STANDARD TRAPEZE SOFTWARE LICENSE AND MAINTENANCE AGREEMENT - TRANSIT

<mark>LF042705-20</mark>

Between

TRAPEZE SOFTWARE GROUP, INC., an Arizona Corporation ("Trapeze"), with its principal place of business at 8360 East Via de Ventura, Suite L-200, Scottsdale, Arizona 85258, U.S.A.

And

RAPID CITY ("Licensee"), with its principal place of business at 300 Sixth Street, Rapid City, South Dakota 57701, U.S.A.

Notice Information:

If intended for Trapeze, to:	If intended for Licensee, to:
2800 Skymark Avenue, Building 1, 2nd Floor	
Mississauga, Ontario, Canada L4W 5A6	
Contact: Sanjay Desai, Counsel	Contact:
Telephone: 1-905-629-8727	Telephone:

Number of Pages in this Agreement including attached Exhibits:

Both parties acknowledge that they have read and fully understand this Agreement and hereby agree to the terms hereof. Licensee expressly acknowledges that no representations other than those contained in this Agreement have been made regarding the goods or services to be provided hereunder, and that Licensee has not relied on any representation not expressly set out herein.

Signed for and on behalf of Trapeze:

By:

Print Name: Jason Redman

Title: Director of Finance

Date:

Signed for and on behalf of Licensee:

By:

Print Name: Jim Shaw

Title: Mayor

Date:

Attested By:

Print Name: Jim Preston

Title: City Finance Officer

Date:

STANDARD TRAPEZE SOFTWARE LICENSE AND MAINTENANCE AGREEMENT - TRANSIT

NOW THEREFORE, the parties agree as follows:

1.   Definitions

"Agreement"   this agreement effectively made as of the 4th day of April, 2005, between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this Agreement;

"Confidential Information"   all information obtained by the parties from each other under this Agreement, but does not include any information, which at the time of disclosure is generally known by the public.

"Documentation"   the user documentation and training materials pertaining to the Software as supplied by Trapeze;

"New Product"   any update, new feature or major enhancement to the Software that Trapeze markets and licenses for additional fees separately from Upgrades;

"Software"   the certain software as identified in Exhibit A of this Agreement;

"Trade Secrets"   the Software, Documentation, and other related information (including all modifications of the Software developed for Licensee) disclosed to Licensee under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze.

"Upgrades"   generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.

2.   License, Maintenance and Support Services In consideration of payments to be made by Licensee to Trapeze as set out below, Trapeze agrees to provide the following:

   (a)   Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use a production copy of the object code version of the Software in the form supplied by Trapeze and on hardware approved by Trapeze as of the License Date referred to in Exhibit A ("License Date"), restricted to the places of business of the Licensee, for the Licensee's own operations, with operational characteristics as described in Exhibit A.

   (b)   Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use Documentation , but only as required to exercise the license granted herein.

   (c)   For any warranty period, and subsequently only as part of maintenance, Trapeze will maintain the Software so that it operates in conformity in all material respects with the descriptions and specifications for the Software set forth in the Documentation.

   (d)   For any warranty period, and subsequently only as part of maintenance, in the event that Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 am to 8 pm prevailing EST. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website, and webex support as available. Trapeze also offers 24 * 7 cover for emergency calls on a toll-free number with a response usually within one hour.

   (e)   For any warranty period, and subsequently only as part of maintenance, Trapeze will post website notices of available Upgrades of the Software, and copies of the release notes for download. Trapeze shall provide Licensee with Upgrades of the Software at no additional license fee charge.

   (f)   Licensee may make one back-up copy of the Software at each site. Licensee may use the production copy of the Software solely to process Licensee's own data, and the software may not be used on a service bureau or similar basis to process data of others.

The license to use the Trapeze™ Malteze Transit Database is granted to Licensee solely for the development of internal reports by Licensee and for the integrated operation of Trapeze software components. Unless expressly included herein,

all other access rights to the Trapeze™ Malteze Transit Database are excluded from this Agreement, and the Licensee shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Trapeze™ Malteze Transit Database. Should the Licensee wish to interface other systems or databases to the Trapeze™ Malteze Transit Database that would read from the Trapeze™ Malteze Transit Database, Licensee must obtain written consent from Trapeze, which shall not be unreasonably withheld, and a listing of the relevant systems or databases, if approved, must be added by amendment to this Agreement. Trapeze shall not approve independent interfacing of other systems or databases to the Trapeze™ Malteze Transit Database that write to the Trapeze™ Malteze Transit Database, and shall not approve interfacing of other systems or databases to the Trapeze™ Malteze Transit Database that belong to Trapeze competitors.

Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee shall have no further rights to use the Software or the Documentation, and shall not copy, reproduce, modify, adapt, reverse engineer, dissassemble or translate them, without the express written authority of Trapeze. These obligations of confidentiality shall survive termination of the license granted herein.

Support and maintenance services shall not include, and Licensee shall pay additional fees for, any and all consulting, implementation, modification, education and training related services.

3. Purchase Order, Payment and Maintenance Fee Upon execution of this Agreement, Licensee will issue a Purchase Order specifying the amount of $54,150 U.S. (this amount excludes any sales taxes, first year maintenance fees subsequent to the warranty period, or escrow fees which may apply) for the provision of Software licenses and services, as set out in Exhibit B. The Purchase Order will be governed exclusively by the terms and conditions of this Agreement. Trapeze will invoice Licensee for the Software licensee fee(s), services, and related expenses as set out in Exhibit B. Expenses will be calculated on a fixed rate per diem, per trip basis.

    Licensee shall pay annual maintenance fees to Trapeze as provided in Exhibit A (the "Maintenance Fee"). Licensee's payment of the annual maintenance fee to Trapeze is in consideration of Licensee's rights defined in Section 2 for additional period(s) of one (1) year duration subsequent to the warranty period. This fee shall be subject to change as set out in Exhibit A. Licensee shall issue a Purchase Order annually specifying the amount set forth in the Trapeze invoice for maintenance services, and the Purchase Order shall be governed by the terms and conditions of this Agreement.

    Subject to receipt of an accurate invoice, Licensee will pay invoices within thirty (30) days of receipt. Overdue payments will bear interest at the annual rate of ten percent (10%) on the amount outstanding from the date when payment is due until the date payment in full is received by Trapeze. Licensee will also be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement. **If Licensee has a tax exemption certificate, a copy of the certificate must be provided to Trapeze upon signing of this Agreement to avoid payment of the applicable tax to Trapeze.**

4. Trade Secrets and Confidential Information Licensee acknowledges that any Trade Secrets or Confidential Information disclosed to Licensee pursuant to this Agreement are owned by Trapeze and include trade secrets and other confidential and proprietary information of Trapeze, and Licensee shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without Trapeze's prior written consent.

5. Media and Publication Licensee shall not communicate with representatives of the general or technical press, radio, television or other communications media regarding the work under this Agreement without prior written consent of Trapeze, which shall not be unreasonably withheld. Licensee nor any of its personnel shall publish or reproduce or arrange press releases regarding Trapeze without the prior written consent of Trapeze upon such terms as may be agreed. Trapeze reserves the right to publish the results of the work done under this Agreement.

6. Force Majeure Neither party to this Agreement shall be liable to the other party hereto for loss or damage arising out of any delay or failure by such party in performing its obligations hereunder, if such delay or failure was the unavoidable consequence of a natural disaster, exercise of governmental power, strike or other labor disturbance, war, revolution, embargo, insurrection, operation of military forces, or other event or condition beyond the control of such party,

provided that such party notifies the other party of its inability to perform and the reasons therefor, with reasonable promptness, and performs its obligations hereunder as soon as circumstances permit.

7. <u>Remote Access</u> Upon Licensee's consent, Licensee shall provide Trapeze with the right of a remote connection to Licensee's computer(s) on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software.

8. <u>Warranty, Acceptance Procedure and Indemnity</u> Trapeze warrants the Software to operate in all material respects as specified in the Documentation for a period of one (1) year from the date upon which the Software is first put into operational and functional use, as defined in the "Acceptance Procedure" set out below. The sole remedy of Licensee for any breach of this warranty will be to require Trapeze to use reasonable efforts to correct, or replace at its own expense, any defects in the Software that are brought to Trapeze's attention by Licensee.

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 the Licensee the rights set forth in this Agreement and that neither the performance of the services by Trapeze nor the use by the Licensee of the Software, or any portion thereof, 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.

Acceptance Procedure: Upon completing the delivery, installation, and testing of the Software, Trapeze will notify Licensee in writing. Licensee will then have ten (10) business days in which to conduct acceptance tests in order to ensure that the Software operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the Software unless Trapeze receives prior written notice outlining the nature of the perceived defects in the Software.

Notwithstanding the above, Licensee will be deemed to accept the Software when the Licensee puts the Software into operational and functional use. Without limiting the foregoing, the Software will be deemed to be in operational and functional use when the Licensee first uses the Software to support its then current operations in any capacity. Upon the deemed acceptance of the Software in accordance with this paragraph, Licensee will provide Trapeze with a written acknowledgement to confirm such acceptance.

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 and fitness for a particular purpose and those arising by statute or otherwise in law or from the course of dealing or usage of trade. But for the requirements of Section 2(c), and Section 8, Trapeze does not represent or warrant that this Software will meet all of Licensee's particular requirements, that the operation of the Software will operate 100% error-free or uninterrupted and that all program errors in the Software can be found in order to be corrected.

Trapeze's entire liability and responsibility for any and all claims, damages, or losses arising from use of the Software by Licensee shall be absolutely limited to the amount(s) of $50,000. Notwithstanding any provision contained herein, Trapeze shall not be liable for any indirect, consequential, special, incidental or contingent damages or expenses, whether in contract, tort (including negligence) or otherwise, arising in any way out of this Agreement, the Software, or Trapeze's performance or lack thereof under this Agreement, including without limiting the generality of the foregoing, loss of revenue, profit or use.

However, for intellectual property infringement, Trapeze will defend Licensee in respect of any claims brought against Licensee by a third party based on the claim that the Software infringes the intellectual property rights of that third party. Trapeze will pay any award rendered against Licensee by a court of competent jurisdiction in such action, provided that Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full control of any defense. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing or terminate this Agreement as it relates to the infringing portion of the Software. This is Trapeze's entire liability concerning intellectual property infringement.

Trapeze will not be liable for any infringement or claim based upon any modification of the Software developed by Licensee, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of the Software contrary to this Agreement or the Documentation.

9.   <u>Exclusion of Liability</u> Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet.

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

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

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

Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of changes in Licensee staffing.

10.   <u>Termination</u> The license granted by this Agreement is a perpetual, non-exclusive license that shall commence upon the License Date. The maintenance terms shall continue for periods each of which shall be one (1) year in length from the expiry of the warranty period unless the maintenance fees are not paid when due or unless earlier terminated as provided herein:

    a.   Either party may terminate for convenience with ninety (90) days written notice.

    b.   Either party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder, and if such default has not been cured within fifteen (15) days after receipt of notice of such default.

    c.   Either party has the right to terminate this Agreement by written notice if the other party becomes insolvent or bankrupt. Without limiting the foregoing the following shall be deemed to be Licensee defaults under this Agreement: Licensee fails to pay any amount when due hereunder; or Licensee becomes insolvent or any proceedings shall be commenced by or against Licensee under any bankruptcy, insolvency or similar laws.

In the event that the license granted under this Agreement is terminated, Licensee shall forthwith return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this Agreement and will certify in writing to Trapeze that all copies or partial copies of the Software, the Documentation and such other materials have been returned to Trapeze or destroyed. The obligations of each party pertaining to Confidential Information and taxes shall survive the termination of this Agreement.

11.   <u>Assignment</u> This Agreement, or any of the rights or obligations of Trapeze created herein, may be assigned by Trapeze, but this Agreement is for the sole benefit of Licensee and may not be assigned by Licensee without the express written consent of Trapeze.

12.   <u>Applicable Law</u> This Agreement shall be governed by and construed in accordance with the laws of the State of <u>South Dakota</u>, USA.

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

Trapeze may perform audit(s) on the use of the Software and Documentation upon giving Licensee written notice of at least five (5) business days. Licensee agrees to make the necessary operational records, databases, equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

EXHIBIT A
Software License and Maintenance Agreement

Item	Software	Configuration	Gross License Fees	Maintenance Fees (<u>commences subsequent to the one year warranty period</u>)	License Date
1.	*Trapeze-PASS*	5 multiple user licenses 399 trips a day	$ 45,500.00	$ 9,100.00	April 4th, 2005
2.	*Trapeze-PASS-SUS*	399 trips a day	$ 9,000.00	$ 1,800.00	April 4th, 2005
3.	*Trapeze-MAPMAKER*		$ 5,000.00	$ 1,000.00	April 4th, 2005
		Totals	$ 59,500.00	$ 11,900.00	

Notes:

1. License is provided to Licensee for operations with up to 399 peak number of booked trips a day.
2. Third Party Runtime licenses, if required to operate the Software, are not included.
3. Third Party data, hardware and system/operating software are not included within the license granted under this Agreement and are not included in the License fees.
4. Upon request, Trapeze will assist in reviewing hardware specifications, however the Licensee is responsible for purchasing hardware and any other pre-requisite products. Any hardware that must be tested by Trapeze may require additional service days not included in this Agreement.
5. First year maintenance fee only. For subsequent years, the annual maintenance fee will be Trapeze's then current price.
6. First year maintenance is calculated as 20% of the Software gross license fee.
7. Proposed software solution is designed for the Windows XP operating environments, with an ODBC database infrastructure (the Malteze Transit Database) designed by and proprietary to Trapeze, configured for the Oracle 8/MS SQL database engine.
8. Any components may be operated on any of the licensed workstations within a configuration approved by Trapeze. Licenses for additional local or remote workstations may be purchased at the then current rates.
9. All other deliverables and services requested by Licensee, including on-site training and consulting services, not enumerated in Exhibit A or Exhibit B are the responsibility of the Licensee and will be billed separately by Trapeze along with related expenses.

EXHIBIT B
Software Summary of Pricing, Payment Schedule

Following is our cost proposal for our TRAPEZE-PASS software system as discussed in our written and oral communications. Any local or State sales and usage taxes are in addition to the quoted prices.

The following prices are valid for 90 days after submission.

A.   SOFTWARE COMPONENTS AND NET LICENSE FEES

Trapeze-PASS paratransit system	$13,650
Includes: 5 Multiple User Licenses	
Trapeze-PASS-MapMaker Module	$1,500
Trapeze-PASS-SUS Suspension Module	$2,700
TOTAL NET SOFTWARE COSTS	$17,850

B.   INSTALLATION AND STAFF TRAINING COSTS

PROJECT MANAGEMENT & SUPPORT SERVICES	$8,000
SITE SPECIFIC CUSTOMIZATION	$ -
SOFTWARE, & INSTALLATION SERVICES	$1,000
TRAINING	
All inclusive costs for 18 days training	$18,000
TRAVEL & EXPENSES	
Total of expenses including airfares.	$9,300
TOTAL SERVICES COSTS	$36,300
GRAND TOTAL	$54,150

Notes:
1) Licenses are provided for operations up to 399 booked trips per day
2) Licenses provide for software utilization for Rapid Transit (Rapid City, SD)
   Third Party Runtime licenses, if required, to operate the proposed applications are
3) not
   included in prices listed above
4) Proposed software solution is Windows based with ODBC Database engine
5) Any components may be operated on any of the workstations, and additional local workstation licenses may be purchased for $3,500
6) Malteze Transit Database will be provided at no cost for the development of reports by your staff only and for the integrated solution consisting of Trapeze Components. Access rights to the master infrastructure or API's for any core components that are not Trapeze compliant/sanctioned are charged at the current rate per application, unless otherwise approved by Trapeze.

Payment Schedule

Item	Description
1	75% of Net License Fee upon contract signing
2	25% Net License Fee upon installation
3	Implementation services as incurred by project milestone determined during Operational Review
4	Expenses as incurred