



This AGREEMENT is made and entered into this October 31, 2006, by and between WHATCOM TRANSPORTATION AUTHORITY, a Washington municipal corporation, hereinafter referred to as "WTA," and Trapeze Software Group, Inc., hereinafter referred to as "Contractor."

The Project:

In consideration of the terms, conditions, covenants, and performance contained herein, WTA and Contractor agree as follows:

1. The Agreement documents consist of this Agreement, Request for Proposal, the Trapeze Software Group, Inc., Proposal in response to WTA Specifications for an Agreement for Project Number 2006-600, the Best and Final Offer, the Trapeze Software Group, Inc. License and Maintenance Agreement dated October 31, 2006 and all addenda issued prior to and all modifications issued after execution of this Agreement. These form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein. An enumeration of the Agreement documents appears in Exhibit "A." In the event of any conflict between or among the terms and conditions of the Agreement documents, the terms and conditions appearing in the Contractor's Proposal shall take precedence.
2. The Contractor shall perform all the Work required by the agreement documents for WTA Project Number 2006-600.
3. Subject to authorized adjustments, the completion of the work shall be as agreed to by the WTA and the Contractor.
4. WTA shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Agreement Documents, the Agreement sum as proposed in Contractors proposal submittal.
5. The parties agree that this Agreement is the complete expression of the terms hereto and any oral representation or understandings not incorporated herein are excluded. Further, any modification of the Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed the day and year first above written.

Whatcom Transportation Authority

Richard G. Walsh, General Manager  
Whatcom Transportation Authority

Trapeze Software Group, Inc

Colin McKenzie, CFO

## SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

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

WHATCOM Transportation Authority ("Licensee"), with its principal place of business at 4111 Bakerview Spur Road, Bellingham, WA 98226, U.S.A.

Notice Information:

If intended for Trapeze, to:

5800 Explorer Drive, 5<sup>th</sup> Floor

Mississauga, Ontario, Canada L4W 5L4

Contact: Mary Pavela

Telephone: 1-905-629-8727

If intended for Licensee, to:

\_\_\_\_\_

\_\_\_\_\_

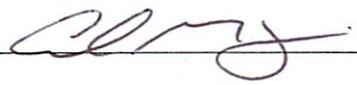
Contact: \_\_\_\_\_

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:

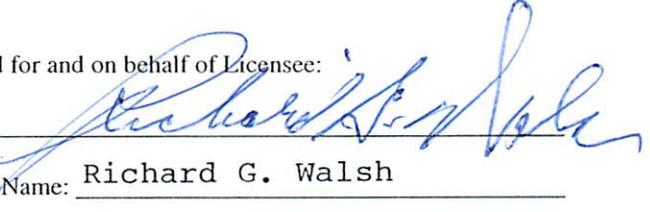
By: 

Print Name: Colin McKenzie

Title: Chief Financial Officer

Date: Nov 6/06

Signed for and on behalf of Licensee:

By: 

Print Name: Richard G. Walsh

Title: General Manager

Date: October 31, 2006

NOW THEREFORE, the parties agree as follows:

1. **Definitions**            In this Agreement the capitalized words set out below will have the following meanings:
  - “Agreement”                    this Software License and Maintenance Agreement effectively made between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this Agreement;
  - “Confidential Information”    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;
  - “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;
  - “Third Party Products”        the equipment, hardware, software, documentation, and/or other intangible materials which is not proprietary to Trapeze.
  - “Upgrades”                        generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.
  
2. **Software License**            In consideration of payments to be made by Licensee to Trapeze as set out below, Trapeze agrees as follows:
  - (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, in accordance with the operational characteristics described in Exhibit A.
  - (b) Trapeze hereby grants to Licensee a personal, non-transferable, non-exclusive license to use the Documentation, but only as required to exercise the license granted herein.
  - (c) Licensee may make one back-up copy of the Software. Licensee may use the production copy of the Software solely to process Licensee’s own data, and the software may not be used on a service bureau or similar basis to process data of others.
  - (d) The license to use the 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 interfaces to or from the Trapeze Malteze Transit Database.
  - (e) 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, disassemble or translate them, without the express written authority of Trapeze.
  
3. **Software Services**            In accordance with the terms of Exhibit B, Trapeze will perform services related to Licensee’s use of the Software (the “Services”). Such services may include installation, modification, testing, training and additional services.

4. Software Acceptance 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. 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.

5. Software Warranty 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. 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. For any breach of this warranty, Licensee's sole and exclusive remedy and Trapeze's entire obligation hereunder shall be to either repair or replace the defective Software. This warranty does not apply to any Software damaged as a result of any accident, negligence, use in any application for which it was not designed or intended, or modification without the prior written consent of Trapeze.

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. No warranty is provided by Trapeze with respect to any Third Party Products. Separate warranties may be available from the developer, distributor, or publisher of the Third Party Products.

**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 and any other warranties arising by statute or otherwise in law or from the course of dealing or usage of trade. Trapeze does not represent or warrant that this Software will meet all of Licensee's particular requirements, or that the operation of the Software will operate 100% error-free or uninterrupted, or that all program errors in the Software can be found in order to be corrected.**

6. Software Maintenance During any warranty period and for any annual support period for which maintenance fees have been paid in full by Licensee:

- (a) 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;
- (b) in the event that Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 am to 8 pm EST, along with a toll-free emergency service available 24 hours per day. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website, and online support as available; and
- (c) Trapeze will post notices of available Upgrades of the Software on its website and copies of the release notes for download. Trapeze will provide Licensee with Upgrades of the Software at no additional license fee charge.

7. Payment Upon execution of this Agreement, Licensee will issue a Purchase Order to Trapeze, for the Software license fees, service fees, and related expenses as set out in Exhibit B, attached hereto. Trapeze will invoice Licensee for the Software license fees and services fees as set out in and according to Exhibit B. The gross amount of the license fee is set out in Exhibit A. Trapeze will invoice Licensee monthly for the Services provided, in accordance with Exhibit B. The total amounts due for all service fees and modifications fees are firm fixed amounts and will be invoiced on that basis. Expenses will be calculated on a fixed rate per diem, per trip basis. All fees for Third Party Products shall be payable in full upon delivery of the Third Party Products to the Licensee. The Purchase Order shall be governed exclusively by the terms and conditions of this Agreement.

Commencing upon completion of the warranty period for each Software application, Licensee shall pay annual maintenance fees to Trapeze as provided in Exhibit A (the "Maintenance Fee"), attached hereto. 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.

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

8. Trade Secrets 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. Licensee shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without Trapeze's prior written consent. Licensee further acknowledges that a breach of this Section would cause irreparable harm to Trapeze for which money damages would be inadequate and would entitle Trapeze to injunctive relief and to such other remedies as may be provided by law.

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

10. 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, except the making of payments due 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.

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

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

13. Limitation of Liability

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

(b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any 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.

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

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

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

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

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

i) incidental or consequential damages, whether foreseeable or not;

ii) special damages even if Trapeze was aware of circumstances in which special damages could arise;

iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

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

14. Termination The license granted by this Agreement is effective until terminated.

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

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

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

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

(e) If this Agreement is terminated, Licensee will immediately return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this Agreement 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.

15. Assignment 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.

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

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

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

19. Notices All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective addresses of the parties appearing on page one of this Agreement. Any notice given shall be deemed to have been received on the date, 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.

20. Audits 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**

<b>Item</b>	<b>Software</b>	<b>Configuration</b>	<b>Gross License Fees</b>	<b>*Year 1 Maintenance Fees</b>	<b>License Date</b>
1.	Trapeze – PASS	Base Station and Ten Workstations	\$81,000	\$16,200	Effective date of this agreement
2.	Trapeze – PASS-MON	Base Station	\$45,500	\$9,100	Effective date of this agreement
3.	Trapeze – PASS- CERT	Base Station and Ten Workstations	\$19,000	\$2,850	Effective date of this agreement
4.	Trapeze - FLEX	Base Station and Ten Workstations	\$15,000	\$2,250	Effective date of this agreement
5.	Trapeze- PLAN (R&D and CDA)	Base Station and Ten Workstations	\$22,800	\$3,420	Effective date of this agreement
6.	Malteze Transit Database	Base Station	Included	Included	Effectived date of this agreement
<b>Totals</b>			<b>\$ 183,300</b>	<b>\$ 33,820</b>	

Notes:

License is provided for operations as follows:

- PASS: up to 1199 booked trips per day
- PASS MON: up to 1199 booked trips per day
- PASS CERT: up to 9,999 registered clients
- FLEX: up to 1199 trips per day
- PLAN: up to 99 peak vehicles

\* Maintenance Fees are stated for the first year only. For the subsequent years, the annual maintenance fee will be at Trapeze's then current price.

**EXHIBIT B**  
**Summary of Pricing and Payment Schedule**

1. Final Price Proposal attached hereto.

EXHIBIT B  
Summary of Pricing and Payment Schedule

MINISTRY OF EDUCATION  
JERUSALEM

1997-1998

RECEIVED  
NOV 7 2006  
PROCUREMENT