before GTFS-RT can be implemented.

The following sections define the implementation services to be provided by Trapeze for the GTFS and GTFS-RT Software, as well as the effort that will be required from FAX staff and resources.

Unless otherwise indicated, Trapeze shall provide 'standard' services (project management, testing, installation, and training) as defined by Trapeze. Any special requirements shall be considered a change request and processed through the change request system.

The products to be installed here are complimentary to the currently installed Trapeze Fixed Route ("FX") application and the TransitMaster ("TM") system. Prior to the installation of the GTFS Static Software, FAX will be asked to patch their backoffice environment to the most recent version of those products. The GTFS and GTFS-RT shall use data currently loaded for production. These Trapeze applications shall use the same Trapeze database servers. Additionally, FAX shall be responsible for ensuring schedule data integrity prior to running the GTFS static export.

Project Kick-Off Meeting

Following the Notice to Proceed, a conference call will be held between the Trapeze and FAX project teams to review the overall objectives and timelines of GTFS static & GTFS-RT Software implementation. During this meeting, feed configuration will be reviewed along with key tasks that will be required to be performed by both Trapeze and FAX respectively. The outcome of this kick-off meeting shall result in a common understanding of the project implementation approach, as well as a preliminary project schedule.

Project Timeframe

Generally, this size of project delivery can be completed between two (2) to three (3) months from the initial kick-off. However launch of 'Go Live' data within Google is determined by Google's validation and FAX willingness to go public. It is understood that these actions are outside of Trapeze delivery and could extend beyond three (3) months, however the GTFS-RT solution can be made available for 3rd Party usage prior to completion of Google validation. Note this timeframe is also dependent on FAX receiving the latest patches to the back office suite of products prior to starting the project.

If the length of the project exceeds three (3) months due to client preparation or resourcing delays, Trapeze reserves the right to engage in a change order process with the Licensee to secure additional project management and off-site support services to accommodate the delay. The following table represents a high level task list with responsible party noted by the task. Many of these tasks are serial and delays in accomplishing tasks will cascade through following tasks.

	GTFS Static - General Timelines			
	Description	**Trapeze Tasks**	**Fresno Tasks**	**Dependency**
Week 1	Project Kickoff	- Schedule necessary project team members to attend kickoff - Download & Restore Fresno database backup	- Provide database backup to Trapeze - Schedule necessary stakeholders to attend project kickoff - Request GTFS Environment from Google	
Week 2	Internal Testing with Fresno Data	- Test GTFS export deployment internally		- Database Backups
Week 3	Software Deployment in Fresno Production	- Installation & Configuration of the GTFS static feed in Fresno Production - Provide remote training on operation of GTFS functionality	- WebEx for Trapeze to perform installation & receive remote training on operation of the GTFS functionality	- Internal Testing Acceptance
Week 4	Data Validation		- Validate data using open source feed validator tool - Make necessary schedule	- Install - Configuratio n - Training

			updates to resolve issues found in data validation - GTFS Project Acceptance	
Week 5	Data Validation		- Same as above	
Week 6	Go Live		- Make necessary networking changes to provide GTFS static files in .zip to the public - Work with Google for Go Live of GTFS static feed (timing dependency with Google)	- Data Validation

	Description	Trapeze Tasks	Fresno Tasks	Dependency
	GTFS Real-Time – General Timelines			
	Description	**Trapeze Tasks**	**Fresno Tasks**	**Dependency**
Week 1	Project Kickoff	- Schedule necessary project team members to attend kickoff	- Schedule necessary stakeholders to attend project kickoff - Request GTFS-RT Environment from Google	
Week 2	Define / Create GTFS-RT Server		- Define or Create server in DMZ for GTFS-RT service to be installed upon - Make necessary network infrastructure changes to allow public access and communication back to the application server on port 5000	
Week 3	Define / Create GTFS-RT Server		- Same as above.	
Week 4	Define / Create GTFS-RT Server		- Same as above.	
Week 5	Software Deployment in Fresno Production	- Trapeze VPN into GTFS-RT server and install service - Update IIS with configuration to GTFS-RT files - Test download of files internally & externally	- Resolve any network issues with file downloading internally or externally - Enable any desired security on files	- Define / Create GTFS-RT Server - Networking Changes

Week 6	Data Validation	- Feed review against static feed for identifier matching	- Correct Schedule data issues with respect to link between GTFS & GTFS-RT - Provide URL's to Google when environment available	- Software Deployment - GTFS feed live
Week 7	Data Validation	- Same as above.	- Same as above.	
Week 8	Go Live	- Assist Fresno with Google Dashboard Review	- Correct Schedule data issues with respect to link between GTFS & GTFS-RT - Submit feed to Google QA	
Week 9	Go Live	- Same as above.	- Work with Google for feed acceptance	
Week 10	Go Live		- GTFS-RT Project Acceptance	

Project Management

A Trapeze project manager shall be responsible for ensuring that project requirements are communicated and understood and all milestones are met. The project manager shall be the key point of contact during the project. Trapeze project managers provide the following key services:

- **Risk Management:** The project manager understands the risks involved with the project and ensures that tight controls are implemented to minimize these risks.
- **Scope Change Management:** When a change is made mid-project, the project manager understands the global impact of this change and initiates the necessary actions to ensure timelines are adjusted.
- **Issues Management:** The project manager ensures that issues are addressed and resolved in a timely manner.
- **Access to Key Resources:** The project manager acts as conduits to other parties and ensures through proper scheduling and 'scope change management' that resources are available when their services are required. Trapeze project managers employ the following tools to support the successful implementation of projects:
- **Scope of Work and Design Documents**: The Scope of Work is contains the current operating environment of the site and the tasks that need to be completed in order to ensure a successful implementation.

- **Milestone Sign-Offs:** As each milestone is achieved, the Licensee will be asked to sign-off on the milestone, signaling that they are in agreement that the project is moving forward.
- **Standards.** After each implementation, we assess the project and determine how we can improve the process. A proactive approach enables us to develop software that works and predict issues during the planning phases of future projects.

In addition to the project manager, the Licensee shall have multiple contacts from within Trapeze, including:

- **Technical Product Specialist** – technical product specialists shall deal with technical issues involving the product including installation, data development, testing of modifications and parallel support.
- **Account Representative** – The account representative is the key point of contact for the Licensee. The account representative knows the status of all projects the Licensee is currently involved with and can be contacted at any time during the project to respond to the needs of the Licensee.
- **Customer Care** – Licensee are provided with our 1-800 customer support number during the implementation phase of the project to provide for added security if a situation arises and they cannot contact their project manager or account representative.

In addition to on-site and telephone support, Trapeze uses WebEx technology to provide an additional channel for support and training. WebEx enables users to 'share' computer desktops, so that a user can view and control an application running or a remote computer.

Installation of Trapeze Products

The Trapeze GTFS & GTFS-RT Software shall be installed and tested on the FAX network (see Network Services section). FAX and Trapeze will both review and approve the implemented software before any training is conducted.

The proper operation of the GTFS-RT Software requires the installation of two separate pieces of software: TMDataCubeService and TMGTFSRealTimeService. All feed file folders designated during installation need to have their access permission altered to allow the service to create and write the feed files in each folder. Full Control should be provided to user account under which the Windows service runs. Permissions and user account creation are the responsibility of FAX. Deployment of GTFS-RT software is limited to the production environment. The GTFS-RT deployment will require Microsoft .NET Framework 4.0 or greater.

Training

Training provided shall be based on Trapeze standard training agendas. Each session can be attended by up to six (6) employees. The following training services will be provided:

- Up to one-half (0.5) day of remote system administrator training for GTFS and GTFS-RT configuration.

In addition to training, Trapeze will provide one (1) digital copy of available Google Export (GTFS) user manuals. The Licensee is free to create copies of the hard copy manual for their users. Users will also have access to recorded training videos and online sessions provided through the Trapeze Collaborate portal.

Trapeze Remote Services

Trapeze shall provide project management and off-site support services for up to three (3) months from first meeting/conference call with the Trapeze project manager. These bi-weekly services will include:

- The Trapeze project manager will coordinate the appropriate resources for this project implementation, as well as own all milestone documentation.

- For the duration of the project, Trapeze technical product expert shall be available for consultation off-site via phone or email during standard business hours, not to exceed the total of budgeted off-site support (4 days).

Fresno Responsibilities

- Prior to the installation of GTFS static, FAX will be asked to patch their back office environment to the most recent version of those products.

- FAX shall ensure valid Trapeze FX static schedule data is provided and meets data relationship requirements with TransitMaster's real-time feed attributes as outlined in this SOW.

- FAX shall ensure Network environment is available and provided to Trapeze as outlined in this SOW.

- FAX will be responsible for making Network changes to allow the GTFS static & GTFS-RT data to be available to the public.

- FAX is being charged GTFS-RT licensing for 3rd parties due to not having already been licensed for any Real-Time Customer Information products prior to the execution of this agreement.

GTFS & GTFS-RT Output Review

GTFS static feed is composed of a series of text files – exported from FX – and collected in a ZIP file. The following files are required: Agency.txt, stops.txt, routes.txt, trips.txt, stop_times.txt, and calendar.txt. Additional files are optional.

GTFS-RT is a feed specification that allows FAX to provide real-time updates about their fleet. The GTFS-RT specification currently supports the following files:

- **Trip Updates** - delays, cancellations, and changed routes.
- **Service Alerts** - stop moved, unforeseen events affecting a station, route or the entire network.
- **Vehicle Positions** - information about the vehicles location.

Three feeds are generated as part of GTFS Real-time: Trip Updates, Vehicle Position and (if *available or desirable)* CAD/AVL Alerts functionality. The first piece of validation is to verify that the files are generating and updating data every 30 seconds.

Next, using Google's Transit Partner Dashboard web application, Trapeze shall support validation of the FAX GTFS static & GTFS-RT data to confirm accuracy between CAD/AVL and the real-time feed. The Dashboard provides GTFS-RT feed detail about the data quality, including errors and warnings concerning FAX feed data. Details shall be provided to help troubleshoot issues or problems. The end goal is to have a thorough quality review of FAX Real time feed before it goes live, and fix any 'launch blocking' issues that Google presents in its Partner Dashboard report.

The following link shall take FAX to the steps for Google Transit Participation.

https://partnerdash.google.com/partnerdash/d/transit

FAX shall be responsible to set up its Transit Partner Dashboard. At this time, Google shall provide a Partner Dashboard environment used to validate the static and real-time feeds.

Google Transit Partner Dashboard includes in-depth real-time reports. This Google overview includes many feed issues discovered over a period of time, and gives a severity level for each issue: error, warning, or informational. Errors typically describe connection to fetching URL or DNS issues, focus on network. The majority of issues are centered on trip and stop content. Partner Dashboard allows FAX to monitor data quality of its Transit feeds over time. Reports are generated daily and cover feed issues for the previous eight (8) days.

Trapeze shall support investigating feed issues once the Partner Dashboard environment is set up. To help support troubleshooting, Trapeze requires FAX to add a Trapeze user gmail account to the Dashboard for the Project Engineer to troubleshoot any issues in real-time.

The critical data elements GTFS-RT is dependent on are Trip_ID, Route_ID and Stop_ID which are used to link the feed back to the data elements in the GTFS static feed. The remaining fields can be looked up in the GTFS static feed once real time data pieces of information are confirmed.

Real-time data shall join to the static Trapeze FX data on 3 data Identifiers: Route_ID, Trip_ID and Stop_ID:

Real-Time Feed

*=Optional	ROUTE_ID	TRIP_ID	STOP_ID
Alerts	X*	X*	X*
Trip Updates	X	X	X
Vehicle Position		X	

Static Feed

*=Optional	ROUTE_ID	TRIP_ID	STOP_ID
Agency			
Calendar			
Calendar_Dates			
Fare_Attributes			
Routes	X		
Shapes			
Stop_Times		X	X
Stops			X
Trips	X	X	

Network Services

Included in this project will be Trapeze remote WebEx review and consultation in configuration of the physical network components necessary for GTFS and GTFS-RT implementation. FAX shall provide all physical Network hardware necessary for this delivery.

This effort is not limited to feeding Google, but can include GTFS-RT access out to the developer community. As shown in *example* figure below, many parts make up the GTFS-RT system and a reliable, workable network solution is required for real time data community delivery.
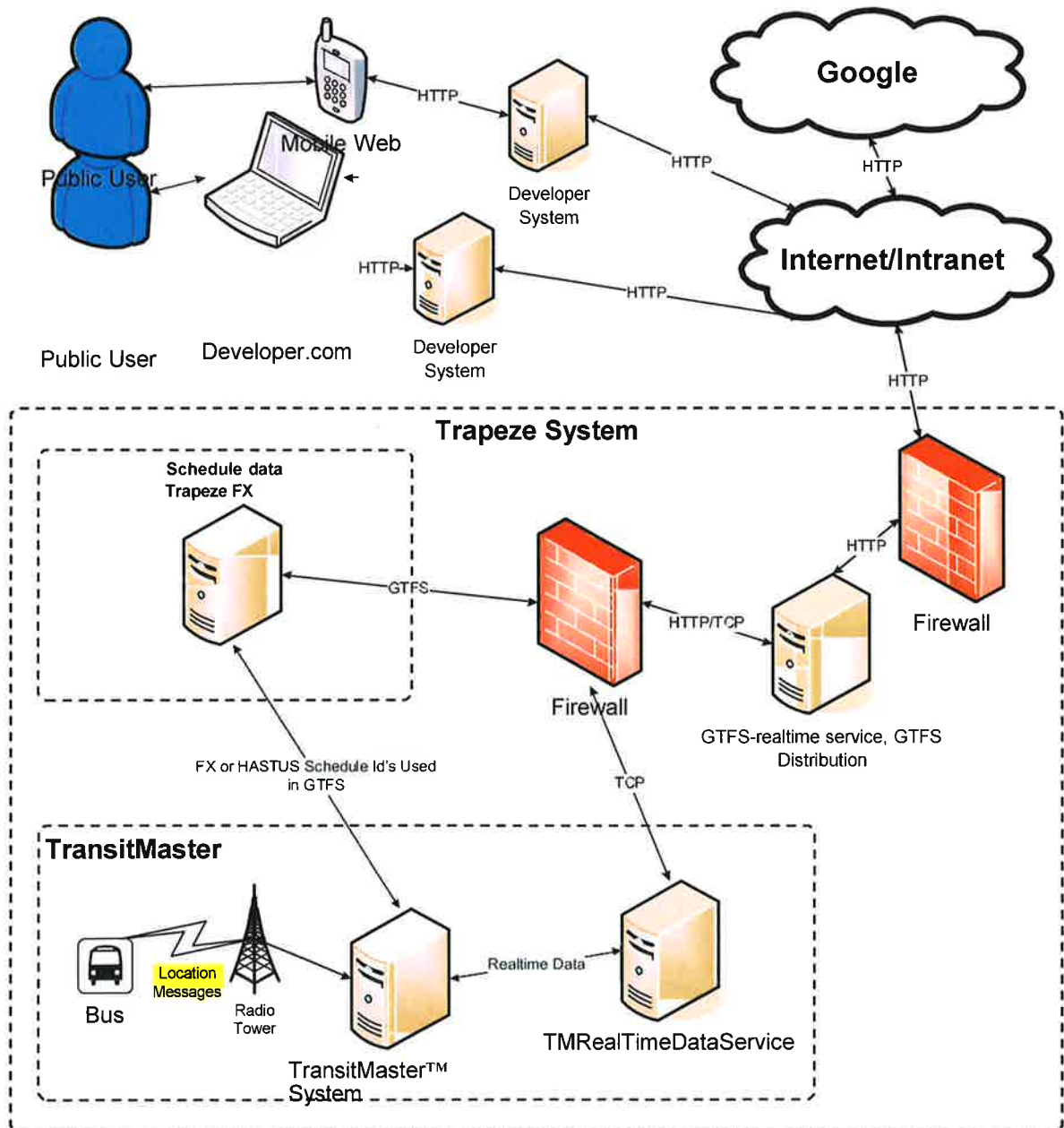
GTFS Acceptance & Project Completion

The final phase of the implementation shall be User Acceptance Testing (UAT). This involves the Licensee utilizing the Software in production-like environment to ensure it responds accurately to users input and the features and functions of the Software work as specified. Upon completion of training for each component of GTFS (static feed and real-time), FAX shall have up to ten (10) days in which to review that Software component. At the end of this period, the GTFS project shall be deemed complete and the Software accepted unless Trapeze receives prior written notices outlining the nature of perceived issues with the installed Software.

Once UAT has been completed for both GTFS static and GTFS real-time, the project shall be deemed complete.

Licensee Resource Estimates

The table below identifies the resource requirements for the Licensee.

Resource	Description	Time Dedication	Tasks
Project Manager	The project manager coordinates all efforts between the Licensee and Trapeze.	20% of time for duration of project.	Coordinate all resources from the Licensee Coordination of conference calls and meetings, as required. Prepare training plan & sessions Coordinate completion of data development Coordinate completion of user acceptance testing. Payment of Trapeze invoice in a timely fashion (30 days from milestone completion).
Subject Matter Expert	Someone with intimate knowledge of the Licensee's	20% of time for duration of project.	Participation in the project kick-off meeting Participation in all training sessions

Resource	Description	Time Dedication	Tasks
	request operations		Assist PM with completion of user acceptance testing, data development
System Administrator		10% of their time for the duration of the project.	Participate in System administration training.
Testers	Responsible for user acceptance testing	25% of their time during the testing phase of the project.	Complete Software User Acceptance Testing.

Exhibit D-4

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Fresno ("CITY")
and Trapeze ("CONSULTANT")
GTFS and Software Suite
PROJECT TITLE

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, if there are owned vehicles, 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 CONSULTANT'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by Consultant 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

CONSULTANT, or any party the CONSULTANT 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 under the Commercial General Liability and Automobile Liability, 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

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) $5,000,000 per claim; and,
    (ii) $10,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT 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, the Commercial General Liability & Automobile Liability coverages 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

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT 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 his/her designee. At the option of the CITY'S Risk Manager or his/her designee:

> (i)   CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her 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. CONSULTANT shall establish additional insured status for the City for the Commercial General Liability & Automobile Liability coverages 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, CONSULTANT'S insurance coverage under Commercial General Liability and Automobile Liability 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 CONSULTANT'S insurance and shall not contribute with it. CONSULTANT 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 under Commercial General Liability and Automobile Liability.

The *Workers' Compensation insurance policy* is to contain, or be endorsed to contain, the following provision: CONSULTANT 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 CONSULTANT.

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 CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) 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 except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT 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, CONSULTANT shall furnish CITY with certificates and applicable endorsements. In the event of litigation or threat of litigation involving CONSULTANT and its products, if the parties mutually agree, , CONSULTANT shall permit the City to inspect the copies of the actual polices, to verify CONSULTANTS conformance with the requirements set forth therein. In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) 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 polices will be twice the above stated limits.

The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, 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 CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT 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, CONSULTANT shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONSULTANT shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONSULTANT, and CITY, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish CITY with all certificate(s) and **appropriate endorsements** effecting coverage required hereunder. All certificates and **endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to work commencement. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. This requirement shall survive expiration or termination of this Agreement.