

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

December 3, 2024

FROM

MARK MCCULLOUGH, Director, Fleet Management Department

SUBJECT

Agreement with E.J. Ward, Inc. for Upgrade and Replacement of Fuel Terminals, and Migration of Software from Self-Hosted Servers to the Software as a Service Platform

RECOMMENDATION(S)

Approve **Agreement No. 24-1238** with E.J. Ward, Inc., including non-standard terms, for upgrade and replacement of fuel terminals and migration of software from self-hosted servers to the Software as a Service platform, in the amount not-to-exceed \$1,200,000, effective December 3, 2024, through December 2, 2027.

(Presenter: Mark McCullough, Director, 387-7870)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this agreement with E.J. Ward, Inc. (E.J. Ward) will not result in the use of Discretionary General Funding (Net County Cost). The agreement will have an aggregate not-to-exceed amount of \$1,200,000 over a three-year period. The Fleet Management Department (Fleet) is an internal service fund, and its operational costs are financed through the Board of Supervisors (Board) approved rates charged to customers. Sufficient appropriation has been included in Fleet's 2024-25 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of this agreement will enable Fleet to continue to provide fuel, car washes, and gate entry access to County departments and outside agencies. Since 2017, Fleet has used E.J. Ward's hardware and software technology that control fuel terminals, car wash terminals, and gate entry terminals throughout the County. This agreement will also allow E.J. Ward to upgrade existing fuel terminals that are no longer supported and migrate the existing and outdated County hosted software to the Software as a Service platform. The upgrade will involve 63 existing terminals with the addition of seven new terminals by the conclusion of the agreement period. The software is currently being hosted by the Innovation and Technology Department (ITD) on virtual servers.

The agreement includes E.J. Ward's standard commercial End-User License Agreement, which includes terms that differ from the standard County agreement and omits certain County

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standard agreement terms. E.J. Ward is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law is the State of Texas.
 - The County standard contract requires California governing law.
 - Potential Impact: The agreement will be interpreted under Texas law. Any questions, issues or claims arising under this agreement will require the County to hire outside counsel competent to advise on Texas law, which may result in fees that exceed the total agreement amount.
2. The agreement does not require E.J. Ward to indemnify the County, as required by County Policies 11-05 and 11-07.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: E.J. Ward is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from E.J. Ward's negligent or intentional acts and intellectual property infringement, which could exceed the total agreement amount. County Counsel cannot advise on whether and to what extent Texas law may allow the County to require E.J. Ward to defend or indemnify it absent an express provision in the agreement
3. The agreement does not require E.J. Ward to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that E.J. Ward will be financially responsible for claims that may arise under the agreement, which could result in expenses to the County that exceed the total agreement amount.
4. E.J. Ward's maximum liability to the County is limited to the replacement cost of the defective product or services causing the damage.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the agreement amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Texas law may limit or expand the exclusion of limits to the extent prohibited by applicable law.

Fleet recommends approval of the non-competitive agreement with E.J. Ward, including non-standard terms and conditions, as continuing to use E.J. Ward's technology, which has been used by Fleet since 2017, will mitigate a potential disruption in operations, including the County's emergency response time.

PROCUREMENT

County Policy 11-04 requires departments to seek Board approval when contracting for competitive and non-competitive purchases of goods and services in excess of \$200,000 during a single annual period. E.J. Ward's unique compatibility in configuration and footprint for the existing terminals will not need significant modifications providing valid justification for the non-

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competitive procurement. The Purchasing department concurs with non-competitive justification of equipment/system compatibility for service and parts.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Adam Ebright, Deputy County Counsel, 387-5455) on November 5, 2024; Purchasing (Lisa Zhu, Lead Buyer III, 387-7856) on November 5, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-9008) on November 20, 2024; Finance (Penelope Chang, Administrative Analyst, 387-5423) on November 5, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on November 14, 2024.

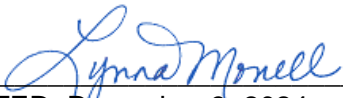
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: December 3, 2024



cc: Fleet - Lawver w/agree
Contractor - c/o Fleet w/agree
File - w/agree
CCM 12/6/2024