

STAFF REPORT

SUBJECT: Trapeze Maintenance Agreement

FROM: Dave Massa, AVL and ITS Analyst

DATE: June 8, 2020

Action Requested

Approve the Maintenance Agreement between LAVTA and Trapeze Software Group, Inc

Background

In 2002 the LAVTA Board of Directors authorized staff to deploy the Siemens TransitMaster automatic vehicle location system, herein known as AVL for the purpose of dispatching and tracking its fleet of buses as well as disseminating real-time information of the vehicle locations to the public. Since that time the TransitMaster product has been acquired by Trapeze Software Group, Inc. The product is an ever-evolving item and has been continuously under maintenance contract since 2002. The last two contract terms have been extended to 5-year terms from the initial 2-year model in order to maximize management discount opportunities.

Discussion

Attached for your approval is a software maintenance agreement for fiscal years 2021 - 2026 between LAVTA and the Trapeze Software Group Inc. for their TransitMaster suite of products. TransitMaster is used for the real-time dispatching, tracking and reporting of the agency's fleet service. It also controls the agency's real-time information feed to 511, Google, Apple, Bing and Transit app to name a few as well as the agency's 80+ OnStreet signs.

This software agreement is essentially an extension of what the agency has had in place since the inception of the AVL system in 2002 with a few minor improvements. These improvements include bi-annual map upgrades and 45 additional licenses for OnStreet passenger information signs. These additional licenses were needed due to the rising number of OnStreet signs deployed throughout the Tri-Valley.

This agreement also allows the agency to maintain its licensing agreement as well as provides bi-annual upgrades to whatever the latest stable version of the software is available and in dept technical support when needed. A side benefit is that it allows for predictable budgeting for this vital software product over the next 5 years.

Recommendation

Staff recommends that the Board of Directors approve and authorize the Executive Director to enter into contract with Trapeze Software Group, Inc for the purpose of a maintenance agreement for the term of 5 years beginning July 1, 2020.

Attachments:

1. LAVTA_Trapeze_TM_Agreement.pdf
2. Resolution 14-2020 Trapeze Software.docx

Approved: _____

ATTACHMENT A**SCHEDULE OF COVERED SOFTWARE****SOFTWARE**

The following Software modules and workstations are released and installed as part of the Livermore Amador Valley Transit Authority (LAVTA) TransitMaster™ system and Trapeze Back Office Software Products.

Table 1 – Covered Software Modules and Workstations

Description
TRANSITMASTER - BASE TRANSITMASTER FIXED ROUTE CONTROL CENTER SOFTWARE TMRouter, TMCalc, TMLogger, TMWorkAssignments, TMOpsCommSvr, TMTracker
TRANSITMASTER - FIXED ROUTE AND SCHEDULING SYSTEM INTERFACE TMRouteManager application including the data import wizard
TRANSITMASTER - GIS AND SURVEY TOOLS SurveyTool and MidMifLay applications
TRANSITMASTER - BASE TRANSITMASTER COMMUNICATIONS SOFTWARE Multi-Channel Controller (MCC) software which interfaces with the method used by the vehicles for data
TRANSITMASTER - INFO SERVER SOFTWARE DataMart
TRANSITMASTER – ROSTERING SYSTEM INTERFACE
TRANSITMASTER – RADIO NETWORK CONTROLLER (RNC) SOFTWARE FOR TWO (2) RNC'S
TRANSITMASTER - STANDARD AVL AND COMMUNICATION <u>MOBILE SOFTWARE</u> FOR VEHICLES, INCLUDING: <ul style="list-style-type: none"> ▪ UP TO (99) TRANSIT MASTER VEHICLES
TRANSITMASTER - SUPPORT FOR UP TO FIVE (5) TRANSITMASTER WORKSTATIONS Includes: BusOps, AVL Map (integrated into BusOps) and Playback. Mobile Dispatch, System admin; TMConfig, Security Manager, IDS Config, MCC Viewer (data radio only) Client Monitor, Incident Manager, Vehicle Assignments and TMPlanner. And any other TransitMaster applications not defined.
TRANSITMASTER - APC CONTROL SOFTWARE Integrated with Onboard Mobile Software
TRANSITMASTER - LOUD AND CLEAR MOBILE SOFTWARE Integrated with the onboard mobile software
TRANSITMASTER - ANNUNCIATOR STUDIO
TRANSITMASTER – STANDARD ONSTREET CUSTOMER INFORMATION AND COMMUNICATION SOFTWARE FOR SIGNS.

Software Maintenance Program Pricing includes:

- Software modules and workstations as noted in Table 1. Workstation support assumes the number of workstations supported is already licensed.
- 24 x 7 Remote priority 1 technical support via the Trapeze Customer Care.
- 8 am to 8 pm EST business day technical support for lower priority issues via the Trapeze Customer Care.
- Central system and mobile vehicle system software support.
- Licensed software interface support (in-vehicle interfaces are included; central system interfaces may be separately priced).
- Software license for software updates and upgrades.
 - UPDATES are defined as bug fixes and patches for the then current software version running on the HRT's TransitMaster™ system.
 - UPGRADES are defined as software releases containing new features and functionality enhancements.
- One (1) Client Engineer visits for one (1) week to consult, diagnose, repair, etc. annually has been provided for LAVTA's TransitMaster system.
- Two (2) annual User Conference general session registrations per year have been provided. Expenses are the responsibility of LAVTA.
- Monthly Web training session invitations.
- Quarterly user forum invitations
- On-line tracking ability for queued service tickets.
- Deployment services for two (2) TransitMaster Software Upgrades have been included for the term of this agreement. The 2nd upgrade shall be scheduled at least 6 months prior to the end of the final year of this agreement. Unused deployment services may not be transferred over. Refer to Attachment D for statement of work.

ATTACHMENT B

PRICING & PAYMENT SCHEDULE

LIVERMORE Transit Master

Item Description	Quantity	ANNUAL PRICE				
		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
		Base Maintenance	Base Maintenance	Base Maintenance	Base Maintenance	Base Maintenance
		7/2020-6/2021	7/2021-6/2022	7/2022-6/2023	7/2023-6/2024	7/2024-6/2025
Standard SW Support - TransitMaster Vehicles	Up to 99	88,704	93,159	97,812	102,762	107,811
Standard SW Support - Additional OnStreet Signs (up to 120)	Start Year 2	-	2,500	2,625	2,756	2,894
SOFTWARE MAINTENANCE - BASE		88,704	95,659	100,437	105,518	110,705
Transit Master Software - Services for 2 Upgrades during the 5 Year period	1	50,000	52,500	55,125	57,881	60,775
SERVICES - BASE		50,000	52,500	55,125	57,881	60,775
MANAGEMENT DISCOUNT - MULTI-YEAR AGREEMENT		(13,870)	(14,816)	(15,556)	(16,340)	(17,148)
DISCOUNTS - BASE		(13,870)	(14,816)	(15,556)	(16,340)	(17,148)
TOTAL ANNUAL MAINTENANCE AGREEMENT		124,834	133,343	140,006	147,059	154,332

Coverage term:

- The coverage term will span July 1st, 2020 to June 30, 2025.

Invoicing:

- Invoicing occurs annually, typically 90-days in advance of the coverage term anniversary date with the exception of the first year.
- Trapeze products may be invoiced separately.
- Additional charges **may apply** more frequent billing (PLUS 1.5% quarterly).
- Coverage is not in effect until payment is received by Trapeze.
- Lapses in coverage are subject to additional charges to bring coverage current.

Optional Time & Materials ("T&M") Services:

- Customers with an active support agreement are eligible to request repair for hardware equipment not specifically covered under the maintenance agreement. T&M services may be initiated by 1) sending a Purchase Order to Trapeze for T&M repairs, and 2), requesting material return using the Return Material Authorization ("RMA") process, as described in Exhibit c.
- T&M services shall be directly invoiced upon completion of the work.
- After the diagnosis and testing is complete and a problem has been found, a quote for repair will be sent to the Buyer.
 - Buyer has fourteen (14) calendar days to respond to Trapeze with Buyer's desire to repair, or have Trapeze return the unit to the Buyer unrepai red.
 - If the Buyer chooses to not repair the unit, or if the Buyer exceeds the fourteen (14) calendar days without responding to Trapeze request for disposition on the unit, the unit will be returned to the Buyer. Time and Material rates and minimum fees shall apply.
- Equipment returned for repair determined by Trapeze to be No Trouble Found ("NTF") or No Fault Found ("NFF") is subject to the Time and Material rates and minimum fees.

Time & Materials Rate Schedule	
Bench Fee	\$275 minimum
Diagnosis and Testing	\$200.00/hour (1 hour minimum)
Equipment Repair Rates	\$200.00/hour plus Parts & Shipping

Other Optional Program Pricing includes:

- On-site Field Service Engineer is \$1,500 per day plus travel expenses.
- On-site Project Engineer is \$1,750 per day plus travel expenses.
- On-site Training is \$1,750 per day plus travel expenses.
- Deployment Services are \$1,750 per day, plus any applicable travel expenses
- Additional TransitMaster™ workstation license \$8,500; additional annual TransitMaster™ workstation software maintenance support \$1,700.
- The above daily labor rates are the standard rates at the time of writing this agreement, and are subject to change without notice.



ATTACHMENT C

RETURN MATERIAL AUTHORIZATION ("RMA") PROCESS

All items returned to Seller must have the following information presented prior to the issuing of a Return Material Authorization ("RMA") number. The reason for return (as specific as possible), the item(s) part number(s), serial number and Buyer contact. For vehicle installed equipment please provide the vehicle id, vehicle make/model and vehicle year.

Buyers who have equipment needing repair, having received Trapeze approval for the repair shall follow the procedure outlined below:

Buyer (or authorized representative) has equipment needing repair.

Buyer (or authorized representative) provides to Seller: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto www.MyTrapeze.com and selecting "Request an RMA" on the left side. You will need to enter the following information:

- a) Serial number
- b) corresponding problem description for each device being returned
- c) return shipping address
- d) billing address

A complete and accurate description of the condition or problem of the component or unit and the initial trouble shooting shall be done by the Buyer (or authorized representative).

The Buyer (or authorized representative) shall ship the unit and CRG (Customer Returned Goods) form to:

Trapeze Software Group
5265 Rockwell Dr NE
Cedar Rapids, IA 52402
Attention: RMA Department
1-877-411-8727

Packing

- Buyer (or authorized representative) places all equipment (EXCEPT IVLU's) in a nonstatic bag along with a copy of RMA form. IVLU's shall be sent in an ESD static sensitive bag. Seller will provide non-static bags at Buyer's request.
- Buyer shall place a copy of the CRG Form, which shall be provided by Seller at the time of the RMA request, inside the box or taped to the outside of the bag of the unit being returned.
- Buyer (or authorized representative) shall pack all returned units carefully, using packing peanuts and bubble wrap when necessary. All returns are Buyer property and must be protected during shipping and through the entire return process.
- Mark the RMA number on the top of the outside boxes.
- Attach the waybill.

Please note:

- Trapeze will provide proper packaging at a nominal fee if the units are not sent to us in original packaging or if the packaging is damaged.
- Buyer is responsible for shipping to and from Trapeze on all non-warranty/non-maintenance repairs and per the agreement on warranty/maintenance repairs.

If the quantity or serial numbers are not filled out correctly on the commercial invoice, customs may hold the shipment, or the shipment may be refused.

If you have any questions, please contact our Customer Care Department (cc@trapezegroup.com).

ATTACHMENT D
Statement of Work
TransitMaster™ Software Upgrade

General Description of Project:

This Statement of Work ("SOW") describes tasks to be performed by Trapeze Software Group, Inc. (Trapeze) for the TransitMaster™ ("TM") Fixed Side (Dispatch) software upgrade for the Livermore Amador Valley Transit Authority (LAVTA) TM system. Tasks involve the backup of the existing TM software version and associated databases, the installation of the upgraded TM software, the upgrade of individual dispatch workstations and operational state verification of the upgraded TM software.

Trapeze's Responsibilities:

Trapeze will coordinate with LAVTA to ensure the accessibility to the dispatch center and all server rooms, towers, garages and associated facilities as is necessary until project completion. Trapeze will provide one (1) project engineer to be on-site for up to but not to exceed five (5) days for customer testing and cut over and provide up to but not exceed three (3) days for new feature training.

Trapeze will provide one (1) trainer to be on-site for up to but not exceed three (3) days of on-site training as described in the Training section.

Trapeze shall have the authority over the installation of all equipment and systems. All communications regarding the upgrade, approval of work and workmanship should flow through Trapeze representatives on-site.

LAVTA Responsibilities:

LAVTA will be required to provide Trapeze access to all workplaces necessary to perform all installation of the required TM software. The necessary requirements LAVTA must deploy to meet all mandatory obligations follows (if applicable):

- Access to a secure and locked storage facility available for access by Trapeze personnel. This would only be required if hardware is involved as part of the upgrade. If the upgrade is software only, then a locked storage facility would not be needed.
- Identification badges for all Trapeze personnel working at each installation site.
- Authorized personnel to coordinate and support acceptance testing with Trapeze personnel.
- Remote dial in VPN connection required for factory technician support.
- Provisioning of virtual machines in existing VMware environment for production and testing systems.
- Affected Software:
 - Base TransitMaster™ control center software
 - GIS and survey tools
 - Fixed route scheduling system interface

- Base TransitMaster™ communications software including TDMA communications subsystem
 - Datamart™
 - Any other TransitMaster™ licensed interfaces
- Licensing
 - The current license count from the original contract and any purchased changes prior to the upgrade will apply to the upgraded TransitMaster™ software system.
- Operating System
 - The TransitMaster™ software version will be upgraded to the current version at time of upgrade request. The new version is only compatible with the Microsoft Windows Server 2012 operating system and Microsoft SQL Server 2012 RDBMS. It is LAVTA's responsibility to upgrade the operating systems on servers used for this upgrade to Windows Server 2012 and SQL Server 2012.
 - Note: Please note that version 15.0 and higher is only compatible with Microsoft Windows Server 2012 and Microsoft SQL Server 2012. It is LAVTA's responsibility to purchase and upgrade unless this is specifically purchased as part of the upgrade package.
 - Note: It is expected that operating system upgrades and SQL Server upgrades will be coordinated between Trapeze and LAVTA as part of the upgrade schedule.
 - Note: OS and SQL requirements may vary based on TransitMaster requirements.

Software Upgrade high level Phases:

Notice to proceed (NTP) & Operational overview

Discuss and define upgrade schedule and review client's TransitMaster™ ITS operations in terms of Network, Vehicle, and System features (fixed and any non-revenue applications if needed). This phase will be with customer involvement.

Deployment Testing

Create testing environment within the Trapeze ITS deployment lab that simulates the client's ITS environment. Obtain current backup of client's TransitMaster™ databases and convert to upgrade version. This phase is an internal check of client's ITS system to validate upgrade stability and integration to existing software and hardware interfaces.

On-Site Work Plan and actual upgrade

These activities involve transition from the production databases to the new converted upgrade system version. Many critical activities are completed during this phase:

- Transition server data (database conversion) to new version, including Application and DataMart servers
- Mobile software preparation and vehicle configuration
- Signup import & merge
- Create & stage Route files
- Replication set-up (if applicable)
- Upgrade dispatch workstations for both fixed route and non-revenue (if needed)
- Validate FTP service
- Validate functionality
- Validate error logs

A detailed plan will be delivered to client for approval and consideration of client resources needed to carry out these upgrade activities, as well as operational expectations during on-site work.

Post upgrade support

The objective on this final phase is to continue validating upgrade activities and assure system stability and functionality over time. Some of the activities addressed are new feature training activities, issues resolution, and general support.

Project Management Work Plan:

Trapeze shall provide project management support for the duration of this project phase. The Trapeze project manager will be responsible for ensuring that project requirements are communicated and understood and milestones are met. The project manager will be the key point of contact for LAVTA during the project. We request that LAVTA also assign a project manager. The two project managers will work together to ensure that regular dialogue is maintained through an established channel.

The Trapeze project manager shall provide the following key services:

- **Scope Management.** The project manager is the link between the client's requirements, the contract/agreement, the deliverable specifications and the project's scope of work. The project manager is critical to defining and documenting the tasks and deliverables necessary to complete the project. The project manager ensures that the project's resources remain focused on the project objectives.
- **Integration Management.** While subject matter experts may be brought onto the project for specific purposes, the project manager understands the project as a whole and ensures that project deliverables are achieved in the right sequence and at the right time. The master project schedule is an output of Integration Management.

- **Communication Management.** The project manager is essential to the effective flow of information throughout the project. As the accumulator, archiver and librarian of the project records, the project manager is also responsible for ensuring that information is distributed to the appropriate individuals in a timely manner. Examples of communication management include issue lists, weekly progress reporting, scheduled weekly teleconferences, and contract administration.
- **Resource Management.** The project manager ensures that the most appropriate Trapeze resources are allocated to the project at the correct time. The Trapeze project manager also specifies what kinds of project resources are required from the client and when they are needed.

Project Plan Delivery:

The Trapeze Project Manager is responsible for managing scope, cost, schedule, communications, human resources, integration, risk, quality, change orders and procurement. This approach has proven to be successful when managing complex ITS System deployments. Trapeze Project Managers deliver value to their customers and stakeholders and are responsible and accountable for delivering on time.

Trapeze understands project success is measured by the thorough integration into the existing LAVTA ITS system and that success can only be realized with a sound management approach and business style from Trapeze. Trapeze tailors an implementation solution to meet the customer's specific needs as presented in this delivery proposal. Communication with the right decision makers and receiving accurate and consistent feedback will promote success and customer satisfaction with this implementation objective. The following strategic overview provides a description of the phases for this project.

Project Delivery meets Project Standards:

Already in the Project Management overview we have described a number of quality assurance processes that proactively and positively assist ensuring that the project remains soundly managed and on schedule.

The Project Management overview includes a detailed description of the Project Standard that we follow. One of the key aspects of this model is the quality gate process which, for critical phases, ensures the phase is not only completed but that all the relevant quality processes and documentation has been produced and approved for each of the following project phases:

Project Phases:

Project phases and quality assurance are jointly accomplished through project processes and documentation. Following are the critical phases to the vehicle hardware and system software upgrades:

- Project Initiation & System Surveys
- System Design Document
- System Installation & Deployment

- Availability Test and Project Closure

Project Initiation & System Surveys

Upon award and notice to proceed (NTP), Trapeze will work with your project team to accomplish a number of necessary elements required immediately after NTP.

Initially Trapeze produces the project plan and detailed project schedule. These will be in review with LAVTA during the kickoff meeting and completed at system design approval. Project teams from both Trapeze and LAVTA should attend the project kick off meeting. A project kickoff meeting will be held so that the technical experts from each side can commence the design activities.

Trapeze core team staff will work together with LAVTA core team to complete and approve the project plan and detailed project schedule. The key planning assumptions need to be discussed and agreed. These include the following:

- Work Plan and Schedule
- Proposed Cutover-Phasing Plan for the fixed side system elements
- Detailed Surveys, including: Requirements survey, Network review, operational review – particularly back office applications and their integration with the existing ITS system.

Trapeze's project engineering personnel schedule onsite visits to perform surveys, preferably during the Kick-Off meeting. The survey process will provide LAVTA staff and Trapeze engineering personnel the opportunity to review required infrastructure design supporting the upgraded system. The Trapeze team will work with LAVTA at each stage of the project to confirm all members of LAVTA team are given the opportunity to fully participate in the decision making process.

System Design Document Preparation

During the design phase, Trapeze gains the opportunity to fully understand recently requested operational and system requirements that are currently important to LAVTA. The system design end result will be the mutual approval of detailed planning and project requirements.

This effort will result in a mutually understood set of documents that allow Trapeze and LAVTA to record ITS requirements for operational functionality in an effective manner. We view this as the “cornerstone” of a successful project. The System Design Documents will demonstrate how the system will function, integrate and provide new functionality – *where applicable* - in accordance with the agreed requirements. The results of this effort will flow down and be incorporated into a final design delivery and compliance specification, which will be reviewed with LAVTA to confirm compliance with the design before the upgrade is initiated.

Other elements that will be provided within this document are:

- Requirement review reporting results with mutually agreed ‘met-by’ statements

- Block diagrams and hardware schematics showing new major components, *if applicable*
- System network overview of actual and/or planned network design, particularly new features and functionality, *if applicable*

Trapeze engineering team shall survey all of the locations where equipment will be installed to confirm and support requirements, *if applicable*. Results from survey shall be documented within the System Design document.

System Installation and Deployment

System Test phase shall be conducted using LAVTA data in a controlled environment. Either LAVTA's new servers or a Trapeze hosted lab environment will act as a place to verify functionality prior to cutover.

Once testing of the new version with LAVTA data is complete, LAVTA and Trapeze will perform the cutover to the new version in accordance with the deployment plan provided at project kick off.

Availability Test and Project Closure

During this phase of the project, LAVTA - with Trapeze personnel support - exercise the TransitMaster™ ITS system for a period of days and note system performance. It is the responsibility of Trapeze to support when requested, and resolve quickly any issues that may occur during this period. It is understood at this time, Trapeze Customer Care will transition to providing ongoing system and application support according to existing maintenance and warranty programs with LAVTA.

Following successful completion of the availability test, final documentation is prepared and delivered. LAVTA will be responsible for reviewing the documentation. Once the documentation is reviewed and approved, Trapeze will present the project phase closure letter to LAVTA for signature.

Training

It is important that your system administrator and operations staff be trained and familiar with the new equipment and application features installed and the functionality they provides. Training shall be conducted so that LAVTA staff is well equipped to troubleshoot and maintain the new system after integration into production.

Major areas of instruction will include:

- System configuration and operational review
- TransitMaster™ TIS Manager and central system configuration

This priority will allow LAVTA organization staff an amount of time to become familiar with the system and at the same time put this knowledge to immediate use. Using this method, the learning experience of your support staff can be closely timed with the implementation of the system.

This course introduces the student to the advanced tools and topics related to the TransitMaster™ Intelligent Transportation System (ITS). The focus of this course is to provide the student with information on the day-to-day maintenance and monitoring of the system, with an in-depth study of the applications used to perform those tasks.

General Objectives:

- Review and gain an advanced understanding of the TransitMaster™ applications and services that are used to configure, maintain, and troubleshoot the system.
- Use the appropriate applications to monitor and maintain the TransitMaster™ radio and computer network.
- Use the appropriate software applications to monitor and maintain the data stored in the TransitMaster™ database

Format: Combination of classroom lecture, discussion, and hands-on exercises

Duration: 3 Days

Training sessions start at 8:00 AM and end at 5:00 PM each day unless other arrangements are made with the instructor. One-half hour preparation and tear-down time is required by instructor and is included as part of the training session.

Prerequisites:

- *Working knowledge of computer and Windows™ Operating Systems*
- *Working knowledge of computer networks and communication methods*
- *Working knowledge of schedule and route data*

Who should attend:

- Computer Network Administrators, System Administrators, Database Analysts, Schedulers

Student Capacity: 1-2 students per computer workstation

- *Recommended maximum is 6 students*

Trapeze Software Group, Inc. ("Seller" or "Trapeze") hereby agrees to furnish TransitMaster™ Systems Software maintenance service and other named Software maintenance services consisting of the necessary parts, labor, and testing of all Livermore/Amador Valley Transit Authority ("Buyer") licensed Software listed in Attachment A in accordance with the terms and conditions of this Software Maintenance Agreement ("Agreement"). Buyer agrees to use Seller as the maintenance vendor for all Software listed. Buyer agrees to purchase and pay for such services subject to the following terms and conditions:

WHEREAS Buyer wishes to participate in Seller's annual maintenance program;

WHEREAS Seller is the owner of the rights to certain software identified under Attachment A (Collectively "Software"), including copyright, trademark, trade secret and other intellectual property rights;

WHEREAS Seller has granted Buyer certain rights regarding the Software that enable Buyer to use the Software under the terms and conditions specified under the granted license; and

WHEREAS, The Software covered by this Agreement is identified in Attachment A, Schedule of Covered Software, and pricing for this coverage is identified in Attachment B, Pricing Schedule.

NOW, THEREFORE, the parties agree as follows:

1) DEFINITIONS.

- A. Turnaround Time: Commences on the date of receipt by Seller's Service Center, and continues to the date of shipment back to Buyer.
- B. Updates and Upgrades: Those improvements to the Equipment or Software that Seller generally makes available as part of the annual maintenance program.
- C. Priority One (1) Variance: An Equipment or Software performance anomaly resulting in the loss or use of critical system functions to the extent that such loss affects the safety of the public and/or personnel.
- D. Priority Two (2) Variance: An Equipment or Software deficiency of lesser severity than a Priority One (1) that does not substantially reduce the capability of the system to accomplish its primary system functions (e.g., vehicle communications and AVL). Priority Two (2) Variances indicate functional and/or performance deficiencies, but the system is still capable of accomplishing its primary system functions with a satisfactory degree of safety and effectiveness. A Priority One (1) Variance for which an acceptable workaround has been established shall be reassigned to a Priority Two (2).
- E. Service Notification: A notification or bulletin provided by Seller that describes a change to Software.
- F. Trade Secrets: Any information proprietary to either party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that (1) is or becomes generally known to the public through no fault of the recipient; (2) 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; (3) the recipient independently develops through persons who have

not had access to such information; or (4) the disclosing party approves for unrestricted release by written authorization.

G. Trapeze Equipment ("Equipment"): The Trapeze proprietary equipment units identified in Attachment A of this Agreement.

H. Trapeze Software: The Trapeze proprietary software applications identified in Attachment A of this Agreement.

2) MAINTENANCE SERVICES PROVIDED. Seller agrees to provide the following Software maintenance services during the term of this Agreement:

- A. Seller shall maintain the Software in conformity, and in all material respects, with the descriptions and specifications of the Software in effect at the time of this Agreement;
- B. Seller shall send Buyer mailings regarding Updates and Upgrades of the Software;
- C. Seller shall provide phone support to Buyer's authorized callers to assist with troubleshooting of installation, configuration, and operational problems of covered Equipment and Software.

The toll free number for all calls to Seller is 1-877-411-8727.

Buyer shall provide Seller with remote access to Buyer's computers on which the Software is installed. Seller shall provide Updates and Upgrades to the Software via remote connection or at its sole discretion, load the software onto the system while on site. All media used to load software on-site shall remain in the possession and control of Seller. Should the Buyer request any on-site maintenance services, Seller reserves the right to charge its standard applicable service fees plus expenses related to such services.

Seller does not represent or warrant that (a) the Equipment or Software shall meet any or all of Buyer's particular requirements; (b) the operation of the Equipment or Software shall be error-free or uninterrupted.

3) TERM OF THIS AGREEMENT. The term of this Agreement shall commence on July 1, 2020, and shall continue through June 30, 2025, unless (1) this Agreement is cancelled in accordance with Article 12 CANCELLATION; or (2) if Buyer elects to exercise renewal option(s) pursuant to Article 4 OPTION TO RENEW, then, in that event, upon expiration of the term of renewal.

4) OPTION TO RENEW. If an Option to Renew for additional periods is provided for in Attachment B, Buyer must exercise the option to renew prior to expiration of this Agreement. If more than one (1) option to renew is contained in Attachment B, Buyer must exercise any subsequent option to renew prior to the expiration of the then current option.

5) PAYMENT AND PRICING TERMS. Buyer shall pay Seller on a "firm fixed price" basis, in US dollars, in accordance with the Maintenance Plan Fees, attached to and, by this reference, incorporated into this Agreement. Terms of payment shall be net thirty (30) days from date of invoice. If Buyer determines that an invoice does not comply with the terms of this Agreement, Buyer shall notify Seller in writing, via certified mail, within seven (7) business days of receipt of invoice. Buyer shall pay all undisputed portions of the invoices submitted by Seller within the payment terms stated herein.

In the event Buyer declines, for any reason, to pay any invoice(s) when due, in addition to any other rights reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. In addition, Seller reserves the right to assess a monthly fee of two percent (2%) of the open balance payable to Seller by Buyer. Buyer understands and agrees that the two percent (2%) fee constitutes an administrative cost rather than a penalty.

Time and Material rates are subject to change without notice and are set forth under Attachment B. Time and Material rates shall apply to any repair services for any Software covered under Article 7, SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE.

Seller shall invoice Buyer at the address set forth below for services provided hereunder.

Invoice address:
Livermore/Amador Valley Transit Authority Attn: Dave Massa 1362 Rutan Drive, Suite 100 Livermore, CA 94551

6) TAXES AND FEES. Except as otherwise specified, the prices stated do not include any state, federal or local sales or excise taxes, customs, or duties, now in force or which may be enacted in the future, and may be applicable to the sale, delivery or use of goods. Buyer shall provide tax exemption certificate if Buyer is tax exempt.

7) SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE. In the event that Software covered under this Agreement is subjected to any of the conditions below by Buyer or any Third Parties, such Software shall be excluded from maintenance service coverage.

- A. Software subjected to carelessness or negligence;
- B. Software subjected to cannibalization or vandalism;
- C. Software subjected to alteration or repair in a manner which conflicts with Seller's' written repair procedures, specifications, and license terms;
- D. Software subjected to inadequate packing, storage or handling;
- E. Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
- F. Software altered as a result of Third Party service bulletins.

The parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects or performance issues in the Trapeze Software or the Trapeze Equipment which are caused by the actions or omissions of the Buyer, its employees, contractors or vehicle riders.

8) DOCUMENTATION OF SOFTWARE DIFFICULTY. Upon the identification of a possible fault or difficulty within any of the Software to be supported hereunder, Buyer shall promptly issue a trouble report to Seller that shall include the following information:

- A. Date of performance anomaly;
- B. Software module in question and location of where Software is installed;
- C. Detailed system description of performance anomaly;
- D. Part number or version number of Software and severity/ impact to Buyers operations; and
- E. Contact name and phone number.

The trouble report information shall also be communicated verbally to Seller at 1-866-778-5572. Seller shall forward the trouble report to the designated repair technician.

9) CHANGES TO SOFTWARE. Seller may issue Service Notifications indicating recommended or mandatory changes to the Software covered under this Agreement.

10) CHANGES TO AGREEMENT. Seller and Buyer may, by mutual agreement and subsequent written amendment, make changes to this Agreement. Implementation of any change not covered under this Agreement shall be chargeable in accordance with Seller's current pricing. In addition, Buyer shall be entitled to acquire a license to new products at Seller's then current license fees. Upgrades and new products will be provided with updated documentation where available and appropriate.

11) LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

WITH THE EXCEPTION OF THE DUTY OF INDEMNIFICATION SET FORTH IN SECTION 14, SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED SIXTY-ONE THOUSAND, SEVEN HUNDRED SEVEN DOLLARS AND FIFTY CENTS US (\$61,707.50).

12) CANCELLATION. Seller and Buyer may cancel this Agreement in whole or in part by providing ninety (90) calendar days written notice to the other party for any of the following reasons: (i) For any occurrence described under Article 15, FORCE MAJEURE, (ii) for material breach by the other party which remains uncured for sixty (60) calendar days following a written notice of the breach and a demand for cure of the breach by the non-breaching party. Either party may cancel for its convenience. During the ninety (90) calendar day notice period, the applicable maintenance fees will remain payable.

Cancellation or early termination of the initial five (5) year agreement shall result in waiving of the Seller's "Discounts - Base" as described in the Pricing & Payment Schedule, Attachment B. In the event of early termination, Buyer shall be invoiced for the

annual amount(s) of the "Discounts - Base" applied from the beginning of the agreement, prorated up to the time of early termination.

Upon cancellation of this Agreement by either party, Buyer shall return all of Seller's assets within thirty (30) calendar days of the effective date of cancellation, and Seller shall return all of Buyer's assets within thirty (30) calendar days of the effective date of cancellation. In the event assets are not returned within the specified timeframe, the value of the items not received shall be assessed, invoiced to the non-compliant party and paid in full within thirty (30) days from the date of invoice.

13) NOTICES. Notices under this Agreement shall be sufficient if sent by U.S. certified mail, postage prepaid or by an air courier service, prepaid as follows:

To: Trapeze Software Group, Inc.
Attn: Heidi Wiebold
5265 Rockwell Drive, NE
Cedar Rapids, IA 52402
Tel: 319-743-4522
Fax: 319-743-4510
Email: heidi.wiebold@trapezgroup.com

To: Livermore/Amador Valley Transit Authority
Attn: Dave Massa
1362 Rutan Drive, Suite 100
Livermore, CA 94551
Tel: 925-455-7568
Email: dmassa@lavta.org

14) PATENT, PROPRIETARY RIGHTS, COPYRIGHT AND TRADEMARK INDEMNITY. Seller shall retain all rights in patents, copyrights, trademarks, and trade secrets. Furthermore, neither this Agreement nor the delivery of any work hereunder shall be construed as granting, either by estoppel or otherwise, any right in, or license under, any present or future data, drawings, plans, ideas or methods disclosed in this Agreement or under any invention, patent, copyright or trade secret now or hereafter owned or controlled by Seller. Software utilized under this Agreement is proprietary and ownership of the software remains with Seller and/or its subcontractors, as the case may be. Buyer agrees to: (1) take reasonable steps to maintain Seller's and subcontractors rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where Buyer may disclose the software to designated federal representatives under a nondisclosure agreement executed by both parties; (3) not use or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates, patches or Upgrades, on any equipment other than the equipment on which it was originally installed, without Seller's written consent.

Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright which covers, or alleges to cover, the product described herein in the form sold by Seller. Seller agrees that it will pay all sums, which, by final judgment or decree in any such suits, may be assessed against Buyer on account of such infringement, provided that Seller shall be given (i) reasonable written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of Buyer to continue the use, as contemplated, of the product so purchased. If, in any such suit so defended, the product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either

procure the right to continue the use of the same for Buyer, or replace the same with a non-infringing product, or modify said product so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing product and refund the purchase price.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR PATENT AND/OR COPYRIGHT INFRINGEMENT.

15) FORCE MAJEURE. Seller shall not be liable to Buyer for failure to meet any obligations under this Agreement if such failure is caused by or due to events beyond the control of Seller such as, but not limited to, acts of God, acts of war (whether declared or undeclared), riot, rebellion, sabotage, weather, fire, flood, drought, terrorism, earthquake, windstorm, explosion, strikes or other labor troubles preventing delivery hereunder, embargo, delays, acts of government or government priorities, regulations or rules, court orders, or any other causes not due to the sole fault or negligence of Seller.

16) CONFIDENTIALITY. Buyer agrees that any and all confidential information, in oral or written form, whether obtained from Seller, its agents or assigns, or other sources, or generated by Seller pursuant to this Agreement shall not be used for any purpose other than fulfilling the requirements of this Agreement. To the extent allowed by law, Buyer further agrees to keep in absolute confidence all data relative to the business of Seller, Buyer, their agents or assigns. Seller requests that in the event Buyer receives a request for disclosure of confidential information pursuant to a freedom of information law, Buyer shall promptly give Seller written notice of such request prior to disclosure to allow Seller the opportunity to seek injunctive relief or such other relief as may be appropriate under applicable law and shall fully cooperate with Seller, at Seller's expense, in seeking confidential treatment for any disclosure of such confidential information. No news release, including but not limited to photographs and film, public announcement, denial or confirmation of any part of the subject matter of any phase of any program hereunder shall be made by Buyer without prior written approval of Seller.

17) APPLICABLE LAW. The parties agree that this Agreement shall be governed and construed by the laws of the State of California, but specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

18) DISPUTES. The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by negotiation in good faith between executives who have the authority to settle the dispute. Either Party shall give the other Party written notice of any dispute not resolved in the ordinary course of business. Within seven (7) business days after delivery of such notice, the Party receiving notice shall submit to the other a written response thereto.

All reasonable requests for information made by one Party to any other shall be honored in a timely fashion. All negotiations conducted pursuant to this Article (and any of the Parties' submissions in contemplation hereof) shall be kept confidential by the Parties and shall be treated by the Parties and their representatives as compromise and settlement negotiations under the Federal Rules of Evidence and any similar state rules.

If the matter in dispute has not been resolved within thirty (30) calendar days of the initial dispute date, either Party (the "Claimant") may submit the dispute to binding arbitration to the

State of Delaware office of the American Arbitration Association ("AAA") in accordance with the procedures set forth in the Commercial Arbitration Rules of the AAA then obtaining.

The Commercial Arbitration Rules of the AAA shall govern any arbitration proceeding hereunder. The arbitration shall be conducted by three (3) commercially-experienced arbitrators selected pursuant to the Commercial Arbitration Rules, and pre-hearing discovery shall be permitted if and only to the extent determined by the arbitrators to be necessary in order to effectuate resolution of the matter in dispute. The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof. Equitable remedies shall be available from the arbitrators. Consequential, punitive, exemplary, indirect or similar damages shall not be awarded by the arbitrators, although attorneys' fees and the costs of arbitration may be assessed against either or both Parties. Any provisions of the award which are determined to be unenforceable in any jurisdiction, shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. The arbitrators' decision shall be rendered within thirty (30) days of the conclusion of any hearing hereunder and the arbitrators' judgment shall be final and binding on the Parties. Any award and judgment may be entered and enforced in any court of competent jurisdiction.

Resolution of disputes under the procedures of this Article shall be the sole and exclusive means of resolving disputes arising out of or relating to this Agreement.

19) ENTIRE AGREEMENT. The terms and provisions stated herein and within Attachments A and B comprise all the terms, conditions, and agreements of the parties with respect to the Software maintenance provided hereunder and supersede any provision on the face and reverse side of the Buyer's Purchase Order or any prior agreement inconsistent with the provisions hereof. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, shall form a part hereof or have any legal effect whatsoever. No modification hereof shall be valid unless in writing and duly signed by Buyer's and Seller's authorized representatives.

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

21) MEDIA AND PUBLICATION. Upon reasonable notice and consultation with the Buyer, Seller shall be entitled to publish press releases and other general marketing information related to this Agreement and the work done hereunder. Except for the foregoing, and subject to the strict requirements of the law, neither party will communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work performed under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

22) DATA/DATABASE OWNERSHIP. The license to use the Seller's TransitMaster™ database is granted to Buyer solely for the development

of internal reports by Buyer and for the integrated operation of Trapeze Equipment and Trapeze Software components. Unless expressly included herein, all other access rights to the Seller's TransitMaster™ database are excluded from this Agreement, and the Buyer shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Seller's TransitMaster™ database. However, Buyer shall retain ownership of the raw data that is inputted into the Seller's TransitMaster™ database.

23) ASSIGNMENT. This Agreement shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign any rights or obligations under this Agreement without the written consent of the other, which shall not be unreasonably withheld, except that Seller may assign this Agreement without consent to any subsidiary or affiliated company or by way of merger or acquisition.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed this _____ of _____ 20__.

Livermore/Amador Valley Transit Authority

By: _____

Name and Title: _____

Date: _____

Trapeze Software Group, Inc.

By: _____

Name and Title: _____

Date: _____

RESOLUTION NO. 14-2020

**RESOLUTION AUTHORIZING SOFTWARE SUPPORT AGREEMENT BETWEEN
LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
AND TRAPEZE SOFTWARE GROUP, INC**

WHEREAS, the Livermore Amador Valley Transit Authority does require the use of a licensed and supported Automatic Vehicle Location software product;

WHEREAS, the Livermore Amador Valley Transit Authority has been utilizing the TransitMaster suite of products offered by Trapeze Software Group, Inc since 2002

THEREFORE, BE IT RESOLVED by the Board of Directors of the Livermore Amador Valley Transit Authority that the Executive Director may enter into a maintenance contract with Trapeze Software Group, Inc for a 5 year term beginning July 1, 2020;

Michael S. Tree
Executive Director

PASSED AND ADOPTED by the Board of Directors of the Livermore Amador Valley Transit Authority of the State of California on the 8th day of June 2020.

David Haubert, Board Chair

ATTEST:

Michael Conneran, Legal Counsel