



**DeWight Dopslauf, C.P.M., CPPO
Harris County Purchasing Agent**

November 15, 2021

Commissioners Court
Harris County, Texas

RE: Sole Source Exemption - Local Government Code § 262.204 (a)(7)

Members of Commissioners Court:

Please approve a sole source exemption from the competitive bid requirements and the attached Order authorizing the County Judge to execute the attached Agreement for the following:

Description: Subscription, Licenses, Warranty, Upgrades and Support of Fleet Management Software produced by Fleetio for Harris County Universal Services

Vendor(s): Rarestep, Inc. dba Fleetio

Term: November 30, 2021 - November 29, 2022 with four (4) one-year renewal options

Amount: \$240,759

Reviewed By: • Harris County Purchasing • Universal Services - Fleet

The Office of the Harris County Purchasing Agent has confirmed the sole source exemption. Purchase order(s) will be issued upon Commissioners Court approval.

Sincerely,

DeWight Dopslauf
Purchasing Agent

JW
Attachment(s)
cc: Vendor(s)

FOR INCLUSION ON COMMISSIONERS COURT AGENDA NOVEMBER 30, 2021

**ADDENDUM TO THE AGREEMENT BETWEEN HARRIS COUNTY AND
RARESTEP, INC. D/B/A FLEETIO**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Addendum to the Fleetio Manage-Enterprise Software Subscription Agreement being executed on even date herewith (the “Agreement”) is made and entered into by and between Harris County (“Customer” or the “County”), a body corporate and politic under the laws of the State of Texas, acting by and through the Harris County Universal Services (“Department”), and Rarestep, Inc. d/b/a Fleetio (“Contractor” or “Company”) upon execution of this Addendum (“Effective Date”). The County and Contractor are referred to herein collectively as the "Parties" and individually as a "Party."

Recitals

Contractor desires to provide Enterprise Software Subscription Agreement for access to a fleet management platform for managing Customer’s assets for the Department (the “Services”), as a Sole Source procurement.

Contractor represents and warrants it is capable of performing the Services and is willing to provide the Services to the County.

I.

It is expressly understood and agreed that the Software Subscription Agreement (the “Agreement”) is attached hereto as Exhibit A and incorporated herein by reference. In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of any other part or portion of the Agreement, this Addendum shall control. In the event of any conflict between the terms and provisions of this i) Addendum and Agreement with ii) any purchase order issued by the County to Contractor, then this Addendum and Agreement shall control. All right, title, and interest in and to the Services are and will remain the exclusive property of Contractor.

II.

Subsection (b) of Section 1. entitled “Configuration and Training” is hereby deleted in its entirety and restated to read as follows:

Company shall provide data conversion services necessary to convert Customer’s vehicle information from a CSV file. Company shall supply Customer with a template format to which the data must adhere. Further, Company shall provide 40 hours of web-based training on using the Services.

III.

Subsection (b) of Section 2. entitled “Service Fees” is hereby amended to read as follows:

Customer shall pay Company the recurring Service Fees listed below beginning on the effective Date for the license, hosting, and support services listed in Section 1.

IV.

Section 3 entitled “Term and termination” is hereby amended to read as follows:

“The Initial Term of this Agreement shall commence on the Effective Date and shall continue for 12 Months from the Launch Date unless earlier terminated as provided herein. Upon mutual agreement of both County and Contractor, this Agreement may be renewed for four (4) additional one year terms. With regard to any Renewal Terms or extension of this Agreement, the County has not certified any funds for any renewal or extension period beyond current fiscal funds. Therefore, if the County exercises any renewal option, the renewal is subject to the future allocation and certification of funds. Failure to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

In the event either party has failed to substantially cure any material default or failure of performance under this Agreement within thirty (30) days after the breaching party’s receipt of a written notice describing with reasonable specificity such alleged material default or failure of performance, then the non-breaching party may terminate this Agreement for cause by giving the breaching party a written notice of termination within fifteen (15) days after the expiration of the said thirty (30) day period.

County may terminate this Agreement at any time by giving thirty (30) days written notice to the other Party. Upon receipt of termination notice, Contractor shall discontinue all Services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. Within thirty (30) days after receipt of notice of termination, Contractor shall provide County with a refund of any unused, prepaid subscription fees based calculated using a 365-day year.”

V.

The Agreement shall be amended to read as follows:

“(a) The County is a governmental entity under TEX. TAX CODE ANN. § 151.309, as amended and claims exemption from sales and use taxes. The County agrees to provide exemption certificates to Contractor upon request throughout the term of this Agreement.

The County is neither liable for any personal property taxes, charges, or fees assessed against Contractor nor is the County obligated to reimburse Contractor for any taxes, charges, or fees assessed against Contractor for the goods or supplies provided or any Services rendered under the Agreement. Notwithstanding the foregoing, County is responsible for any applicable taxes, including, without limitation, any sales, use, levies, duties, or any value added or similar taxes (“Taxes”) payable with respect to County’s subscription and assessable by any local, state, provincial, federal, or foreign jurisdiction

unless County provides valid exemption certificates to Contractor throughout the term of this Agreement.”

“(b) It is expressly understood and agreed that the County has available **Two Hundred Forty Thousand Seven Hundred Fifty-Nine and No/100 Dollars (\$240,759.00)**, the total maximum sum of funds hereinafter certified available by the Harris County Auditor and evidenced by the issuance of a Purchase Order by the Harris County Purchasing Agent, for the purpose of satisfying the County’s needs for Services for the first year of the Agreement. Contractor understands and agrees, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder for the first year of the Agreement and the total maximum sum that the County shall become liable to pay for Services for the first year of the Agreement herein described shall not under any conditions, circumstances, or interpretations thereof exceed that sum.

(c) When and if all the funds certified are expended for the purpose of satisfying the County's obligations under the terms and provisions of the Agreement, the sole and exclusive remedy of Contractor shall be to terminate the Agreement unless the County Auditor certifies additional funds, as evidenced by an amendment to this Agreement and the Purchase Order.

(d) The above rates are intended to compensate Contractor for all time and expenses. It is expressly understood that County shall not pay Contractor for any other expense not expressly stated in this Agreement. Contractor shall not seek reimbursement for, nor is County obligated to pay for any expenses unless expressly stated in this Agreement. The County is not obligated to pay for postage, long distance telephone calls, parking fees, travel, mileage, lodging, or other costs or expenses (similar or dissimilar). Any specifically allowable reimbursement shall be allowed only to the extent of and no more than what would be allowed by the currently applicable Harris County travel policy for employees.

(e) County shall have no obligation to pay for any work, services, products, deliverables or expenditures that have been provided or incurred without prior authorization.”

Any language in the Agreement in conflict with this section is hereby deleted.

VI.

The Agreement shall be amended to read as follows:

“(a) Payment Requirements.

- i) Contractor understands and agrees that, in accordance with the Texas Constitution, the County is prohibited from paying Contractor in advance for any of the Services.

- ii) The County shall pay each undisputed invoice within thirty (30) days of receipt thereof or from receipt of the Services for which such invoice pertains to, whichever is later. Invoices are subject to the County approval. Upon payment approval, the County will forward payment to Contractor by check issued in U.S. Dollar amounts.
- iii) No additional compensation will be available, unless additional Services are approved by the County in writing. Payment for any additional Services is subject to the future allocation and certification of funds as evidenced by executed amendment(s) to this Agreement.

(b) Payment Process.

- i) Contractor shall submit an invoice upon the Department's acceptance of the equipment, product or Services. Each invoice shall include a description of the equipment, product or Service and the price for each. All invoices MUST be submitted by email to: VENDORINVOICES@HCTX.NET and by mail to : Harris County Auditor, Attn: Accounts Payable, 1001 Preston 8th floor, Houston, Texas 77002. The invoice shall be in a form acceptable to the County Auditor and, at a minimum, include such detail as may be requested by the County Auditor for verification purposes.
- ii) The invoices shall, at a minimum, include a description of the services provided, the cost, and the total amount billed for the services provided. After receipt of an invoice, the Auditor will forward it to the Department, which shall review and approve it with such modifications as may be deemed appropriate, and then return, with any modifications, to the County Auditor for payment. The County shall pay each invoice as approved by the County Auditor in accordance with the laws of the State of Texas.”

VII.

The Agreement shall be amended to read as follows:

“Section 7.01 Indemnity

“CONTRACTOR SHALL HOLD HARMLESS THE COUNTY, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (“INDEMNIFIED PARTIES”) FROM AND AGAINST ALL THIRD-PARTY CLAIMS AND LIABILITY TO THIRD PARTIES DUE TO ACTIVITIES OF CONTRACTOR, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS PERFORMED UNDER THIS AGREEMENT AND WHICH RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT, UNLESS ARISING FROM A PRODUCT, SYSTEM, OR PROCESS SPECIFIED BY THE COUNTY; OR FAILURE TO PAY A

SUBCONTRACTOR OR SUPPLIER, UNLESS ATTRIBUTABLE TO COUNTY'S FAILURE TO FULFILL ITS PAYMENT OBLIGATIONS AS TO UNDISPUTED AMOUNTS; OR ANY WASTE, FRAUD, OR ABUSE AS DEFINED BY THE APPLICABLE GOVERNMENTAL LAWS, RULES, ORDERS, OR REGULATIONS; COMMITTED BY CONTRACTOR OR BY ANY PERSON EMPLOYED BY CONTRACTOR, OR CONTRACTOR'S AGENT, SUBCONTRACTOR, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL, EXCEPT TO THE EXTENT THAT SAID CLAIMS OR DEMANDS ARE DUE TO THE ACTS OR OMISSIONS OF THE COUNTY, ITS EMPLOYEES OR AGENTS.

THE COUNTY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING."

The Agreement shall be amended to read as follows:

Governing Law

“(a) This Agreement is governed by the laws of the State of Texas.

(b) The exclusive forum for any action arising out of, in connection with, or in any way relating to the Agreement is in a state or federal court of competent jurisdiction in Texas.

(c) The exclusive venue for any action arising out of, in connection with, or in any way relating to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.”

Public Information Act

“(a) The Parties expressly acknowledge that the Agreement is subject to the Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 et seq., as amended (the “Act”). The Parties agree that to the extent, if any, that any provision of the Agreement is in conflict with the Act, the same shall be of no force and effect. Therefore, any provisions in the Agreement which provide that any information, including the terms of the Agreement, is confidential are hereby stricken and excluded from the terms of the Agreement. The Parties expressly understand and agree that the either Party shall release any and all information necessary to comply with Texas law without the prior written consent of the other Party.

(b) It is expressly understood and agreed that the Parties, their officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the Sponsor, whether or not the same are available to the public. It is further understood that the Parties, their officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the Parties, their officers and employees shall have no liability or obligations to the other Party for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to the other Party in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

(c) In the event either Party receives a written request for information pursuant to the Act that affects the other Party's rights, title to, or interest in any information or data or a part thereof, furnished to either Party under the Agreement, then the Party will promptly notify the other Party of such request. Either Party may, at its own option and expense, prepare comments and submit information directly to the Attorney General of Texas stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. The Parties are solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. The Parties are solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

(d) Electronic Mail Addresses. The Parties affirmatively consent to the disclosure of its e-mail addresses that are provided to each Party, including any agency or department. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Contractor and agents acting on behalf of Contractor provided in any form for any reason whether related to this Agreement or otherwise.”

Insurance

“Proof of insurance held by the Contractor shall be attached hereto as Exhibit B and incorporated herein by reference.

Contractor understand and agrees, said understanding and agreement also being of the absolute essence of this Agreement, **CONTRACTOR SHALL INDEMNIFY AND HOLD THE COUNTY HARMLESS (BUT ONLY TO THE EXTENT INSURED UNDER ALL INSURANCE POLICIES ATTACHED AS EXHIBIT B) FOR ANY AND ALL CLAIMS THAT ARISE AS A RESULT OF THE CONTRACTOR'S PERFORMANCE OF THE SERVICES.**”

No Federal Exclusion

“Contractor warrants that Contractor is not an “Ineligible Person.” An “Ineligible Person” is an individual or entity who:

- i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any federal and/or state grant, health care program, or in federal and/or state procurement or non-procurement programs. This includes but is not limited to persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
- ii) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

Contractor agrees to report immediately to the County if Contractor becomes an “Ineligible Person” during the term of this Agreement.”

Modifications

“Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.”

VIII.

Any references in the Agreement to imply additional monies owed of any kind including, but not limited to charges, late-payment fees, cancellation fees, storage fees, modification of charges or interest, collections costs, attorney’s fees, or any other fees are hereby deleted.

IX.

This Addendum may be executed in multiple counterparts, each having equal force and effect of an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Addendum.

[Execution Page Follows]

RARESTEP, INC. D/B/A FLEETIO

HARRIS COUNTY

DocuSigned by:

By _____
102EF85280D945F...
Name: Will Yarbrough
Title: VP, Sales
Date: 11/9/2021

By: _____
LINA HIDALGO
COUNTY JUDGE

APPROVED AS TO FORM:
CHRISTIAN D. MENEFEE
COUNTY ATTORNEY

Cherelle Sims

By: _____
Cherelle Sims
Assistant County Attorney
C.A. File 21GEN3145



Fleetio Manage - Enterprise Software Subscription Agreement

Customer

Account Legal Name:

Harris County, TX

Billing Street:

Billing City:

Billing State:

Billing ZIP:

Billing Country:

Contact Name:

Joshua Pascua

Phone:

Email Address:

joshua.pascua@us.hctx.net

Billing Email:

Company

Rarestep, Inc. d/b/a Fleetio

Attn: Legal Department

1900 2nd Avenue North, Suite 300

Birmingham, AL 35203

legal@fleetio.com

Effective Date	
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This agreement (the “**Agreement**”) is entered into by and between Rarestep, Inc., d/b/a Fleetio (the “**Company**”) and Harris County, TX (the “**Customer**”) as of the Effective Date set forth above. In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Company and Customer agree as follows:

1. Services Provided To Customer

Company will provide the following services (collectively, “Services”):

- a. License: Company shall grant Customer a nonexclusive, non transferable license for an unlimited number of users during the term of this Agreement for the use of **Fleetio Manage**, a fleet management platform for managing Customer’s assets. Fleetio Manage shall be configured as described below:
 - (specific modules are listed in the attached Schedule A)
- b. **Configuration and Training:** Customer and Company agree the **Launch Date** shall be **December 1, 2021** unless mutually agreed to be an earlier date. Company shall provide data conversion services necessary to convert Customer’s vehicle information from a CSV file. Company shall supply Customer with a template format to which the data must adhere. Further, Company shall provide **hours** of web-based training on using the Services.
- c. **Hosting and Support:** Company shall be responsible for the hosting, maintenance, and support of all Company- hosted software and Company-hosted equipment used to provide the Services. Company shall provide Customer with ongoing technical support for the Services by providing Customer with the support services listed below during the term of this Agreement:
 - Support provided to Customer during normal business hours (7 a.m. to 7 p.m. CST Monday to Friday, exclusive of U.S. holidays).
 - Access to documentation of the Services.

2. Pricing and payments for services

a. Configuration and Training Fees: Customer shall pay a one-time fee listed in the table below for configuration and training services as listed in Section 1 with payment due in full upon execution of this Agreement. If Company provides Customer with on-site training or consulting, Company shall invoice Customer for reimbursement of the reasonable travel and per day expenses of each trainer or consultant following the performance of any such on- site services.

Launch Services	List Price	Quantity	Subtotal
Onboarding Services: 1000+ Vehicles	\$3,999.00	1.00	\$3,999.00
			Total: \$3,999.00

b. Service Fees: Customer shall pay Company the recurring Service Fees listed below beginning on December 1, 2021 for the license, hosting, and support services listed in Section 1, plus applicable sales or value added tax.

Initial Tier	Initial Pricing
Enterprise 6,000 Annual Subscription	\$214,260.00
Equipment Management - Basic 5,000 - Annual	\$22,500.00

Payment Frequency	Payment Method
Annual	Invoiced

The amount of the recurring Service Fees listed in the table above is applicable until Customer upgrades to a higher asset count tier or the end of the Initial Term, whichever occurs first. If Customer desires to upgrade to a higher asset count tier, Customer shall be presented with the pricing for the next applicable tier and be able to upgrade within the product interface. For each Renewal Term, Customer shall be charged the then current list pricing applicable for Customer's then current asset count tier at the beginning of such Renewal Term.

Any discount listed in the table above shall be applicable only to the Initial Term. Thereafter, such discount shall revert to zero for any renewal terms.

c. Payment Terms: Customer's payment terms shall be Net 15 if paying via invoice, or "Due On Receipt" if paying automatically.

d. Past Due Payments: Company shall be entitled to block Customer's access to the Services without terminating this Agreement or affecting Customer's obligation to make payments under this Agreement if Customer is more than thirty (30) days delinquent on any undisputed fees.

3. Term and termination

The Initial Term of this Agreement shall commence on the Effective Date and shall continue for **36 Months** from the Launch Date unless earlier terminated as provided herein. After the expiration of the Initial Term, this Agreement will be automatically renewed for successive one-year Renewal Terms unless either party gives written notice to the other party of its intent not to renew at least 90 days prior to the expiration of the then current term.

In the event either party has failed to substantially cure any material default or failure of performance under this Agreement within thirty (30) days after the breaching party's receipt of a written notice describing with reasonable specificity such alleged material default or failure of performance, then the non-breaching party may terminate this Agreement for cause by giving the breaching party a written notice of termination within fifteen (15) days after the expiration of the said thirty (30) day period.

If i) Customer terminates this Agreement before the end of the then-current term without cause, or ii) Company terminates this Agreement for cause (which includes a failure to pay any undisputed fees when due), then Customer will pay to Company and Company agrees to accept from Customer, as mutually negotiated liquidated damages and not as a penalty, seventy-five percent (75%) of the total service fees that would have accrued over the remainder of the then-current term of the Agreement, if such early termination had not occurred. The parties have bargained for and agreed to this provision, deeming it adequate and reasonable compensation for the damages and injuries suffered by Company because of such termination and giving consideration that calculating the actual damages from an early termination is impractical given the nature of a fast-growing software business. The liquidated damages agreed to by the parties are the best reasonable estimate of actual losses which would be suffered by Company based on its ability to adjust staffing and capital outlays, the length of the term of the Agreement, the evolving nature of the Services and other factors. Customer shall pay such sum to Company within thirty (30) days of such early termination and failure to timely pay such sum shall constitute a breach of this Agreement and such sum shall be recoverable, along with attorney's fees and costs, in any court of competent jurisdiction.

4. General

Remainder of page intentionally left blank

Customer

Signature

Joshua Pascua

Name

Date

Operations Coordinator

Title

Company

DocuSigned by:

102FE85280D945E

Signature

will Yarbrough

Name

11/9/2021

Date

VP, Sales

Title

Schedule A

Fleetio Manage - Enterprise

Fleetio Manage Enterprise includes the following features*:

- Asset Profiles
- Service Entries
- Fuel Entries
- Vendors
- Issues & Defects Management
- User Permissions
- Fuel Card Integrations
Integrations
- Import Data
- Work Orders
- Inventory Management
- Inspections Module
Integration
- SAML
- Service Reminders
- VIN Lookups
- Contacts
- Renewal Reminders
- Custom Fields
- Group Management
- Standard & Advanced GPS
- API Access
- Parts
- Purchase Orders
- Maintenance Shop Network
- Custom Branding

** Customer acknowledges that modules listed above may be appended, modified, or replaced by the Company throughout the term of this Agreement as necessary to continue the never-ending evolution of the product. However, in no case, will such changes materially reduce the level of functionality available to Customer.*

ORDER OF COMMISSIONERS COURT
 Authorizing execution of addendum to agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2021 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF ADDENDUM TO AGREEMENT
 BETWEEN HARRIS COUNTY AND RARESTEP, INC. D/B/A FLEETIO**

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that County Judge Hidalgo be and is hereby authorized to execute for and on behalf of Harris County an addendum to an agreement between Harris County and Rarestep, Inc. D/B/A Fleetio; to provide Enterprise Software Subscription Agreement for access to a fleet management platform for managing assets for Harris County Universal Services; for a not to exceed amount of Two Hundred Forty Thousand Seven Hundred Fifty-Nine and No/100 Dollars (\$240,759.00); for an initial term of one (1) year, with four (4) additional one year renewal terms; said Addendum being incorporated as though fully set forth herein word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.