

A G R E E M E N T

THIS AGREEMENT ("Agreement") is made and entered into this 14th day of April, 2020 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the state of California ("COUNTY"), and E.J. Ward, Inc., a Nevada corporation, whose address is 8620 N. New Braunfels, Suite 200N, San Antonio, TX 78217 ("CONTRACTOR").

W I T N E S S E T H:

WHEREAS, COUNTY has previously purchased and utilized the Fuel View software system for managing its Fleet fuel sites, and has recently completed an upgrade to the fuel system that includes GPS tracking services for vehicles;

WHEREAS, COUNTY desires to purchase vehicle GPS tracking services, software maintenance, and physical products and supplies related to the COUNTY's fuel system from CONTRACTOR;

WHEREAS, CONTRACTOR is willing to provide GPS tracking, software maintenance, and services as requested by COUNTY, and subject to the terms and conditions of this Agreement; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for maintenance and support of the E.J. Ward Fuel View software, GPS vehicle tracking services, and supplies related to these systems.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS:

The following terms used throughout this Agreement shall be defined as follows:

Change Control Process:

Process used by the Information Services Division of COUNTY's Internal Services Department (ISD) to inform staff of new or updated production use systems.

County System Hardware:

The central processing units owned or leased by COUNTY which are described in this Agreement on which COUNTY is licensed to use the System Software, any back-up equipment for such central processing units, and any peripheral hardware such as terminals, printers, and

1 Personal Computers as described in this Agreement.

2 COUNTY System Software:

3 The operating system and database software installed on the COUNTY System Hardware.

4 License:

5 The meaning assigned to the term "License," as defined in Section 2(A) of this Agreement, and
6 the rights and obligations that it creates under the laws of the United States of America and the
7 State of California, including without limitation, copyright and intellectual property law.

8 Monies:

9 The terms "Monies", "Charges", "Price", and "Fees" will be considered to be equivalent.

10 Public Records:

11 Public Records includes any writing containing information relating to the conduct of the public's
12 business that is prepared, owned, used, or retained by any state or local agency, regardless of
13 physical form or characteristics.

14 Supplier:

15 The terms "Supplier", "Vendor", and "EJ Ward" all refer to CONTRACTOR, and are considered
16 to be equivalent throughout this Agreement.

17 System:

18 The System Software and System Documentation, collectively. Reference to the "System" shall
19 include any component thereof. All modifications and enhancements to the System shall be
20 deemed to be part of the System as defined herein and shall be subject to all terms and
21 conditions set forth herein. The System consists of Fuel View 4, which supports the Fresno
22 County Department of Internal Services, all interfaces including Fuel Control Terminals and
23 related devices.

24 System Documentation:

25 The documentation relating to the System Software, and all manuals, reports, brochures, sample
26 runs, specifications and other materials comprising such documentation provided by
27 CONTRACTOR in connection with the System Software pursuant to this Agreement.

28 System Operation:

1 The general operation of COUNTY's hardware and all software including, but not limited to,
2 system restarts, configuration and operation of system peripherals (such as printers, modems,
3 and terminals), installation of new software releases, and other related activities.

4 System Installation:

5 All software has been delivered, has been physically loaded on a Computer, and COUNTY has
6 successfully executed program sessions.

7 System Software:

8 Fuel View 4, that certain computer software described in this Agreement provided by
9 CONTRACTOR, and all interfaces, coding, tapes, disks, modules and similar materials
10 comprising such software or on which it is stored. System Software shall not include operating
11 system software, or any other Third-Party Software.

12 User:

13 The terms "User", "Customer" and "Licensee" all refer to COUNTY, and are considered to be
14 equivalent throughout this Agreement.

15 2. OBLIGATIONS OF THE CONTRACTOR

16 A. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

17 I. DOCUMENTATION

18 CONTRACTOR shall provide to COUNTY Fuel View 4 System Documentation, which shall
19 consist of electronic media files. The electronic media files must be printable using PC software normally
20 available at COUNTY. CONTRACTOR shall provide new System Documentation corresponding to all
21 new Software Upgrades. COUNTY may print additional copies of all documentation. All System
22 Documentation is to be used by COUNTY only for the purposes identified within this Agreement.

23 B. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

24 System maintenance and support includes System Updates as they are released by
25 CONTRACTOR, including updates as required as a result of Federal Regulatory Changes. The first day
26 of production use will be identified by COUNTY and communicated to CONTRACTOR. CONTRACTOR
27 will support day-to-day operation of the System as follows:

28 I. SUPPORT HOURS/SCOPE:

1 Provide unlimited technical assistance by phone during normal coverage hours
2 (8:00 a.m. to 5:00 p.m. Central Standard Time (CST), Monday through Friday, except
3 CONTRACTOR and COUNTY holidays), toll-free telephone assistance to keep the
4 System in, or restored to, normal operating condition. The object of this support will be to
5 answer specific questions related to the System Software and the application thereof.
6 Support provided under this Agreement does not include training of new personnel (after
7 initial staff is trained), operation of hardware, or solving other hardware/software
8 problems unrelated to the System Software.

9 II. SUPPORT RESPONSE:

10 During the term of this Agreement, CONTRACTOR will (a) correct any error or
11 malfunctions in the System as supplied by CONTRACTOR that prevent the System from
12 operating in conformance with the specifications set forth in this Agreement, or (b)
13 provide a commercially reasonable alternative that will conform to the specifications set
14 forth in this Agreement.

15 If analysis by CONTRACTOR indicates a reported problem is caused by a
16 reproducible error or malfunction in the then-current release of the System Software as
17 supplied and maintained by CONTRACTOR, which significantly impacts effective use of
18 the System by COUNTY, CONTRACTOR will, if the System is inoperable, as reported by
19 COUNTY, provide continuous effort to correct the error or to resolve the problem by
20 providing a circumvention.

21 In such cases, CONTRACTOR will provide COUNTY with corrective information,
22 such as corrective documentation and/or program code. CONTRACTOR will endeavor to
23 respond to COUNTY's service request no later than four (4) business hours from the time
24 a call has been received by CONTRACTOR. In the event that a person with the
25 necessary expertise is not available when the call is received, CONTRACTOR will
26 endeavor to respond to the service request no later than within one (1) business day.

27 III. REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

28 Remote VPN Diagnostics Support includes:

- a. Diagnostic or corrective actions necessary to restore proper Fuel View 4 operation;
- b. Diagnostic actions which attempt to identify the cause of system problem;
- c. Correction of data file problem; and
- d. Fuel View 4 modifications

CONTRACTOR product specialists will provide diagnostics via VPN on Fuel View. COUNTY will provide any required hardware and equipment necessary at COUNTY for CONTRACTOR VPN support.

IV. ERROR CORRECTION PROCESS

If, during the term of this Agreement, COUNTY determines that software error(s) exist, COUNTY will first follow the error procedures specified in the System Documentation. If following the error procedures does not correct the software error, COUNTY shall immediately notify CONTRACTOR, setting forth the defects noted with specificity. Upon notification of a reported software error, CONTRACTOR shall have five (5) days to determine if any actual software error exist and, if so, endeavor to correct such software errors. At CONTRACTOR's request, additional time to solve difficult problems will not be unreasonably withheld. Within fifteen (15) days of correction, COUNTY shall retest the System Software and report any other software errors.

V. TECHNICAL INFORMATION

CONTRACTOR will provide technical information to COUNTY from time to time. Such information may cover areas such as Fuel View usage, third party software, and other matters considered relevant to COUNTY by CONTRACTOR. Technical information will be provided at the discretion of CONTRACTOR, but will not be unreasonably withheld.

C. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

CONTRACTOR may provide additional maintenance services ("Additional Maintenance and Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as identified in Section 6 of this Agreement; or, if not included in this Agreement, charges will be at current prices in effect at the time goods or services are provided. Any Additional Maintenance and Support

Services requested by COUNTY and determined by CONTRACTOR to be billable by CONTRACTOR must be identified as a chargeable service prior to the service being performed and must be approved in writing in advance by COUNTY's Contract Administrator. Additional Maintenance Services include, but are not limited to, the following:

I. ADDITIONAL TRAINING

A specific amount of training is specified in this Agreement. Additional training at a COUNTY facility is available upon request by COUNTY at an additional charge under the terms of this Agreement. Requests for additional training will be reviewed by CONTRACTOR, and must be requested in writing in advance by COUNTY's Contract Administrator. Charges will be at rates identified in this Agreement.

II. DATA AND SYSTEM CORRECTIONS

Data and System Corrections include any corrective actions accomplished by CONTRACTOR on-site or via VPN which are necessary due to COUNTY errors or unauthorized source code or data access by COUNTY. Unauthorized access to the data is defined as any COUNTY editing of data through other than normal system usage, as defined in System Documentation. Unauthorized access to source code is defined as any COUNTY access whatsoever to system source code. Services provided by CONTRACTOR are not billable when they result from errors caused by Fuel View or instruction provided by CONTRACTOR.

III. CUSTOMER SITE VISITS

Site visits to COUNTY sites, as may be requested in writing by COUNTY and that are within the scope of the project services, are available for reasons such as, but not limited to, (1) additional system training on hardware or software usage; (2) resolution of system difficulties not resulting from actions by, or otherwise the responsibility of CONTRACTOR (as determined by mutual agreement between CONTRACTOR and COUNTY); (3) installation of Software Releases; and (4) assistance in equipment maintenance, movement or diagnosis. Site visits outside of the scope of project services

1 will be reviewed by the CONTRACTOR and must be requested in writing in advance by
2 COUNTY's Contract Administrator. Charges will be at rates identified in this Agreement.

3 D. SYSTEM UPDATES

4 I. SYSTEM UPDATES

5 From time to time CONTRACTOR will develop and provide System Updates to
6 COUNTY for the COUNTY'S licensed software. System Updates shall be subject to the
7 terms and conditions of this Agreement and shall be deemed licensed System Software
8 hereunder and will be made available to COUNTY at no additional charge to COUNTY.
9 System Updates will be made available to COUNTY at the discretion of CONTRACTOR
10 but will not be unreasonably withheld.

11 E. OPERATING SYSTEM UPDATES

12 The application must run on an operating system (O/S) that is consistently and currently
13 supported by the operating system vendor. Applications under maintenance are expected to always be
14 within 1 year of current in regards to the O/S. Outdated or unsupported O/S will not be implemented on
15 the production network.

16 COUNTY will notify CONTRACTOR when a critical security patch is released. CONTRACTOR
17 will have thirty (30) days to ensure application can perform in the updated environment. With approval
18 from CONTRACTOR, COUNTY will apply patches to both the operating system, and non-critical
19 security subsystems as releases are available from operating system vendors. The application is
20 expected to perform in this environment. CONTRACTOR is expected to keep their software within one
21 (1) year of current in order to operate in this environment. These patches include critical O/S updates
22 and security patches.

23 F. ANTI-VIRUS MANAGEMENT

24 COUNTY will actively run anti-virus management, where appropriate, on all application servers
25 and PCs. The application is expected to perform adequately while anti-virus management is active.

26 G. ADHERE TO CHANGE CONTROL PROCESS

27 CONTRACTOR must adhere to COUNTY's Change Control Process, which shall be provided to
28 CONTRACTOR in writing. COUNTY employs a procedure to implement updates, upgrades, and version

1 releases to a system that is in production use. This forum allows ISD to inform staff (Help Desk,
2 Network, Server, Database, Security, and Analysts) of upcoming changes to a production system.
3 CONTRACTOR must inform ISD a minimum of 1 week prior to any planned, non-emergency changes
4 so that the Change Control Process may be followed.

5 H. OTHER

6 Unless otherwise specified, for third-party software, CONTRACTOR shall provide standard
7 documentation in electronic form (via the Internet or File Transfer Protocol (FTP)).

8 The system being provided runs in a Local Area Network and Web environment. As such, the
9 performance of the system is directly related to, among other things: available network bandwidth, and
10 the performance of other applications. For this reason, CONTRACTOR makes no guarantees as to
11 system response time.

12 3. OBLIGATIONS OF COUNTY

13 A. COUNTY CONTRACT ADMINISTRATOR

14 COUNTY appoints its Chief Information Officer (CIO) or his or her designee, as COUNTY's
15 Contract Administrator with full authority to deal with CONTRACTOR in all matters concerning this
16 Agreement.

17 B. SAFEGUARDING SYSTEM SOFTWARE

18 COUNTY will follow its present practices to safeguard System Software delivered to COUNTY by
19 CONTRACTOR. A copy of COUNTY'S "Information Technology (IT) Standards and Preferred Practices"
20 will be made available upon request.

- 21 1) COUNTY utilizes a backup and recovery system written and maintained
22 by Commvault Systems. This application requires a backup agent to run
23 on the server.
- 24 2) COUNTY will provide the vendor with an account with appropriate
25 administrative rights to administer the application. The account password
26 is expected to periodically expire.
- 27
28

1 3) In order for the application to run on COUNTY supported servers, the
2 application must not require the users to have administrative rights on the
3 servers.

4 4) COUNTY, at all times, during and after the performance of the installation
5 of the System Software, is responsible for maintaining adequate data
6 backups to protect against loss of data.

7 C. SYSTEM HARDWARE AND SYSTEM SOFTWARE

8 COUNTY will, at its own expense, provide and properly maintain and update on an on-going
9 basis all necessary COUNTY System Software and County System Hardware required to operate
10 Product. Said COUNTY System Software and County System Hardware shall meet or exceed
11 CONTRACTOR's recommendations.

12 As part of COUNTY's responsibility for computer infrastructure, COUNTY is responsible for
13 ensuring that data is secure and protected at all times. CONTRACTOR is not responsible for and cannot
14 be held liable for inadvertent data disclosure or theft from COUNTY facilities.

15 D. OTHER COUNTY OBLIGATIONS

16 1) Technical assistance from COUNTY's ISD staff will be provided during the
17 performance of the installation of the System Software. In particular, COUNTY will
18 provide:

- 19 a. Network connectivity and troubleshooting assistance.
- 20 b. Ability to monitor network traffic and isolate bottlenecks.
- 21 c. Technical assistance concerning the integration with existing COUNTY
22 systems (if applicable).
- 23 d. Expertise to handle issues with PCs, printers, and cabling before,
24 during, and after rollout.

25 4. TERM

26 The term of this Agreement shall be for a period of three (3) years, commencing on Effective Date
27 through and including April 13, 2023. This Agreement may be extended for two (2) additional consecutive
28 twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first

day of the next twelve (12) month extension period. The Director of Internal Services/Chief Information Officer (CIO) or his or her designee is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory performance.

5. **TERMINATION**

A. **Non-Allocation of Funds** - The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time without penalty by giving the CONTRACTOR thirty (30) days advance written notice.

B. **Breach of Contract** - The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;
- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. **Without Cause** - Under circumstances other than those set forth above, this Agreement may be terminated by either party upon the giving of thirty (30) days advance written notice of an intention to terminate. In the event of early Agreement termination, CONTRACTOR shall promptly refund to COUNTY the prorated portion of any fees paid annually, for the portion of the year that the COUNTY will not receive services due to the Agreement termination.

6. **COMPENSATION/INVOICING**: COUNTY agrees to pay CONTRACTOR, and

1 CONTRACTOR agrees to receive compensation, as follows:

2 A. GPS Monitoring:

3 CONTRACTOR agrees to provide GPS monitoring for COUNTY vehicles at a rate of \$7.99 per month.

4 Existing vehicles will be invoiced annually on May 1st of each year. New vehicles will be prorated to the
5 next annual invoice date.

6 B. Physical Goods & Supplies:

7 CONTRACTOR agrees to provide physical goods and services at a twenty percent (20%) discount from the
8 current Manufacturer Suggested Retail Price List for purchases under Sourcewell Contract No. 022217.

9 This price list will be made available to COUNTY whenever updates and/or changes are made to the list.

10 C. Software Maintenance and Support:

11 CONTRACTOR agrees to provide software maintenance and support for CONTRACTOR's Fuel View
12 software at a rate of \$3,950.00 for Year One. These support services are described fully in Exhibit B.

13 D. Fuel Site Repair:

14 CONTRACTOR agrees to provide COUNTY with fuel site repair services related to the CONTRACTOR's
15 fueling site equipment. These services will be provided at a labor rate as described in the Manufacturer
16 Suggested Retail Price List. The County may instead elect to purchase an annual support agreement at a
17 rate of \$80.00 per month per fuel control terminal for Year One, with 5% increase for each year thereafter.
18 These support services are described fully in Exhibit B.

19 E. Fee Changes

20 CONTRACTOR may increase Software Maintenance and Support Fees and Fuel Site Repair Fees for
21 Years Two through Five of this Agreement, upon thirty (30) days' advance written notice to COUNTY,
22 provided CONTRACTOR shall not increase such fees more than once in any one-year period, and
23 provided further that each increase shall not exceed the prior year's fees by the lesser of five percent
24 (5%) per year, or the cumulative percentage increase in the Consumer Price Index, All Urban
25 Consumers for the U.S., during the previous year.

26 F. Invoicing

27 CONTRACTOR shall submit an annual invoice referencing the provided contract number, either
28 electronically or via mail, in triplicate to the County of Fresno, Internal Services Department, Attention:

1 Business Office, 333 W. Pontiac Way, Clovis, CA 93612, (isdbusinessoffice@fresnocountyca.gov).

2 In no event shall services performed under this Agreement exceed \$1,102,000.00 during the total
3 possible five-year term of this Agreement. It is understood that all expenses incidental to CONTRACTOR'S
4 performance of services under this Agreement shall be borne by CONTRACTOR. COUNTY shall pay
5 CONTRACTOR within forty-five (45) days of receipt of an approved invoice.

6 7. **INDEPENDENT CONTRACTOR:** In performance of the work, duties and obligations
7 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
8 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
9 times be acting and performing as an independent contractor, and shall act in an independent capacity and
10 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
11 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
12 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
13 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
14 terms and conditions thereof.

15 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
16 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

17 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
18 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
19 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
20 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
21 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
22 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
23 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

24 8. **MODIFICATION:** Any matters of this Agreement may be modified from time to time by the
25 written consent of all the parties without, in any way, affecting the remainder.

26 9. **NON-ASSIGNMENT:** Neither party shall assign, transfer or sub-contract this Agreement nor
27 their rights or duties under this Agreement without the prior written consent of the other party.

28 10. **HOLD HARMLESS:** CONTRACTOR agrees to indemnify, save, hold harmless, and at

COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

The provisions of this Section 10 shall survive the termination of this Agreement.

11. **INSURANCE**

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A. **Commercial General Liability**

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis.

B. **Automobile Liability**

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C. **Technology Professional Liability (Errors and Omissions)**

Technology Professional Liability (Errors and Omissions) Insurance appropriate to CONTRACTOR's profession, with limits not less than Two Million Dollars (\$2,000,000) per occurrence or claim, Two Million Dollars (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this Agreement and may include, but not be limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information,

1 alteration of electronic information, extortion and network security. The policy may provide coverage for
2 breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses
3 with limits sufficient to respond to these obligations.

4 D. Cyber Liability

5 CONTRACTOR shall obtain cyber liability insurance with limits not less than Two Million Dollars
6 (\$2,000,000) per occurrence. Coverage shall include, but not be limited to, claims involving Cyber Risks.
7 The cyber liability policy shall be endorsed to cover the full replacement value of damage to, alteration
8 of, loss of, or destruction of intangible property (including but not limited to information or data) that is in
9 the care, custody, or control of the CONTRACTOR.

10 For purposes of the technology professional liability insurance and the cyber liability insurance
11 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which
12 include disclosure of, whether intentional or unintentional, information provided by COUNTY, information
13 provided by or obtained from any inmate, or personal-identifying information relating to any inmate, to an
14 unauthorized third party; (ii) breach of any of CONTRACTOR's obligations under this Agreement relating
15 to data security, protection, preservation, usage, storage, transmission, and the like; (iii) infringement of
16 intellectual property including, but not limited to, infringement of copyright, trademark, and trade dress;
17 (iv) invasion of privacy, including any release of private information; (v) information theft by any person
18 or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information; (vii) extortion
19 related to CONTRACTOR's obligations under this Agreement regarding electronic information, including
20 information provided by COUNTY, information provided by or obtained from any inmate, or personal-
21 identifying information relating to any inmate; (viii) network security; (ix) data breach response costs,
22 including security breach response costs; (x) regulatory fines and penalties related to CONTRACTOR's
23 obligations under this Agreement regarding electronic information, including information provided by
24 COUNTY, information provided by or obtained from an inmate, or personal-identifying information
25 relating to any inmate; and (xi) credit monitoring expenses.

26 E. Professional Liability

27 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
28 providing services, Professional Liability Insurance with limits of not less than One Million Dollars

1 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

2 F. Worker's Compensation

3 A policy of Worker's Compensation insurance as may be required by the California Labor
4 Code.

5 Additional Requirements Relating to Insurance

6 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
7 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
8 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
9 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
10 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
11 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
12 a minimum of thirty (30) days advance written notice given to COUNTY.

13 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
14 employees any amounts paid by the policy of worker's compensation insurance required by this
15 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
16 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
17 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

18 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
19 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
20 foregoing policies, as required herein, to the County of Fresno, Internal Services Department, Attention:
21 Director of Internal Services/Chief Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that
22 such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
23 agents and employees will not be responsible for any premiums on the policies; that for such worker's
24 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
25 agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate
26 the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its
27 officers, agents and employees, individually and collectively, as additional insured, but only insofar as the
28 operations under this Agreement are concerned; that such coverage for additional insured shall apply as

primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

12. **AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during business hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

13. **NOTICES:** The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

COUNTY OF FRESNO
Director of Internal Services/CIO
333 W. Pontiac Way
Clovis, CA 93612

CONTRACTOR

EJ Ward, Inc.
8620 N New Braunfels, Ste 200 N
San Antonio, TX 78217

All notices between the COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,

1 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
2 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
3 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
4 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
5 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
6 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
7 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
8 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
9 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
10 beginning with section 810).

11 14. **GOVERNING LAW:** Venue for any action arising out of or related to this Agreement shall
12 only be in Fresno County, California.

13 The rights and obligations of the parties and all interpretation and performance of this Agreement
14 shall be governed in all respects by the laws of the State of California.

15 15. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

16 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit
17 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status
18 to operate as a corporation.

19 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
20 that they are a party to while CONTRACTOR is providing goods or performing services under this
21 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
22 and in which one or more of its directors has a material financial interest. Members of the Board of
23 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
24 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by
25 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
26 immediately thereafter.

27 16. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the
28 CONTRACTOR and COUNTY with respect to the subject matter hereof, and supersedes all previous

Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

3
4 **CONTRACTOR**

5 
6 (Authorized Signature)

7 Leslie Patterson, ISS Manager

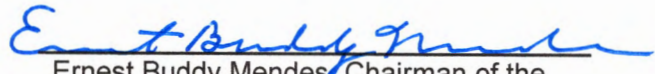
8 Print Name & Title

9 8620 N. New Braunfels Avenue, Suite 200

10 San Antonio, TX 78217

11 Mailing Address

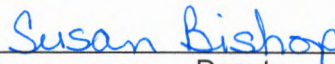
COUNTY OF FRESNO

12 
Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the County of
Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

13
14
15 By:


Deputy

16 **FOR ACCOUNTING USE ONLY:**

17 Fund: 1000

18 Subclass: 10000

19 ORG: 8910

20 Account: 7309
21
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SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit A

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	



SERVICE CALL CENTER AND SUPPORT AGREEMENT

BETWEEN

E.J. WARD, INC.

AND

FRESNO COUNTY

4551 E. HAMILTON

FRESNO, CA 93702

The Agreement detailed herein defines the entire service provided for continuous, trouble-free operation of the Hardware and Software purchased from E.J. Ward, Inc.

This agreement may be modified in writing subject to the approval of both parties. Furthermore, either party may cancel in part or all of this agreement with sixty (60) days written notice of intent to cancel.

Definitions:

- **Fresno County**, for this agreement shall be known as the "Buyer".
- **E.J. Ward, Inc.**, for this agreement shall be known as the "Seller" or "EJW".
- **Excessive**, is defined for the purpose of this agreement as time spent beyond what is considered acceptable, proper, usual, or necessary to solve the problem solely based on the judgment of the "seller".
- **Normal business hours**, for the purpose of this agreement are defined as Monday – Friday, 8 am - 5pm. CST, excluding Local, State, and Federal holidays.
- **Preferred Rates**, for the purpose of this agreement are defined as those rates in the current published Price List defined as 10% off list for customers who maintain a Platinum Plan to include Software and Hardware supplied by "EJW".
- **Overtime Rates**, for the purpose of this agreement are defined as charges equal to 1.5 times the base rate (preferred or otherwise) for work performed after normal business hours, on weekends or holidays.
- **On-site Overtime Service Rates**, for the purpose of this agreement are defined as charges equal to 1.5 times the base rate (preferred or otherwise) for work performed after normal business hours, weekends, or holidays with a minimum of four (4) hours, not inclusive of travel or other direct costs.

System support will be provided as set forth in the following sections:

Extent of Coverage:

1. "EJW" shall provide the "Buyer" service call support on a 24 hour / 7-days per week basis
2. "Buyer" will use the "EJW" Support Number to report an issue. Service requests to "EJW" are broken into one of 2 categories by the "Buyer" caller: (1) Phone support; or (2) Sitesupport.

"Buyer" must contact "EJW" directly for all Support and On-site repair requests. If "Buyer" contacts a third- party service provider directly, "Buyer" is responsible for payment directly to the third party for all parts and services performed by the third-party service provider, even if that provider is a local authorized or certified "EJW" service and repair provider.



Phone support - Support Number: 1-800-580-WARD (9273) or email support@ejward.com (email for non-emergency support only during normal business hours: Monday-Friday 8am-5pm CST)

1. This service will be provided 24/7 per terms outlined in each plan option
2. "On-site" Emergency service after hours is available as required
 - a. On-site Emergency service after hours is available per the On-site Overtime Service Rates. "Buyer" must provide Server and Database access before "EJW" technician is dispatched to "Buyer" site.

"EJW" will return the service call within the following time requirements:

1. Four (4) hours to the number provided in the service call between the hours of 8 am-5 pm Monday - Friday Central Time; or
2. Eight (8) hours to the number provided in the service call report during Evenings, Weekends and Federal Holidays.

Process: The call center operator will record each service request by ticket # and record the problem in writing. The operator will contact the on-call service technician. Should the on-call technician not be reached within 4 hours, the back-up on-call technician will be contacted. In the event, the back-up technician is not available; the Regional Field Service Manager will be contacted.

Reported issues will be addressed in the following manner:

1. Priority 1 – Requires immediate attention as performance is unreasonably degraded (i.e. the system is completely down). Every effort will be made in providing an immediate resolution. Issue resolution is normally no more than forty-eight (48) hours.
2. Priority 2 – Requires urgent action, as failures are extremely inconvenient (i.e. a site is down). Every effort will be made to provide a resolution as soon as possible, in most cases, within five (5) Business days.
3. Priority 3 – Requires routine action, as failure is only somewhat inconvenient. Resolution will be provided as soon as possible and in most cases within fourteen (14) business days.

Site Support: On-site service within the following time requirements and limitations described will be provided:

1. 12 - 24 hours if service request between the hours of 8 am & 5 pm Monday – Friday; or
2. 24 - 48 hours if service request between the hours of 5:01 pm & 7:59 am Monday – Friday; or
3. 24 - 48 hours if service request between the hours of 4:01 pm Friday & 7:59 am Monday; or
4. 24 - 48 hours if service request occurred on any Local, State or Federal Holiday.
5. Five (5) business days for locations with either:
 - a. No local authorized service technician; or
 - b. Air travel is required to support the location

Exchange Policy: Exchange and/or repair of components is two to three (2/3) days after the receipt of the items in need of repair or exchange or after the receipt of a request for shipment (RMA) if there is no exchange or repaired board available. Customer's exchange and shipment to Ward must comply with Ward's Return Material Authorization (RMA) policy and reference a ticket number assigned by "EJW" Technical Support.

Service Limitations: “EJW” cannot be deemed non-compliant with service requirements inclusive, but not limited to the following conditions:

1. **Acts of God and Man Made Events:** Disruptions caused by heavy rains, earthquakes, flooding, tornadoes, lightning strikes, hurricanes, fires, snow, ice, sleet, or road closures and detours caused by Town, City or State construction projects where normal street or interstate traffic patterns to the customer site are disrupted or stopped.
2. **Non-access:** Situations where “EJW” technicians are denied access to the fuel terminal sites due to locked fences, blocked passages, or no one answering the phone number provided to the service call operator.
3. **Malicious Acts:** Inclusive of but not limited to; vandalism, theft, gun shots, rock throwing, fire, and anywhere damage is not attributable to normal, fair wear and tear of hardware components.
4. **Negligence:** Inclusive of but not limited to; third party contractors hired by the “Buyer” to perform fuel site maintenance that would impair the performance of “EJW” equipment by disrupting electrical service or making non-authorized adjustments or modifications to “EJW” installed hardware or terminals.
5. **Procedural Changes:** Inclusive of but not limited to; the “Buyer” changing the manner in which their employees interact with the “EJW” fuel automation hardware. These changes may require systemic changes which are considered outside the normal software maintenance activities (i.e., operating systems “OS”, business rules or software customization requests).
6. **Non-“EJW” Equipment or Systems Failure:** Inclusive of but not limited to; “EJW” dispatching a technician and the cause of incident is found to be other than an agreement covered product. Standard published pricing will apply for authorized repairs.

Service Response versus Service Repair: “EJW” will meet the service response requirements as defined in this agreement. The actual time to repair your equipment however, cannot be determined or controlled by the response time period. Each service incident will require analysis to determine the failure, actual repair, and testing to confirm the unit is working within specifications. In special cases, the repair may require unique parts which will require additional time to obtain.

Definition of Maintenance: Under the terms of this agreement with the “Buyer”, “EJW” agrees to provide contracted for maintenance activities to address normal fair wear and tear issues found with the normal use of the equipment

Examples of non-covered equipment inclusive of; but not limited to:

- | | |
|----------------------------------|---|
| 1. Dispensers, Pumps and Pulsers | 11. Vehicles or Fleet Assets |
| 2. Tank Level Monitoring (TLS) | 12. CANceiver, VIT, Cables or GPS antenna |
| 3. Electrical System | 13. EM-Tag or Ring Antenna |
| 4. Network (TCP/IP) | 14. All hardware, and software versions of the Jettscan or vehicle device programmers |
| 5. Moxa 508A Network Switch | 15. Cards, Datakeys, Fobs, Encoders, Embossers, Printers |
| 6. Wi-Fi Access Points | 16. Equipment & Software Upgrades |
| 7. Servers (Virtual or Physical) | |
| 8. CAT 5 Cable, Routers, Bridges | |
| 9. Cabinet, Base, Lock Assembly | |
| 10. Hose Modules | |



Third Party Hardware Support: “EJW” agrees to provide “Buyer” with limited technical support in troubleshooting problems associated with “Third-Party” or “Non-Covered” hardware or software. “EJW” will consult with representatives of other support organizations, if required.

1. If the time required to resolve third party issues is excessive, “Buyer” will be contacted for authorization to proceed before charges will be incurred by “Buyer”.

Hardware Covered: Included in this coverage are the hardware components of the Fuel Control Terminal (FCT) that were installed as part of the Automated Fuel Management System (AFMS) either by “EJW” Technicians or a certified Contractor Technician.

1. Field modifications, additions or changes to the hardware without written authorization or approval by “EJW” may void this agreement.
2. EJW is not liable if parts are no longer available due to end of life (EOL) or not available from subcomponent suppliers for any hardware covered under this agreement.

Extent of Software Coverage: “EJW” will ensure the proper operation of all “EJW” copyrighted software programs and their interface to external programs previously installed by “EJW”.

Software **upgrades** are not included (examples are W3.x to W4.x or Access to SQL or to Oracle or any other combination).

Software Covered: Included in this coverage are the following “EJW” copyrighted software programs installed on the server / servers and backup system.

1. Fuel View Software, communication programs, listeners and parsers
2. Database Interface Programs written by “EJW”
3. Business Rule Operating Systems “OS”
4. Reports, Screens, Scripts and Data Files

Items Not Covered: “Buyer” supplied or 3rd Party supplied software, computer or network equipment not specifically contracted for under this agreement. Non-covered software and equipment include, but are not limited to:

1. Servers, Laptop and Desktop computer hardware
2. Support for Server / PC Moves / Transfers of the application software or Databases
3. Network Hardware
4. Third Party Software, Operating Systems and Relational Databases

It is “Buyer’s” responsibility to update and maintain all updates, patches and fixes for 3rd party software and databases. “Buyer” responsibility includes, but is not limited to:

1. Microsoft and Oracle Operating Systems
2. Microsoft and Oracle Database updates
3. Java updates



Third Party Software Support:

"EJW" agrees to provide the "Buyer" with limited technical support in resolving problems associated with "Third Party" operating systems, database and network problems. "EJW" will consult with representatives of other support organizations as necessary.

1. If the time required to resolve external issues is excessive, "Buyer" will be contacted for authorization to proceed.

Disaster Recovery: It is "Buyer's" responsibility to provide enterprise and / or system level disaster recovery in accordance with its own information technology standards and business risk requirements.

1. "EJW" can provide assistance to "Buyer" in the absence of IT standards recommend best practices. Assistance will be limited to best practice recommendations only.

Vehicle Equipment: "EJW" will provide phone support only for issues pertaining to Vehicle Mounted Equipment, Hose Module, EM-Tag, and JettScan.

1. On-site service and replacement of this equipment will be billed separately at the labor rates listed in current Price List.

Miscellaneous Additional Conditions: Additional equipment may be added to this agreement at any time; existing Warranty will be taken into consideration. Initial repairs, when required to qualify for addition to this Agreement, are based solely on the judgment of the "EJW" and will be billed separately at the published labor rates, and then current list price of parts. Future Support Agreement costs will be adjusted to reflect additional equipment as needed. **Based solely on the judgment of "EJW", "EJW" shall retain the exclusive right to refuse adding, or may remove equipment from this agreement based on the equipment's serviceability.**

Shipping: The standard method of shipping is by ground for this agreement, for additional information refer to "EJW"'s published Price List for shipping information:

1. "Buyer" may request expedited shipments such as "next day" or "two day" for additional cost.
2. "EJW" shall retain the sole right to use those expedited methods to insure system up time at its cost when "EJW" determines such actions are warranted under this agreement and its use does not establish precedent for future shipments.

Sites greater than one hundred (100) miles from service center: Location of hardware or software requiring service or support on-sites greater than 100 miles from an "EJW" office or service center shall be subject to additional technician time and travel costs based on its current published Price List. Distances for invoicing are verified using "Google Maps" routing on a round trip basis.



Platinum Plan Agreement Pricing

- Includes Annual Call Center Support and Hardware, Service, & Parts
- **10% off list price based on EJW current published Price List** related to Labor, Software and Hardware for items not covered under this agreement (only one discount shall be applied towards purchases. Third Party contract purchases excluded)

Annual Call Center Support Fee

- Ensures the proper operation of the "EJW" Software, communication programs, listeners and parsers, Database Interface Programs written by "EJW", Business Rule Operating Systems "OS", Reports, Screens, Scripts and Data Files
- Includes scheduled and periodic updates, fixes, and patches as released within the customer's current version of Fuel View Software.
- Unlimited calls per month; 24x7 Call Center support for Software and Hardware supplied by "EJW"

Total – Call Center Support Fee = \$3,950

Hardware Service, & Parts Pricing - Annual

- Only "EJW" FCTs less than ten (10) years old or under previous support agreement.
- "EJW" FCTs greater than ten (10) years old may require inspection, consult factory for pricing.
- FCT-XT is no longer covered under this plan unless noted below.
- "EJW" cannot be held liable if parts are no longer available due to end of life (EOL) or unavailable from subcomponent suppliers for its product lines.
- On-site, Labor and Parts included - **Sites over 100 miles from an "EJW" office are subject to additional technician time and travel costs.**

- a. \$80 per Fuel Control Terminal (FCT-W4-05H) per month - (\$960 per yeareach)

FCT-W4-05H - Total 18 X (\$960 per year) = \$17,280 Annual Fee

*Additional Hardware may be added and priced separately for parts and labor support.