

Regular 11-10-15
Item # RS-15-082
CCM/R 15-125R

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

Approval of contract with Routeware, Inc. to provide GPS tracking hardware and software products for Solid Waste fleet optimization.

ORIGINATING DEPARTMENT

Public Works / Solid Waste Division

BACKGROUND INFORMATION

The Solid Waste Division conducted a 365-day pilot program, during which all facets of the Routeware program were tested and validated. The results of the pilot program demonstrated substantial cost savings and avoidance in areas such as fuel and vehicle maintenance, efficiencies and accountability through better command and control, and improved customer service benefits.

DISCUSSION/CONCLUSION

Routeware, Inc. (Routeware) is a premium service optimization company that specializes in the solid waste industry. Routeware's innovative products and services increase driver accountability and productivity and reduce direct costs. The implementation of Routeware will allow the Solid Waste Division to avoid paper-based routing methods, automate vehicle communications, and avoid manual data processing of operational information. During the pilot program, the Solid Waste division realized cost savings and efficiencies because of reduced idle time, enlarged spans of supervisory control, and decreased vehicle wear. Also, the Solid Waste division received fewer callbacks, while simultaneously receiving a higher capture of overages via overloaded container fees, missed pickup fees, and bulk charges. Full implementation of this initiative will secure substantial efficiencies, lead to better support, and contribute to estimated cost savings per truck of \$25 to \$30 per day, per route.

Routeware is a cost-effective, proven solution currently used by many cities including Tulsa, Oklahoma, and Houston, Texas, and is under consideration by Austin, Texas. This system allows professional conflict resolution over disputed charges and significantly reduces the number of customer service calls the Solid Waste Division receives. The Solid Waste Division, based on the results of the pilot program, predicts reduced expenses and increased customer service satisfaction. Routeware is being purchased through the HGAC Cooperative, and includes a three-year service commitment.

FISCAL IMPACT

Funds are approved and included in the FY 2016 Solid Waste annual budget, account number 540.3460-439.61-40 in the amount of \$352,000 for the purchase of Routeware GPS Tracking hardware and software products.

The one-time cost to implement Routeware across the fleet including cost per truck, hardware, software, and back office support is \$258,478. Annual operating costs are projected to be approximately \$65,000, for back-office support fees, basic support and cellular fees, premium cellular support fees, cloud-hosting fees, onboard computer support fees, and camera system fees.

RECOMMENDATION

City staff recommends full implementation of Routeware hardware and software technology in all 42 heavy duty and 12 light duty Solid Waste vehicles and requests that the City Council authorize the City Manager to enter into an agreement with Routeware, Inc. to implement the full Routeware program across the Solid Waste fleet and to execute any change orders within the amounts established by state and local law.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

That the above stated recommendation is hereby approved and authorized.

PASSED AND APPROVED at a special meeting of the City Council of the City of Killeen, Texas, this the 10th day of November, 2015, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, § 551.001 *et seq.*

APPROVED



Scott Coper
MAYOR

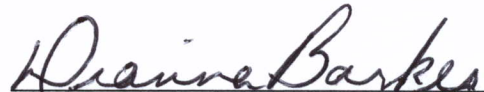


APPROVED AS TO FORM:



Kathryn H. Davis
CITY ATTORNEY

ATTEST:



Dianna Barker
CITY SECRETARY



Sales Contact: Jay Nichols
Phone: (678) 653-9818
Email: jnichols@routeware.com

Date: October 20, 2015
 Quote Expires: 30 day(s)

Quotation # 000123-R3

Customer:
City of Killeen, TX
 2003 Little Nolan Road
 Killeen, TX 76541

Contact: Cleghorn, Michael
Phone: (254) 501-6376
Email: MCleghorn@killeentexas.gov

Ship to: **City of Killeen, TX**
 2003 Little Nolan Road
 Killeen, TX 76541

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
PILOT-DEFERRED	Pilot Credit (per Amendment No. 1)	-1	6,000.00	-6,000.00
Total:				-6,000.00

HARDWARE

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
RWH100-BA	Heavy Duty Hybrid (External Modem, External Antenna, Accessories)	42	1,872.00	78,624.00
RWCAM100-BA	Camera	42	350.00	14,700.00
RWHDV100-BA	Basic Heavy Duty Vehicle (HDV) Modem, no jBUS	5	134.00	670.00
Hardware Total:				93,994.00

SOFTWARE

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
SW License - RCC	Routeware Command & Control (up to 15 units)	1	11,997.00	11,997.00
SW License - RCC Add	Routeware Command & Control Additional	27	150.00	4,050.00
SW License - OBC	Perpetual OBC Software License	42	1,500.00	63,000.00
SW License - Camera	Camera License	42	117.00	4,914.00
SW License - REP	Reporting Module	1	19,999.00	19,999.00
SW License - RFO	Routeware Front Office	1	29,999.00	29,999.00
Software Total:				133,959.00

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SERVICES

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
Prof Svs - PM&T	Project Management and Training	1	10,000.00	10,000.00
Prof Svs - Truck Inst	Truck Installation	42	200.00	8,400.00
Prof Svs - Camera Inst	Camera Installation	42	100.00	4,200.00
Prof Svs - Basic Inst	Basic unit Installation	5	29.00	145.00
Prof Svs - RMS Interf	Third Party Software Interface	1	10,000.00	10,000.00
HW Warranty	2 Year Warranty Extension for Heavy Duty Hybrid	42	90.00	3,780.00

Services Total: 36,525.00
Order Total: 258,478.00
Deposit Due: 113,976.50

Payment Terms:

Hardware & Software: 50% due upon execution of order, 50% prior to shipment
 Services: Due 10 days from invoice date



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Basic Support & Cellular	29.99	Per Unit, Per Month
Cloud Hosting	595.00	Per Month
On-Board Computer Support Fee	59.00	Per Unit, Per Month
Camera System Fee	5.00	Per Unit, Per Month
Routeware Back Office Software Support Fee	3,048.93	Per Year

Support Fees include the following:

1. CPU support (whether purchased from Routeware or not)
2. Monitor support
3. Camera support
4. Modem support
5. Cabling support
6. One-year warranty on hardware
7. Troubleshooting software in the vehicle
8. Troubleshooting the back office server
9. Routinely updating software in the vehicle with patches and fixes
10. Routinely updating software on the server with patches and fixes
11. Troubleshooting and monitoring the cellular network
12. Providing new functionality to vehicle software at no additional cost
13. Providing new functionality to back office software at no additional cost
14. Providing phone support
15. Imaging hardware with software
16. Performing hardware warranty work (for hardware purchased from Routeware)
17. Providing hardware at Routeware cost
18. Years of continuing research on the type of hardware that customers should purchase
19. Supporting and troubleshooting the RMS/billing interface
20. Consulting about best practices in waste fleet automation

This quotation and all products and services herein are subject to and limited to the terms and conditions contained in Routeware's Master Terms attached. Any purchase orders issued in response to this Quotation, will be deemed acceptance of such terms and any acknowledgement Routeware issues is expressly conditioned on such acceptance.

Order commitment is for three years of service.

Prices are exclusive of any federal, state, or local taxes. The customer is responsible for all federal, state, and local taxes unless otherwise exempt as stated in an exemption certificate issued by the State of Texas.

This system requires a specific server to operate Routeware software, which may need to be purchased separately.

This system requires cellular connectivity for each vehicle which will need to be purchased separately.

Routeware is not a Billing or Route Management System (RMS) expert and does not represent any RMS or Billing company in any way.

On-Board Computer software is sold as a perpetual license, allowing the license to be activated on replacement hardware.

Any lapse in support voids perpetual license.

Pricing does not include freight cost or travel expenses, which will be invoiced as they are incurred.

Customers please choose a cellular option and initial.

N/A Cellular Contract For Modems (Customer Provided)

MC Cellular Contract For Modems (Routeware Provided)

\$24.00 per month, per modem

\$30.00 per month, per modem (with cameras)

Quotation # 000123-R3 | Date: October 20, 2015



Sales Contact: Jay Nichols
Phone: (678) 653-9818
Email: jnichols@routeware.com

Date: October 20, 2015
Quote Expires: 30 day(s)

Quotation # 000123-R3

I authorize this purchase subject to the terms and conditions of the Master Terms.

City of Killeen, TX

[Signature]
Signature
GLEN MORRISON
Name (Printed)

CITY MANAGER
Title
4/12/15
Date

Routeware, Inc.

[Signature]
Signature
Shanna Peralta
Name (Printed)

Secretary
Title
11/12/15
Date

Quotation # 000123-R3 | Date: October 20, 2015



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Phone: (678) 653-9818
Email: jnichols@routeware.com

Date: October 20, 2015
Quote Expires: 30 day(s)

Quotation # 000123-R3

Statement of Confidentiality & Non-Disclosure

Subject to disclosure under the Freedom of Information Act

This document contains proprietary and confidential information. All information and data submitted to City of Killeen, TX is provided in reliance upon its consent not to use or disclose any information contained herein except in the context of its business dealings with Routeware, Inc. The recipient of this document agrees to inform present and future employees of City of Killeen, TX who view or have access to its content of its confidential nature.

The recipient agrees to instruct each employee that they must not disclose any information concerning this document to others except to the extent that such information is generally known to, and are available for use by, the public. The recipient also agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without Routeware, Inc.'s express written consent.

Routeware retains all title, ownership and intellectual property rights to the material and trademarks contained herein, including all supporting documentation, files, marketing materials, and multi-media.

BY ACCEPTANCE OF THIS DOCUMENT THE RECIPIENT AGREES TO BE BOUND BY THE AFOREMENTIONED STATEMENT.

Quotation # 000123-R3 | Date: October 20, 2015

ROUTEWARE SALES AND LICENSE TERMS

This document lists the terms and conditions under which Routeware, Inc., a Delaware corporation with offices located at 16575 SW 72nd Avenue, Portland, OR 97224 ("Routeware"), is willing to sell products and services to the entity listed in an Order Form issued by Routeware ("Customer"). Together with an Order signed by Customer, these terms and conditions form an "Agreement" with respect to the Products and Services listed in the Order.

TERMS AND CONDITIONS

1. GENERAL ORDERING PROCESS

1.1 Ordering. From time to time, Routeware may sell to Customer hardware products (including all on-board computers and peripheral devices, such as the RCore devices) ("Hardware") and software products ("Software") (together, "Products"), and related Support (as defined in Section 2) and/or other installation, maintenance, consulting, software development or disaster recovery services (collectively, "Services"), all pursuant to an authorized order form issued by Routeware that is signed by Customer (an "Order"). Together, an Order and these terms and conditions form an "Agreement" between Routeware and Customer regarding the Products and Services subject to the Order.

1.2 Delivery. Routeware will use reasonable efforts to meet the delivery dates for Products and Services that are specified in an Order. All Product shipments are delivered F.O.B. Routeware's facility, with title and risk of loss passing at that time. All Products are deemed accepted upon delivery.

1.3 Payment Terms. Each Order sets forth the amounts due for all Products and Services that it covers (the "Fees"). Unless otherwise stated in an Order, Customer will pay all invoiced Fees in United States Dollars within thirty (30) days following invoice date. Any Fee not paid when due will bear a late payment charge of 1.5% per month compounded daily from the due date until the date paid, or such lower rate as allowed by applicable law. All Fees are non-refundable. Customer will reimburse Routeware in full for any and all collection costs incurred by Routeware. Routeware may, at its option, delay the delivery of Products or suspend Services and Support until all overdue Fees have been paid in full. If Routeware permits delayed payment or otherwise finances any purchases of Products by Customer, (a) Customer grants to Routeware a first priority, purchase money security interest in such Products as collateral until payment is made in full, (b) Routeware will enjoy all rights and remedies available to it with respect to such collateral under applicable law, (c) Customer will take all steps reasonably requested by Routeware to facilitate such security interest, and (d) Customer will not transfer nor permit any other security interests or liens to be applied to such Products until payment is made in full. Customer is responsible for all applicable taxes and will reimburse Routeware for the same.

2. SOFTWARE LICENSES; SUPPORT

2.1 Truckware License. "Truckware" means all Software that is pre-loaded and operates on the hardware that is integrated into the Customer's truck fleet, whether sold by Routeware or certified and approved by Routeware in writing. Subject to the provisions of the Agreement and subject to Customer continuing to maintain Support per Section 2.4, Routeware grants a limited, non-transferrable, perpetual license to Customer to operate the Truckware on the specific hardware product on which it was originally loaded (whether sold by Routeware or certified and approved by Routeware), in accordance with the user guides, specifications and other documentation provided by Routeware for that Truckware (the "Documentation"), and up to the number of trucks authorized on the Order. Under no circumstances may Customer load Truckware on hardware (including computers and peripherals) that is not sold or certified and approved by Routeware.

2.2 Officeware License. "Officeware" means all Software that is provided for installation and use as office software (including the RBO server and client software). Subject to the provisions of the Agreement, Routeware grants a limited, non-transferrable license during the License Period to Customer to install a single instance of the server version of Officeware on a networked server and to allow up to ten (10) users to use the client version of Officeware, all in accordance with its respective Documentation. The Officeware license will continue in force for the period listed on the applicable Order, or if no such period is stated, for automatically renewing periods of one (1) year started from the Order date (in either case, the "License Period"), subject to either party electing against renewal by notifying the other party in writing at least ninety (90) days prior to the end of the then-current License Period.

2.3 Support and Maintenance. All support and maintenance services for Software listed in an Order are further subject to the terms and conditions listed at ("**Support**").

2.4 Restrictions; Reservation of Rights. Customer agrees not to (and to not enable any third party to): (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Software; (b) distribute, transfer, grant sublicenses to, or otherwise make available the Software or Documentation to third parties, including making the Software or Documentation available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) embed or incorporate in any manner all or part of the Software into other applications of Customer or third parties other than as authorized in applicable Documentation; (d) create modifications to or derivative works of the Software; (e) reproduce the Software (except that Customer may make up to two archival copies of the Officeware solely for backup purposes); (f) attempt to modify, alter, or circumvent any license control and protection mechanisms within the Software; (g) use or transmit the Software in violation of any applicable law, rule or regulation, including any export/import laws; and (h) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation included on any display screen within the Software. All Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), Software is provided to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Other than as stated in this Agreement, Routeware grants Customer no other right, title or interest in any Software.

3. THIRD PARTY HARDWARE AND SOFTWARE. Certain hardware and software sold by Routeware is manufactured, developed or made available by other companies and distributed by Routeware for use in conjunction with the Products ("Third-Party Products"). Routeware will identify all Third-Party Products in the Order. Third Party Software may be subject to additional license terms and restrictions; see such software for details. Routeware does not offer any warranty or representations on the Third-Party Products, and is not responsible for fulfillment of any warranty provided by the third party supplier. Routeware hereby assigns to Customer (to the extent assignable) all warranties given by the supplier(s) of Third-Party Products; provided, however, that Customer agrees to look to the supplier(s) for any Third-Party Product warranty, service and other post-purchase issues. Customer is solely responsible for obtaining any and all components, updates, new versions, and releases for any Third-Party Products necessary for use in connection with the Products.

4. OTHER SERVICES. All other Services provided by Routeware under an Order are further subject to a statement of work issued by Routeware. Routeware will perform such Services in a professional, competent and workmanlike manner in accordance with the prevailing standards in Routeware's industry. Customer acknowledges that the timely and successful performance of Services requires good faith cooperation by Customer. Therefore, Customer shall furnish all information, access, assistance and services reasonably requested by Routeware. In the event that any failure by Customer to comply with the provisions of this Section 4 results in any delay in performance of the Services by Routeware, Routeware shall not be deemed in breach of the Agreement for such delay. Customer shall reimburse Routeware for all expenses reasonably incurred in the performance of Services, as such have been approved in advance by Customer. Except with respect to any Customer Confidential Information or pre-existing intellectual property included therein (collectively, "Customer Property"), Routeware will retain all right, title and interest in and to all deliverables and work product (including any and all intellectual property rights therein) generated as a result of the Services. Customer's rights to the deliverables and work product shall be the same as the rights granted to Customer under this Agreement with respect to the applicable Hardware and Software.

5. AUDITS. During any time that Customer is using Hardware or Software under an Agreement, and for one year thereafter, Routeware will have the right to perform an audit not more than once each year to verify that Customer is using the Products in compliance with this Agreement. The audit will include at a minimum Routeware having access to all Software, Hardware, Documentation and related Customer equipment (including all servers and personal computers that contain Officeware, and any hardware that contains Truckware). The audit will be performed from Monday through Friday, between 8:00 a.m. and 5:00 p.m. local time, and upon not less than 15 days' prior written notice to Customer. The audit will be conducted at Routeware's sole cost and expense, subject to reasonable security and access restrictions. Customer will be permitted to have Customer personnel present during the audit. If an audit conducted under this Section discloses that Customer has underpaid by more than 3% any amounts payable under this Agreement during the period covered by the audit, Customer will pay Routeware the amount of that underpayment and, in addition, will reimburse Routeware's reasonable and actual costs for that audit.

6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

6.1 Mutual. Each party represents and warrants to the other party that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts this Agreement requires of it; (b) the execution of this Agreement and performance of its obligations under this Agreement do not and shall not violate any other agreement to which it is a party; (c) when executed and delivered this Agreement constitutes the legal, valid and binding obligation of such party; and (d) any and all activities it undertakes in connection with this Agreement shall be performed in compliance with all applicable laws, rules and regulations.

6.2 Products.

(a) Subject to the exceptions listed below in part (b), Routeware warrants (i) that the Hardware will be free from material defects in materials and workmanship and will operate in all material respects in accordance with its applicable Documentation (the "Hardware Warranty") for one year from the date of initial delivery or renewal (the "Hardware Warranty Period"); and (ii) for a period of ninety (90) days from the date of initial delivery (the "Software Warranty Period") the Software will perform in substantial conformance with its Documentation. Customer may purchase renewals of the Hardware Warranty Period through extended service plans made available by Routeware in its discretion. Following the end of the Hardware Warranty Period, Routeware will have no further obligation to repair or support the applicable Hardware.

(b) Routeware's entire liability and Customer's exclusive remedy for any reported breach of the Hardware Warranty or Software Warranty will be repair or replacement of the defective Product. All claims must be received by Routeware promptly upon discovery of any defect, and in no event after expiration of the applicable Warranty Period. The foregoing Hardware and Software Warranties do not apply to any defect or failure to operate that is attributable to: (i) Customer's misuse or abuse of or failure to maintain the Product; (ii) Customer's failure to operate the Product in accordance with Routeware's Documentation; (iii) any change made to the Product by Customer without Routeware's written approval; (iv) any defect, limitation or incompatibility in any equipment or other component installed by Customer; (v) any accident, catastrophe, act of God, or interruption or fluctuation in electrical power supplies; (vi) any material change in Customer's business or in the operating conditions under which the Product is used or (vii) translations.

6.3 Disclaimer. THE WARRANTIES OF THIS SECTION 6 ARE THE EXCLUSIVE WARRANTIES OFFERED BY EITHER PARTY AND NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER CONDITIONS AND WARRANTIES, INCLUDING ANY CONDITIONS OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, ARE HEREBY DISCLAIMED.

7. LIMITATION OF LIABILITY

7.1 INDIRECT DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, SECTION 9.1 (CONFIDENTIALITY), OR VIOLATIONS OF ROUTEWARE'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT DAMAGES THAT ARISE FROM OR RELATE TO THIS AGREEMENT (INCLUDING LOST PROFITS AND ANY OTHER INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES), WHETHER FORESEEABLE OR NOT AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 TOTAL LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, BREACHES OF SECTION 9.1 (CONFIDENTIALITY), OR VIOLATIONS OF ROUTEWARE'S INTELLECTUAL PROPERTY RIGHTS, EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY WARRANTY CLAIMS) WILL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO ROUTEWARE IN THE 12 MONTHS PRIOR TO THE EVENT THAT GAVE RISE TO LIABILITY.

7.3 EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE RISK BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE REMEDIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8. TERM AND TERMINATION

8.1 Term of Agreement. This Agreement begins on the Effective Date and continues until terminated pursuant to this Section 8.

8.2 Termination Rights. This Agreement may only be terminated as follows: (a) by mutual, written agreement of the parties; (b) by either party if the other party materially breaches this Agreement, and does not cure the breach within 30 days after receiving written notice from the non-breaching party; (c) by either party if such party elects to not renew all License Periods; or (d) by either party if the other party makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the U.S. Federal Bankruptcy Act or any other foreign or domestic statute, law, rule or regulation relating to insolvency or the protection of rights of creditors, which proceeding is not dismissed within 60 days.

8.3 Effect of Termination. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have, the following applies: (a) Customer shall immediately cease all use of all Hardware and all Software; (b) all other rights and obligations immediately cease, except that Sections 1.3, 2.4, 5, 6.3, 7, 8.3, 9 and 11 shall survive termination; (c) upon written demand, each party as a receiving party will return or destroy all of the other party's Confidential Information; and (d) Customer will immediately pay Routeware any undisputed amounts still outstanding.

8.4 Non-Appropriation and Right of Termination. The obligations of the City of Killeen to make payments to Routeware pursuant to this Agreement are subject to appropriation by the City of Killeen of funds that are lawfully available to be applied for such purpose. If the City of Killeen fails to make such an appropriation prior to a fiscal period for the Payments scheduled in such a fiscal period, this Agreement shall terminate at the end of the last fiscal period immediately preceding the fiscal period for which funds have not been appropriated. Upon any such termination of this Agreement, all of City of Killeen's right, title and interest in and its obligations under this Agreement and to the Property shall terminate effective on the last day of the last fiscal period for which such an appropriation was made.

9. CONFIDENTIAL INFORMATION; PUBLICITY

9.1 Confidential Information. This agreement is subject to disclosure under the Public Information Act. Nothing in this section or otherwise should be interpreted to limit disclosure of information subject to the Public Information Act. Both parties recognize that they may each receive (as a "Recipient") from the other (as a "Discloser") certain confidential and valuable proprietary information that is identified pursuant to the terms of this Section 9.1 as confidential (collectively, the "Confidential Information"). Both parties agree to identify any Confidential Information as follows: if written, with a written legend that says "confidential" or a similar term; or if verbal, by identifying the information as confidential when disclosed, and then sending the Recipient a written confirmation of that confidential status within 30 days after disclosure. Notwithstanding the foregoing, all pricing, Documentation and Software are Routeware Confidential Information. A Recipient will not, without the Discloser's prior written consent, disclose Confidential Information to any person other than those of its employees, independent contractors or consultants who need to know it for the purposes of this Agreement and who are bound by confidentiality agreements with the Recipient that are at least as protective as this section. A Recipient may only use Confidential Information for the purpose of this Agreement. A Recipient will handle any Confidential Information with the same care as it does its own Confidential Information, but in any event no less than reasonable care. None of the provisions of this section, however, apply to any Confidential Information that meets any one of the following criteria: (a) information possessed by the Recipient without restriction prior to receiving it from the Discloser, provided that the Recipient can demonstrate such possession; (b) information that the Recipient developed independently and without use of or reference to the Confidential Information, as documented by its written records; (c) information that the Recipient receives from another party who is not in breach of any of that party's obligations as a result of that disclosure; or (d) information that the Discloser intentionally discloses to any other party without any restriction on confidentiality. Additionally, a Recipient may disclose Discloser's Confidential Information to the extent that a court or other governmental body orders such Confidential Information disclosed by the Recipient, provided that the Recipient promptly notifies the Discloser of such order and provides the Discloser with notice and opportunity to contest it, if possible. These obligations shall survive the termination of this Agreement for a period of five (5) years, except with respect to any source code, which will remain protected until it is no longer Confidential Information. This Section does not intend to grant a

Recipient any ownership interest or license or right to any intellectual property rights of the Discloser.

10. Terms; Publicity. The parties will keep the terms and conditions of this Agreement confidential and will not divulge any of this information to any third party except as follows: (a) with the prior written consent of the other party; (b) as otherwise may be required by law or legal process; (c) during the course of litigation, so long as the disclosure is restricted in the same manner as is the confidential information of other litigating parties; and (d) in confidence to its legal counsel, accountants, banks, and financing sources and their advisors solely in connection with complying with or administering its obligations with respect to this Agreement; provided that, in (b) and (c) above, to the extent permitted by law, the disclosing party will use all legitimate and legal means available to minimize the disclosure to third parties, including seeking a confidential treatment request or protective order whenever appropriate or available, and the disclosing party will provide the other party with at least 10 days' prior written notice of such disclosure. Neither party may use the other party's trade names, trademarks or service marks, or engage in any publicity regarding this Agreement or its subject matter, without the other party's express written consent, which will not be unreasonably withheld or delayed.

11. MISCELLANEOUS

11.1 Independent Contractors. The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties.

11.2 Force Majeure. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

11.3 Assignment. Neither party may assign its rights or obligations under this Agreement to any other person or entity, except for assignment and transfer of all of a party's rights and obligations under the following circumstances: (a) with the express written consent of the other party, which may not be unreasonably delayed or withheld; (b) as part of a re-organization or restructuring; (c) to the surviving entity of a merger transaction; or (d) to the purchaser of a Controlling Interest in, or more than 50% of, the assets of the assigning party. A "Controlling Interest" means more than 50% of the total outstanding voting stock of the assigning party. Any attempted assignment or delegation in violation of this section is void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

11.4 Changes & Waivers. All amendments and modifications of this Agreement must be in a writing that is signed by the parties and expressly references this Agreement. No waiver of any breach of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach, and no waiver is effective unless made in writing and signed by an authorized representative of the waiving party.

11.5 Governing Law; Jurisdiction. The laws of the State of Texas, without regard to conflict of laws rules, govern the interpretation and enforcement of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The parties agree with and submit to the state or federal courts located in Bell County, Texas as the exclusive venue and jurisdiction for any and all disputes arising from or relating to this Agreement. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction by these courts

11.6 Attorney Fees. The prevailing party in any litigation between the parties regarding this Agreement shall be entitled to recover reasonable attorney's fees and other costs from the other party. These fees and other costs are in addition to any other relief to which the prevailing party may be entitled.

11.7 Conflicts; Order of Precedence. In the event that any term of this Agreement conflicts with governing law or is held to be ineffective or invalid by a court of competent jurisdiction, such term will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remaining terms of this Agreement shall remain in full force and effect. This Agreement controls any conflicts between any of its provisions and those of any Order.

11.8 Integration. This Agreement and the Orders together constitute the entire agreement between the parties with respect to the Products and Services and supersede all prior and contemporaneous discussions, negotiations, communications or agreements regarding the same subject matter. The terms on any purchase order, invoice, or other ordering document will have no effect and are hereby rejected.

11.9 Notices. Unless stated otherwise, all notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth on at the beginning of this Agreement, and are deemed delivered when received. Either party may change its address for notices by notice to the other party given in accordance with this Section 11.9.

11.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

11.11 Headings; Interpretation. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, "includes" (or "including") means without limitation.

SUPPORT PLAN TERMS & CONDITIONS

This document provides more specifics about the Routeware Support Plan. It is subject to the provisions of the Master Agreement and all related Orders (collectively, the "Master Agreement") between Routeware and its customer ("Customer," "You," or "Your"). Any capitalized words not defined in this Support Plan are defined in the Master Agreement.

You must have purchased a Software or Hardware Support Plan for any of the terms and conditions below to apply.

GENERAL

Plan Duration. All Support Plans cover 12-month periods beginning January 1 and ending on December 31 (a "Plan Year"). Plans purchased mid-year are pro-rated based on the number of days remaining in a given Plan Year. All Support Plans automatically renew on December 31 unless Routeware receives from Customer a written notice of non-renewal no later than December 1. Support Plans are not cancellable outside of the notice period.

Billing. Customer may pay for entire Plan Year up front, or quarterly (a discount may apply for payment up front). If Customer fails to pay any amounts when due, Routeware may, at its option, suspend all Support Plans, or continue to provide all or part of the Support Plan at the applicable time and materials rate, in either case until such time as the Customer's account is paid in full (including all Reinstatement Fees). Support Plan payments are non-refundable.

Third Party Vendor-Specific Support Terms. You must remain on a supported environment– including applications and hardware platforms – to receive any Support Plan. You may be required to upgrade to a current Routeware-certified and supported third party application, hardware platform, framework, database, and/or operating system configuration to continue receiving a Support Plan.

HARDWARE SUPPORT PLAN

A Hardware Support Plan extends the warranty on the hardware purchased from Routeware for an additional Plan Year. See the Master Agreement for details on the warranty. Hardware Support Plans are not available on any hardware that Routeware has declared as EOL (including the DMS3000 and DMS5000 products).

Hardware Support Plans are only available if purchased immediately following expiration of the Hardware Warranty; Routeware will not provide a Hardware Support Plan for hardware that has had a lapse in warranty coverage.

Any support (including repair work) done by Routeware outside of a Hardware Support Plan is subject to a Time and Materials Rate of \$195.00 per hour for hardware repair labor, billed in 15 minute increments, plus the cost of parts in accordance with Routeware spare parts pricing.

SOFTWARE SUPPORT PLAN

Coverage. A Software Support Plan covers all Software (e.g. Truckware and Officeware) licensed by Customer from Routeware (except for any Software that has reached EOL, as announced by Routeware). It includes the provision of Technical Support and Updates (each defined below) during a Plan Year. Unless stated otherwise by Routeware in writing, Software Support for a given version of Software is available for three years from the date of release.

Reinstatement. Should You want to add Software Support following a period in which you did not have a Software Support Plan in place, then in addition to paying for the current Plan Year, You must pay a Reinstatement Fee covering the lapse period (prorated daily) at a price equal to 150% of the most recent Software Support Plan price that You paid prior to the lapse (or, if You did not purchase a Software Support Plan at order, the price that would have applied at the time of your original order).

Technical Support. A Software Support Plan includes technical support by phone and email, during the hours of 8:00 a.m. to 5:00 p.m. PST, Monday through Friday, but excluding the following Routeware holidays:

- New Year's Day
- Memorial Day
- Independence Day (US)
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

Any support outside of these time frames is subject to Routeware discretion, and will be further subject to an additional charge of \$195 per hour, billed in 15 minute increments. Any on-site support requires a professional services engagement, as documented in a statement of work.

Technical Support may also include the following:

- Certification with third-party products/versions
- Assistance with service requests during published support hours
- Access to on-line support
- A diagnosis of problems or issues of the supported Software

Routeware will use commercially reasonable efforts to meet the response and resolution times listed in the table below.

Updates. A Software Support Plan includes the provision of Updates. "Update" means a subsequent release of Software which Routeware generally makes available to its customers who have purchased a Software Support Plan. Updates do not include any release, option or future Software for which Routeware charges a separate fee. Updates are provided as and when available (as determined by Routeware) and may not include all previously available versions. Routeware develops Updates in its discretion, and has no obligation to develop any specific feature or functionality. Updates are made available by delivery (which may be subject to a shipping and handling charge) or by download, in Routeware's discretion. If delivered, You will receive one copy for each supported operating system for which Your Software licenses were ordered. You shall be responsible for copying, downloading and installing any Updates. Updates are subject to the terms and conditions of the Master Agreement, and are covered by the same license as the Software to which the Updates pertain.

Customer Obligations. Software Support is conditioned on You doing the following: (a) You shall use commercially reasonable efforts to provide Routeware with the necessary access (e.g., access to server files, log files, application software or database extracts) required to provide Software Support; (b) You will designate, and identify by name, phone number, e-mail address and other appropriate contact methods, Customer Contacts, whom shall be the only personnel authorized to communicate with Routeware regarding Software Support; (c) You will apply all Updates, bug fixes, critical patches and configuration recommendations according to Routeware's instructions promptly following delivery; and (d) You will provide Routeware with remote online access via the Internet to all Hardware (including all truck on-board units), Software and servers for the purposes of troubleshooting, general assistance, and verification of compliance with licensing terms.

Response/Resolution Times:

Severity level and definition:	Acknowledge error report	Complete Patch, Answer, Workaround, of Temp Fix	Release Final Version of Fix
Priority level 1 : A Critical Severity issue has significant to critical impact on production; product is largely unusable	1/2 hour	Routeware will use commercially reasonable efforts to address in 24 hours	In one of next two updates if deemed appropriate for all customers
Priority level 2: has some business impact on production system resulting in some loss in functionality; the software is usable but operating sub-optimally	24 hours	Routeware will use commercially reasonable efforts to address in 10 days	In one of next two updates if deemed appropriate for all customers
Priority 3: non-production questions including general usage questions, issues related to a non-production system. There is no impact on performance, quality, of functionality.	3 days	Routeware will use commercially reasonable efforts to address in 15 days	N/A

Exclusions. Routeware is not obligated to provide Hardware or Software Support Services when: (a) Routeware products have been changed, modified or damaged by anyone other than Routeware; (b) the issue is caused by Your negligence or misuse of software or hardware, or other causes outside of Routeware's control; (c) the issue is caused by third party hardware or software, or by Your network infrastructure; or (d) Your Routeware products are EOL or is otherwise not a currently supported version, as determined by Routeware's announced policies.

Changes. Routeware reserves the right to change these Support Plan Terms & Conditions at any time; provided however, that any such changes are in writing and signed by both parties.