



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

May 08, 2023

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: Enterprise Software Subscription for Harris County Precinct 1

Vendor(s): Rarestep, Inc., dba Fleetio

Term: May 16, 2023 - May 15, 2024 with four (4) one-year renewal options

Amount: \$72,429

Reviewed By: • Harris County Purchasing • Precinct 1

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

BB
Attachment(s)
cc: Vendor(s)

FOR INCLUSION ON COMMISSIONERS COURT AGENDA MAY 16, 2023



**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 Precinct 1 ("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. § 72,429.00, 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 **Seventy Two Thousand Four hundred Twenty Nine and No/100 Dollars (\$72,429.00)**, 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.

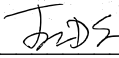
IX.

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

By 
Name: Jonathan D. Sides
Title: CFO
Date: April 28, 2023

By: _____
LINA HIDALGO
COUNTY JUDGE

APPROVED AS TO FORM:
CHRISTIAN D. MENEFE
COUNTY ATTORNEY



By: _____
Cherelle Sims
Assistant County Attorney
C.A. File 23GEN1049

Exhibit A



Fleetio

Rarestep, Inc., dba Fleetio

Software Subscription Agreement

Customer Information

Customer: Harris County Precinct 1

Contact:

Account ID:

Billing Email: george.greanias@cp1.hctx.net

Account Executive: Mike Chertkov

Billing Address: 7901 El Rio Street, Houston, Texas
77054, United States

Order Information

Sign By Date: May 31, 2023

Initial Term: 36 Months

Subscription Start Date: June 2, 2023

Reference: 0065G00000oG9DgQAK

Subscriptions

Product	List Price	Minimum Quantity	Per Payment Amount	Payment Frequency
Onboarding Services: 1000+ Vehicles	\$3,999.00	1	\$3,999.00	One Time
Enterprise 1,250 Annual Subscription	\$68,430.00	1	\$68,430.00	Annual

Fleetio is required to charge sales tax on your order pursuant to certain state and local tax laws where it is registered to collect tax. Any applicable tax charges will appear separately on your invoice.

Payments

Upon execution of this Software Subscription Agreement and for each Renewal Term, if applicable, Customer shall pay the fees as described above. All monetary amounts are in United States dollars unless otherwise expressly stated.

Credit card or bank account (ACH) must be added to automatically process payments. Instructions will be sent upon agreement completion.

Payment is due in full within 30 Days days of receipt for all invoices.

Product

Onboarding Services: 1000+ Vehicles

Enterprise 1,250 Annual Subscription

Payment Type

Remittance

Remittance

Tax Exemption Information

Tax Exempt Customer **Yes**

Onboarding Services


All onboarding services must be used within the 90-day period following the Subscription Start Date. Customer and Fleetio agree to begin onboarding services within 30 days of the Subscription Start.

Subscription Terms and Conditions

The parties agree to be legally bound by the GSA Terms of Service found at <https://www.fleetio.com/terms/gsa> ("GSA Terms") and this Software Subscription Agreement. In the case of any conflict among the preceding documents, the GSA Terms shall govern. The GSA Terms and this Software Subscription Agreement constitute the entire agreement between the parties for the services above and cannot be modified (including by any purchase order not explicitly referenced and incorporated herein) without the prior written consent of both parties.

Rarestep, Inc., dba Fleetio

Harris County Precinct 1


Signature

CFO
Title

Signature

Title

Jonathan D. Sides

April 28, 2023

Name

Date

Name

Date

Fleetio Support

Schedule: Fleetio Support Services

During the Term of this Software Subscription Agreement, Fleetio shall provide assistance to Customer via email, telephone, and online chat during normal Fleetio business hours as set forth on Fleetio's website (<https://www.fleetio.com/contact>). Further, Customer shall have access to support documentation via Fleetio products at any time.

Fleetio shall use reasonable commercial efforts to correct, at no additional charge, any reproducible errors reported by Customer within the timeframes described in the table below:

Category	Severity	Definition	Acknowledgement SLA	Resolution SLA
Critical Production Incidents	P1	Service Down/Unusable: An essential customer business service is critically impacted and there is no workaround available.	Within 1 business hour of the incident being logged by Customer via the Fleetio support portal. Status updates may also be available at status.fleetio.com .	ASAP.

Non-Critical Production Incidents	P2	Service Severely Impaired: An essential business service is impacted.	Within 8 business hours of the incident being logged by Customer via the Fleetio support portal.	Will be scheduled ASAP to be addressed as the product development schedule permits.
Non-Critical Production Incidents	All other Requests	Service Usable: There is very little to no impact to the business. There may or may not be a workaround available. May reflect an area or possible service enhancement	Within 3 business days of the incident being logged by Customer via the Fleetio support portal.	Will be scheduled when there are enough similar cases accumulated to be addressed in an update.

Fleetio shall review all requests for improvements and new functionality, but Fleetio shall have no obligation to provide any modifications to the Services.

Fleetio reserves the right, from time to time, to make modifications to support services (or particular components thereof), provided that such modifications do not materially reduce the support services in effect as of the Effective Date of this Agreement. Fleetio shall notify Customer of any such changes to support services.

Schedule: Sandbox Account

Customer shall be provided a sandbox account for internal, non-production use during the term of this Software Subscription Agreement. Customer understands that such an account is meant solely for testing integrations and configurations and is not generally supported by Fleetio. Customer also understands that it is not possible to programmatically transfer any data or configuration settings entered in the sandbox account to a production account.

Amendment: Termination for Lack of Funding

The following text shall be appended to the Master Subscription Agreement as follows:

3.4.b Termination for Non-Appropriations. In addition to the rights to terminate as otherwise provided in this Agreement, if this Agreement is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, Customer may terminate this Agreement, without penalty to Customer, by providing written notice to Fleetio specifying the date of termination. Customer shall pay for all work properly performed up to the effective date of the notice of termination.

The text of Section 3.5.2. ("Termination by Fleetio") of the Master Subscription Agreement shall be replaced in its entirety with the following:

3.5.2. Termination by Fleetio. If this Agreement is terminated by Fleetio due to a material breach by Customer, seventy-five percent (75%) of all Subscription Fees payable to be paid to Fleetio for the remainder of the then-current Term shall be immediately due and payable to Fleetio, and Customer shall promptly remit all such fees to Fleetio.

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Fleetio Account ID Added By:

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 _____, 2023 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. Briones	<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 Precinct 1; for a not to exceed amount of Seventy-Two Thousand Four hundred Twenty Nine and No/100 Dollars (\$72,429.00); 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.