

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: August 13, 2024
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Anthony R. Dekeyzer, Director of Mass Transit, (915) 212-3306
K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.3 – Enhance regional comprehensive transportation system

SUBJECT:

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0541 Trapeze License & Maintenance to Trapeze Software Group, Inc., the sole and authorized distributor for a term of three (3) years for an estimated amount of \$443,074.00. Supplier will be required to provide an updated sole source letter and affidavit each year.

BACKGROUND / DISCUSSION:

The Software helps Sun Metro to provide and keep up with changing demands and accurate customer information, gaining passengers' trust with efficient and reliable schedules. In addition to that the Trapeze software and hardware, are compatible with the all related vehicle equipment utilized in Sun Metro vehicles.

SELECTION SUMMARY:

General Exemption under Texas Local Government Code Section 252.022 Part 7 (D) captive replacement parts or components for equipment. Trapeze Software Group, Inc., is the sole and authorized distributor of Trapeze software applications.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: A decrease of \$499,193.00 for the initial term, which represents a 52.98% decrease due to the previous contract being funded for five years. This contract is funded for three years.

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$443,074.00
Funding Source: Sun Metro Operating Fund
Account: 560-3200-60050-522020- P6017

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES ___ NO

PRIMARY DEPARTMENT: Mass Transit (Sun Metro)

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Deputy Transit Officer

Jerry DeMuro

for

Anthony R. Dekeyzer, Director of Mass Transit

Project Form
Non-Competitive

*****Posting Language Below*****

Please place the following item on the Regular Agenda for the Mass Transit Board Meeting of August 13, 2024

Strategic Goal 7 - Enhance and Sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection: 7.3 Enhance a regional comprehensive transportation system

Award Summary:

Discussion and action on the request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for solicitation 2024-0541 Trapeze License & Maintenance to Trapeze Software Group, Inc., the sole and authorized distributor for a term of three (3) years for an estimated amount of \$443,074.00. Supplier will be required to provide an updated sole source letter and affidavit each year. The Software helps Sun Metro to provide and keep up with changing demands and accurate customer information, gaining passengers' trust with efficient and reliable schedules. In addition to that the Trapeze software and hardware, are compatible with the all related vehicle equipment utilized in Sun Metro vehicles.

Contract Variance:

The difference based in comparison to the previous contract is as follows: A decrease of \$499,193.00 for the initial term, which represents a 52.98% decrease due to the previous contract being funded for five years. This contract is funded for three years.

Department:	Mass Transit (Sun Metro)
Award to:	Trapeze Software Group, Inc.
City & State:	Cedar Rapids, IA
Item(s):	All
Initial Term:	3 Years
Option Term:	N/A
Total Contract Time:	3 Years
Year 1:	\$140,547.00
Year 2:	\$147,574.00
Year 3:	\$154,953.00
Initial Term Estimated Award:	\$443,074.00
Option Term Estimated Award:	N/A
Total Estimated Award:	\$443,074.00
Account(s):	560-3200-60050-522020-P6017
Funding Source(s):	Sun Metro Operating Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 - (7) a procurement of items that are available from only one source – (D) captive replacement parts or components for equipment;

The Purchasing & Strategic Sourcing and Mass Transit (Sun Metro) Departments recommend award as indicated to Trapeze Software Group, Inc., under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.



November 29, 2023

El Paso Mass Transit Department (Sun Metro)
Attention: Norma E. Jimenez, Contract Compliance Manager
Address: 700 A San Francisco
El Paso, TX 79901

Reference: Sole Source Justification Trapeze Products

Trapeze Software Group, Inc. ("Trapeze") is pleased to provide additional information to El Paso Mass Transit Department (Sun Metro) regarding your request for a sole source justification request for Trapeze Support Service and Software maintenance MPS for the MPS Trapeze software.

Trapeze is the principal owner and proprietor of the FX and Blockbuster technology. Therefore, Trapeze is the sole provider of support for this software.

The Customer Support Services for the Trapeze suite of products provided by Trapeze Software Group, Inc include:

- Access to Customer Care 24 x 7, for urgent site down issues.
- Access to the secure [Collaborate](#) web portal, where you can log service requests, check on the status of your requests and participate in the online forums.
- The opportunity to participate in the annual Trapeze User Conference (Think Transit) which is a unique opportunity for both networking and for on-going training.

If you have any questions or require anything else to complete your purchasing process, please feel free to contact me at brian.canivet@trapezgroup.com.

Sincerely,

A handwritten signature in black ink, appearing to read "BC", written over a white background.

Brian Canivet
General Manager MPS





PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____ a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed and said:

1. My name is Teresa Domingo. I am over the age of 18, have never been of a convicted crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: Trapeze Software Group, Inc.
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s):
FX and Blockbuster technology - MPS Trapeze Software

4. Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. **Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuation of any/all business with the City of El Paso.**

Signature

SUBSCRIBED AND SWORN to before me on this 3rd day of MAY 2024

NOTARY PUBLIC

G. LEIGHAN FYNN

PRINTED NAME

N/A

MY COMMISSION EXPIRES



COMPANY NAME: Trapeze Software Group, Inc. ADDRESS, CITY, STATE & ZIP CODE: 5265 Rockwell Drive NE, Cedar Rapids, IA 52402
PHONE: 1-647-203-4640 FAX NUMBER: n/a CONTACT NAME AND TITLE: Teresa Domingo, Group Leader WEB ADDRESS:
www.trapezegrp.com EMAIL: teresa.domingo@modaxo.com FEDERAL TAX ID NUMBER: 98-0358175 TEXAS SALES TAX NUMBER:

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

Between

TRAPEZE SOFTWARE GROUP, INC. (“Trapeze”), with a place of business at 5265 Rockwell Drive NE, Cedar Rapids, Iowa 52402, U.S.A.

And

CITY OF EL PASO (“Licensee”) with its principal place at business at 300 N. Campbell, El Paso, TX 79938, U.S.A.

Notice Information:

If intended for Trapeze, to:

5800 Explorer Drive, 5th Floor

Mississauga, Ontario, Canada L4W 5L4

Contact: Legal Department

Telephone: 1-905-629-8727

If intended for Licensee, to:

Sun Metro

10151 Montana Ave. El Paso, TX 79925

Contact: Jerry DeMuro

Telephone: 915/212-3470

Collectively, Trapeze and Licensee are hereinafter referred to as “Party” or “Parties”. This Agreement, including the Exhibits hereto, represents the complete and exclusive agreement between Trapeze and Licensee with respect to the subject matter hereof and supersedes all prior agreements, negotiations, or understandings between Trapeze and Licensee in any way relating to the subject matter of this Agreement. By executing this Agreement, the Parties agree and acknowledge that all previous agreements between the Parties pertaining to the Software identified herein shall terminate in all respects, effective August 31, 2024 and shall have no further force or effect after that date. The maintenance portion of this Agreement shall be effective for a period of three (3) years, from September 1, 2024 thru August 31, 2027 (as further set out in Exhibit B hereunder), unless otherwise terminated in accordance with Section 15 below. The licensing portion of this Agreement shall remain in effect as set out in this Agreement unless otherwise terminated in accordance with Section 15 below.


No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever. In the event of any conflict or inconsistency between the provisions of this Agreement and the exhibits, the terms and conditions of this Agreement will govern to the extent of such inconsistency. This Agreement may not be modified except by a later written amendment signed by both parties. Without limiting the generality of the foregoing, Trapeze will not be bound by any standard or printed or referenced terms produced by Licensee, including but not limited to those terms included or referenced in any of Licensee’s purchase orders. Licensee expressly acknowledges that no provisions, representations, undertakings, agreements, regarding the products or services to be provided hereunder, have been made, other than those contained in this Agreement. The parties agree that no obligations or duties not set out expressly herein shall be imposed upon the parties or implied by law.


Signature Page follows

THIS AGREEMENT is made effective this ____ day of _____ 2024 between:

Signed for and on behalf of Trapeze:

Signed for and on behalf of Licensee:

By:  _____

By:  _____

Print Name: Teresa Domingo

Print Name: Jerry DeMuro

Title: Group Leader

Title: Deputy Transit Officer

Date: July 26, 2024

Date: 8/9/2024

EXECUTED THIS ____ DAY OF ____, 2024

CITY OF EL PASO, TEXAS:

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

Cary Westin
City Manager

APPROVED AS TO CONTENT:



K. Nicole Cote
Managing Director
Purchasing & Strategic Sourcing

NOW THEREFORE, the parties agree as follows:

1. Definitions In this Agreement the capitalized words set out below will have the following meanings:
 - “Agreement” this Software License and Maintenance Agreement effectively made between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this Agreement;
 - “Confidential Information” any oral, written, graphic or machine-readable information including, but not limited to technical or non-technical data, patents, patent applications, copyright, copyright applications, research, product or service plans, developments, inventions, processes, designs, drawings, patterns, compilations, engineering methods, techniques, devices, formulae, software (including source and object code), algorithms, business plans, agreements with third parties, lists of actual or potential services or customers, marketing plans, financial plans or finances and similar information relating to either Party furnished by or on behalf of the disclosing Party to the recipient Party or any representatives regardless of the manner in which it is furnished or obtained by the recipient Party or its representatives through observation of the disclosing Party’s facilities or procedures (save and except communications with legal counsel which constitute attorney-privileged information). The disclosing Party agrees to use reasonable efforts to summarize in writing the content of any oral disclosure or other non-tangible disclosure that is proprietary or confidential to the recipient Party within a reasonable time (not to exceed thirty (30) calendar days) after the disclosure. However, failure to provide this summary will not affect the qualification of the disclosing Party’s Confidential Information as such if the Confidential Information was identified as confidential or proprietary when disclosed orally or in any other non-tangible form. Confidential Information shall not include any information that: (i) is or becomes generally known to the public through no fault of the recipient Party; (ii) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (iii) the recipient Party independently develops through persons who have not had access to such information; or (iv) the disclosing Party approves for unrestricted release by written authorization.
 - “Documentation” the user documentation and training materials pertaining to the Software as supplied by Trapeze;
 - “Equipment” shall refer to any third party equipment, that may be provided herein
 - “Software” Trapeze proprietary software licensed to the Licensee
 - “Statement of Work” the specifications for the Services to be provided by Trapeze and the Licensee
 - “Third Party Software” any licensed software products that are provided hereunder which are not Trapeze intellectual property;

Trade Secrets”	any information proprietary to either Party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that: (i) is or becomes generally known to the public through no fault of the recipient Party; (ii) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (iii) the recipient Party independently develops through persons who have not had access to such information; or (iv) the disclosing Party approves for unrestricted release by written authorization
“Upgrades”	generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.

2. Software License

- (a) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use a production copy of the object code version of the Software in the form supplied by Trapeze and on hardware approved by Trapeze as of the License Date (“**License Date**”), restricted to the places of business of the Licensee, for the Licensee’s own operations, in accordance with the operational characteristics described herein.
- (b) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use the Documentation as of the License Date, but only as required to exercise the Software license granted herein.
- (c) Licensee may make one back-up copy of the Software. Licensee may use the production copy of the Software solely to process Licensee’s own data, and the software may not be used on a service bureau or similar basis to process data of others.
- (d) The license to use the database underlying the Software (“**Trapeze Transit Database**”) is granted to Licensee solely for the development of internal reports by Licensee and for the integrated operation of the Software components. Unless expressly included herein, all other access rights to the Trapeze Transit Database are excluded from this Agreement, and the Licensee shall not develop or use, or authorize the development or use of, any other interfaces to or from the Trapeze Transit Database. Notwithstanding the previous two sentences, Licensee may develop interfaces for the Trapeze Transit Database either (i) on its own based on the information and Documentation provided by Trapeze to extract data for its internal benefit, so long as such interfaces do not write to, edit, modify or materially degrade the performance of the Trapeze Transit Database or (ii) to a Trapeze-published application programming interface (“**API**”), which may be licensed from Trapeze. However, Licensee shall retain ownership of the raw data that is inputted into the Trapeze Transit Database and any data generated thereof.
- (e) In the case of any third party Equipment, Third Party Software, related Documentation, or third-party services provided under this Agreement, such third party shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property. The terms and restrictions of the license grants contained in Section 2, in addition to any other terms required by any third party licensor(s), will apply to the use of any Third Party Software and related Documentation, and the licensors of such Third Party Software are third party

beneficiaries of the rights granted under those terms. Where required, Licensee shall enter into a separate end-user-license agreement depending on the product(s) procured. Licensee may only transfer any Software or Third Party Software embedded with any Equipment in accordance with the terms and conditions of this Agreement.

- (f) Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee shall have no further rights to use the Software, Third Party Software, or the Documentation, and shall not copy, reproduce, modify, adapt, reverse engineer, disassemble or translate them, without the express written authority of Trapeze except as otherwise provided in Section 8. Trapeze shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property whether pre-existing or developed under this Agreement. Furthermore, neither this Agreement nor the delivery of any services hereunder shall be construed as granting, either by estoppel or otherwise, any right in, or license under, any present or future data, drawings, plans, ideas or methods disclosed in this Agreement or under any invention, patent, copyright or trade secret now or hereafter owned or controlled by Trapeze. Licensee agrees to: (i) take reasonable steps to maintain Trapeze's and/or its subcontractors' intellectual property rights; (ii) not sell, transfer, publish, display, disclose, or make available the Software, Third Party Software or Documentation, or copies of the Software, Third Party Software or Documentation, to third parties except as required by law or where Licensee may disclose software to designated government representatives under a nondisclosure agreement executed by both parties, (iii) not use or allow to be used, the Software, Third Party Software or Documentation either directly or indirectly for the benefit of any other person or entity, and (iv) not use the Software or Documentation, along with its updates, patches or upgrades, on any equipment other than the equipment on which it was originally installed, without Trapeze's written consent.

3. Software Services As applicable, in accordance with the terms of Exhibit B and Exhibit C, Trapeze will perform services related to Licensee's use of the Software (the "Services"). Such services may include installation, modification, testing, training and additional services.

The Parties agree that certain additional Services, including but not limited to training, installation, or testing, may be added by the Parties' representatives via a work order under this Agreement. The Parties agree that pricing and scope of such additional Services will be finalized between the project managers and any work orders or purchase orders associated with such additional Services shall be governed by the terms of this Agreement, notwithstanding the presence of any standard terms and conditions associated with such work orders.

4. Software Acceptance The parties agree that there shall be no acceptance granted for any Software procured prior to the effective date of this Agreement. The following acceptance procedures shall apply only for purchases of Software modules made pursuant to this Agreement. Upon completing the delivery, installation, and testing of the Software, Trapeze will notify Licensee in writing. Licensee will then have ten (10) business days in which to conduct acceptance tests in order to ensure that the Software operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the Software unless Trapeze receives prior written notice outlining the nature of the Significant Failures in the Software. Notwithstanding the above, Licensee will be deemed to accept the Software when the Licensee puts the Software into operational and functional use. The Software will be deemed to be in operational and functional use when the Licensee first uses the Software to support its then current operations in any capacity.

A “Significant Failure” will mean a failure of the Software to function in accordance with the requirements of the Documentation, where such a failure causes the Software to be inoperable or significantly impairs the functionality of the Software such that there is a critical impact on business operations. Failures that are, without limitation, the result of any operator error, Licensee’s or its subcontractors’ actions or omissions, abuse or misuse of the products or invalid or incorrect data entry by call takers or operators will not be considered in evaluating successful operation.

5. Software Warranty

The parties agree that there shall be no warranty granted for any Software procured prior to the effective date of this Agreement. The following warranty shall apply only for purchases of Software modules made pursuant to this Agreement.

- a. Trapeze warrants the individual Software component to operate in all material respects as specified in the Documentation for a period of ninety (90) days from the date upon which the individual Software component is installed. For any breach of this warranty, Licensee’s sole and exclusive remedy and Trapeze’s entire obligation hereunder shall be to either repair or replace the defective Software. This warranty does not apply to any Software damaged as a result of any accident, negligence, use in any application for which it was not designed or intended, or modification without the prior written consent of Trapeze.
- b. Trapeze warrants it has the right to (i) enter into this Agreement and (ii) grant the licenses pursuant to this Agreement. No separate warranty is provided or included by Trapeze with respect to any third party licensed products including any embedded third party software or Equipment. Trapeze shall flow through any and all third party warranty terms that may apply. Trapeze agrees that it shall be the first point of contact for corrective or remedial services with respect to any embedded software, however specific support and upgrades for such embedded software shall be delivered through the applicable third party provider. Any third party licenses or Services required to migrate the Software due to any future upgrade or migration of the embedded software are not included in the pricing under this Agreement and will be separately quoted by Trapeze.
- c. **The foregoing warranties are in lieu of all other warranties or conditions, express or implied, including but not limited to any implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose and any other warranties arising by statute or otherwise in law or from the course of dealing or usage of trade. Trapeze does not represent or warrant that the Software will meet all of Licensee’s particular requirements, or that the operation of the Software will operate 100% error-free or uninterrupted, or that all program errors in the Software can be found in order to be corrected.**

6. Software Maintenance Pursuant to this Agreement, during any warranty period and for any annual support period for which maintenance fees have been paid in full by Licensee, and the Software has not reached its commercial end of life:

- a. Trapeze will maintain (i) the Software so that it operates in conformity in all material respects with the descriptions and specifications for the Software set forth in the Documentation, and (ii) one (1) instance of the Software in a test environment and one (1) additional instance of the Software in a production environment;

- b. In the event that Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 am to 8 pm EST (Except North American holidays) and an available twenty-four hours per day line for emergency support in accordance with the Trapeze Service Standards identified in Exhibit D. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website.
- c. Trapeze will post notices of available version Upgrades of the Software Under Maintenance on its website and copies of the release notes for download. Licensee agrees to install updates and Upgrades in a timely manner and further agrees that Trapeze shall provide maintenance services only for the current release of the Software and all other releases whose version number begins with either the same number or two previous numbers left of the left most dot. If Trapeze provides support for versions of the Software other than those specified above, such support will be treated, billed, and paid for, as additional Services. Any support for such additional Services that will be billed separately by Trapeze must be agreed in advance and in writing by the Parties.
- d. Documentation for Software Difficulty: Upon the identification of a possible fault or difficulty within any of the Software to be supported hereunder, Licensee shall promptly issue a trouble report to Trapeze that shall include the following information:
 - a) Date of performance anomaly;
 - b) Software module in question and location of where Software is installed;
 - c) Detailed system description of performance anomaly;
 - d) Version number of Software and severity/impact to Licensee's operations;
 - e) Contact name and phone number.

The trouble report information may also be communicated verbally to Trapeze via telephone. Trapeze shall forward the trouble report to the designated repair technician.

- e. Software Excluded from Maintenance The Parties agree that the above maintenance services shall not apply to maintenance of Third Party Software and Trapeze shall be under no obligation to provide any maintenance services to the Licensee with respect to such third party Software. Trapeze shall be the first point of contact with respect to embedded Third Party Software but remedial services may be required from the respective third party provider. The Parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects, or performance issues in the Software which are caused by the actions or omissions of the Licensee, its employees, contractors or vehicle riders described in the following sentence. In the event that Software is subjected to any of the conditions below by Licensee or any third parties, such Software shall be excluded from maintenance service coverage:
 - a) Software subjected to negligence;
 - b) Software subjected to cannibalization or vandalism;
 - c) Software subjected to alteration or repair in a manner which conflicts with Trapeze's written repair procedures, specifications, or license terms;
 - d) Software subjected to inadequate handling;
 - e) Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
 - f) Software altered as a result of third party service bulletins.
- f. Disclaimer Trapeze does not represent or warrant that the Software under maintenance shall meet all of Licensee's particular requirements; or the operation of the Software under maintenance shall be error-free or uninterrupted. Additionally, Trapeze makes no representations

with respect to any third party tablets that are procured by the Licensee.

7. Payment Upon execution of this Agreement, Licensee will issue a Purchase Order to Trapeze, for the fees and related expenses as set out in Exhibit B, attached hereto.

Licensee shall pay annual maintenance fees to Trapeze as provided in Exhibit B (the “**Maintenance Fee**”), attached hereto. All periodic Maintenance Fees for Software covered under Exhibit B will be computed on a calendar annual basis, and will be pro-rated to meet a common date as set forth in Exhibit B. This fee shall be subject to change as set out in Exhibit B. Licensee shall issue a Purchase Order annually specifying the amount set forth in the Trapeze invoice for maintenance services, and the Purchase Order shall be governed by the terms and conditions of this Agreement. In the event that either Party wishes to terminate the maintenance services to be provided under this Agreement with regards to a product, the terminating Party must provide the other Party with no less than ninety (90) days written notice of such termination before the expiration of the then current maintenance period, during which ninety (90) day period the applicable maintenance fees will remain payable. Trapeze may suspend provision of any maintenance services during any period of time during which the applicable maintenance fees remain unpaid by Licensee.

For Software purchased under this Agreement, Trapeze will invoice Licensee for the Software license fees and services fees as set out in and according to Exhibit B. Trapeze will invoice Licensee monthly for the Services provided, in accordance with Exhibit B. The total amounts due for all service fees, modifications fees, and expense are firm fixed amounts and will be invoiced on that basis. The Purchase Order shall be governed exclusively by the terms and conditions of this Agreement.

Licensee shall pay invoices within thirty (30) days of receipt. In the event of an invoice dispute, Licensee shall have five (5) business days from date of receipt of invoice to advise Trapeze of the reasons for disputing the invoice in question. If Trapeze has not received such notification within such time frame, the invoice in question shall be deemed accepted by Licensee. Overdue undisputed payments will bear interest at the annual rate of ten percent (10%) on the amount outstanding from the date when payment is due until the date payment in full is received by Trapeze. Licensee will also be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement. If Licensee has a tax exemption certificate, a copy of the certificate must be provided to Trapeze upon signing of this Agreement to avoid payment of the applicable tax to Trapeze.

8. Trade Secrets Licensee acknowledges that all Trade Secrets relating to or concerning the Software, including any modifications made thereto, are owned by Trapeze or Trapeze has the applicable rights of use and Licensee will maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without Trapeze’s prior written consent. Licensee shall prohibit any persons other than Licensee employees from using any components of the Software and Licensee shall restrict the disclosure and dissemination of all Trade Secrets reflected in the Software to Licensee’s employees who are bound to respect the confidentiality of such Trade Secrets. These obligations of confidentiality will survive termination of this Agreement.

The Parties acknowledge that any Confidential Information disclosed to either Party pursuant to this Agreement shall remain the property of the respective Party. Either Party shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without the other Party’s prior written consent. Both Parties further acknowledge that a breach of this section would cause irreparable harm to the other Party for which money damages would be inadequate and would entitle the non-breaching Party to injunctive relief and to such other remedies as may be provided by law.

Notwithstanding anything to the contrary in Section 8 or in any other provision of this Agreement,

Trapeze acknowledges that Licensee is a governmental entity subject to the Public Information Act, Chapter 552, Texas Government Code ("the Act"). Licensee will maintain confidentiality as provided in this Agreement, to the extent permitted by applicable law and agrees that, as required by the Act, it will notify Trapeze if a request relating to such proprietary information is received. Trapeze represents that it understands that the Act excepts disclosure of trade secrets and confidential commercial information and that it will need to assert the proprietary interest of Trapeze as a basis for nondisclosure.

9. Media and Publication Licensee shall not communicate with representatives of the general or technical press, radio, television or other communications media regarding the work under this Agreement without prior written consent of Trapeze, which such consent shall not be unreasonably withheld. Neither Licensee nor any of its personnel shall publish or reproduce or arrange press releases regarding Trapeze without the prior written consent of Trapeze upon such terms as may be agreeable to Trapeze. Trapeze reserves the right to publish the results of the work done under this Agreement with Licensee's consent, which shall not be unreasonably withheld.

10. Force Majeure Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including, but not limited to: any incidence of fire or flood; acts of God or the public enemy; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; acts of war (whether declared or undeclared); terrorism; strikes; any acts, restrictions, regulations, by-laws, refusals to grant a license or permission; prohibitions or measures of any kind on the part of any authority; freight embargoes; or delays of either Party's suppliers for like causes ("**Force Majeure**"), provided evidence of such Force Majeure is presented to the other Party, and provided further that such non-performance is unforeseeable, beyond the control, and is not due to the fault or negligence of the Party. Either Party shall use commercially reasonable efforts to remove or overcome the cause of Force Majeure and resume work as soon as possible.

Both Parties shall keep in contact with each other as to the status of such Force Majeure and shall agree in writing to a restart date when the facts or matters giving rise to such Force Majeure have concluded and further delays are not foreseen. Upon reengagement of the services to be provided hereunder, Trapeze and Licensee will formulate and agree upon an updated project schedule, taking into account the timeframe that has passed since the work stoppage, necessary time to resume or re-create any previously completed tasks due to damaged or missing equipment and any associated time periods for shipment and/or manufacture of equipment.

11. Remote Access Upon request, Licensee shall provide Trapeze with the right to establish a remote connection to Licensee's computer(s) on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software.

12. Intellectual Property Indemnification In the event of an intellectual property infringement claim by a third party, Trapeze will defend Licensee in respect of any such claims based on the claim that the Software infringes the intellectual property rights of that third party. Trapeze will pay any award rendered against Licensee by a court of competent jurisdiction in such action, provided that Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full and exclusive control of any defense. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing or terminate this Agreement as it relates to the infringing portion of the Software. This is Trapeze's entire liability concerning intellectual property infringement. Trapeze will not be liable for any infringement or claim based upon any modification of the Software developed by Licensee or any other third party, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of

the Software contrary to this Agreement or the Documentation.

13. Limitation of Liability

(a) Trapeze and Licensee do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

(b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any mobile or wireless network, or any information stored in any system connected to the internet or to any mobile or wireless network. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet or of any mobile or wireless network.

(c) Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:

(i) Licensee's use of map or geographical data, owned by Licensee or any third party, in conjunction with the Software or otherwise; or

(ii) Licensee's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.

(d) Trapeze's aggregate liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the use of the Software (whether or not in the manner permitted by this Agreement) including claims for breach of contract, tort, misrepresentation, or otherwise, or the development, modification or maintenance of the Software will be absolutely limited to the amount of the license fees paid by Licensee.

(e) Trapeze will not be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party which fall within the following categories:

- i. incidental, consequential, special, exemplary or punitive damages, whether foreseeable or not;
- ii. special damages even if Trapeze was aware of circumstances in which special damages could arise;

iii. indirect damages, including those for loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind, whether foreseeable or not.

(f) Paragraphs (d) and (e) do not apply to claims arising out of death or personal injury caused by Trapeze's gross negligence or fraudulent misrepresentation.

14. Indemnification: NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TRAPEZE WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, LICENSEE AND LICENSEE'S OFFICIALS, EMPLOYEES, CONTRACTORS, AND AGENTS, FROM ANY AND ALL CLAIMS FROM THIRD PARTIES TO THE EXTENT RESULTING DIRECTLY FROM THE NEGLIGENT ACTS OR OMISSIONS OF TRAPEZE AND/OR TRAPEZE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, EMPLOYEES, AND/OR OFFICERS INCLUDING BUT NOT LIMITED TO CLAIMS INVOLVING ANY BODILY INJURY, DEATH, PROPERTY DAMAGE, PROPERTY LOSS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, BREACH OF PRIVACY, RELEASE OF CONFIDENTIAL INFORMATION, AND/OR CONTRACT INFRINGEMENT. WITHOUT MODIFYING ANY CONDITIONS ABOVE, LICENSEE WILL PROMPTLY FORWARD TO TRAPEZE EVERY DEMAND, NOTICE, SUMMONS, OR OTHER PROCESS RECEIVED BY LICENSEE IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN.

15. Insurance:

15.1 Trapeze will maintain the following:

15.1.1 Commercial General Liability Insurance written on an occurrence for providing coverage at a minimum for premises and operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad-form property damage, and coverage for work performed by independent contractors when work is performed on behalf of Trapeze. The minimum amounts for the Commercial General Liability insurance are \$1,000,000 for bodily injury per occurrence and \$1,000,000 for property damage per occurrence.

15.1.2 If required by law, worker compensation insurance in the amounts required by law.

15.1.3 Professional Liability Insurance (Errors & Omissions) in the minimum amount of \$1,000,000 per occurrence.

15.2 Trapeze will name the Licensee, its officials, employees, agents, and contractors as additional insured in all insurance policies required above. To the extent allowable by law, Trapeze's insurance shall be primary insurance as it related to the Licensee, its officials, employees, agents, and contractors. The Licensee's insurance, if any, will only act as excess insurance and shall not contribute to Trapeze's insurance.

15.3 Prior to undertaking any services under this Agreement Trapeze, at no expense to the Licensee shall furnish to the Licensee a standard certificate of insurance and a copy of all original endorsements.

15.4 Any waivers of any of the insurance requirements above must be approved in advance in writing by the Licensee's Risk Manager.

16. Termination The license granted by this Agreement is effective on effective date and shall terminate on August 31, 2027.

(a) Either party may terminate this Agreement or any part of it for its convenience upon ninety (90) calendar days' prior written notice to the other Party.

(b) Either party may terminate this Agreement if the other party is in material breach of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, the following are deemed material breaches under this Agreement: (i) Licensee fails to pay any amount when due hereunder; (ii) Licensee becomes insolvent or any proceedings will be commenced by or against Licensee under any bankruptcy, insolvency or similar laws or (iii) Licensee breaches the license rights granted herein or violates Trapeze's intellectual property rights.

(c) If Licensee develops software that is competitive with the Software, or Licensee is acquired by or acquires an interest in a competitor of Trapeze, Trapeze shall have the right to terminate this Agreement immediately.

(d) Licensee agrees that in the event that in Trapeze's sole opinion the Software reaches end of its commercial viability (commercial end of life) at a future point in time Trapeze shall be able to terminate this Agreement with respect to the maintenance services to be provided herein. In the event of such termination, Trapeze shall provide Licensee with a one (1) year notice prior to termination of maintenance services.

(e) In the event Licensee terminates this Agreement for any reason, Licensee shall pay Trapeze for all license fees and service fees then due, and all costs incurred up to and including the date of termination.

(f) If this Agreement is terminated, Licensee will immediately return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this Agreement, except as required by law and Licensee's document retention procedures.

17. Assignment Neither party may assign this Agreement, or any of its interest herein, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that with 90 days prior written notice to other party, no such prior approval shall be required for an assignment in connection with a sale of all or substantially all of a Party's business related to the subject matter of this Agreement or any merger, sale of a controlling interest or other change of control of such Party. This Agreement shall apply to and bind the successors and permitted assigns of the Parties.

18. Applicable Law This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, USA.

19. Survival The parties hereto agree that any provisions of this Agreement requiring performance or fulfillment by either party after the termination of this Agreement shall survive such termination.

20. Severability If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void and does not relate to the payments to be made to Trapeze. If the remainder of this Agreement, as the case may be, shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.

21. Notices All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective addresses of the parties appearing on page one of this Agreement. Any notice given shall be deemed to have been received on the date when it is delivered if delivered personally, or, if mailed, on the fifth business day following the mailing thereof. Either party may change its address for notices by giving notice of such change as required in this section.

22. Audits Licensee's use of any of the Software is limited to the operational characteristics and such other usage restrictions as are set forth in this Agreement, including but not limited to Exhibit A. Software may contain or, subject to five (5) days written prior notice Trapeze will have the right to install, a reporting tool that audits and transmits information periodically to Trapeze regarding the usage and operational characteristics of the Software. The purpose of any audit will be to verify compliance with the terms and conditions of this Agreement. Licensee acknowledges that the Software may include license keys, password protection, anti-copying subroutines and other security measures designed to limit usage of the Software to that which is licensed hereunder. Such measures shall not interfere with Licensee's normal and permitted operation of the Software as licensed hereunder. Licensee and Trapeze will amend the Agreement to account for any increased operational characteristics revealed by an audit and Licensee shall promptly pay to Trapeze any amounts shown by any audits to be owing to Trapeze.

23. Waiver No action or failure to act by Trapeze shall constitute a waiver of any right or duty afforded it under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing. The express provision herein for certain rights and remedies of Licensee shall not be construed to deprive Trapeze of any other rights and remedies to which it would otherwise be entitled under applicable law.

24. Counterparts This Agreement may be approved by the signatories by counterparts delivered electronically or by courier, which when properly executed by each respective party and read together shall comprise a fully executed Agreement.

25. Independent Contractor It is understood that in the performance of the Agreement, services and/or sale of goods under this Agreement, Trapeze is acting solely as an independent contractor. Nothing in this Agreement shall be construed or implied to create a joint venture, partnership, corporation, or business association.

EXHIBIT A

Summary of Software Products

Listing of Pre-Existing Software Under Maintenance:
FX
Blockbuster
Google Export
INFO SMS/EMAIL
INFO RMD
INFO WEB
INFO COM
INFO BASE
INFO QR Code
INFO TransitNOW

EXHIBIT B
Summary of Maintenance Pricing and Payment Schedule

(follows this page)

SUN METRO Maintenance Schedule

Product	Term	Operational Characteristics	Value	Notes
FX FX FX FX	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 200 peak vehicles & 3 w/s up to 200 peak vehicles & 3 w/s up to 200 peak vehicles & 3 w/s up to 200 peak vehicles & 3 w/s	\$ 42,282 \$ 46,658 \$ 48,991 \$ 51,440	Contracted
Blockbuster Blockbuster Blockbuster Blockbuster	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 200 peak vehicles up to 200 peak vehicles up to 200 peak vehicles up to 200 peak vehicles	\$ 18,946 \$ 20,906 \$ 21,952 \$ 23,049	Contracted
Google Export Google Export Google Export Google Export	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 110 peak fixed route vehicles up to 110 peak fixed route vehicles up to 110 peak fixed route vehicles up to 110 peak fixed route vehicles	\$ 4,612 \$ 5,089 \$ 5,344 \$ 5,611	Contracted
INFO SMS/EMAIL INFO SMS/EMAIL INFO SMS/EMAIL INFO SMS/EMAIL	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles	\$ 4,498 \$ 4,723 \$ 4,959 \$ 5,207	Contracted
INFO RMD INFO RMD INFO RMD INFO RMD	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles	\$ 5,292 \$ 5,557 \$ 5,835 \$ 6,127	Contracted
INFO WEB INFO WEB INFO WEB INFO WEB	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles up to 124 peak vehicles	\$ 12,250 \$ 12,862 \$ 13,505 \$ 14,181	Contracted
INFO COM INFO COM INFO COM INFO COM	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 130 peak vehicles & 1199 booked trips up to 130 peak vehicles & 1199 booked trips up to 130 peak vehicles & 1199 booked trips up to 130 peak vehicles & 1199 booked trips	\$ 11,645 \$ 12,227 \$ 12,839 \$ 13,481	Contracted
INFO BASE INFO BASE INFO BASE INFO BASE	September 1, 2023 - August 31, 2024 September 1, 2024 - August 31, 2025 September 1, 2025 - August 31, 2026 September 1, 2026 - August 31, 2027	up to 124 peak fixed route vehicles up to 124 peak fixed route vehicles up to 124 peak fixed route vehicles up to 124 peak fixed route vehicles	\$ 17,554 \$ 18,431 \$ 19,353 \$ 20,321	Contracted

SUN METRO Maintenance Schedule

Product	Term	Operational Characteristics	Value	Notes
INFO QR Code	September 1, 2023 - August 31, 2024	up to 124 peak vehicles	\$ 6,642	Contracted
INFO QR Code	September 1, 2024 - August 31, 2025	up to 124 peak vehicles	\$ 6,974	
INFO QR Code	September 1, 2025 - August 31, 2026	up to 124 peak vehicles	\$ 7,323	
INFO QR Code	September 1, 2026 - August 31, 2027	up to 124 peak vehicles	\$ 7,689	
INFO TransitNOW	September 1, 2023 - August 31, 2024	up to 124 peak vehicles	\$ 6,780	Contracted
INFO TransitNOW	September 1, 2024 - August 31, 2025	up to 124 peak vehicles	\$ 7,119	
INFO TransitNOW	September 1, 2025 - August 31, 2026	up to 124 peak vehicles	\$ 7,474	
INFO TransitNOW	September 1, 2026 - August 31, 2027	up to 124 peak vehicles	\$ 7,848	

Summary	
Years	Total
September 1, 2024 - August 31, 2025	\$ 140,547
September 1, 2025 - August 31, 2026	\$ 147,574
September 1, 2026 - August 31, 2027	\$ 154,953
Total	\$ 443,075

**Trapeze has included only those products currently on maintenance on the list above.
 * Fees do not include any applicable taxes. These will be added at time of invoicing.

EXHIBIT C
Statement of Work

None as of the effective date of this Agreement.

EXHIBIT D

Service Standard for Maintenance of Trapeze Software

Trapeze will use reasonable efforts to correct any Software deficiency or performance anomaly within the time frames established below in order to cause the Software to meet the functional and performance criteria set out in the Documentation for the Software in effect at the time of this Agreement. Unless provided otherwise in this maintenance and support schedule, Trapeze will respond to a trouble report of a Software deficiency or performance anomaly in accordance with the severity level reasonably determined by the Licensee and communicated to Trapeze, based on the following definitions:

Severity Level	Condition	Response Time (Goal)	Resolution Efforts
Priority 1	An error or performance anomaly that renders Software inoperable in a production environment, resulting in the inability to utilize critical system components.	During normal business hours – Immediately After Hours - Within 1 hour	<p>Dedicated staff resources working 24 hours per day, 7 days per week until corrected.</p> <p>Within 4 hours of receipt of Priority 1 report the management of the issue will escalate to the 1st escalation point until corrected.</p> <p>Within 8 hours of receipt of Priority 1 report the management of the issue will escalate to the 2nd and 3rd escalation point until corrected.</p> <p>Within 12 hours of receipt of Priority 1 report the management of the issue will escalate to the 4th escalation point until corrected.</p> <p>Trapeze will remain in regular contact with the Licensee (contact will occur, at a minimum, during escalation points, and every 8 hours thereafter).</p>
* Priority 2	An error or performance anomaly with Software resulting in major inconvenience for users in the production environment or the public.	Within 2 business hours	<p>For the first 48 hours following receipt of Priority 2 report, dedicated staff resources working during normal business hours until corrected.</p> <p>Within 24 hours of receipt of Priority 2 report the management of the issue will escalate to the 1st escalation point until corrected.</p> <p>Within 48 hours of receipt of Priority 2 report the management of the issue will escalate to the 2nd and 3rd escalation point until corrected.</p> <p>Within 5 days of receipt of Priority 2 report the management of the issue will escalate to the 4th escalation point until corrected.</p>

Severity Level	Condition	Response Time (Goal)	Resolution Efforts
			Trapeze will remain in regular contact with the Licensee (contact will occur, at a minimum, during escalation points, and every 24 hours thereafter).
Priority 3	Software issues where the system is functioning but causing minor or short term inconvenience for specific users with critical positions using the production environment.	Within 1 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 3 reports.
Priority 4	General questions; Software issues resulting in minor inconvenience for non-critical positions using the production environment or testing using a test environment. Includes; Hardware Support (RMA requests)	Within 1 business day	Working on the issue during normal business hours with the same efforts as are employed for other Priority 4 reports.

* If Trapeze’s resolution efforts result in a work around that leads Licensee to experience an improvement in the conditions it is reporting, the severity level will be lowered accordingly. For example, where a Priority 1 report is resolved by Trapeze to the point where the Licensee is experiencing conditions associated with a Priority 2 severity level, the Priority 1 report will be reclassified as a Priority 2 report, at which time Trapeze shall be deemed to be in “receipt of a Priority 2 report” and Priority 2 resolution efforts shall apply.

Escalation Management Matrix

Trapeze strives to provide exceptional customer support services. If this level of service is not experienced, it is important for our customers to have the ability to escalate their concerns so appropriate actions can be taken.

All support issues are logged first with our customer care organization to ensure that all required details can be recorded and allow the customer care team to attempt to resolve the issue within the service level objectives.

First level Escalation Point

Product Line Manager or comparable role

If you are concerned that your issue is not being progressed in a satisfactory manner, please refer this to the Product Line Manager.

Second Level Escalation Point

Escalation Manager or comparable role

If you feel your escalation is not being handled at 1st Level escalation, please refer this to the Escalation Manager.

Third Level Escalation Point

Customer Care Director or comparable role

If you feel your escalation is not being handled at 2nd Level escalation, please refer this to the Customer Care Director.

Fourth Level Escalation Point

Vice President of Customer Care or comparable role

If you feel your escalation is not being handled at 3rd Level escalation, please refer this to the Vice President of Customer Care.