



Sanitation Department  
2405 Garrett Way  
Pocatello, Idaho 83201  
208.234.6192  
Fax 208.478.7152

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**MEMO**

TO: Mayor Blad and Members of City Council  
FROM: Tom Kirkman, Deputy Public Works Director  
DATE: April 30, 2020  
SUBJECT: Recommendation for Piggyback Purchase – Routeware Inc.

The City of Pocatello Sanitation Department has researched the availability of route optimization services and asset management software to be able to implement a more efficient, data-driven operation. We have found Routeware Inc. to be the best match for the current department needs. Currently, all department operations are tracked via Utility Billing for billing purposes and via digital/paper documents for internal department tracking. Routeware implementation will allow for the following:

- Data Capture- This will assist in cost tracking and the ability to put a dollar amount to all services provided. For example: the cost to dump a yard waste cart. This could assist the rate study by making cost calculations more precise and have the potential to decrease costs.
- Route Optimization- Currently, routes are done on paper with only minimal optimization done by staff. Automating this process could greatly increase efficiency.
- Department Process Automation- This will allow for automated notifications between office staff and drivers. This will also assist in the billing process, as Routeware has the ability to integrate with Central Square for billing and Time Clock Plus for payroll. Currently, billing is reliant on hand input of all billable charges. Routeware will automate this process, decreasing the potential for errors, and increasing efficiency.

There are no local companies that provide this extensive service, therefore, per Idaho Code, it is my recommendation that the City of Pocatello Sanitation Department utilize the option of piggybacking a cooperative purchasing competitively bid contract.

Routeware, Inc. has agreed to allow the HGACBuy piggyback purchase of its software and systems. HGACBuy competitively bid contract #19-0043 was awarded to Routeware, Inc. in response to HGACBuy's RFP bid #FL03-19. This will automate and optimize the Sanitation Department's operations in the one-time sum of \$138,590.00 with monthly costs of \$8,227.25. These amounts have been budgeted for in the FY20 Sanitation Department budget.

The HGACBuy quote from Routeware, Inc. and the accompanying paperwork to honor the piggyback price is attached for Council and Mayor approval. The Council may wish to authorize Mayor Blad to sign and execute the purchase documents.

## MEMORANDUM

TO: Brian C. Blad, Mayor; Members of the City Council  
FROM: Rich Diehl, Deputy City Attorney  
RE: Piggyback Purchase from Routeware for Software (Sanitation Dept.)  
DATE: May 13, 2020

I have reviewed the documents associated with above-referenced purchase. They meet with my approval for the Council to authorize the Sanitation Department to execute such purchase from Routeware. The City of Pocatello is piggy backing on a cooperative purchasing contract which was competitively bid. Therefore, this current purchase qualifies as a "piggyback" purchase under the Idaho Code.

I would recommend that the Council authorizes the Mayor to sign any documents necessary to effectuate this purchase and it is appropriate to follow the recommendations of Tom Kirkman, Deputy Public Works Director. If you have any questions, please feel free to contact me.

## NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2020 ("**Effective Date**"), by and among Routeware, Inc., a Delaware corporation located at 16525 SW 72<sup>nd</sup> Avenue, Portland, OR 97224 ("**Routeware**"), and the City of Pocatello - ID \_\_\_\_\_, a(n) municipality located at 911 N 7<sup>th</sup> Ave., Pocatello, ID 83201 (the "**Second Party**").

### AGREEMENT

1. **Definitions.** For purposes of this Agreement, "**Recipient**" shall mean the party that receives or obtains Confidential Information, "**Discloser**" shall mean the party that discloses or provides Confidential Information, and "**Confidential Information**" shall mean all information in any form concerning the Discloser that is obtained by the Recipient during the course of the discussions, including but not limited to technical know-how, patent applications, customer and supplier lists, product roadmaps, concepts, ideas, methods and procedures of operations, and marketing and financial information and which the Discloser, in the case of tangible disclosures, marks as "Confidential" or with a similar legend or, in the case of oral, visual or audio disclosures, designates as confidential at the time of disclosure; provided, however, that regardless of whether so marked or designated, any information which the Recipient has reason to know is confidential or proprietary of the Discloser shall be deemed Confidential Information of the Discloser.
2. **Protection of Confidential Information.** For a period of five (5) years from the date of receipt, the Recipient:
  - a. shall maintain Confidential Information in confidence, shall not disclose Confidential Information, or any portion thereof, to any third party, and shall protect Confidential Information with at least the same degree of care as the Recipient uses in maintaining as secret its own confidential and proprietary information, but in no case less than a reasonable degree of care;
  - b. shall restrict disclosure of Confidential Information solely to employees of the Recipient or Recipient's affiliated companies having a need to know such Confidential Information;
  - c. shall advise each such employee, before he or she receives access to such Confidential Information of the obligations of the Recipient under this Agreement; and
  - d. shall use Confidential Information received from the Discloser only for purposes of its internal evaluation of the potential transaction between Routeware and Second Party.
3. This Agreement imposes no obligation on the Recipient with respect to any portion of Confidential Information which the Recipient can demonstrate through written or other tangible proof:
  - a. was generally available to the public prior to Discloser's first disclosure thereto to Recipient or subsequently becomes generally available to the public through no fault of the Recipient;
  - b. was in Recipient's possession prior to receipt from Discloser and not acquired directly or indirectly from Discloser;
  - c. is lawfully received by the Recipient from a third party not directly or indirectly associated with Discloser and having no obligation of confidentiality with respect thereto;
  - d. is disclosed to third parties without obligation of confidentiality with the prior written consent of Discloser; or
  - e. is independently developed by Recipient without benefit of Confidential Information.
4. **Required Disclosures.** If Recipient becomes subject to an order that requires Recipient to disclose Confidential Information, Recipient will, to the extent permitted by law: (a) promptly notify Discloser of the order's terms and the circumstances surrounding its issuance; (b) consult in good faith with Discloser regarding possible responses to the order and, if requested by Discloser, make best efforts to narrow the order's scope, obtain a protective order from the court, or produce documents to the court or government body under seal with appropriate instructions regarding preservation of the information's confidentiality; and (c) if disclosure is required to prevent Recipient from being subjected to contempt sanctions or other penalties, disclose only the Confidential Information that, in the opinion of counsel reasonably satisfactory to Discloser, is legally required to be disclosed, consistent with a reasonable interpretation of the order.
5. **Ownership and Return of Confidential Information.** All tangible information, including without limitation documentation, drawings and specifications furnished hereunder shall remain the property of the Discloser. Within thirty (30) days following request by the Discloser, the Recipient shall deliver to the Discloser any tangible information submitted by the other party hereunder, and either deliver, or destroy with a certificate attesting to such destruction by an officer of the Recipient, all copies, notes, diagrams, computer memory media and other materials prepared or created by the Recipient containing any portion of Confidential Information.

6. **No Licenses Granted.** Except as expressly provided herein, this Agreement shall not be construed as granting or conferring, either expressly or impliedly, any rights or licenses with respect to Confidential Information, or any intellectual property rights relating thereto. Confidential Information shall remain the sole property of the Discloser. Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of Second Party or Routeware to enter into any further agreement with the other, with respect to the subject matter hereof or otherwise, to license or sell any technology products or services to or license or purchase any technology products or services from the other, or to require any party to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the parties.
7. **Term.** This Agreement shall become effective as of the Effective Date and shall expire one (1) year thereafter, unless extended by the mutual agreement of Second Party and Routeware or terminated sooner by the mutual agreement of Second Party and Routeware. Expiration or termination of this Agreement shall not relieve the parties of any obligations set forth herein with respect to Confidential Information received under this Agreement prior to its expiration or termination, and all such obligation shall continue in accordance with the terms of this Agreement.
8. **Disclaimer.** SECOND PARTY AND ROUTEWARE DO NOT MAKE ANY REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO, OR WARRANT, ANY INFORMATION PROVIDED UNDER THIS AGREEMENT.
9. **Remedies.** In the event of a breach or threatened breach of this Agreement by either party, the other party, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
10. **Export.** The Recipient shall not export, directly or indirectly, any technical data acquired from the Discloser or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval.
11. **Assignment.** Neither party may assign this Agreement or any rights or duties hereunder without the prior written consent of the other party and any attempted assignment without such consent shall be void, except that either party shall be entitled to assign this Agreement to a successor in interest who obtains all or substantially all of the assigning party's business and assets as a part of a merger, sale of assets, sale of stock, operation of law or otherwise. Subject to the foregoing, this Agreement shall be binding upon both parties, and their respective successors and assigns.
12. **Governing Law.** The validity, construction and performance of this Agreement shall be governed by the laws of the State of Oregon, without giving effect to the principles of conflicts of laws. All suits and proceedings between the parties must be brought in the state and federal courts for Washington County, Oregon. In the event of invalidity or unenforceability of any provision of this Agreement, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior confidential disclosure agreements, written or oral communications, representations, undertakings or understandings between the parties with respect to the subject hereof. Any additions or modifications to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, intending to be legally bound, each party has caused this Nondisclosure Agreement to be executed by its duly authorized representative.

**ROUTEWARE, INC.**

**SECOND PARTY**

By: \_\_\_\_\_

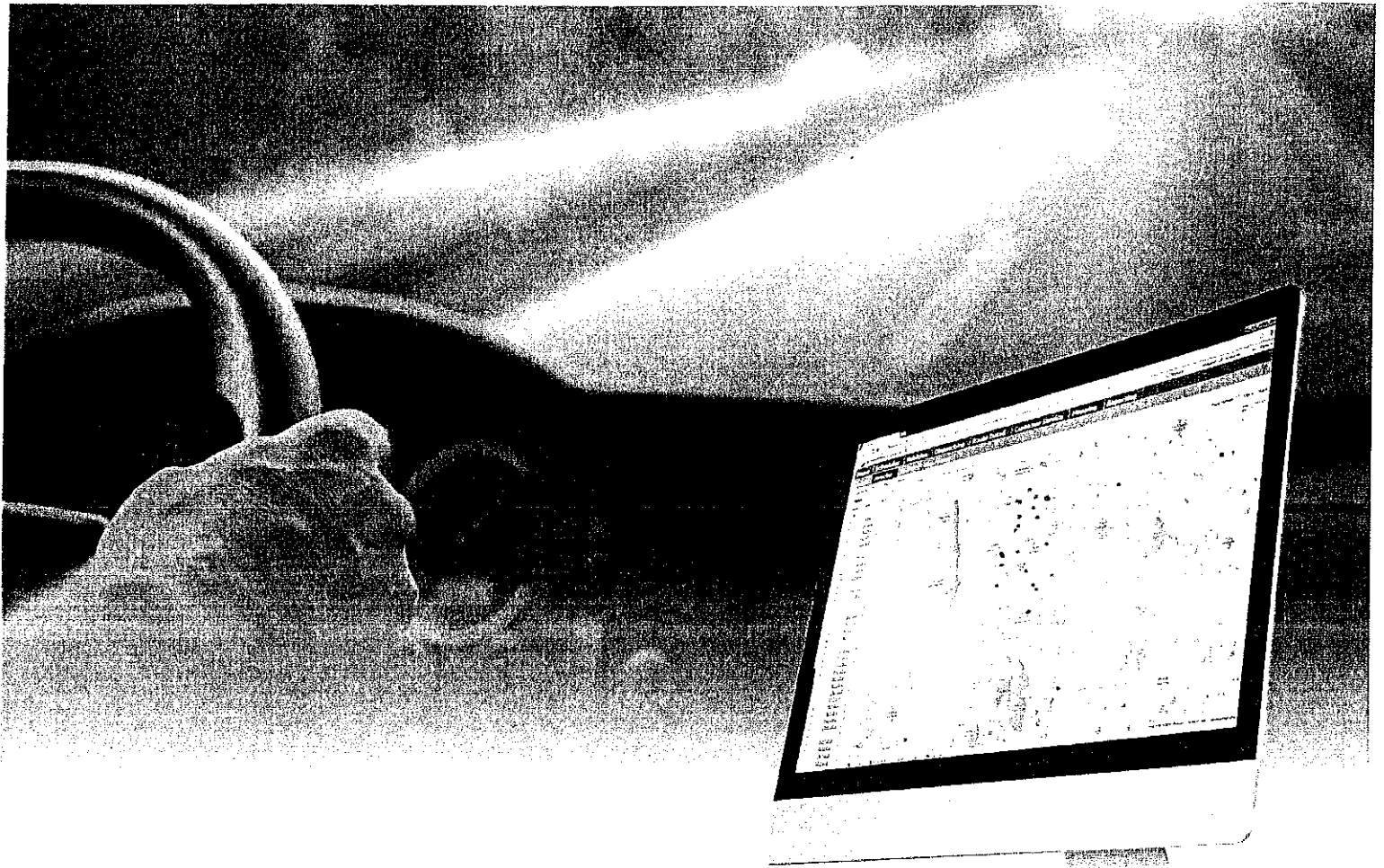
By: \_\_\_\_\_

Name: Thomas Malone

Name: Brian C. Blad

Title: CEO

Title: Mayor



**ROUTEWARE®**

**Proposal for  
City of Pocatello - ID**

Prepared by Dan Cunnane  
dcunnane@routeaware.com | (503) 906-8530

[www.routeaware.com](http://www.routeaware.com)



Sales Contact: Dan Cunnane  
Phone: (503) 906-8530  
Email: dcunnane@routeware.com

Date: April 30, 2020  
Order Expires: May 30, 2020

**Order # 3129-R3**

## Statement of Confidentiality & Non-Disclosure

This document contains proprietary and confidential information. All information and data submitted to City of Pocatello - ID 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 Pocatello - ID 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 is 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.**

Order # 3129-R3 | Date: April 30, 2020

16525 SW 72nd Ave. Portland, OR 97224 • Office: 503.906.8500 • Fax: 503.906.8544



Sales Contact: Dan Cunnane  
 Phone: (503) 906-8530  
 Email: dcunnane@routeaware.com

Date: April 30, 2020  
 Order Expires: May 30, 2020

Order # 3129-R3

**Customer:**

City of Pocatello - ID  
 2405 Garrett Way  
 Pocatello, ID 83205-4169

Contact: Tom Kirkman  
 Phone: (208) 234-6250  
 Email: tkirkman@pocatello.us

Ship to: City of Pocatello - ID  
 2405 Garrett Way  
 Pocatello, ID 83201

**HARDWARE**

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
KIT-TABLET-RD10-100-W	Regular Duty Tablet 10" with Full Install Kit (Windows)	28	\$950.00	\$26,600.00
KIT-PROX-HD-100	Proximity Switch for Windows	14	\$105.00	\$1,470.00
KIT-CAMERA-200-WIN-RD	Camera System for Regular Duty Windows	28	\$430.00	\$12,040.00
KIT-CAMERA-200-WIN-POWER	Camera Power Kit for Windows Tablet	28	\$25.00	\$700.00
7-110-A	Monitor for Camera Controller	2	\$40.00	\$80.00
<b>Hardware Total:</b>				<b>\$40,890.00</b>

**SOFTWARE**

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
SW License - EZRoute	EasyRoute Software License and Year 1 Support	1	\$58,800.00	\$58,800.00
<b>Software Total:</b>				<b>\$58,800.00</b>

**SERVICES**

ITEM #	DESCRIPTION	QTY	UNIT PRICE	TOTAL
Prof Svs - PM&T	Project Management and Training	1	\$10,000.00	\$10,000.00
Prof Svs - Interf2	Third Party Software Interface (Level 2)	1	\$10,000.00	\$10,000.00
Prof Svs - Vehicle Inst	Vehicle Installation	28	\$300.00	\$8,400.00
Prof Svs - Camera Sys Inst	Camera System Installation	28	\$300.00	\$8,400.00
Prof Svs - Prox Inst	Prox Switch Installation	14	\$150.00	\$2,100.00
<b>Services Total:</b>				<b>\$38,900.00</b>
<b>Order Total:</b>				<b>\$138,590.00</b>

**Payment Terms:**

Hardware & Software: 100% due upon execution of order and prior to shipment

Services: Due 30 days from invoice date

Monthly Fees: Due quarterly in advance per support plan terms and conditions; EasyRoute Annual Renewal begins in year 2 of the contract

**Level 2 Interface Description (CentralSquare):**

- Data is received from and returned to one system
- File transfers between the two systems are done via shared folders or FTP/SFTP
- Files are XML or CSV format
- One time or ongoing importing of customer records from a master spreadsheet
- Files representing Residential, Commercial and Roll Off (Service Orders) are all in the same format and layout specification
- Total interface effort not to exceed 40 Professional Service hours
- All additional hours are on a time and materials basis at the Professional Services rate of \$225 per hour

Travel and Expenses are estimated at \$15,000.

Order # 3129-R3 | Date: April 30, 2020



Sales Contact: Dan Cunnane  
 Phone: (503) 906-8530  
 Email: dcunnane@routeware.com

Date: April 30, 2020  
 Order Expires: May 30, 2020

**Order # 3129-R3**

	<u>Qty</u>	<u>Price</u>	<u>Monthly</u>
EasyRoute Annual Renewal	1	11,760.00	980.00
Cloud Hosting	1	599.00	599.00
Monthly Service Fee	28	154.00	4,312.00
Camera System Fee	28	35.00	980.00
Auto Pickup System Fee	14	20.00	280.00
Cellular Data Charge (RD)	28	15.00	420.00
Interface Support - Annual	1	1,900.00	158.33
RouteMaker Support - Annual	1	5,975.00	497.92
		<b>\$8,227.25</b>	<b>Total per month</b>

Monthly Fees include the following:

1. CPU support
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. Years of continuing research on the type of hardware that customers should purchase
18. Supporting and troubleshooting the RMS/billing interface
19. Consulting about best practices in waste fleet automation

This Order and all products and services herein are subject to and limited to the terms and conditions contained in Routeware's Master Terms located at <http://www.routeware.com/Clients>. Any purchase orders issued in response to this Order, will be deemed acceptance of such terms and any acknowledgement Routeware issues is expressly conditioned on such acceptance.

<http://www.routeware.com/Clients>      Username: routeware      Password: RWClient1!

Order commitment is for one (1) year term with four (4) additional automatic renewals.  
 Prices are exclusive of any federal, state, or local taxes. The customer is responsible for all federal, state, and local taxes.  
 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 may need to be purchased separately.  
 If route sequencing by Routeware is a requirement, additional professional services fees may apply.  
 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.**

**Order # 3129-R3 | Date: April 30, 2020**





Sales Contact: Dan Cunnane  
Phone: (503) 906-8530  
Email: dcunnane@routeware.com

Date: April 30, 2020  
Order Expires: May 30, 2020

Order # 3129-R3

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

City of Pocatello - ID

Signature  
*Brian C. Blad*  
Name (Printed)

*Mayor*  
Title  
Date

Routeware, Inc.

Signature  
Name (Printed)

Title  
Date

Order # 3129-R3 | Date: April 30, 2020

# ROUTEWARE MASTER SALES AND LICENSE AGREEMENT

This document lists the terms and conditions under which Routeware, Inc., a Delaware corporation with offices located at 16525 SW 72<sup>nd</sup> 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 a "Master Agreement" with respect to the Products and Services listed in the Order. The signing of an Order or issuance of a Purchase Order by the Customer and/or use of Services, having had the opportunity to read these terms and conditions, shall be deemed conclusive evidence of the Customer's acceptance of the terms of the Master Agreement.

## 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, support, 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 a "Master Agreement", hereinafter "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. Delivery delay or default of any instalment shall not relieve the Customer of its obligation to pay for services provided by Routeware or accept remaining deliveries of product.

**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 and/or suspend Services and Support until all overdue Fees and late charges 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 vehicle 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 2.3, 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 provided that Customer maintains a current support plan. 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 Routeware-supplied, server-based Software that is provided to Customer for installation and use for reporting, status checking, alert management, dispatching, and other purposes either locally or remotely. 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.** All support services for Software listed in an Order are further subject to the terms and conditions listed under Support Plans Terms & Conditions ("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 (except to the extent required by law or as necessary for interoperability purposes as required under terms and conditions required by the providers of Third-Party Products); (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. **CLOUD HOSTING.** All cloud hosting services are subject to the terms and conditions listed under the Cloud Hosting Service Level Agreement found at <http://www.routeware.com/Clients>.

4. **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, including but not limited to open source or "free" software (collectively, "Third-Party Products"). Third-Party Products may be subject to additional license terms and restrictions ("Third-Party Terms"), which we will make available to you as required by the suppliers of such Third-Party Products. In the event of a conflict between the terms of this Agreement and any Third-Party Terms, the Third-Party Terms shall control to the extent of the conflict. 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.

5. **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 5 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.

6. **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.

## 7. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

**7.1 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.

### 7.2 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; (vii) translations; or (viii) Third-Party Products.

**7.3 Disclaimer.** THE WARRANTIES OF THIS SECTION 0 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.

## 8. LIMITATION OF LIABILITY

**8.1 INDIRECT DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, SECTION 10.1 (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.

**8.2 TOTAL LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, BREACHES OF SECTION 10.1 (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.

**8.3** 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.

## 9. TERM AND TERMINATION

**9.1 Term of Agreement.** This Agreement begins on the Effective Date (defined as the order form signature date or purchase order date) and continues until terminated pursuant to this Section 9.

**9.2 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.

**9.3 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, 2.3, 2.4, 6, 7.3, 8, 9.3, 10, and 12 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.

## 10. CONFIDENTIAL INFORMATION; PUBLICITY

**10.1 Confidential Information.** 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 10.1 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.

**11. 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.

## 12. MISCELLANEOUS

**12.1 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.

**12.2 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.

**12.3 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.

**12.4 Changes & Waivers.** Any changes to the terms and conditions to be agreed upon and signed by both Parties and added as an amendment to 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.

**12.5 Governing Law; Jurisdiction.** The laws of the State of Idaho, 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 Bannock County, Idaho 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.

**12.6 Arbitration.** Customer agrees that any and all controversies, claims, or disputes arising out of this Agreement, including any breach of this Agreement, shall be subject to binding arbitration under the Arbitration Rules set forth by the American Arbitration Association (the "*Rules*") and pursuant to Idaho law. Disputes that Customer agrees to arbitrate, and thereby agrees to waive any right to a trial by jury, include any statutory claims under state or federal law. The place of arbitration shall be Pocatello, Idaho. Idaho State law shall apply. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one (1). The arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication and motions to dismiss and demurrers, prior to any arbitration hearing. The arbitrator shall issue a written decision including findings of fact and conclusions of law on the merits of its award. The arbitrator shall have the power to award any remedies, including attorneys' fees and costs, available under applicable law.



**12.7 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.

**12.8 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.

**12.9 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.

**12.10 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 12.10.

**12.11 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.

**12.12 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.



**CONTRACT PRICING WORKSHEET**  
For Catalog & Price Sheet Type Purchases

Contract No.: **FL03-19**

Date Prepared: **4/28/2020**

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Pocatello	Contractor:	Routeware, Inc.
Contact Person:	Tom Kirkman	Prepared By:	Rachel Causey
Phone:	208-234-6250	Phone:	503-906-8550
Fax:		Fax:	503-906-8544
Email:	<a href="mailto:tkirkman@pocatell.us">tkirkman@pocatell.us</a>	Email:	<a href="mailto:accountspayable@routeware.com">accountspayable@routeware.com</a>

Catalog / Price Sheet Name:	Routeware Premium G06 - Subscription Pricing
General Description of Product:	

**A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary**

Quan	Description	Unit Pr	Total
28	Regular Duty Tablet - Class 2 (On-board computer, Mounting Cradle & Accessories)	900	25,200.00
28	Camera System	355	9,940.00
14	Regular & Heavy Duty Tablet Proximity Switch	100	1,400.00
1	Route Optimization License Fee 1 User (Hauler's Fleet Size 16 - 25)	58800	58,800.00
1	PM&T - Package 1 (Project Management, Server SW Install, Training)	10000	10,000.00
1	Third Party Software Interface - Level 2	10000	10,000.00
28	Vehicle Installation (Per Vehicle)	275	7,700.00
28	Camera Installation (Per Vehicle)	200	5,600.00
28	Subscription Fee (12 months)	1848	51,744.00
28	Camera System Fee (12 months)	420	11,760.00
1	Cloud Hosting (12 months)	7188	7,188.00
1	Third Party Software Interface - Level 2 Support (Annual)	1900	1,900.00
1	RouteMaker Support (Annual)	5975	5,975.00
1	Route Optimization License Fee Hauler's Fleet Size 16 - 25 (Annual)	11760	11,760.00
28	Cellular Data Charge Per vehicle - RD (Annual)	180	5,040.00
Total From Other Sheets, If Any:			-
<b>Subtotal A:</b>			<b>224,007.00</b>

**B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary**  
(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
2	Monitor for Camera Controller	40	80.00
14	Proximity Switch Installation	150	2,100.00
14	Auto Pickup System Fee (12 months)	240	3,360.00
28	Camera Power Kit for Windows Tablet	25	700.00
28	Differential for Camera Installation	100	2,800.00
28	Differential for Vehicle Installation	25	700.00
28	Differential for RD Tablet Class 2	50	1,400.00
14	Differential for RD Tablet Proximity Switch	5	70.00
28	Differential for Camera System	75	2,100.00
Total From Other Sheets, If Any:			
<b>Subtotal B:</b>			<b>13,310.00</b>

Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: **6%**

**C. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Travel and Expenses Estimate for Training	15000
<b>Subtotal C:</b>	<b>15000</b>

**Delivery Date:** **TBD**      **D. Total Purchase Price (A+B+C):** **252,317.00**

