

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.3**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**



Authorizing the Director of Transportation to execute Contract No. SFMTA-2024-50-LOC, Scheduling System Maintenance and Support Services Agreement between the City and County of San Francisco and Trapeze Software Group, Inc., for proprietary scheduling system maintenance and software services for a total contract amount not-to-exceed \$4,182,211 and a term of five years commencing on November 1, 2024.

- In 2002, the SFMTA executed Contract MR-1185 with Trapeze Software Group, Inc. (Trapeze) to procure a Scheduling System, including proprietary software and related professional services, which performs transit operator and vehicle scheduling, run cutting, rostering, and reporting system with data collection/route analysis and transit operator dispatch and timekeeping/payroll functions, for a contract amount of \$2,981,455. The Trapeze Scheduling System is critical to the SFMTA's efficient operation and management of transit services, and the SMFTA has structured many core business processes around it.
- To continue to use the Trapeze Scheduling System, the SFMTA must obtain periodic software updates and system maintenance and support services, or the scheduling software will become out-of-date and would eventually not work as intended. The current purchase order for those services, under SFMTA Contract No. 2015-2016 expires on October 31, 2024.
- The proposed Contract No. SFMTA-2024-50-LOC would provide system support services and periodic system software updates to maintain the existing configuration and operations of the Scheduling System, commencing on November 1, 2024.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract

**APPROVALS:**

	<b>DATE</b>
DIRECTOR 	<u>May 15, 2024</u>
SECRETARY 	<u>May 15, 2024</u>

**ASSIGNED SFMTAB CALENDAR DATE:** May 21, 2024

**PURPOSE**

Authorizing the Director of Transportation to execute Contract No. SFMTA-2024-50-LOC, Scheduling System Maintenance and Support Services Agreement between the City and County of San Francisco and Trapeze Software Group, Inc., for scheduling system maintenance and software services, for a total contract amount not-to-exceed \$4,182,211 and a term of five years commencing on November 1, 2024.

**STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

The SFMTA will further the fifth and tenth goals of the Strategic Plan through approval of the Contract No. SFMTA-2024-50-LOC:

Goal 5: Deliver reliable and equitable transportation services.

Goal 10: Position the agency for financial success. Trapeze software is used to ensure that near-term resource allocation is efficient and reliable to meet the city's long-term transportation vision.

This contract will support SFMTA's Transit First Policy Principles as follows:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

**DESCRIPTION**

On January 11, 2002, the City entered Contract MR-1185 with Trapeze Software Group in the amount of \$2.9 million to procure a proprietary Scheduling System, including software and professional services to configure and implement the Scheduling System. The SFMTA uses Trapeze's Scheduling System to create schedules for Muni transit operations, including operator shift and run scheduling and payroll calculation, to dispatch bus and rail trips and runs, assign vehicles, and perform operator assignment bidding.

The proposed maintenance agreement would provide maintenance services and periodic software updates to ensure the continued operations and functions of the Scheduling System. The contract

## **PAGE 3.**

amount of this maintenance services agreement is not-to-exceed \$4,182,211, which is the negotiated value of software maintenance services and software updates that the Scheduling System will require over the five-year term of the agreement. The SFMTA will not procure additional system functions or software under this contract – those may be procured under the task order agreement with Trapeze, Contract No. SFMTA-2024-07-FTA , which the SFMTA Board of Directors approved on April 2, 2024.

All services will be provided by Trapeze Software Group, Inc. There are no Local Business Enterprise (LBE) subcontracting participation requirement for this agreement because the work consists entirely of providing proprietary software and related professional services that can only be provided by Trapeze.

If approved, Trapeze would provide software updates and system support services commencing on November 1, 2024, when the current purchase order for those services, under SFMTA Contract No. 2015-2016, expires.

## **STAKEHOLDER ENGAGEMENT**

The stakeholders for the Scheduling System who will be impacted by the work performed under the proposed agreement consist only of SFMTA staff in the Transit Division, who attend internal meetings to address ways in which the Scheduling System is used and may be improved.

## **ALTERNATIVES CONSIDERED**

The Trapeze Scheduling System is central to SFMTA transit operations as it is integrated to multiple other critical SFMTA business systems, including transit service dispatch, run and shift bidding, time keeping and payroll. Theoretically, these functions could be performed manually or using spread sheet programs (as they were more than 20 years ago), but those methods would be inefficient and time consuming, would likely produce scheduling errors and incorrect data, and would not integrate with SFMTA’s transit radio communications and payroll systems.

## **FUNDING IMPACT**

The SFMTA maintains and has budgeted for Scheduling System software updates and maintenance services for fiscal year 2024.

The SFMTA will budget these updates in future operating budgets.

## **ENVIRONMENTAL REVIEW**

On April 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA-2024-50-LOC for a Maintenance agreement with Trapeze Software Group, Inc. for software maintenance services is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b). A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed this calendar item and has approved the Contract as to form.

The Civil Service Commission approved procuring services from Trapeze under item 43627 – 23/24 (11/06/2023)

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA-2024-50-LOC, Scheduling System Maintenance and Support Services Agreement between the City and County of San Francisco and Trapeze Software Group, Inc., for scheduling system maintenance and software services, for a total contract amount not-to-exceed \$4,182,211 a term of five years commencing on November 1, 2024.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, In 2002, the SFMTA executed Contract MR-1185 with Trapeze Software Group, Inc. (Trapeze) to procure a Scheduling System, including proprietary software and related professional services, which performs transit operator and vehicle scheduling, run cutting, rostering, and reporting system with data collection/route analysis and transit operator dispatch and timekeeping/payroll functions, for a contract amount of \$2,981,455; and,

WHEREAS, The Trapeze Scheduling System is critical to the SFMTA's efficient operation and management of transit services, and the SMFTA has structured many core business processes around the Trapeze Scheduling System, including transit services dispatch, run and shift bidding, time keeping and payroll; and,

WHEREAS, The SMFTA has over the past 22 years under numerous contracts and purchase orders procured periodic Scheduling System software updates and system maintenance and support services from Trapeze, and has also expanded and integrated the Scheduling System with Muni dispatch, timekeeping and payroll, and radio communications systems; and,

WHEREAS, To continue to use the Trapeze Scheduling System, the SFMTA must obtain periodic software updates and system maintenance and support services, or the scheduling software will become out-of-date and would eventually not work as intended; and the current purchase order for those services, under SFMTA Contract No. 2015-20162, expires; and,

WHEREAS, The proposed maintenance services contract, Contract No. SFMTA-2024-50-LOC, would provide system support services and periodic system software updates to maintain the existing configuration and operations of the Scheduling System; new software and additional system functions will not be procured under this contract; and,

WHEREAS, The Scheduling System and its software are proprietary to Trapeze, which is the only source for Scheduling System software updates and support services; and,

WHEREAS, On April 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined the Contract No. SFMTA-2024-50-LOC scheduling system maintenance and software services is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2024-50-LOC, Scheduling System Maintenance and Support Services Agreement between City and County of San Francisco and Trapeze Software Group, Inc., for proprietary Scheduling System software and related services, for a total contract amount not to exceed \$4,182,211 and for a term of five years commencing on November 1, 2024.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 21, 2024.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Scheduling System Maintenance and Support Services Agreement  
between City and County of San Francisco  
and  
Trapeze Software Group, Inc.**

**Contract No. SFMTA-2024-50-LOC**

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City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103

**System Maintenance and Support Maintenance Services Agreement between City and  
County of San Francisco and  
Trapeze Software Group, Inc. for Scheduling Software and Support Services  
Contract No. SFMTA -2024-50-LOC**

This Scheduling System Maintenance and Support Services Agreement (“Agreement”) is made as of \_\_\_\_\_, in San Francisco California by and between Trapeze Software Group, Inc. (“Trapeze” or “Contractor”), whose principal place of business is located at 5265 Rockwell Drive NE, Cedar Rapids, IA, 52402, and the City and County of San Francisco (“City”), a municipal corporation, acting by and through its Municipal Transportation Agency (“SFMTA”).

**Recitals**

- A.** The SFMTA purchased from Trapeze certain transit operations scheduling software and related professional services under a Purchase and Maintenance Services Agreement for Purchase and Implementation of an Integrated Scheduling, Run Cutting, Rostering and Reporting System with Data Collection/Route Analysis and an Operator Dispatch and Time Keeping System, dated April 2002, as amended (“Original Contract”).
- B.** Subsequent to the Original Contract, the SFMTA has purchased certain upgrades, updates and additional software modules to maintain and improve the functionality to the Software from Trapeze under separate maintenance, service, and license agreements (“Subsequent Contracts”).
- C.** The SFMTA desires to procure from Trapeze and Trapeze desires to provide to the SFMTA System Maintenance and support Maintenance Services (as described in this Agreement) necessary to maintain the functions and operation of the System.
- D.** This Contract does not concern the planning, research, or development of systems or software. This Agreement does not contemplate or include the development of any custom software. All software that Trapeze has provided to the SFMTA under the contracts referenced above and will provide under this Agreement are commercial, off-the-shelf, non-custom software products that Trapeze developed as part of its general business enterprise separately, apart, or prior to any of those agreements. Said software was not developed specifically for the SFMTA or under any federally funded or other grant program to develop transit scheduling software.
- E.** Contractor represents and warrants that it is qualified to perform the Maintenance Services as described in this Agreement.

**F.** The Maintenance Services procured under this Agreement are proprietary to Contractor and cannot be obtained from or performed by another vendor. This Agreement was procured through the single source requirements for sole source contracting, in accordance with San Francisco Administrative Code Sections 21.30.

**G.** Due to the proprietary nature of the Work under this Agreement, Contractor and SFMTA agree that Contractor must perform the Work with its own personnel and no portion of the Work can or will be performed by a subcontractor.

**H.** The City's Civil Service Commission approved Contract number 43627-23/24 for this Agreement on November 6, 2023.

**I.** There is no Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement.

**J.** The City will only use local funds to pay for the Maintenance provided under this Agreement; the City will not use federal funds for this Agreement.

Now, THEREFORE, the Parties agree as follows:

## **Article 1      Definitions**

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

“**Agreement**” or “**Contract**” means this contract document, including all Included Appendices, any future approved Contract Modifications, and all applicable City Ordinances and Mandatory City Requirements incorporated into this Agreement by reference.

“**Approval Date**” means the date the Director of Transportation executes this Agreement, which is the date stated in the first paragraph of this Agreement.

“**CCO**” means the SFMTA Contract Compliance Office.

“**City**” or “**City**” means City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

“**City Data**” or “**Data**” means that data as described in Article 12 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by the System, including Confidential Information.

“**CMD**” means the Contract Monitoring Division of the City.

“**Confidential Information**” means information and documents that a Party identifies as confidential, a Party's information or that is protected by law (which includes but is not limited to a Party employees' personally-identifiable information (PII), protected health information

(PHI)), or individual financial information that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

“**Contract Administrator**” means the SFMTA contract administrator assigned to this Agreement.

“**Contract Amount**” means the not-to-exceed value of this Agreement as authorized by the SFMTA Board of Directors (and the San Francisco Board of Supervisors if this Agreement is subject to San Francisco Charter Section 9.118).

“**Contract Modification**” means a written amendment to the Contract, approved by Contractor and the Director of Transportation or their authorized designee.

“**Contractor**” or “**Trapeze**” means Trapeze Software Group, Inc., whose principal place of business is located at 5265 Rockwell Drive NE, Cedar Rapids, IA, 52402.

“**Controller**” means the Controller of City.

“**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

“**Days**” (whether or not capitalized) means a number of continuous calendar days, unless otherwise designated.

“**Deliverables**” means Contractor’s work product resulting from the Maintenance Services provided by Contractor to City, including without limitation, the work product described in this Agreement.

“**Director**” means the Director of Transportation of the SFMTA or his or her designee.

“**Documentation**” means the user manuals, System design documents, and training materials pertaining to the System and Software supplied by Contractor.

“**Effective Date**” is November 1, 2024, the date that the Services under this Agreement will commence.

“**Errors, Defects and Malfunctions**” means either a deviation between the function of the Software and the functions described in the Documentation furnished by Trapeze for the Software.

“**Fix(es)**” means the repair or replacement of source, object or executable code in the Software to remedy Errors, Defects or Malfunctions.

“**License Date**” means the date City accepts Software provided by Contractor to SFMTA under the Original Contract or Subsequent Contracts as meeting the specifications and requirements stated in the relevant agreement by which the SFMTA procured that Software.

“**Maintenance Fees**” means the negotiated amounts stated in Appendix B that the City shall pay Contractor as compensation for the Maintenance Services Contractor provides under this Agreement.

“**Maintenance Services**” (or “**Services**”) means the services described in Article 4 and Appendix A, which include Software Updates and Upgrades, correction of Errors, Defects or Malfunctions; providing telephone and/or online support concerning the installation and use of existing Software functions (as accepted in the Original Contract and Subsequent Contracts). Maintenance Services do not include training, testing, or Software configuration of Upgrades or other new Software modules.

“**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

“**Notice to Proceed**” (“**NTP**”) means written notice to Contractor of the date on which it shall begin performance of the Work to be performed under this Agreement.

“**Original Contract**” means the “Agreement between The City and County Of San Francisco and Trapeze Software Group, Inc. for Purchase and Implementation of an Integrated Scheduling, Run Cutting, Rostering and Reporting System, with Data Collection/Route Analysis and an Operator Dispatch and Timekeeping System,” SFMTA Contract No. MR-1185, dated April 2002, amendments to that contract dated May 5, 2005 and August 12, 2005, and task orders issued under that contract. (See Appendix C)

“**Party**” and “**Parties**” mean City and Contractor either collectively or individually.

“**Patch(es)**” means the temporary repair or replacement of code in the Software to remedy Errors, Defects or Malfunctions. Patches may be made permanent and released in Subsequent Releases of the Software.

“**Priority Category**” means a priority level assigned to Errors, Defects or Malfunctions, designating the urgency of correcting Errors, Defects or Malfunctions. Assignment of a Priority Category to Errors, Defects or Malfunctions is based on City's reasonable determination of the severity of the Errors, Defects or Malfunctions and Trapeze's reasonable analysis of the priority of the Errors, Defects or Malfunctions. (See Appendix A)

“**Priority Protocol**” means the process (based on the Priority Category) specifying the response time of the resolution efforts for correcting Errors, Malfunctions and Defects and related escalation procedures. (See Appendix A)

“**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or their designated agent.

“**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

“**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means City department that has jurisdiction over all surface transportation in San Francisco, as provided in Article VIIIA of City's Charter.

“**Software**” (or “Scheduling Software” as referenced in the Original Contract and Subsequent Contracts) means the software that is proprietary to Contractor, excluding Third Party Software and software for which Contractor has provided SFMTA end-of-life notice, that is licensed to SFMTA under the Original Contract and Subsequent Contracts, which may be updated from time to time as agreed between the Parties, Upgrades and Updates that Contractor shall supply to the SFMTA under this Agreement as listed in Appendix A.

“**Software Operational Characteristics**” means the authorized use of Software, including the functions and tasks the Software is to perform, and the number of allowable seats (users), rides, vehicles, or any other usage parameters and limits stated in the Documentation which Contractor provided the Software to City.

“**Software Module(s)**” means a non-customized code that is a subset of the Software, which performs specified System functions.

“**Subsequent Contracts**” means: (1) the “Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Software and Related Professional Service,” Contract SFMTA 2015-2016, dated September 25, 2014, and the amendment to that contract dated October 31, 2014; (2) purchase orders issued by the SFMTA on the following dates for Software and related services, all of which are listed in Appendix C to this Agreement.

“**Subsequent Release**” means a release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly



designated by Trapeze as a replacement to a specified Software product. A Subsequent Release will be supported by Trapeze in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Trapeze at any given time.

“**System**” means the integrated scheduling, run cutting, rostering and reporting system with data collection/route analysis and an operator dispatch and time keeping system, related Software and Software Modules, equipment, and other deliverables that Contractor has provided to the SFMTA under the Original Contract and Subsequent Contracts and Updates and Upgrades to the Software that Contractor will provide to the SFMTA under this Agreement.

“**Term**” means the period that the Agreement is in effect, commencing on the Effective Date.

“**Third Party Software**” means software products provided and licensed by Contractor to the SFMTA that are necessary to operate the System that are not Contractor’s intellectual property.

“**Trade Secrets**” means the Software, Documentation, and other related information (including all modifications of the Software developed for City) disclosed to City or SFMTA under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze. Trade Secrets are Confidential Information.

“**Update(s)**” means Patches and fixes to Software problems that are necessary to repair and maintain the functionality of the Software in accordance with the Documentation that does not provide additional or enhanced System functions. Software Updates are included in Maintenance Services.

“**Upgrade(s)**” means either a generic enhancement to the Software code to add new features or functions to the System or Software programming revisions containing corrections to Errors, Defects and Malfunctions that Trapeze generally makes available to licensees as part of its long term software maintenance program, but excludes any services for consulting, Software configuration or other System changes or training. Such services shall be procured under the SFMTA Contract No. 2024-07-FTA.

“**Work**” means the Maintenance Services that Contractor shall provide to the SFMTA, as described in Section 4.1 and Appendix A.

“**Workaround(s)**” means a change in the procedures followed or end user operation of the Software to avoid Errors, Defects or Malfunctions without significantly impairing functionality or degrading the use of the Software.

## **Article 2      Term of the Agreement**

**2.1**      The Term of this Agreement shall commence on the date the Director of Transportation executes this Agreement, which is the date stated in the first paragraph of this

Agreement (which shall be the Effective Date of this Agreement), and shall expire on October 31, 2029 unless earlier terminated as otherwise provided in this Agreement or extended by an approved Contract Modification (as provided in Section 11.3). The Parties may agree to extend the Term of this Agreement as provided in this Agreement or subject to a sole source determination and approval by the SFMTA Board of Directors, and the San Francisco Board of Supervisors as required by Charter Section 9.118, as applicable.

### **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Except as separately stated in this Agreement, this Agreement may terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the period for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. This provision shall not absolve City from payment obligations for any Work already performed by Contractor prior to termination due to lack of funding.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per City Charter, applicable laws governing emergency procedures, no City representative, officer or employee is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor in excess of the certified maximum amount for this Agreement without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.3 (Modification of this Agreement). The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**3.3 Compensation.** SFMTA shall pay Contractor the Maintenance Fees stated in Appendix B for Maintenance Services Contractor provides to SFMTA under this Agreement, payable annually, as provided in this Article 3. The Contract Amount of this Agreement is not to

exceed \$4,182,211 for the Term of the Agreement, unless this Agreement is modified by a Contract Modification properly executed and approved (See Section 11.3 – Modification of Agreement). Amounts listed in Appendix B and all payments shall be made in United States Dollars. Amounts listed in Appendix B do not include sales tax, if applicable. If the SFMTA purchases additional software or Upgrades to the Software, the Parties will negotiate an amendment to this Agreement to cover that additional software or Upgrades under the Maintenance Services not included in the Maintenance Fees set out in Appendix B.

**3.4 Invoice - Calculation of Charges.** Contractor shall each year during the Term of this Agreement issue an invoice to the City on or before ninety (90) days prior to the anniversary of the Effective Date of this Agreement for the Maintenance Fees payable for the next year. Subject to the above terms and receipt of an accurate invoice, which is properly addressed and delivered, City shall pay invoices for undisputed Work within thirty (30) calendar days of receipt of the invoice for that Work. In no event shall City be liable for interest or late charges for any late payments. The City shall be responsible for payment of all applicable sales taxes including use taxes, and this obligation shall survive termination of this Agreement.

**3.5 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to City’s Controller and the SFMTA, and must include a unique invoice number and the following information:

- (a) Contract Number
- (b) Purchase Order Number for this Agreement
- (c) Description of the Work
- (d) Contract payment terms
- (e) Sales/use tax (if applicable)
- (f) Total costs
- (g) Progress Payment Form – SFMTA Form No. 6

**3.6 Payment Limited to Satisfactory Work.** Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Work without additional charge to the SFMTA, in accordance with the Agreement. The City may reject Work that does not conform to the requirements of this Agreement.

### **3.7 Payment Process**

**3.7.1 Payment Due Date:** Unless the SFMTA notifies Contractor that a dispute exists, the SFMTA shall issue payment for undisputed Work within thirty (30) Days of the date

the SFMTA receives the invoice for that Work. Payment is deemed to be made on the date on which City has posted the electronic payment to Contractor.

### **3.7.2 City Payment for Work**

(a) The City utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of City, Contractor may be required to submit invoices directly in City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

**3.8 Audit and Inspection of Records.** Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to the Maintenance Services performed under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years after final payment for the specific Maintenance Services provided under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section.

**3.9 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to City if Contractor or subcontractor:

(a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

**3.10 Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way reduce, compromise or waive the liability of Contractor to replace unsatisfactory Work, including but not limited to materials, and/or Maintenance Services, although the unsatisfactory character of Work same may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay, subject to terms of warranty under this Agreement or a separate maintenance agreement between the Parties.

#### **Article 4 Scope of Work - Maintenance Services and Resources**

**4.1 Maintenance Services Contractor Agrees to Perform.** Contractor agrees to perform the Maintenance Services described in Appendix A. This Agreement and the Maintenance Services that Contractor will perform under it do not include the planning, research, or development of systems or software or the creation of custom software or systems.

**4.2 Qualified Personnel** Contractor shall use only competent and qualified personnel under the supervision of and in the employment of Contractor to perform the Work. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete and deliver the Work as required by this Agreement.

**4.3 Current Workload and Available Resources.** Contractor represents and warrants that its current workload will not impair its ability to perform Work under this Agreement. Contractor shall use reasonable efforts to make available, at all times the necessary professional, technical and support personnel available, ready and mobilized to perform the Maintenance Services under this Agreement.

**4.4 SFMTA's Responsibilities.** City shall use reasonable efforts to make available to Trapeze reasonable access to the System on which City experienced the Errors, Defects or Malfunctions, the Software and all relevant documentation and records. City shall also provide reasonable assistance to Trapeze, including sample output and diagnostic information, to assist Trapeze in providing Maintenance Services. Unless otherwise agreed in an executed Task Order issued under SFMTA Contract No. 2024-07-FTA, City is responsible for installing, managing and operating any Software delivered under this Agreement.

**4.5 Subcontracting.** Contractor shall perform all Work under this Agreement with its own personnel and shall not use subcontractors.

**4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses**

**4.6.1 Independent Contractor.** For the purposes of this Section 4.6.1, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Work under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s Work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 Payment of Employment Taxes and Other Expenses.** Should City’s Tax Collector, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a

credit against such liability). A determination of employment status pursuant to this Section 4.6.2 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City.

#### **4.7 Assignment**

**4.7.1** The Maintenance Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Notwithstanding the above restrictions, in the event of an assignment or novation of this Agreement to a Contractor's Affiliate pursuant to a corporate reorganization, Contractor shall not require City's consent. For purposes of this Agreement, an Affiliate means a company which controls, is controlled by, or is under the common control with Contractor, but only for as long as such control exists; for the purposes of this clause, control is deemed to exist when the company in question has the authority, directly or indirectly through one or more intermediaries, to direct or utilize the voting rights of more than 50% of the stock entitled to vote for directors, general managers or persons performing a similar function, whereby such authority may exist by ownership of such stock or by contract.

**4.7.2** The City shall not transfer or assign its rights under this Agreement without Contractor's approval.

**4.8 General Warranty.** Contractor warrants to City that the Maintenance Services will be performed with the degree of skill and reasonable care that is required by current, good and sound professional industry procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Maintenance Services are performed.

**4.9 Force Majeure.** Either Party shall be excused from performing its obligations under the 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; disease epidemic; 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; delays of either Party's suppliers for like causes ("Force Majeure"), provided satisfactory 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.

The Parties shall regularly communicate 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, Contractor and City will formulate and agree upon an updated project schedule, taking into account the time 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.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to Section 5.2 (Indemnification), Contractor must maintain in force, during the full Term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Maintenance Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$5,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(1) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(2) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.



(f) Cyber and Privacy Insurance with limits of not less than \$5,000,000 per claim. Such insurance shall include coverage for network security and privacy liability coverage for liability arising from theft, dissemination, and/or use of Confidential Information that is stored or transmitted in electronic form.

### **5.1.2 Additional Insured Endorsements**

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured City and County of San Francisco, its Officers, Agents, and Employees.

**5.1.3 Waiver of Subrogation Endorsements.** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and subcontractors.

### **5.1.4 Primary Insurance Endorsements**

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

### **5.1.5 Other Insurance Requirements**

(a) Contractor shall provide thirty (30) Days' advance written notice to City of cancellation, non-renewal or reduction of coverage, or immediate notice if Contractor's insurer provides less than thirty (30) Days' notice of cancellation. Notices shall be sent to City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement Term give rise to claims

made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the Term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Work, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

## **5.2 Indemnification**

### **5.2.1 Indemnity and Defense of Claims**

(a) Contractor shall indemnify and defend City and its officers and employees (collectively "Indemnitees") against any and all third party claims for loss, cost, damage, injury, liability for injury to or death of a person (including employees of Contractor) or loss of or damage to tangible property, arising from Contractor's negligence or willful misconduct, including, but not limited to, Contractor's use of facilities or equipment provided by City or others (collectively "Third Party Claim"), except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such third party loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City. The foregoing indemnity and defense obligations shall include, without limitation, reasonable fees of attorneys as may be awarded by a court of competent jurisdiction. Contractor's obligations to defend and indemnify City extend to any Third Party Claim that states allegations related to this Agreement or Contractor's performance of this Agreement, even if such Third Party Claim is or may be groundless, false or fraudulent. Contractor's obligation to defend City arises at the time such Third Party Claim is tendered to Contractor by City and continues at all times thereafter.

(b) The foregoing indemnity and defense obligations shall also extend to and include any claims brought against City by a third party based on any claim that the

Maintenance Services infringes the intellectual property rights of that third party. If, in any intellectual property infringement suit concerning the Maintenance Services is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Contractor deems it advisable to do so, Contractor may either: (1) procure the right to continue the use of the same for City; or (2) replace the same with a non-infringing Maintenance Services; or (3) modify said Maintenance Services so as to be non-infringing or, (4) if the foregoing options are not reasonably available, take back the infringing Maintenance Services and refund the purchase price for the infringing Maintenance Services. A replacement or modified Maintenance Services shall perform in all material respects as the (infringing) Maintenance Services to be replaced. The foregoing states the sole and exclusive liability of Contractor to City for intellectual property rights infringement.

(c) The preceding intellectual property infringement indemnity shall not apply to: (1) any infringement that results from City's design of any portion of the Maintenance Services being procured, (2) any infringement that results from the modification of the Maintenance Services by anyone other than Contractor, or (3) the use of the Maintenance Services in conjunction with any other applications, apparatus or material not supplied or approved by Contractor.

(d) The City agrees that:

(1) The City will promptly give written notice to Contractor after obtaining knowledge of any potential or actual claim against City that constitutes a Third Party Claim or otherwise may come under Contractor's defense and indemnity obligations;

(2) The Contractor will have the right to defend City against any such claim with counsel of Contractor's choice. In addition, City may retain separate co-counsel at its sole cost and expense to monitor the defense of the claim, provided, however, that Contractor shall have the right to control the defense of such claim in Contractor's sole discretion;

(3) The City will not consent to the entry of any judgment or enter into any settlement with respect to such claim without Contractor's prior written consent. The City will cooperate with Contractor's reasonable requests in connection with the defense of such claim; and

(e) To the extent reasonably possible, City will in good faith endeavor to mitigate any losses against which Contractor is obligated to indemnify City pursuant to this Section 5.2.

## **Article 6      Liability of the Parties**

**6.1      Liability for Use of Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees. The City will not provide equipment to Contractor to perform the Work under this Agreement.

**6.2      Waiver of Incidental and Consequential Damages.** Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other Party, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement, the Work performed in connection with this Agreement, the use of or inability to use any product, equipment or Software that Contractor has provided to SFMTA under this Agreement, either separately or in combination with any other product, equipment, software or other materials, even if a Party has been advised of the possibility or certainty of such damages.

**6.3      Limitation of City's Liability.** The City's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in Article 3 of this Agreement.

**6.4      Insurance Does Not Limit Liability.** No insurance policy covering Contractor's performance under this Agreement shall operate to limit Contractor's liabilities under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitees or Contractors or consultants of any Indemnitees.

**6.5      Limitation of Contractor's Liability.** Except for the indemnity obligations contained in Article 5 and liability arising under statutes or ordinances applicable to the City which directly preclude the City from limiting liability under the Contract, Contractor's aggregate liability and obligation to the City concerning disputed Work shall be limited to the amount of the annual Maintenance Fees paid by SFTMA to Contractor under this Agreement. For clarity, nothing contained herein shall affect the liability and indemnity obligations existing on the Contractor under the Original Contract and Subsequent Contracts with regards to the Software. To the extent the Contractor is in breach of its ongoing obligations under the Original Contract and Subsequent Contracts, nothing herein precludes the City from pursuing any remedies under those contracts.

## **Article 7      Payment of Taxes**

**7.1      Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Work delivered pursuant hereto.

Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2 Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**7.3 Business and Tax Regulations.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the Term of this Agreement and is subject to the requirements of those regulations as they apply to Contractor.

## **Article 8 Non-Renewal, Termination and Default**

**8.1 Non-Renewal of Maintenance Services.** The City may terminate Maintenance Services in whole or in part by providing written notice of non-renewal to Contractor or on

before August 1 (that is, 90 Days before the anniversary of the Effective Date of this Agreement) applicable to Maintenance Services commencing on immediately following November 1. The City's written notice of non-renewal must specify those elements of the Maintenance Services that the City no longer requires. If the City partially terminates Maintenance Services, the Parties will negotiate the Maintenance Fees for the remaining (renewed) Maintenance Services, to the extent that those Maintenance Services are not separately priced in Appendix B to this Agreement. If the City timely terminates all Maintenance Services, then this Agreement will be deemed terminated for the City's convenience and not for cause.

## **8.2 Termination for Default; Remedies**

**8.2.1 Contractor Default.** If Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement shall be an event of default:

3.9	Submitting False Claims
4.7	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.9	Alcohol and Drug-Free Workplace
11.9	Compliance with Laws
12.1.1	Proprietary or Confidential Information
12.1.2	Protection of City Employees Private Information

**8.2.2** Any of the following also constitutes a Default Event:

(a) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from City to Contractor.

(b) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(c) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in

bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.3 City Default.** City's failure to pay Contractor undisputed amounts owed in accordance with this Agreement within thirty (30) Days of receipt of notice from Contractor of City's failure to pay is a Default Event.

#### **8.4 Remedies**

**8.4.1** Except as to disputed issues that the Parties are addressing as provided in Section 11.5, on and after any Default Event that the defaulting Party has not cured within thirty (30) Days of the Party's knowledge of the default, the other Party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to suspend performance and payment until such Default Event is cured or terminate this Agreement if the defaulting Party cannot cure the Default Event.

**8.4.2** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that either Party may have under applicable law.

**8.4.3** Any notice of default must be sent to the defaulting Party's address set forth in Article 11, and in the manner prescribed in Section 11.1.

#### **8.5 Discontinuance of Maintenance Services and End-of-Life Notice.**

**8.5.1** Contractor agrees that in the event it ceases to sell the Software and/or Maintenance Services associated therewith ("Discontinuation of Services"), and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, Contractor shall provide to City not less one (1) year's notice prior to effecting Discontinuation of Services. The City agrees that in the event that, in Trapeze's sole opinion, any Software Module reaches the end of its commercial viability (commercial end of life) at a future point in time, Trapeze shall be able to terminate the Maintenance Services for the applicable Software Module. In the event of such termination, Trapeze shall provide the City with not less than one (1) year's notice prior to termination of Maintenance Services for the affected Software Module.

**8.6 Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such

default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

## **8.7 Rights and Duties upon Termination or Expiration**

**8.7.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.6	Payment Limited to Satisfactory Work
3.8	Audit and Inspection of Records
3.9	Submitting False Claims
4.6	Independent Contractor; Payment of Employment Taxes and Expenses
4.8	General Warranty
Article 5	Insurance and Indemnity
Article 6	Liability of the Parties
Article 7	Payment of Taxes
Article 9	Rights In Software, Documentation and Deliverables
11.2	Incorporation of Recitals
11.4	Severability
11.5	Dispute Resolution Procedure
11.6	Agreement Made in California; Venue
11.7	Construction of Agreement
11.8	Administrative Remedy for Interpretation of Agreement
11.9	Compliance with Laws
11.10	Severability

Subject to the survival of the Sections identified above, if this Agreement is terminated prior to expiration of the Term specified in Article 2, this Agreement shall be of no further force or effect.

## **Article 9 Rights In Software, Documentation and Deliverables**

**9.1 Software and Documentation License** For all Updates and Upgrades that Contractor provides to the SFMTA under this Agreement, Contractor grants and the SFMTA shall have the same license rights and obligations as apply to the Software as stated in the Original Agreement and Subsequent Agreements.

**9.2 Support Services for Upgrades.** Contractor will make Upgrades to the Software available to the SFMTA under this Agreement at no additional charge, but Contractor will not support the implementation of Upgrades as Maintenance Services under this Agreement. SFMTA assumes the risk of implementing an Upgrade, unless SFMTA separately contracts for services to support that Upgrade. Said separately contracted services would include installation support, training, trouble shooting, configuration, reversion, and system integration. The Parties may contract for said additional support services under SFMTA Contract No. 2024-07-FTA or



other separate agreement. Support services for Updates provided under this Agreement are Maintenance Services included in this Agreement.

### **9.3 Rights to Software**

**9.3.1** Trapeze warrants that it holds title to all Software licensed and delivered pursuant to this Agreement. Trapeze further warrants that it has full power and authority to grant to City the rights set forth in this Agreement, and that neither the performance of the Maintenance Services by Trapeze nor the use by City of the Updates and Upgrades provided under this Agreement will in any manner constitute an infringement or other violation of any ownership, claim, copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party. The foregoing warranty is 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 other than those described in this Agreement, the Original Contract or Subsequent Contracts.

**9.4 Remote Access.** Upon request, City shall provide Trapeze a remote connection to City's computer(s) on which the Software is installed, so as to enable Trapeze to perform Maintenance Services. Contractor shall not use such access to disable or otherwise interfere in the operation of the System due to a dispute between the Parties, and any attempt to do so shall be a material breach of the Agreement for which City may seek immediate legal and equitable remedies.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca). To the extent that any provisions of this Agreement conflict with governing laws, regulations, or ordinances ("Applicable Laws"), those Applicable Laws shall prevail. However, in instances where Applicable Laws permit variation by agreement, this Agreement shall govern and supersede such Applicable Laws.

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify City if it becomes aware of any such fact during the Term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Work, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

### **10.5 Nondiscrimination Requirements**

**10.5.1 Nondiscrimination in Contracts.** Contractor shall comply with the applicable provisions of San Francisco Labor and Employment Code Articles 131 and 132.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2. Contractor does not as of the date of this Agreement, and will not during the Term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.5.3 Nondiscrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.6 Minimum Compensation Ordinance.** If Labor and Employment Code Article 111 applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by Article 111, including a minimum hourly gross

compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

**10.7 Health Care Accountability Ordinance.** Contractor shall provide to its employees based in the United States health care benefits conforming to the extent practicable with the requirements of Labor and Employment Code Article 121.

**10.8 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement.

**10.9 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to or require Contractor to remove from City facilities any Contractor personnel who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

**10.10 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a

candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective Party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to City department with whom it is contracting.

### **10.11 Consideration of Criminal History in Hiring and Employment Decisions**

**10.11.1** Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

**10.11.2** The requirements of Article 142 shall only apply to a Contractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.12 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.13 Compliance with Americans with Disabilities Act.** Contractor shall provide the Maintenance Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation. The parties agree that the Updates

and Upgrades to the Software to be provided under this Agreement is commercial, off-the-shelf software and in the event City requests changes and modifications to the Software in order to meet its ADA obligations with regards to its employees or the public, Contractor shall be allowed equitable adjustment for such changes and modifications.

**10.14 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law. If City receives public records request, City shall provide Contractor written notice of the request and shall provide Contractor the maximum amount of time available under the applicable public records law to seek a protective order to protect against or limit the scope of disclosure.

### **10.15 Notification of Legal Requests**

**10.15.1** Each Party shall promptly notify the other Party upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests, excluding confidential information obtained with communications with legal counsel which constitute client privileged information (Legal Requests) related to either Party's Confidential Information, and in no event later than two (2) business days after it receives the Legal Request. A Party shall not respond to Legal Requests related to the other Party without first notifying the other Party other than to notify the requestor that the Confidential Information sought is potentially covered under a non-disclosure provision of this Agreement or other agreement(s) between the Parties. Each Party shall retain and preserve the other Party's Confidential Information in accordance with the Party's reasonable instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders, independent of where City Data is stored.

**10.15.2** City shall notify Contractor of any subpoenas, Legal Requests or requests for records issued under a public records law for documents or materials that are Contractor's Confidential Information. When possible, City will invoke extension of time to respond to such request, so that Contractor may seek take appropriate action.

## **Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Rosa Esquivel  
Project Manager

SFMTA  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94103  
[rosa.esquivel@sfmta.com](mailto:rosa.esquivel@sfmta.com)

To Contractor: Legal Department  
Trapeze Software Group, Inc.  
5265 Rockwell Drive, NE  
Cedar Rapids, IA 52402  
[legal@trapezegroup.com](mailto:legal@trapezegroup.com)

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice. Any notice given shall be deemed to have been received on the date, which it is delivered if delivered personally, or if emailed on the third business day net following the date the email was sent, or, if mailed, on the fifth business day next following the mailing thereof.

**11.2 Incorporation of Recitals.** The facts stated in the Recitals at the beginning of this Agreement are incorporated into and made part of this Agreement.

**11.3 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and mutually approved by the Parties as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (Contract Modification Form). Modifications of this Agreement require agreement and approval of both Parties and shall be in writing.

**11.4 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

## **11.5 Dispute Resolution Procedure**

### **11.5.1 Dispute Negotiation and Escalation; Alternative Dispute Resolution**

(a) The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the Work under this Agreement. The Parties shall first attempt to resolve disputes and controversies by discussion and negotiation between the SFMTA

and Contractor's Project Managers. Disputes not resolved by the Parties' Project Managers may be elevated by either Party to the SFMTA's Chief Technology Officer and Contractor's General Manager.

(b) If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the SFMTA's Chief Technology Officer a written request for administrative review and documentation of Contractor's claim(s). Upon such request, the SFMTA's Chief Technology Officer shall promptly issue an administrative decision in writing, stating the reasons for the SFMTA's position, denial of Contractor's contract claim, or other action taken. The Parties may at any time agree to submit the dispute to a mediator selected by the Parties. If the Parties are unable to resolve the dispute through negotiation or mediation, Contractor may submit a claim to City in accordance with Government Code section 900 et seq.

(c) Unless otherwise agreed in writing, during the dispute resolution process, Contractor agrees to continue performing non-disputed Work as long as SFMTA continues to make payments for such non-disputed Work. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement.

**11.5.2 Government Code Claim Requirement.** If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.6 Agreement Made in California; Venue.** This Agreement is made and shall be performed in San Francisco, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflicts of laws and applicable federal law. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

## **11.7 Construction of Agreement**

**11.7.1 Entire Agreement.** This Agreement sets forth the entire agreement between the Parties concerning the matters specifically addressed herein, which supersedes all other oral or written provisions concerning System Maintenance. All Included Appendices to this Agreement (as listed in Section 11.13) are incorporated by reference as though fully set forth.

This Agreement may be modified only as provided in Section 11.3 (Modification of this Agreement).

**11.7.2 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.7.3 Integrated Agreement.** The Parties' Agreement concerning Maintenance Services are stated in this Agreement and its appendices. The terms and conditions of this Agreement stated in this document may only be amended by a Contract Modification, as provided in Section 11.3. Any terms or conditions stated in Contractor's invoice(s), or a purchase order or other document issued by the City as part of the billing and/or payment process, contain contractual terms or conditions that conflict with any provision of this Agreement, the terms and conditions stated in this Agreement shall take precedence and shall govern.

**11.7.4 Validity of Existing Contracts.** This Agreement shall not amend, supersede, or otherwise modify the Original Contract or any Subsequent Contracts between City and Trapeze. Any products, including but not limited to services and software procured prior to the Effective Date of this Agreement shall remain subject to the terms and conditions of the respective contract(s) under which Contractor provided those services and/or software to SFMTA. In instances where Maintenance Services related to those previously procured items are performed or delivered under the scope of this Agreement, the terms of this Agreement shall apply solely to that specific portion of the Maintenance Services procured under this Agreement.

**11.7.5 Titles.** All Article and Section titles are for reference only and shall not be considered in construing this Agreement.

**11.8 Administrative Remedy for Interpretation of Agreement.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to Contractor taking any other action, escalating the dispute, or resorting to any other legal remedy, be referred to the SFMTA's Chief Technology Officer who shall decide the meaning and intent of the Agreement.

**11.9 Compliance with Laws.** Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and applicable regulations and laws as they may be amended from time to time.



**11.10 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

**11.11 MacBride Principles – Northern Ireland.** By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles, and urges such companies to do business with corporations that abide by the MacBride Principles.

**11.12 Approval by Counterparts.** This Agreement may be approved by the signatories by counterparts delivered electronically or by first class mail, which when properly executed by each respective Party and read together shall comprise a fully executed contract.

**11.13 Included Appendices.** The following documents appended to this Agreement are incorporated by reference into this Agreement:

- Appendix A: Scope of Maintenance Services
- Appendix B: Maintenance Fees Schedule
- Appendix C: List of Agreements, Amendments and Purchase Orders

## **Article 12 Data and Security**

### **12.1 Nondisclosure of Private, Proprietary or Confidential Information**

**12.1.1 Proprietary or Confidential Information.** Each Party understands and agrees that, in its performance of this Agreement or in contemplation thereof, a Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, (including City Employee Information, City Data, and Contractor Confidential Information and Trade Secrets) the disclosure of which to third parties may be damaging to the disclosing Party. The Parties agree that, subject to the California Public Records Act, the San Francisco Sunshine Ordinance and any other applicable public records laws, or lawful orders of a court or regulatory authority, all information disclosed by one Party to the other Party shall be held in confidence and used only in the performance of the Work or enforcement of the Agreement. The Parties shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect their own proprietary data. The Parties acknowledge that any Confidential Information disclosed to either Party pursuant to this Agreement shall remain the property of the respective Party. Except and to the extent that disclosure is required by law, each Party shall

maintain in confidence and not disclose the other Party's Confidential Information, directly or indirectly, to any third party without the other Party's prior written consent. Each Party further acknowledges that a breach of the provisions of this Section may 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.

**12.1.2 Protection of City Employees Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Contract, bring a false claim action against Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Contractor.

## **12.2 City Data**

**12.2.1 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data are the exclusive property of City. Contractor shall have no rights or claim to City Data, and shall use City Data only to implement and maintain the System.

**12.2.2 Access to City Data.** City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time (other than planned maintenance periods), at no additional cost at the SFMTA's facilities. Contractor shall not include in the Software any code, tool, or process that would disable the System and otherwise prevent the Agency from accessing City Data.

**12.2.3 Use of City Data.** Contractor agrees to hold City Data received from, or collected on behalf of City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work using, or sharing or storage of, City Data must be controlled and limited to Contractor's staff on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-Party. Unauthorized use of City Data by Contractor or third Parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose

other than security or service delivery analysis and quality control that is not explicitly authorized.

**12.2.4 Disposition of City Data.** Upon written request of City, and pursuant to any document retention period of Contractor and as required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) Days, return all City Data given to or collected by Contractor on City's behalf. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within thirty (30) Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement. Contractor shall provide City with written certification that such purge occurred within five (5) Days of the purge. Secure disposal shall be accomplished by "clearing," or "purging" in a non-readable format.

**12.2.5 Contractor's Confidential Information and Trade Secrets.** Contractor's Confidential Information includes System designs, System design processes and procedures, formula, any written, graphic or machine-readable information and code, 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 and other materials that Contractor designates in writing as its Confidential Information.

City will maintain Contractor's Confidential Information in confidence and not disclose said information to any third party without Trapeze's prior written consent, except and the to the extent that disclosure is required by law. City shall prohibit any persons other than City employees from using any components of the Software in a manner that is not authorized by this Agreement and shall limit City employees' access to said information to City's employees who are bound to respect the confidentiality of such information. These obligations of confidentiality will survive the expiration or termination of this Agreement.

Contractor's Confidential Information does not include any information that: (i) is or becomes generally known to the public through no fault of City; (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) is independently developed by someone other than City; (iv) Trapeze approves for unrestricted release by written authorization; or (v) is a public record or public information by statute or ordinance.

*Signatures on following page.*

<b>CITY</b>	<b>CONTRACTOR</b>
<p><b>San Francisco Municipal Transportation Agency</b></p>	<p><b>Trapeze Software Group, Inc.</b></p>
<p>_____ Jeffrey P. Tumlin Director of Transportation</p>	<p>_____ Signature</p>
<p>Authorized By: Municipal Transportation Agency Board of Directors</p>	<p>Name: Mark Miller Title: Director 5265 Rockwell Dr. NE Cedar Rapids, IA 52402</p>
<p>Resolution No: _____</p>	
<p>Adopted: _____</p>	
<p>Attest: _____ Secretary, to the Board</p>	
<p>Approved as to Form:</p>	<p>City Supplier Number: 0000009230</p>
<p>David Chiu City Attorney</p>	
<p>By: _____ Robert K. Stone Deputy City Attorney</p>	
<p>n:\ptc\as2024\1000426\01753793.doc corrected 04-26-24</p>	

## **Appendix A**

### **Scope of Maintenance Services**

1. Maintenance Services. Contractor agrees to perform the Work described in this Agreement, in accordance with the terms and conditions of this Agreement. Maintenance Services include correcting Errors, Defects or Malfunctions; providing telephone and/or online support concerning the installation and technical troubleshooting of the Software and Updates as described below.
  - (a) Trapeze will maintain the Software so that it performs in conformity in all material respects with the descriptions and specifications for the Software set forth in the Documentation.
  - (b) In the event that the City detects any Errors, Defects, or Malfunctions in the Software, Trapeze will provide support services via telephone software support from Monday to Friday, 8 am to 8 pm Eastern Time (Except North American holidays), and via twenty-four hours per day line for emergency support, and through access to Trapeze's software support website.
  - (c) Trapeze shall provide (as applicable) Patches, Workarounds or Fixes as necessary to correct any Errors, Defects or Malfunctions in the Software, appropriate to the Priority Category, and in accordance with the Priority Protocols described in the table below.
  - (d) Trapeze will post notices of available Upgrades of the Software on its website and copies of the release notes for download. Trapeze will provide the City with Upgrades of the Software at no additional license fee charge.
  
2. Maintenance Services Standards. Trapeze will use reasonable efforts to correct Errors, Defects, and Malfunctions or other Software deficiencies or performance anomalies within the time frames stated below, so that the Software meets the functional and performance criteria set out in the Documentation for the Software. Trapeze will not be responsible for any delays to respond to or resolve any trouble report or performance anomaly to the extent that such delay is due to SFMTA's not providing access to the System to Trapeze.

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 Priority Category (severity level) reasonably determined by the SFMTA and communicated to Trapeze, based on the following definitions:

Priority Category (Severity Level)	Condition	Response Time (Goal)	Priority Protocol (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 1<sup>st</sup> escalation point until corrected.</p> <p>Within 8 hours of receipt of Priority 1 report the management of the issue will escalate to the 2<sup>nd</sup> escalation point until corrected.</p> <p>Trapeze will remain in regular contact with SFMTA (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 1<sup>st</sup> escalation point until corrected.</p> <p>Within 48 hours of receipt of Priority 2 report the management of the issue will escalate to the 2<sup>nd</sup> escalation point until corrected.</p> <p>Trapeze will remain in regular contact with SFTMA (contact will occur, at a minimum, during escalation points, and every 24 hours thereafter).</p>

Priority Category (Severity Level)	Condition	Response Time (Goal)	Priority Protocol (Resolution Efforts)
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 SFMTA 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 SFTMA 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.

3. Escalation Management Procedures and 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.

Trapeze logs all support issues with its 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.

4. Priority Protocols

a. First level Escalation Point

Customer Care Manager or comparable role

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

b. Second Level Escalation Point

General Manager of the respective Vertical Business Unit (VBU) or comparable role

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

5. Covered Software. Trapeze shall provide Maintenance Services to the SFMTA for the Software listed in Appendix B:

Item	Software	Description	Configuration
1.	FX/Blockbuster	Fixed route trip building, scheduling, blocking, run cutting, and rostering software application.	Base Station
2.	Trapeze Standard Data Exchange (TSDE)	Provides 3rd Party CAD/AVL vendors with schedule data developed in the Trapeze FX and BlockBuster scheduling applications.	Base Station
3.	PLAN	Fixed route planning system software which extracts data from devices for use in Trapeze planning solutions	Base Station
4.	INFO COM	Internet based commendations and complaints form	Base Station



Item	Software	Description	Configuration
5.	Mapmaker	GIS mapping application.	Base Station
6.	OPS	Fixed route bidding, vehicle dispatching, and timekeeping application.	Base Station
7.	FX MON	Exports schedule data from Trapeze-FX to OrbCAD.	Base Station
8.	OPS MON	Exports driver and vehicle assignment data from Trapeze OPS to OrbCAD.	Base Station
9.	OPS MON EXT	Extended OPS MON interface to process data from additional sources (SFMTACadEvents and SFMTA CadAssignments) and provide that information to OrbCAD.	Base Station

## Appendix B

### Maintenance Fees Schedule

City shall pay Contractor the following Maintenance Fees, as provided in the Section 3.3.

Software	Coverage Period	Software Operational Characteristics	Value
FX/BLOCKBUSTER	November 1, 2024 - October 31, 2025	up to 1100 (814 actual) fixed route vehicles	\$339,186
FX/BLOCKBUSTER	November 1, 2025 - October 31, 2026	up to 1100 (814 actual) fixed route vehicles	\$356,145
FX/BLOCKBUSTER	November 1, 2026 - October 31, 2027	up to 1100 (814 actual) fixed route vehicles	\$373,952
FX/BLOCKBUSTER	November 1, 2027 - October 31, 2028	up to 1100 (814 actual) fixed route vehicles	\$392,650
FX/BLOCKBUSTER	November 1, 2028 - October 31, 2029	up to 1100 (814 actual) fixed route vehicles	\$412,283
TSDE	November 1, 2024 - October 31, 2025	up to 1100 (600 actual) peak vehicles	\$16,751
TSDE	November 1, 2025 - October 31, 2026	up to 1100 (600 actual) peak vehicles	\$17,589
TSDE	November 1, 2026 - October 31, 2027	up to 1100 (600 actual) peak vehicles	\$18,468
TSDE	November 1, 2027 - October 31, 2028	up to 1100 (600 actual) peak vehicles	\$19,391
TSDE	November 1, 2028 - October 31, 2029	up to 1100 (600 actual) peak vehicles	\$20,361
PLAN	November 1, 2024 - October 31, 2025	up to 1100 (600 actual) peak vehicles	\$46,197
PLAN	November 1, 2025 - October 31, 2026	up to 1100 (600 actual) peak vehicles	\$48,507
PLAN	November 1, 2026 - October 31, 2027	up to 1100 (600 actual) peak vehicles	\$50,932
PLAN	November 1, 2027 - October 31, 2028	up to 1100 (600 actual) peak vehicles	\$53,479
PLAN	November 1, 2028 - October 31, 2029	up to 1100 (600 actual) peak vehicles	\$56,153
INFO COM	November 1, 2024 - October 31, 2025	up to 1100 (600 actual) peak vehicles	\$11,461
INFO COM	November 1, 2025 - October 31, 2026	up to 1100 (600 actual) peak vehicles	\$12,034
INFO COM	November 1, 2026 - October 31, 2027	up to 1100 (600 actual) peak vehicles	\$12,636
INFO COM	November 1, 2027 - October 31, 2028	up to 1100 (600 actual) peak vehicles	\$13,268

Software	Coverage Period	Software Operational Characteristics	Value
INFO COM	2028 November 1, 2028 - October 31, 2029	up to 1100 (600 actual) peak vehicles	\$13,931
MAPMAKER	November 1, 2024 - October 31, 2025	up to 1100 (600 actual) peak vehicles	\$13,886
MAPMAKER	November 1, 2025 - October 31, 2026	up to 1100 (600 actual) peak vehicles	\$14,580
MAPMAKER	November 1, 2026 - October 31, 2027	up to 1100 (600 actual) peak vehicles	\$15,309
MAPMAKER	November 1, 2027 - October 31, 2028	up to 1100 (600 actual) peak vehicles	\$16,074
MAPMAKER	November 1, 2028 - October 31, 2029	up to 1100 (600 actual) peak vehicles	\$16,878
OPS	November 1, 2024 - October 31, 2025	up to 3828 total employees	\$152,138
OPS	November 1, 2025 - October 31, 2026	up to 3828 total employees	\$159,745
OPS	November 1, 2026 - October 31, 2027	up to 3828 total employees	\$167,732
OPS	November 1, 2027 - October 31, 2028	up to 3828 total employees	\$176,119
OPS	November 1, 2028 - October 31, 2029	up to 3828 total employees	\$184,925
OPS-MON	November 1, 2024 - October 31, 2025	up to 2500 total employees	\$22,514
OPS-MON	November 1, 2025 - October 31, 2026	up to 2500 total employees	\$23,640
OPS-MON	November 1, 2026 - October 31, 2027	up to 2500 total employees	\$24,822
OPS-MON	November 1, 2027 - October 31, 2028	up to 2500 total employees	\$26,063
OPS-MON	November 1, 2028 - October 31, 2029	up to 2500 total employees	\$27,366
FX-MON	November 1, 2024 - October 31, 2025	up to 1100 peak vehicles	\$58,237
FX-MON	November 1, 2025 - October 31, 2026	up to 1100 peak vehicles	\$61,149
FX-MON	November 1, 2026 - October 31, 2027	up to 1100 peak vehicles	\$64,206
FX-MON	November 1, 2027 - October 31, 2028	up to 1100 peak vehicles	\$67,416
FX-MON	November 1, 2028 - October 31, 2029	up to 1100 peak vehicles	\$70,787
OPS-WEB (Employee Info + Bidding Requests)	November 1, 2024 - October 31, 2025	up to 2597 total employees	\$57,191

<b>Software</b>	<b>Coverage Period</b>	<b>Software Operational Characteristics</b>	<b>Value</b>
OPS-WEB (Employee Info + Bidding Requests)	November 1, 2025 - October 31, 2026	up to 2597 total employees	\$60,051
OPS-WEB (Employee Info + Bidding Requests)	November 1, 2026 - October 31, 2027	up to 2597 total employees	\$63,054
OPS-WEB (Employee Info + Bidding Requests)	November 1, 2027 - October 31, 2028	up to 2597 total employees	\$66,207
OPS-WEB (Employee Info + Bidding Requests)	November 1, 2028 - October 31, 2029	up to 2597 total employees	\$69,517
OPS-MON-EXT	November 1, 2024 - October 31, 2025	up to 1100 peak vehicles & 2500 total employees	\$39,313
OPS-MON-EXT	November 1, 2025 - October 31, 2026	up to 1100 peak vehicles & 2500 total employees	\$41,279
OPS-MON-EXT	November 1, 2026 - October 31, 2027	up to 1100 peak vehicles & 2500 total employees	\$43,343
OPS-MON-EXT	November 1, 2027 - October 31, 2028	up to 1100 peak vehicles & 2500 total employees	\$45,510
OPS-MON-EXT	November 1, 2028 - October 31, 2029	up to 1100 peak vehicles & 2500 total employees	\$47,786
<b>Total</b>	<b>November 1, 2024 - October 31, 2025</b>		<b>\$756,874</b>
<b>Total</b>	<b>November 1, 2025 - October 31, 2026</b>		<b>\$794,719</b>
<b>Total</b>	<b>November 1, 2026 - October 31, 2027</b>		<b>\$834,454</b>
<b>Total</b>	<b>November 1, 2027 - October 31, 2028</b>		<b>\$876,177</b>
<b>Total</b>	<b>November 1, 2028 - October 31, 2029</b>		<b>\$919,987</b>
<b>Grand 5 Year Total</b>			<b>\$4,182,211</b>

## Appendix C

### List of Agreements, Amendments, and Purchase Orders

April 2002	Original Contract MR-1185	Agreement between The City and County Of San Francisco And Trapeze Software Group, Inc. for Purchase and Implementation of An Integrated Scheduling, Run Cutting, Rostering and Reporting System, with Data Collection/Route Analysis and an Operator Dispatch and Timekeeping System
May 05, 2005	MR-1185 Contract Mod 1	First Amendment to Purchase and Services Agreement for Implementation of an Integrated Scheduling, Run Cutting, Rostering and Reporting System, with Data Collection/Route Analysis and an Operator Dispatch and Timekeeping System
August 12, 2005	MR-1185 Contract Mod 2	Second Amendment to Purchase and Services Agreement for Implementation of an Integrated Scheduling, Run Cutting, Rostering and Reporting System, with Data Collection/Route Analysis and an Operator Dispatch and Timekeeping System (TSDE purchase)
September 25, 2014	Contract SFMTA 2015-2016	Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Software and Related Professional Services
October 31, 2014	Contract SFMTA 2015-16 Contract Mod 1	First Amendment to the Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Software and Related Professional Services

#### Purchase Orders

October 10, 2014	Purchase Order for Software License, Services and Maintenance (FX Mon, OPS Mon)
January 15, 2015	Purchase Order for Software License, Services and Maintenance (Ops Mon Extension)
June 15, 2016	Purchase Order No. 02 for Software Services in re OPS Extended Leave Management Project
January 3, 2017	Purchase Order No. 04 for Software Services – Financial Interface Modifications
March 22, 2017	Purchase Order No. 05 for Multi-Year License Maintenance Services
August 7, 2018	Purchase Order No. 07 for OPS Web (Employee Info) and OPS Web (Bidding Requests) Software
April 20, 2020	Purchase Order No. 09 for Professional Services for OPS Badge Number Configuration
August 5, 2021	Purchase Order No. 11 for OPS-SIT Module and Orbcad Integration
August 5, 2021	Purchase Order No. 14 for OPS-Web Operational Bidding
August 5, 2021	Purchase Order No. 15 for OPS Timekeeping Customizations
August 5, 2021	Purchase Order No. 16 for Ops Incident and Performance Configuration & Training
August 5, 2021	Purchase Order No. 17 for Ops Worker’s Compensation Interface

