

3/21/13
2.B

CITY OF FRESNO
City Clerk's Office (Original)

AIR-TRANSPORT IT SERVICES, INC. ON-SITE MANAGER AND 24/7 HELPDESK "SUPPORT" AGREEMENT

This Agreement is made as of June 1, 2013 (the "Effective Date") by and between the City of Fresno, California, a Municipal Corporation ("Fresno"), and Air-Transport IT Services, Inc., a Delaware corporation ("AirIT" or "Vendor").

RECITALS

AirIT desires to perform, and Fresno desires to have AirIT perform Support and Warranty services ("Services") for the existing Extended Airline System Environment ("EASE") and the Flight Information Display System ("FIDS") Displays and the proposed expansion to include the gates as an independent contractor to Fresno at and for Fresno Yosemite International Airport ("FYI"),

THE PARTIES agree as follows:

Definitions

1. For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms.

- 1.1. "Enhancement," Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by AIRIT as minor or major, depending on AIRIT's assessment of their value and of the function added to the preexisting Licensed program.
- 1.2. "Error." Any failure of the Licensed Program to substantially conform to its functional specifications as published from time to time by AIRIT, However, any nonconformity resulting from Customer's misuse, improper use, alteration, or damage of the Licensed Program, or Customer's combining or merging the Licensed Program with any hardware or software not supplied or identified as compatible by AIRIT, shall not be considered an Error.
- 1.3. "Error Correction." Either a modification or an addition that, when made or added to the Licensed Program, establishes substantial conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity.
- 1.4. "Licensed Program." The computer programs described in Exhibit A attached hereto, including any extracts from such programs, derivative works of such programs, or collective works including such programs (such as subsequent Releases) to the extent offered to Customer under this Agreement or the License Agreement.
- 1.5. "Normal Working Hours." The hours between 8:00 a.m. and 5:00 p.m. Eastern Standard (or Daylight) Time, on Mondays through Fridays, excluding the scheduled holidays of AIRIT.
- 1.6. "Releases." New versions of the Licensed Program, which may include both Error Corrections and Enhancements.
- 1.7. "Initial Term." The Initial Term of the Support and Maintenance Agreement shall commence on the first day of the month immediately following the month in which the covered systems are installed at the Customer's site and the Customer accepts the system for the start of implementation. The Initial Term of the Agreement shall be for a period of one (1) year. The Initial Term commencement may be amended and superseded by the terms of the Implementation Scope of Services Agreement.

APPROVED BY CITY COUNCIL
March 21, 2013
By Sherrin A. Badetsche
DEPUTY

2. Services

2.1 Performance. AirIT shall perform the Services, which are described in detail on Exhibit A, Project Description, attached hereto. In conjunction with the Services described in Exhibit A, AirIT shall provide a Software License and Warranty as described in Exhibits D.

2.2 Software Warranty Support. AirIT shall include software warranty and support for the following AirIT applications and 3rd party software. AirIT software warranty and support will be subject to the terms and conditions outlined in Exhibits A and D hereto.

- a. Airport Operational Database (AODB) Software
- b. Flight Information Display System (FIDS) Software
- c. Extended Airline System Environment (EASE)
- d. 3rd party server operating system, database, network, VoIP and high availability software.

2.3 Hardware Warranty Support. AirIT shall include a hardware warranty and support for all the hardware associated with the EASE™ and FIDS installation as described and subject to the terms and conditions outlined in Exhibits A and D hereto.

2.4 City Responsibilities

2.4.1 City shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to obtain from AirIT the services called for by this Agreement.

2.4.2. City shall provide AirIT with database dumps, as requested, and with sufficient support and test time on the Customer's computer system to duplicate the error, certify that the error is with the Licensed Program, and certify that the error has been corrected.

2.4.3 Amounts payable to AirIT under this Agreement are exclusive of all federal, state, provincial, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and, accordingly, the amount of all payments hereunder is subject to an increase equal to the amount of any tax AirIT may be required to collect or pay in connection with the support and maintenance services.

2.5 Payment. As compensation for the performance of the Services, Fresno will pay AirIT a total fee not to exceed **\$1,916,575.00 US in five (5) installments** as provided in accordance with Exhibit A. Installment payments will be made annually, in advance, by Fresno for a period of five (5) years commencing upon the effective date and annually thereafter. Fresno will pay each such invoice upon receipt. AirIT's charges are inclusive of state sales tax but exclusive of federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies, and the amount of all payments due hereunder is subject to an increase equal to the amount of any tax AirIT may be required to collect or pay in connection with the Services other than any tax on the net income of AirIT.

3. Relationship of Parties

AirIT is an independent contractor and is not an agent or employee of, and has no authority to bind Fresno and/or FYI by contract or otherwise. AirIT will perform the Services under the general direction of FYI, but AirIT will determine, in AirIT's sole discretion, the manner and means by which the Services are accomplished, subject to the requirement that AirIT shall at all times comply with applicable law. AirIT will report as income all compensation received by AirIT pursuant to this Agreement.

4. Confidential Information

In connection with this Agreement, Fresno, FYI and its employees and agents may have access to private and confidential information owned or controlled by AirIT relating to equipment, apparatus, programs, software, specifications, drawings, pricing and other data. Similarly, AirIT and its employees and agents may have access to private and confidential information owned or controlled by FYI relating to FYI's operations and its proprietary computer software. All such information acquired by either party under this Agreement through its employees or agents shall be and remain its owner's exclusive property, and the receiving party shall keep, and shall obligate its employees and agents to keep, any and all such information confidential and, subject to California statutes, shall not copy or disclose it to others without the owner's prior written approval, and shall return all tangible copies of such information to the owner promptly upon request. Nothing herein shall limit either party's use or dissemination of information not actually derived from the other party or information which has been or subsequently is made public by the owner or with the owner's consent.

Notwithstanding anything to the contrary herein, or in any exhibit, schedule, attachment, purchase order or any other agreement between the parties to the contrary, the parties agree that AirIT acknowledges that Fresno is subject to California statutes known as the "California Public Records Act" and that this Agreement and documents related thereto shall be a public record as defined therein. Any specific information that AirIT claims to be confidential ("Confidential Information") must be clearly identified as such by AirIT. To the extent consistent with California Law, Fresno shall maintain the confidentiality of all such information marked by AirIT as confidential. If a request is made to view such Confidential Information, Fresno will notify AirIT of such request and the date that such records relating to the Confidential Information will be released to the requester unless AirIT obtains a court order enjoining such disclosure. If AirIT fails to obtain that court order enjoining disclosure, Fresno will release the requested information on the date specified. Such release of any Confidential Information shall be deemed to be made with AirIT's consent and will not be deemed to be a violation of law or this Agreement.

5. Termination and Expiration

5.1 Breach. Either party may terminate this Agreement in the event of a breach by the other party of this Agreement if such breach continues uncured for a period of ten (10) days after written notice. In the event this Agreement is terminated by Fresno due to a breach of this Agreement by AirIT, Fresno shall pay AirIT all amounts due and owing up until the date of such breach.

5.2 Termination for Convenience. Fresno may terminate this Agreement, with or without cause, by giving not less than thirty (30) days prior written notice to the other party to this Agreement.

5.3 Expiration. Unless terminated earlier, this Agreement will expire five (5) years but no later than May 31, 2018.

5.4 Effect of Termination. Upon the expiration or termination of this Agreement for any reason, each party will be released from all obligations to the other arising after the date of expiration or notice of termination, except that expiration or termination of this Agreement will not relieve either party of its rights or obligations under Sections 1.2, 3, 5, 6, and 8, nor will expiration or termination relieve either party of any liability arising from any breach of this Agreement.

5.5 Non-Appropriation of Funds. Notwithstanding anything herein to the contrary, the obligations of Fresno under this Agreement are subject to the availability of funds lawfully appropriated annually for its purposes and in the event funds are not available, this Agreement may be canceled without penalty by Fresno by giving written notice of such cancellation to AirIT. Such cancellation of the Agreement will not be deemed to be a breach or default of this Agreement by Fresno or FYI.

6. General

6.1 Governing Law; Severability. This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflict of laws. If any provision of this Agreement is for any reason found to be unenforceable, the remainder of this Agreement will continue in full force and effect. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Fresno County, California.

6.2 Notices. Any notices under this Agreement will be sent by certified or registered mail, return receipt requested, or be recognized express courier to the address specified below or such other address as the party specifies in writing. Such notices will be effective upon receipt as documented by the delivery medium.

6.3 Complete Understanding; Modification. This Agreement, together with the attached Exhibits and one other agreements of even date herewith constitute the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

6.4 Personnel. AirIT shall, in its operation at FYI or any Fresno facility under this Agreement, employ or permit the employment of only such personnel as will assure a high standard of service to the public. In the event AirIT's employees, agents, officers directors, or any other personnel are required to conduct any of the duties or obligations of AirIT as set forth herein at FYI or any other Fresno facility, all such personnel, while at FYI or Fresno facilities, shall be clean, neat in appearance, (with appropriate identification badge displaying no less than AirIT and employee name), and courteous at all times. All AirIT personnel that enter FYI or any Fresno facility shall do so only in accordance with FYI's rules and regulations, and shall be covered under the AIRIT's insurance policies.

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

7. **Ownership of Documents.** AirIT agrees that upon completion of the Services, ownership of deliverables, including copies of documents used in implementation, is as set forth in the License and Warranty, attached as Exhibit D,.

8. Indemnification and Insurance

8.1 General Indemnity. AirIT including its employees, agents and subconsultants, shall hold harmless, indemnify, and defend Fresno and FYI, its directors, officers, employees, representatives, agents and volunteers against any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses, of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to any and all persons, including death, or damage to property, arising or alleged to have arisen directly or indirectly out of or incidental to AirIT's, its employees', agents', and/or subconsultants' performance of this Agreement or work performed thereunder. AirIT's obligations under this indemnification shall apply regardless of any form of negligence on the part of Fresno or any of its officers, officials, employees, agents, representatives or volunteers

except in the case that such Liabilities are caused by the sole or active negligence or willful misconduct. This indemnification is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise and shall survive the expiration or any termination of this Agreement.

8.2 Intellectual Property Indemnity. AirIT will, at its expense, indemnify, defend and hold harmless all claims, actions or proceedings against Fresno or any of its officers, officials, employees, representatives, agents or volunteers, based on any allegation that the Services, any product or deliverable generated by the Services, or any part of the Services, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right, and will pay all costs (including, but not limited to attorney's fees and court costs), damages, charges, and expenses charged to Fresno by reason thereof. Fresno will give AirIT written notice of any such claim, action or proceeding and, at the request and expense of AirIT, Fresno will provide AirIT with available information, assistance and authority for the defense at no expense to Fresno. This indemnification is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise and shall survive any termination of this Agreement. If in any suit or proceeding, the Services, or any product or deliverable generated by the Services, is held to constitute an infringement and its use is permanently enjoined, AirIT shall, immediately, make every reasonable effort to secure for Fresno a license, authorizing the continued use of the Service, product or deliverable. If AirIT fails to secure such a license for Fresno, then AirIT shall replace the Service, product or deliverable with an equal or better, non-infringing Service, product or deliverable or modify such Service, product or deliverable in a way satisfactory to Fresno, so that the Service, product or deliverable is non-infringing.

8.2.1 To the extent that AIRIT may provide Customer with any Error Corrections or Enhancements or any other program, Customer may use such Error Correction or Enhancements in connection with the Licensed Programs, in a manner consistent with the requirements of the License Agreement. Customer may not use, copy, modify, decompile, reverse engineer, adapt, or create derivative works of the Licensed Programs, Error Corrections or Enhancements, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by AIRIT. Notwithstanding Section 6 hereof, Customer's rights under this Section 4.1 shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement, Customer shall return or destroy the Licensed Programs, Error Corrections and Enhancements; and returning the Licensed Programs together with any an all Error Corrections and Enhancements in the manner required by the License Agreement shall be sufficient for such purpose.

8.2.2. The Licensed Programs, Error Corrections, and Enhancements, including without limitation any associated intellectual property rights such as copyright and patent, are and shall remain the sole property of AIRIT, regardless of whether Customer, its employees, agents, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid AIRIT for the use of the work product. Customer shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment that AIRIT may reasonably request in order to establish and perfect its exclusive ownership rights in such works, including any associated intellectual property rights.

8.3 Insurance

(a) Throughout the life of this Agreement, AirIT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by Fresno 's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, AirIT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to AirIT shall be withheld until notice is received by Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Fresno. Any failure to maintain the required insurance shall be sufficient cause for Fresno to terminate this Agreement. No

action taken by Fresno pursuant to this section shall in any way relieve AirIT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Fresno that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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

(d) Upon request of Fresno, AirIT shall immediately furnish Fresno with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

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

8.4 Limitation of Liability

In no event shall either party be liable to the other party for loss of profits or indirect, special, incidental or consequential damages incurred by the other party and arising out of or in connection with this agreement. The total liability of AirIT to Fresno under this agreement, whether arising out of breach of contract (including but not limited to breach of warranty) or tort (including but not limited to negligence and strict liability), shall in no event exceed the total amount actually paid to AirIT by Fresno under this agreement.

The limits set forth in this Section 8.4 shall not apply to: (a) the parties' respective indemnification obligations hereunder; (b) damages resulting from the breach by a party of its confidentiality obligations hereunder; or (c) the payment of amounts due AirIT from Fresno hereunder.

9. Miscellaneous

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

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

(b) AirIT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. AirIT shall ensure that applicants are employed, and the employees are treated during

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

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

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

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

9.3 Assignment.

(a) This Agreement is personal to AirIT and there shall be no assignment by AirIT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by AirIT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

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

9.4 Compliance With Law. In providing the services required under this Agreement, AirIT shall at all times comply with all applicable laws of the United States, the State of California and City of Fresno, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

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

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

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

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

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

9.10 Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

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

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

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

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by FYI.
- (ii) Cooperate with and demonstrate to the satisfaction of FYI the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

9.14 Conflict of Interest and Non-Solicitation.

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

(b) AirIT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of Fresno, AirIT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, AirIT and the respective subcontractor(s) are in full compliance with all laws and regulations. AirIT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, AirIT shall immediately notify Fresno of these facts in writing

(c) In performing the work or services to be provided hereunder, AirIT shall not employ or retain the services of any person while such person either is employed by Fresno or is a member of any Fresno city council, commission, board, committee, or similar Fresno body. This

requirement may be waived in writing by the Fresno 's City Manager, if no actual or potential conflict is involved.

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

(e) Neither AirIT, nor any of AirIT 's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. AirIT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the Fresno's City Manager, in advance and in writing.

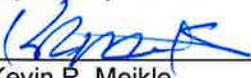
(f) If AirIT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, AirIT shall include the provisions of this Section 9.14 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9.14 shall survive expiration or termination of this Agreement.

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

By: 
Name: Kevin R. Meikle
Title: Director of Aviation, Interim
Date: _____

AIR-TRANSPORT IT SERVICES, INC.,
A Delaware Corporation

By: 
Name: Christopher B. Keller
Title: President and COO
Date: March 21, 2013

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:  4/23/13
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Robert C. Abrams
Deputy City Attorney

CITY:
City of Fresno – Airports Department
Attention: Kevin R. Meikle
Director of Aviation
4995 E. Clinton Way
Fresno, CA. 93727
Phone: (559) 621-4500
FAX: (559) 251-4825

CONTRACTOR:
Air-Transport IT
Attention: Chris Keller – President and
COO
5950 Hazeltine National Dr., Suite 210
Orlando, Fl. 32822
Phone: (407) 370-4664
FAX: (407) 370-4657

Attachments:
Exhibit A – Project Description
Exhibit B - Insurance Requirements
Exhibit C – Disclosure of Conflict of Interest
Exhibit D – AirIT Software License and Warranty

EXHIBIT A
Project Description

1. Overview

AirIT shall provide Support Services for AirIT's proprietary Flight Information Display System (FIDS) Software and Extended Airline System Environment (EASE) System.

Fresno Yosemite International Airport
Support Scope of Services

This document describes the requirements, assumptions, methodology, and fees to provide Support for the Fresno Yosemite International Airport (FYI).

General Description

AirIT Site Manager

AirIT shall include a Site Manager for both the FIDS and EASE (VoIP) implementation and support services.

The Site Manager will be responsible for providing on-site technical implementation and support for hardware and software which include the following:

- Assist with implementation of all FIDS and EASE hardware and software.
- Maintenance of all hardware includes preventive measures as well as replacement
- Provide hardware fixes and workarounds within the established SLA timeframes
- Management of onsite hardware inventory
- Software upgrades related to the replacement of hardware
- Setting/verification of IP addresses/computer names when necessary
- Maintaining appropriate software images in a test environment
- Tracking/maintaining site's open trouble tickets and closing issues with client upon resolution
- Utilization of web based support tool to resolve minor issues
- Escalation of software issues to Level 3 Support Engineers
- Provide weekly site report to management

Software Warranty Support

AirIT shall include software warranty and support for the following AirIT applications and 3rd party software. AirIT software warranty will be subject to the terms and conditions outlined in Exhibit D – Software Warranty and Support.

- e. Airport Operational Database (AODB) Software
- f. Flight Information Display System (FIDS) Software
- g. Extended Airline System Environment (EASE)
- h. 3rd party server operating system, database, network, VoIP and high availability software.

Hardware Warranty Support

AirIT shall include a hardware warranty and support for all the hardware associated with the EASE™ and FIDS installation.

Help Desk

AirIT will maintain a 24/7 Help Desk that will be responsible for handling the initial call from the customer and recording the issue and escalating it to the appropriate party. (This level may reside with the Airport's internal help desk or the Airport's existing IT personnel.)

AIRIT shall maintain a trained staff capable of rendering the services set forth in this Agreement.

- 2.2. During the Agreement Term, AIRIT shall render the following services as indicated below in support of the Licensed Program, during Normal Working Hours, subject to the compensation fixed for each type of service in AIRIT's rate schedule set forth in Exhibit B attached hereto:
- 2.2.1. Telephone Assistance. AIRIT shall maintain a telephone hotline that allows up to three (3) persons designated by Customer to seek technical or operation assistance in use of the Licensed Program.
 - 2.2.2. Software Maintenance. Customer shall report to AIRIT in a written notice Errors for which it desires AIRIT to provide an Error Correction. AIRIT shall, within eight (8) hours of verifying that an Error is present, initiate work in a diligent manner toward development of an Error Correction. AIRIT shall be responsible for using reasonable diligence to correct verifiable and reproducible Errors when reported by Customer to AIRIT. Following completion of the Error Correction, AIRIT shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction. AIRIT shall include the Error Correction in all subsequent Releases of the Licensed Program. AIRIT shall not be responsible for correcting Errors in any version of the Licensed Program other than the most recent Release of the Licensed Program, provided that AIRIT shall continue to support prior Releases superseded by recent releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed one hundred and eighty (180) days.
 - 2.2.3. Customer Training. Direct training on the configuration, operation and use of the licensed system is not included in the Support and Maintenance Agreement. Technical assistance on configuration or data issues will be provided, with the assumption that the customer representative requesting assistance has basic competency in the area where assistance is required. Customer on-site training is available from AIRIT's consulting staff. Training costs are billed on a time and materials basis as described in Exhibit B.
 - 2.2.4. Customer-Requested Enhancements. Customer requests for enhancements to the Licensed Program will be reviewed by AIRIT and disposed of in one of the following ways: (1) Accepted for development and inclusion in a future release at no direct cost. (2) Offered to the Customer as a "Customization", with source code and support through the current major release version only. The "Customized" Enhancement is offered at AIRIT's then-published rates. (3) Rejected, with explanation and offers of alternatives.
 - 2.2.5. Major Enhancements - New Modules. AIRIT may, from time to time, offer major Enhancements in the form of new modules to its customers generally. Such Enhancements may be offered at AIRIT's then published rates for an additional license fee.
 - 2.2.6. Major Enhancements- Technology Changes. AIRIT may, from time to time, offer major Enhancements that involve technology changes to its customers generally. Such Enhancements will be included in a New Release for no additional fee. Installation, configuration, documentation and implementation of third party products that may be required to put the new technology into production are not included in this Agreement. AIRIT will provide support on install scripts and error correction on installation instructions created by AIRIT, and reasonable support on interpretation of installation instructions based on the assumption that the installer is properly qualified to perform the install tasks. New Technology

changes may include the use of "Open Source Software", and AIRIT may provide Open Source Software and instructions for its installation and use, subject to additional licensing requirements that will be made known to Customer. The direct support of Open Source Software under this agreement is limited to code modifications and additions created by AIRIT.

- 2.3. **New Releases.** AIRIT may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances if AIRIT so elects, major Enhancements. AIRIT shall provide Customer with electronic access to each new Release. Each New Release is delivered with a "Release Notes" document. The document provides full instructions for a new installation and how to upgrade from the previous version. The installation or upgrade may require installation and/or reconfiguration of third party products, including hardware, software and network communications items. AIRIT will provide explanation and interpretation of the Release Notes, however, work to install, upgrade, maintain or configure third party products is not included in this Support and Maintenance Agreement. AIRIT does offer consulting and implementation services, at the published rates, to provide installation of third party products subject to a separate, agreed scope of work.
- 2.4. **Upgrade Assistance.** AIRIT shall provide reasonable assistance to help Customer install and operate each New Release of the AIRIT products covered by this agreement, provided that such assistance, if required to be provided at Customer's facility, require system configuration changes or data manipulation to accommodate Customer's changed requirements or customizations, shall be subject to the supplemental charges set forth in Exhibit B attached hereto.
- 2.5. **Year 2000.** The Licensed Program and delivery media shall, at all times and under all circumstances during the warranty period specified in the License Agreement and during any subsequent period when CUSTOMER maintains this Support and Maintenance Agreement in effect, be capable of operating correctly and consistently with dates and times, and date and time ranges in and beyond the year 2000, and date and time ranges spanning periods before and after 0:00 hours on January 1, 2000 in a manner identical to that in which it operates with dates, time, and date and time ranges prior to the year 2000; and, in particular, shall be capable of recognizing the year 2000 as a leap year and as the year immediately following the year 1999 for all purposes. During such periods, AIRIT shall repair, free of charge, all failures by the Licensed Program to perform in accordance with this Section 2.6 which are reported during the periods covered hereby; provided, however, that AIRIT shall have no liability or other responsibility for any failure by the Licensed Program to perform in accordance with this Section 2.6 which is caused or otherwise attributable to any product or component not supplied by AIRIT with which CUSTOMER uses the Licensed Program. The foregoing is CUSTOMER'S sole and exclusive remedy for any failure by the Licensed Program to perform in accordance with this Section 2.5.

Project Fees

The fixed price for the support services described in this scope of services is **\$ 1,916,575.00 US**. Distribution of payments will be made annually, in advance, by FYI for a period of five (5) years commencing upon June 1, 2013.

Year 1	\$ 383,295.00
Year 2	\$ 383,295.00
Year 3	\$ 383,295.00
Year 4	\$ 383,295.00
Year 5	\$ 383,295.00

Assumptions

The following assumptions were used in the development of the Scope of Services and Fees for this project.

- 1) FYI will provide office space and support facilities, communications and infrastructure dedicated to the project team, including:
 - Project Office Space
 - High-Speed Internet access
 - Telephone & Service
 - Access to FAX Machine
 - Access to Photocopier
 - Secure storage and staging facilities
 - All badging to access post-security Airport Operating Area (AOA) work areas
- 2) FYI will assign a project manager to facilitate the project, expedite project decisions, provide access to key personnel as required, and ensure management commitment to the implementation.
- 3) AirIT will honor all holidays honored by AirIT or FYI.

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno ("Fresno") and Air-Transport IT Services, Inc., ("AirIT")

INSURANCE REQUIREMENTS FOR AirIT ("Vendor")

Vendor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's ("Fresno") Risk Manager or his/her designee. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) PROFESSIONAL LIABILITY (Errors and Omissions) Insurance appropriate to the Vendor's profession, with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

Vendor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Vendor shall also be responsible for payment of any self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice by certified mail, return receipt requested, has been given to Fresno. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal or reduction in coverage or limits, Vendor shall furnish Fresno with a new certificate and applicable endorsements for such policy(ies). **In the event any policy(ies) are due to expire during the work to be conducted for Fresno, Vendor shall provide a new certificate and all applicable endorsements evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies).**

The General Liability and Automobile Liability insurance policies shall name Fresno, its officers, officials, employees, agents and authorized volunteers as an additional insured. Vendor's insurance shall be primary as respects to Fresno, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Fresno, its officers, officials, employees, agents and volunteers shall be excess of the Vendor's insurance and not contribute with it. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to Fresno, its officers, officials, employees, agents and authorized volunteers. Vendor shall have furnished Fresno with the certificate(s) and applicable endorsements for ALL required insurance seven (7) days prior to beginning the work for Fresno.

Vendor shall furnish Fresno with copies of the actual policies upon the request of Fresno's Risk Manager or his/her designee and this requirement shall survive completion of the work required under the Emergency Purchase Order.

If at any time during the work to be conducted for Fresno, Vendor fails to maintain the required insurance in full force and effect, the work shall be discontinued immediately until notice is received by Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Fresno.

If the Professional Liability (Errors and Omissions) 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 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 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 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to Fresno for review.
5. These requirements shall survive expiration or termination of the Agreement.

NOTE: The back of the certificate of insurance states, "If the certificate holder is an Additional Insured, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement". The back of the certificate of insurance also states, "If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)." A certificate of insurance must be accompanied by the additional insured and/or waiver of subrogation endorsements.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

**Consultant Service Agreement between City of Fresno ("Fresno")
and Air-Transport IT Services, Inc., ("AirIT")**

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

Explanation: _____



 Signature

 3/26/13

 Date
 Christopher B. Keller _____
 (name)
 Air-Transport IT Services, Inc. _____
 (company)
 5950 Hazeltine National Drive, 210 _____
 (address)
 Orlando, FL 32822 _____
 (city state zip)

Additional page(s) attached.

