

SOFTWARE LICENSE AND MAINTENANCE AMENDMENT #6

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 five prior amendments (Agreement), in order to add the labor to install 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) was added to the scope of the Agreement in Amendment #5. Licensee shall pay all implementation services fees and expenses for the New Software in accordance with **Exhibit B-6**, attached hereto.
2. Implementation services for the New Software shall be provided by Trapeze in accordance with the Statement of Work, attached hereto as **Exhibit C-6**.
3. The insurance requirements set forth in **Exhibit D-6** shall be added and apply to the Agreement and all Amendments
4. 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-6**. Notwithstanding the 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-6** 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. 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.

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

[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.

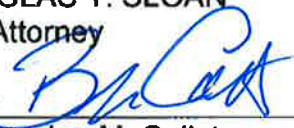
**CITY OF FRESNO,
A California municipal corporation**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Brandon M. Collet
Senior Deputy City Attorney

Date: 9/16/17

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: 

Name: JEFF MOORE

Title: VP, SALES

(If corporation or LLC., Board Chair,
Pres or Vice Pres.)

By: 

Name: Nathan Partington

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

Trapeze:
Trapeze Software Group, Inc.
Attention: Legal Department
5265 Rockwell Drive, NE
Cedar Rapids, IA 52402
Phone: (319) 743-1000

ATTACHMENTS

1. Exhibit A-6: Not Used
2. Exhibit B-6: Summary of Pricing for OPS SIT Implementation
3. Exhibit C-6: Statement of Work
4. Exhibit D-6: Insurance Requirements for Trapeze (Service Provider) for OPS-SIT Implementation
5. Exhibit E-6: Federal Third Party Contract Clauses for the Agreement between City of Fresno (City) and Trapeze (Contractor)

EXHIBIT A-6

Not Used

EXHIBIT B-6

SUMMARY OF PRICING DETAIL For OPS-SIT Implementation for Fresno Area Express (FAX)

1.0 Services and Expenses for the Application Software

Item	Description	Price
1	Services	\$44,900
2	Expenses	\$4,100
	Total	\$49,000

Pricing Notes:

1. Pricing does not include taxes or additional hardware.

2.0 Payment Schedule/Billing Milestones

Milestone	Description	Payment Percentage
6.1	Due upon delivery of initial Project Design Document	20% of services and expenses
6.2	Due upon installation of OPS-SIT in FAX's test environment	20% of services and expenses
6.3	Due upon delivery of OPS-SIT training	20% of services and expenses
6.4	Due upon completion of User Acceptance Testing in FAX's test environment	20% of services and expenses
6.5	Due upon completion of the on-site Go Live support	20% of services and expenses

EXHIBIT C-6

STATEMENT OF WORK For OPS-SIT Implementation for Fresno Area Express (FAX)

STATEMENT OF WORK

The purpose of this document is to provide Fresno Area Express (FAX) with a quote and scope of work for the OPS Sign-In Terminal (SIT). The following information defines the implementation services to be provided by Trapeze for the OPS SIT project as well as the effort that will be required from FAX staff and resources.

TRAPEZE PRODUCT

Trapeze will implement the following OPS modules for FAX:

- OPS Sign-In Terminal (OPS-SIT)

OVERVIEW

This implementation includes the following project activities:

1. Project Design
2. OPS-SIT Configuration
3. Internal Acceptance Testing
4. Software Installation
5. Installation Testing
6. Training
7. User Acceptance Testing
8. Deployment Support

The remainder of this Statement of Work (SOW) provides details to support the project activities outlined above.

PROJECT DURATION

This implementation is expected to be completed within four (4) months from the project kick-off meeting. Following contract execution, up to forty-five (45) days may be required to kick off the project and align Trapeze and FAX resources. Trapeze will work to minimize this mobilization period through proactive planning with FAX.

PROJECT DESIGN

Project design will involve a series of meetings and conference calls with FAX's project team. To assist with preparations for these discussions, FAX will be expected to provide the Trapeze team with any operational material and/or documentation as requested. During these meetings and calls, the following will be discussed:

- Current environment (policies/procedures) as they relate to the fixed route operations
- Operations sign-in business needs
- A review of sign-in devices including cards, card readers and printers
- A review of the current sign-in methods, times of day, locations and expected sign-in loads
- Software configuration
- Project timelines
- Testing, training and transition strategies

A Project Design Document (PDD) will be prepared following the meetings, which will identify the deliverables and expected project timelines for the implementation. During the review process, Software functionality may be identified that is not currently handled by the standard Trapeze Software. If desired, Trapeze can provide estimates to address these gap items, however addressing any gaps as documented in the PDD will be considered out-of-scope.

Following completion of the draft PDD, Trapeze will provide FAX with the draft document to review and provide comments. FAX will have ten (10) business days to complete this review, after which the Trapeze Project Manager will coordinate a meeting with the FAX's project team to review the comments. Following this meeting, Trapeze will revise the PDD to address FAX's comments and feedback and will provide the finalized PDD.

FAX Roles and Responsibilities

- Participate in Design Review meetings
- Provide documentation as requested
- Participate in the review of the Project Design Document and provide comments and feedback

Resources Required from FAX:

- Project Manager
- IT staff (System Analyst, network, security and server)

- Subject Matter Experts

Deliverables:

- Up to eight (8) hours of remote services for Project Design Review meetings
- Project Design Document
- Finalized Project Schedule

OPS-SIT CONFIGURATION

Trapeze will configure the Sign-in Terminal rules based on the standard functionality of the product. The version of OPS-SIT implemented during this project will align with FAX's current Trapeze OPS version. The configuration settings will be determined during the Project Design and documented appropriately.

Trapeze has included up to one (1) day to complete the OPS-SIT configuration. Configuration services will be provided remotely, however Trapeze has allocated up to one (1) day on-site to support kiosk configuration activities on-site with FAX's IT department.

FAX will be responsible for providing network access for all kiosks and responsible for ensuring they can communicate with the necessary servers in FAX's environment. To assist Trapeze with the installation, FAX will provide remote access (VPN, etc.) to the necessary servers. If remote access is unavailable, WebEx will be the alternative method for connecting to the servers.

FAX Roles and Responsibilities:

- Consulting support as required.
- IT/Network support for network integration

Resources Required from FAX:

- Project Manager
- IT staff (network support)

Deliverables:

- Up to one (1) day on-site for configuration support
- Configured test and production Software.

INTERNAL ACCEPTANCE TESTING

Internal Acceptance Testing (IAT) is completed by Trapeze before any Software is installed in FAX's test environment. During IAT, Trapeze Testing Specialists will perform unit and regression testing in order to test all standard features for

completeness and accuracy. These specialists will also update any automated regression test scripts to expand coverage as needed.

After unit and regression testing is completed, the Trapeze Technical Product Specialists will run through a series of tests to ensure that all Software functions properly against FAX's specific data in a local testing environment. This allows Trapeze to proactively determine any potential data-related issues and ensures that all standard setup and configuration tasks are able to be performed for FAX.

FAX Roles and Responsibilities

- Provide data as necessary

Resources Required from FAX

- IT Staff

SOFTWARE INSTALLATION

Following the completion of Internal Acceptance Testing, Trapeze will work with FAX to remotely install the Software in FAX's test environment. After all training and testing is completed, Trapeze will assist with installing the configured Software in FAX's production environment.

Note: The 90 day Software warranty begins upon Software installation into FAX's test environment.

FAX Roles and Responsibilities

- Provide access to test and production environments
- Manage servers, databases, backup procedures, database maintenance practices, and Windows environments and security
- Install Trapeze pre-requisite software (e.g. ODBC connections, database servers, etc.)

Resources Required from FAX

- IT Staff

INSTALLATION TESTING

Installation Testing will occur after the Software has been installed in the FAX test environment. This testing is designed to ensure that the Software is functioning properly within FAX's test environment and working with third party software as necessary.

During Installation Testing, FAX will grant Trapeze access to their servers so that Trapeze can perform testing of key Software functionality and validate that

the Software functions properly in FAX's test environment. Upon completion of Installation Testing, Trapeze will work with FAX to schedule training.

FAX Roles and Responsibilities

- Provide access to test and production environments

Resources Required from FAX

- IT Staff

TRAINING

Trapeze will provide standard System Administrator training for FAX System Administration staff. This training will be based on Trapeze standard training agendas and a Trapeze Technical Product Specialist (TPS) will be on-site for up to one (1) day to conduct the training.

FAX Roles and Responsibilities:

- Schedule the training activities.
- Ensure trainees are prepared and engaged in the training activities.

Resources Required from FAX:

- Project Manager
- Subject Matter Experts
- System Administrators

Deliverables:

- Up to one (1) day on-site to conduct System Administrator training
- Training agenda
- Training attendance sheet

USER ACCEPTANCE TESTING

After training is completed, FAX will begin User Acceptance Testing (UAT). This involves FAX utilizing the Software in the test environment to ensure the Software responds accurately to users input and the features and functions of the Software work as specified.

FAX will have ten (10) business days in which to perform a round of UAT, which is expected to be a comprehensive, end-to-end test of the Software. During User Acceptance Testing, FAX will document and prioritize any defects encountered during the testing period (if they exist). Following the completion of a round of testing, FAX will provide Trapeze with a complete list of all perceived defects,

which Trapeze will assess for root cause and resolve where appropriate based on the severity of each defect.

The severity of defects is based on the impact that an identified defect has on FAX's business and operations. FAX will work jointly with Trapeze to identify defect severity levels, which are defined as follows:

1. **Critical** – system cannot function or site is down (e.g. results in the failure of fundamental business process or in the shutdown of the system being tested)
2. **Major** – system is still functioning but is causing major business risk to FAX. The defect cannot be addressed through a work around solution.
3. **Minor** – system is still functioning but is causing minor or short term inconveniences. The defect can be addressed through a work around solution.

Once FAX confirms all Critical and Major defects are resolved, User Acceptance Testing will be considered to be complete, the proposed Software will be deployed in FAX's production environment, and the project will move on to pilot testing. Trapeze will work to resolve all confirmed defects, after which FAX will validate their resolution.

SIGN-IN TERMINAL PILOT TESTING

Pilot testing requires identifying a small group of operators to use the sign-in terminal in a production setting:

- Ensure cards are reading correctly
- Ensure receipts are printing and correct
- Ensure screen read out is correct.

A Trapeze Technical Product Specialist will be on-site for up to one (1) day to support FAX in executing User Acceptance Testing.

FAX Roles and Responsibilities:

- Perform User Acceptance Testing
- Defect prioritization
- Validate defect resolution
- Lead Pilot Testing

Resources Required from FAX:

- Subject Matter Experts
- End Users

Deliverables:

- Up to one (1) day on-site to provide support during UAT
- Updated Software and/or configurations to resolve defects
- Prioritized Defects log

DEPLOYMENT AND POST GO-LIVE SUPPORT

FAX's Subject Matter Experts (SMEs) are expected to be the first level support for end-users during the deployment phase. SMEs will be expected to provide support on how to use the new system, answer questions regarding functions that may be unfamiliar, and reinforce key functionality and training points.

The final stage of the project involves moving the system into the production environment. The success of this phase depends heavily on properly implemented controls and the adherence to appropriate milestones and measures during previous phases. Tasks include:

- Preparation of production environment
- Deployment Support

Preparation of Production Environment

Trapeze will migrate the necessary ancillary data, configuration settings, security and workspaces from FAX's test environment to FAX's production environment. Additionally, a Trapeze Technical Product Specialist will be on-site for up to two (2) days to perform the following activities during the deployment phase:

- Act as an escalation point for various issues that SMEs are unable to resolve during the production deployment of the OPS-SIT Software.

After the completion of the Software deployment and on-site support trip, FAX will be able to use the Software to support their live operations and all ongoing support will be transitioned to and provided by Trapeze's long term maintenance program.

FAX Roles and Responsibilities:

- Assist with Production Environment preparation
- Act as first level support for end user questions

Resources Required from FAX:

- Subject Matter Experts
- IT staff (network, security, and server)

Deliverables:

- Installation of Software in the production environment

- Up to two (2) days on-site for deployment support

PROJECT MANAGEMENT

Trapeze will provide offsite project management services for the duration of the project. The Trapeze project manager will be responsible for ensuring that project requirements are communicated and understood and milestones are met.

The Project Manager will be the key point of contact for FAX during the project. Trapeze requires that FAX also assign a Project Manager. The two project managers will work together to ensure that regular dialogue is maintained through an established channel.

Trapeze Project Managers provide the following key services:

- **Scope Management.** The project management team is the link between FAX requirements, the contract, the product specifications and the project's scope of work. The project manager is critical to defining and documenting the tasks and deliverables necessary to complete the project. The project manager ensures that the project's resources remain focused on the project objectives.
- **Change Orders.** Another project control mechanism, change orders are a primary tool for ensuring that the project tasks remain focused on the overall objectives. Change orders include proposed changes to the project schedule, technical specifications and additional functionality or services. Change orders must be agreed to by both Trapeze and FAX.
- **Schedule Management.** One of the critical functions of the project management team is to manage the master project schedule. This detailed work plan outlines all of the activities that are required in order to deliver the project scope within time constraints (i.e. training dates/times and deliverables). The project management team will provide regular updates to the work plan, and escalate major issues and risks that will impact the project schedule for mitigation planning.
- **Communication Management.** The project management team is essential to the effective flow of information throughout the project. As the accumulator, archiver and librarian of the project records, the project manager is also responsible for ensuring that information is distributed to the appropriate individuals in a timely manner. Issue lists, progress reporting, scheduled teleconferences, custom report specifications and contract administration are all examples of communication management.
- **Resource Management.** The project manager ensures that the most appropriate Trapeze resources are allocated to the project at the correct time. The Trapeze project manager also specifies what kinds of project

resources are required from FAX and when they are needed. Moreover, the Trapeze project manager acts as the interface to the product development department when customized reports, interfaces or functionality is needed.

COMMUNICATION STRATEGY AND PLAN

Effective and timely communications with all project stakeholders is critical. A successful project will require regular and consistent messaging, keeping all stakeholders informed with relevant and up to date information. In order to ensure that effective communication practices are following, Trapeze will adhere to a similar communication plan as outlined below (which will be finalized during the Project Design activities):

Format	Participants/ Facilitators	Frequency	Individual(s) Responsible	Recipients
Status Meeting & Report	Project Team	Bi-Weekly	Trapeze Project Manager	FAX and Trapeze Project Team
Project Plan Updates	Project Team	Bi-Weekly	Trapeze and FAX Project Manager	FAX and Trapeze Project Team
Open Issues Log	Project Team	Bi-Weekly	Trapeze and FAX Project Managers	FAX and Trapeze project teams
Risk Register	Project Team	Bi-Weekly	Trapeze and FAX Project Managers	FAX and Trapeze project teams

FAX'S RESOURCE REQUIREMENTS

The table below identifies the resource requirements for FAX.

Resource	Description	Time Dedication	Tasks
Project Manager	The project manager coordinates all efforts between FAX and Trapeze.	20% of time for duration of project.	<ul style="list-style-type: none"> ○ Coordinate the scheduling of all of FAX's resources ○ Coordination of conference calls and meetings, as required. ○ Prepare training facilities. ○ Coordinate training sessions. ○ Coordinate completion of

Resource	Description	Time Dedication	Tasks
			User Acceptance Testing. <ul style="list-style-type: none"> ○ Coordinate Software deployment
Subject Matter Experts	Someone with basic level skill of OPS	25% of time for duration of project.	<ul style="list-style-type: none"> ○ Participation in the completion of the Project Design ○ Participation in all training sessions ○ Assist PM with completion of user acceptance testing and data development. ○ Execute User Acceptance Testing ○ Provide Go-Live support
IT Support & System Administrators		10% of their time for the duration of the project. 100% of time during training	<ul style="list-style-type: none"> ○ Provide access to all servers and environments as necessary ○ Participate in all training sessions.

ASSUMPTIONS

1. Any services or requests not identified within this statement of work will be considered outside the scope of this project implementation and will need to be addressed through the Trapeze Change Order process.
2. The Trapeze OPS-SIT Software will be implemented 'off-the-shelf' and will provide the functionality as described in the most recent user manual.
3. If the length of the project exceeds four (4) months due to FAX preparation or resourcing delays, Trapeze will engage in the change order process with FAX to secure additional project management and off-site support services to accommodate any delays.
4. Any additional or custom functionality, reports or interfaces required but not identified within this document will be considered 'out-of-scope.'
5. Trapeze will provide hardware recommendations for Sign-In Terminal kiosks, card formats, receipt printers, and card readers as necessary.

Hardware costs are not included in the budget for the OPS-SIT implementation.

- a. FAX is responsible for all procurement and installation of all required hardware.
6. FAX is required to provide Trapeze with an employee card sample for testing purposes. Trapeze will use the employee card sample to complete internal testing and provide FAX with compatible card reader options.
7. Software Configuration, UAT and training will all take place as part of the same on-site trip.
8. All days quoted are for up to eight (8) hours in length and for one (1) Trapeze resource.
9. All courses assume a maximum of eight (8) participants.
10. In addition to training, Trapeze will provide one (1) digital copy of all available user manuals. FAX is free to create copies of the manual for their users.
11. All training environments should ideally include:
 - a. Networked computer for each trainee, connected to the test system
 - b. White board and markers
 - c. LCD projector
12. Third party licenses, if required to operate the Software, are not included.
13. It is assumed this system will take advantage of existing Trapeze infrastructure, data sources and systems unless otherwise stated.
14. FAX must already be using OPS Dispatch and Workforce Management in production.
15. OPS-SIT will be implemented using FAX's current version of Trapeze OPS (V14).
16. It is expected that a system administrator will be available for all configuration, installation, testing and deployment activities. Internet Explorer on the OPS-SIT kiosks requires administrator access for configuration purposes.
17. No special handling of card formatting is included in this project. If the employee card requires special handling (decryption) upon reading to verify the operator's identity, this will be considered out of scope as such additional services to handle card formatting will need to be addressed through the Trapeze change order process.

EXHIBIT D-6

INSURANCE REQUIREMENTS FOR TRAPEZE (Service Provider) for OPS-SIT Implementation for Fresno Area Express (FAX)

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).
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, 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 minimum limits specified herein:

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) \$2,000,000 per 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

- (i) 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. 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, and employees 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.
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, and employees. 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, and employees.

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 two (2) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.
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.

Insurers of all policies shall endeavor to give 30-day notice of cancellation . 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.

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 E-6

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 (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.
- (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. 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) Non-discrimination. 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.
6. 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 30 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.

7. 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.
8. 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.
9. 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.