SAN BERNARDINO COUNTY

Contract Number

SAP Number
N/A

Fleet Management

Department Contract Representative	Jeff Lawver
Telephone Number	909-831-8879
Contractor	E.J. Ward, Inc.
Contractor Representative	Mike Wade
Telephone Number	210-912-3385
Contract Term	December 3, 2024 – December 2, 2027
Original Contract Amount	Not-to-exceed: $1,200,000
Amendment Amount	N/A
Total Contract Amount	Not-to-exceed: $1,200,000
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (County) desires to upgrade the existing Fuel terminals that are no longer supported and migrate the existing outdated County hosted software to the SaaS platform; and

WHEREAS, the County conducted a non-competitive process to find E.J. Ward, Inc. (Contractor) to provide these services, and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

San Bernardino County – Technical Fuel Management System Requirements

History:

The County has used the Contractor's hardware and software since 2017. The current version is self-hosted. The communication/web server and the database server are hosted by County on virtual 2016 servers. The County has direct access to the servers and database.

Existing interfaces:

- FasterWeb
    - FuelView currently automatically (scheduled task) creates an output file that is manually imported into FasterWeb (County's information system)
    - The file contains all the fuel transactions since the last export was created.
    - Additionally, the transaction includes the mileage information for assets that do not have a GPS.
- Voyager Credit Card
    - US Bank File Transfer Protocol (FTP) transaction files are sent to the comm server each morning.
    - FuelView automatically (scheduled task) imports the data from the file into the FuelView database.

Current Terminal Communication (Including Transport Layer Security):
- Direct Ethernet
    - These terminals have direct ethernet connection to a network switch.
- Wireless Access Point (AP)
    - These terminals use a MOXA AP connected to a network switch
    - The terminals have an internal MOXA device that connects to the AP
- Cellular Connection
    - These terminals use a cellular modem in tandem with a Cisco security device to access the network with a Virtual Private Network (VPN) tunnel.
    - The VPN tunnel is monitored and managed by the Wireless Area Network (WAN) team at County.

Software as a service (SaaS) Model

Responsibilities

- Contractor
    - Hosting web server, communication server and database server
    - Providing and maintaining communication with all terminals and Tank Level Monitoring Systems (TLS) devices
        - Fuel
        - Gate
        - Truck
        - TLS
    - Support for terminals and FuelView application
    - Provide 24 HR access to FuelView application
    - Provide all the current capabilities of FuelView version 4.5.2.27
        - Details can be found in the revised 2014 Scope of Work (SOW) – **Attachment A**
    - Provide training for new SaaS model FuelView application

- o Monitor Terminal and TLS connectivity.
    - Report any issues to County immediately
  - o Respond to support requests
    - FuelView – within 1 hour
    - Hardware Issue – within 24 hours
    - Connection Issue – within 24 hours
  - o Provide access to County for custom report writing and data mining.
- County
  - o Pay for annual hosting and support
  - o County will be FuelView system administrator
    - Add or remove users
    - Change permissions
  - o Contractor will train County during initial Terminal replacements
    - Work with Contractor to create a pre-setup process for the new terminals
      - Cellular Connection
      - Terminal Configuration
  - o Report system or hardware issues to Contractor's support

Interfaces:
- FasterWeb
  - o Fully automated interface between FuelView and FasterWeb using an existing Application Programming Interface (API). If not, the flat file interface will continue to work. County will need to be able to reach the daily generated flat file from FuelView.
    - County will continue to receive the fuel and car wash transaction information as well as mileage for non-GPS assets without any additional cost.
- Voyager Credit Card
  - o The interface needs to continue as it already functions.
    - The FTP from US Bank will need to change to a location that can be reached by the SaaS hosted application.

Terminal Communication (including TLS)

- Cellular Connection
  - o Moving forward all terminal communication will be cellular and will be the responsibility of Contractor.

SaaS Implementation

- The current iteration of FuelView will continue to be hosted by County.
  - o The existing version will be used until all terminals have been updated or 2 years, whichever comes first.
- The new SaaS model will be brought online in parallel with the existing version.
- The data will be migrated to the new SaaS database.
- All new terminals will be brought online in the new SaaS system
  - o Those terminals will then be taken offline in the existing system

- o The migration should be completed within the first 2 years (special circumstances, for example, severe natural disasters will be taken into consideration to extend the migration completion period).
- All new drivers and vehicles will be entered into both systems
  - o That will be the responsibility of County
- The 3-year contract pricing breakdown is listed in **Attachment B** – **Pricing Schedule**.
- The Software use is governed by the Contractor's June 2024 End User License Agreement (EULA) – **Attachment C – End User License** for the three-year contract period.

Termination for Convenience

The County reserves the right to terminate the Contract, for its convenience, with or without cause, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

Campaign Contribution Disclosure (SB 1439)

Contractor has disclosed to the County using Attachment D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than $250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of the Contractor.

ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

E.J. Ward, Inc.

(Print or type name of corporation, company, contractor, etc.)

► _____

By ► _____

Dawn Rowe, Chair, Board of Supervisors

(Authorized signature - sign in blue ink)

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Name   Robert Kettyle

(*Print or type name of person signing contract*)

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

Title   Chief Operating Officer

(Print or Type)

By _____

Deputy

Dated: _____

12621 Silicon Dr #113
San Antonio, TX 78249

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____	► _____	► _____
County Counsel		
Date _____	Date _____	Date _____

ATTACHMENT A

1. Project Objective:
   a. Replace existing outdated and no longer supported W4 FCT terminals with new Internet of Things Fuel Control Terminal (IOT FCT) terminals
   b. Move the existing server which is hosted by County to Contractor's SaaS program.
   c. Contractor shall provide training and certifications to County staff, so they are able to perform installations and repairs as needed to the new IOT FCT.
   d. Plan, deliver, install, test the system and implement.
   e. Provide data conversion services.
   f. Contractor shall provide training and documentation on the use, operation and maintenance of the system.
   g. Contractor shall provide maintenance and customer support for problems, new releases, upgrades and revisions.
   h. Contractor shall provide project management for the duration of the 3-year contract effective San Bernardino County Board of Supervisors approved date.

1. Project Overview:
   a. Paperless capture of fuel transactions.
   b. Providing multiple options to initiate transactions and capture data such as manual keypad entry, magnetic cards, Free on Board (FOB)s or activators / FOBs placed on the vehicle.
   c. Operating access gates and carwashes, and fuel terminals.
   d. Interface with the Faster Asset Solutions (County's information system) for cost tracking and billing purposes.
   e. Project may include automation of all or a portion of the County fuel sites.

2. Existing Computing Environment
   a. County is using version 7.010 of FasterWeb
   b. County is currently on version 4.5.2.27 of FuelView
   (The communication/Web Server and Database server are hosted on Windows Server 2016)

3. General Requirement of the Fuel Management System:

   A. The system must:
   1. Operate within the County's existing environment.
   2. Be accessible from the internet (County's LAN\WAN/cellular) connected devices
   3. Support multiple users simultaneously, both locally and remotely.
   4. Provide an interface that is menu-driven, easy to use, and supports a uniform Common User Access or a Graphical User Interface.
   5. Capture fuel transactions in real-time.
   6. Track transactions by vehicle and user.
   7. Provide the capability for 100% automated transactions with no operator data entry.
   8. Provide the capability for manual fuel entries or import of fuel records from Excel or another similar system.
   9. Provide for migration of user and vehicle records into the new system from the current Contractor's system.
   10. Integrate tank level monitoring and inventory control into the automated fuel system.

11. Interface with 3rd party software.

12. Operate up to 10 hoses at the largest sites.

13. Limit/restrict improper use based on vehicle records, i.e. fuel type, odometer readings and tank size.

14. Bypass options to dispense fuel if system is non-functional.

15. Remote diagnostic capability.

16. System tables must be user-maintainable, with the ability to add new entries or update and delete existing ones without programming.

17. Provide the ability to limit access to data elements, screens, or files by user, group and or workstation.

18. Have built-in file and record locking capabilities and provide an audit trail for all system changes ordered by date and username.

19. Have the ability to maintain multiple years of data online and provide the ability to obtain a system snapshot for any given time period, both past and present.

20. Provide an easy-to-use feature to archive and retrieve historical data.

21. Populate specific fields with default data automatically, e.g., date, time, etc.

22. Have the ability to automatically perform system maintenance tasks such as after-hour back up or user-defined task scheduling.

23. Any hardware must be capable of operating in an "outside environment" (dirt, dust, and temperature variations).

24. Be scalable, to support future growth.

25. Architecture must be open, web-based client-server technology with multi-tier security.

26. Provide a Management Dashboard for "at a glance" Key Performance Indicators (KPIs).

27. Have the ability to search the system for transaction records and provide the capability of ad-hoc reports.

B. The system should:

1. Minimize the use of proprietary hardware and software so the County may, at its discretion, replace and/or substitute components.

2. Utilize modular hardware components for ease of user replacement/repair.

3. Have on-line context sensitive help capabilities.

4. Have the ability to search system information using meta data.

5. The system must be accessible by Edge, Chrome, and Safari web browsers.

4. Maintenance and Support Requirements

   A. Software/Hardware Support:

   1. Must include warranty during the contractual term for all software and hardware.

   2. Software maintenance support to cover regular updates, new releases, technical consultation, and dial-up phone support commencing during the length of the contract.

   3. Contractor must have a support help desk available to County personnel aimed at real-time problem resolution. Coverage needs to match the County's 24/7 hours of fuel operation needs. Provide procedures that explain the process for problem tracking and resolution.

   4. Contractor must be able to provide on-site technical assistance within 24 hours.

5. In the event the Contractor is no longer able to provide support, the Contractor must provide software source code including all pertinent documentation used for the development \ modification \ customization of systems.

6. Expose Web Services to allow for County to perform in-house customization.

B. Installation and Training Requirements

The Contractor shall:

1. Work with the Count personnel to set up the new IOT FCTs before and after installation for all the department-required locations.

2. Provide complete user-friendly training, training materials, and documentation for all purchased hardware/software.

3. System documentation must be included for each person being trained. Training to include software, installation, administration, security, communications, and database & storage, including all functions listed under the County Specific Hardware Support Certification Training (Permission to reproduce the training materials in support of future training requirements is also required).

4. Provide training for approximately 4 County employees under the County Specific Hardware Support Certification Training.

5. Provide a description and method for the proposed training. Identify any limits relative to the number of persons per training session.

6. Describe the differences between the various degrees of training based upon the individuals to be trained.

7. Provide system documentation such as user manuals, hardware and peripheral documentation including manufacturer-supplied documentation and reference manuals that will assist County programmers in building future system interfaces.

8. User manuals must be user-friendly and fully acquaint the user with the overall concept of the system along with detailed instructions for system operation.

C. Data Conversion Requirements

1. Target 100% accuracy for data conversion and new system population.

2. Describe the data conversion approach, including data integrity validation, responsible person and their experience with data conversion.

3. Our existing Fuel Management system data will need to be imported.

<u>***** This is revised based on the 2014 Scope of Work to support the 2024 system requirement*****</u>

ATTACHMENT B – Pricing Schedule

San Bernardino County - SaaS with Hardware & Labor (Year 1)				
Turn-Key Fuel Management System - Hosted by SimplyFuel Solutions LLC. (E.J. Ward, Inc. Company)				
Includes - Tank Level Monitoring and Compliance Reporting Module				
Tank Level Monitoring and Compliance Reporting Module - (Requires connection to an existing compatible TLS) - TLS must have or accept TCP/IP network card (additional cost) without firmware upgrades or additional charges will apply - County is responsible for CAT5/6 cable networking from TLS to FCT or adding recommended Cellular Hardware unless quoted separately				
Part #	**Description - Cloud Hosted Fuel View IOT Software Application**	**Qty**	**Price / Month**	**Extended**
IOT-SaaS	Hosting Fuel View IOT - Includes Cellular Option - 24x7x365 Call Center Support (42) FCT-IOT- Cell Modem - Keypad Entry, FOB, CANceiver and TAG use enabled. Software User and Administrator Training - Online (2hr Session)	Year 1	$8,400.00	$100,800.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
	5-hose Cellular IOT Terminal - Keypad Entry, FOB, CANceiver and TAG use enabled. 5H Truck Terminal - Keypad Entry, FOB. FCT-IOT-WALL **EXCLUDED:** Any non-standard cellular antenna configuration caused by a local environmental condition outside Contractor's control. Pricing is based on before Tax. County will determine specific FCT Part # quantity breakdown before project kickoff.	41	$7,500.00	$307,500.00
FCT-IOT-5H & FCT-IOT-WALL	10-hose Cellular IOT Terminal - Keypad Entry, FOB, CANceiver and TAG use enabled. 5H Truck Terminal - Keypad Entry, FOB. FCT-IOT-WALL **EXCLUDED:** Any non-standard cellular antenna configuration caused by a local environmental condition outside Contractor's control. Pricing is based on before Tax. County will determine specific FCT Part # quantity breakdown before project kickoff.	1	$8,313.00	$8,313.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
LABOR	Software Implementation / Account Activation - 24 Months Live Data Included	1	$1,999.20	$1,999.20
MISC	Annual Fee for Live Data in months 25 - 60 (5 years maximum)	0	$1,999.20	$0.00
MISC	Flat File Export and API	1	$1,999.20	No Charge
MISC	Annual Fee for Data Archive beyond 24 months (up to 60) - Includes four (4) retrieval requests per year.	0	$3,000.00	$0.00
LABORPM	Project Management (per hour)	95	$160.00	$15,200.00
	Shipping and Handling	42	$495.00	$20,790.00
			Subtotal	**$454,602.20**
Part #	**Optional Hardware Support Training**	**Qty**	**Price**	**Extended**
KIT-SVC-ASBC	County Specific Crash Kit - Retail value $14,000 (Parts Managed by the RMA Process) - **INCLUDED WITH PAID FCT HARDWARE CERTIFICATION SUPPORT TRAINING**	1	$14,000.00	No Charge
	The fully automated interface between FuelView and FasterWeb using an existing flat file and API (County will accept the use of the existing Flat File interface to start; however, the interface will be updated to use the available APIs within 1 year from the contract effective date.)	1	No Charge	No Charge

TRAINING	County Specific Hardware Support Certification Training (1- 2 days on location, or completed during the initial system install)- Certification Training by Contractor's Operations team member- Up to four (4) County employees	1	$6,999.00	$6,999.00
SaaS Training	Training for new SaaS model FuelView application	1	No Charge	No Charge
TRAINING	Required Mandatory Annual Re-Certification for certificate holders - By Web, (on location for additional cost) - New or additional employees certified at $750.00 each during the re-certification process.	0	$3,500.00	$0.00
	Sales Tax	1	$24,475.51	$24,475.51
			Total	**$486,076.71**

San Bernardino County - SaaS with Hardware & Labor (Year 2)				
Turn-Key Fuel Management System - Hosted by SimplyFuel Solutions LLC. (E.J. Ward, Inc. Company)				
Includes - Tank Level Monitoring and Compliance Reporting Module				
Tank Level Monitoring and Compliance Reporting Module - (Requires connection to an existing compatible TLS) - TLS must have or accept TCP/IP network card (additional cost) without firmware upgrades or additional charges will apply - County is responsible for CAT5/6 cable networking from TLS to FCT or adding recommended Cellular Hardware unless quoted separately				
Part #	**Description - Cloud Hosted Fuel View IOT Software Application**	**Qty**	**Price / Month**	**Extended**
IOT-SaaS	Hosting Fuel View IOT - Includes Cellular Option - 24x7x365 Call Center Support (63) FCT-IOT- Cell Modem - Keypad Entry, FOB, CANceiver and TAG use enabled. Software User and Administrator Training - Online (2hr Session)	Year 2	$13,482.00	$161,784.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
FCT-IOT-5H & FCT-IOT-WALL	5-hose Cellular IOT Terminal - Keypad Entry, FOB, CANceiver and TAG use enabled. 5H Truck Terminal - Keypad Entry, FOB. FCT-IOT-WALL EXCLUDED**:** Any non-standard cellular antenna configuration caused by a local environmental condition outside Contractor's control. Pricing is based on before Tax. County will determine specific FCT Part # quantity breakdown before project kickoff.	21	$7,500.00	$157,500.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
LABORPM	Project Management (per hour)	50	$160.00	$8,000.00
	Shipping and Handling	21	$495.00	$10,395.00
			Subtotal	$337,679.00
Part #	**Required Training**	**Qty**	**Price**	**Extended**
TRAINING	Required Mandatory Annual Re-Certification for certificate holders - By Web, (on location for additional cost) - New or additional employees certified at $750.00 each during the re-certification process.	1	$3,500.00	$3,500.00
	Sales Tax	1	$12,206.25	$12,206.25
			Total	**$353,385.25**

San Bernardino County - SaaS with Hardware & Labor (Year 3)				
Turn-Key Fuel Management System - Hosted by SimplyFuel Solutions LLC. (E.J. Ward, Inc. Company)				
Includes - Tank Level Monitoring and Compliance Reporting Module				
Tank Level Monitoring and Compliance Reporting Module - (Requires connection to an existing compatible TLS) - TLS must have or accept TCP/IP network card (additional cost) without firmware upgrades or additional charges will apply - County is responsible for CAT5/6 cable networking from TLS to FCT or adding recommended Cellular Hardware unless quoted separately				
Part #	**Description - Cloud Hosted Fuel View IOT Software Application**	**Qty**	**Price / Month**	**Extended**
IOT-SaaS	Hosting Fuel View IOT - Includes Cellular Option - 24x7x365 Call Center Support (67) FCT-IOT- Cell Modem - Keypad Entry, FOB, CANceiver and TAG use enabled. Software User and Administrator Training - Online (2hr Session)	Year 3	$14,740.00	$176,880.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
FCT-IOT-5H & FCT-IOT-WALL	5-hose Cellular IOT Terminal - Keypad Entry, FOB, CANceiver and TAG use enabled. 5H Truck Terminal - Keypad Entry, FOB. FCT-IOT-WALL EXCLUDED**:** Any non-standard cellular antenna configuration caused by a local environmental condition outside Contractor's control. Pricing is based on before Tax. County will determine specific FCT Part # quantity breakdown before project kickoff.	4	$7,500.00	$30,000.00
Part #	**Model/Description**	**Qty**	**Price**	**Extended**
LABORPM	Project Management (per hour)	12	$160.00	$1,920.00
	Shipping and Handling	4	$495.00	$1,980.00
			Subtotal	$210,780.00
Part #	**Required Training**	**Qty**	**Price**	**Extended**
TRAINING	Required Mandatory Annual Re-Certification for certificate holders - By Web, (on location for additional cost) - New or additional employees certified at $750.00 each during the re-certification process.	1	$3,500.00	$3,500.00
Part #	**Other service**			
Data Retention after 24 rolling months	The cost of data retention after the 24 months is $3,000 with four retrievals per year			$3,000.00
	Sales Tax	1	$2,325.00	$2,325.00
			Total	**$219,605.00**

NOTES:

1. The proposal is for a 3-year contract from San Bernardino County Board of Supervisors approved date

2. Annual agreement required on all SaaS Implementations; longer fixed fee terms available upon request

3. Includes Software Version Updates while on a SaaS Agreement

4. Includes 24x7x365 Call Center Support and lifetime IOT FCT parts replacement while on the SaaS platform (**The County staff will be able to install the parts utilizing the Crash Kit with no additional charge**)

5. A Maximum of 24 rolling months of live data will be available.

6. Warranty DOES NOT include Hardware or Software that is declared "END OF LIFE" (**minimum of 10 years**) or previously declared unsupportable

7. Software use is governed by the Contractor's June 2024 End User License Agreement (EULA) for the 3-year contract period.

ATTACHMENT C – End User License

END USER LICENSE

THIS END USER LICENSE ("License") is between E.J. Ward, Inc., its subsidiary SimplyFuel Solutions LLC ("Licensor" or "Contractor"), both a Nevada corporation with its principal place of business located at 12621 Silicon Drive, Suite 113, San Antonio, Texas, 78249, and "Licensee" and shall be effective as of the date of initial installation or Licensee uses the Software, Firmware or Hardware for its intended purpose whichever comes first (the "Effective Date").

RECITALS

WHEREAS Licensor owns all rights, title and interest to the Hardware, Firmware and Proprietary Software (as defined herein); and

WHEREAS Licensor desires to convey, and Licensee desires to receive, certain limited rights in the use of the Hardware, Firmware and Software pursuant to the terms and conditions contained in this License.

NOW THEREFORE, in consideration of the mutual promises set forth below in this License and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

1. **Definitions**

   "Software" means Computer Applications consisting of; but not limited to, mathematical, machine or compiled codes, executable programs, routines, embedded software, firmware, updates, modifications, revisions, other functions and documentation that control, analyze, report on the functions and operation of Licensor Products, as well as any archival copies of such computer programs and documentation permitted by this End User License.

   A. "Computer Applications" means Software designed to perform a group of coordinated functions, tasks, or activities for the benefit of the user.

   B. "Products" means commercially distributed goods that are an idea, method, information, object or service created as a result of a process and serves a need or satisfies a want. It has a combination of tangible and intangible attributes, benefits, features, functions and uses that Licensor desires to convey, and Licensee desires to receive, certain limited rights in the use of pursuant to the terms and conditions contained in this License.

   C. "Hardware" means a physically tangible electrical or electro-mechanical system or sub-system and associated documentation such as but not limited to Fuel Control Terminals, CANceiver OBDII Vehicle Telematics Devices, Passive GPS Antennas, Hose Modules, EM-Tags, EV Charger retrofit modules.

   D. "Use" means: (i) executing or loading the Software or Applications onto a computer, into RAM or other primary memory; (ii) engaging the Software or Applications for its intended purposes; or (iii)copying the Software and Applications for archival or emergency restart purposes.

   E. "Initial Installation" as described in Section 5 (A) and (B)

   F. "Integrated Firmware" refers to any software or programmable code that is embedded or integrated in the Hardware and enables the functionality of the Hardware or Computer Applications.

G. "End User" means a customer that licenses one or more Integrated Products from Licensor in accordance with the EULA for its own use and not for transfer or resale of any kind.

H. "Agent" or "Authorized Sub-Contractor" is defined as any entity to which the user has subcontracted for performance of or delegated any of its responsibilities covered under this Agreement, including third party service providers who are under contract with the user to provide services including any affiliate government agency.

2. Grant of License

Licensor grants to Licensee conditioned on Licensee timely payment of fees and compliance with all other terms and conditions of this Agreement, a limited, non-exclusive, non-transferable, non-sublicensable, right to install and use the Software. Licensee may make one (1) archival copy of the Software Application per licensed instance in non-printed, machine-readable form, in whole or in part, provided that such copy is for Licensee's own use only for archival, emergency restart or development testing and staging environment(s). Licensee will make no other copies of the Software except as authorized herein. All rights, title and interest to the Software will remain vested in Licensor, and nothing in this License will give or convey any right, title or interest therein to Licensee except as a licensee under the terms of this License.

3. Limitations on Use

A. Licensee agrees that it will not use the Software, Firmware or Hardware for any purpose beyond the scope of this license. It shall not market, distribute, license, or otherwise make available in any form or on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of Licensor, or that violates any applicable law. This license is for its own business, and not directly or indirectly for the use or benefit of anyone other than Licensee, and only pursuant to the scope of the grant of the License set forth herein.

B. Licensee agrees that it shall not, directly or indirectly:
   (i)   use (including make any copies of) the Software beyond the scope of this License;

   (ii) permit any other Person (other than its own Users, Agents or Authorized Sub-Contractors) to use the Software;

   (iii) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;

   (iv) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

   (v)   remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property rights notices from the Software, including any copy thereof;

        a. except as contemplated by this License, copy the Software, in whole or in part;
        b. use the Software or Documentation in the operation of a service bureau

4. Limitations on Transfer

This License may not be conveyed in any way without the prior written consent of Licensor, which Licensor's consent may not be unjustly withheld without cause. Notwithstanding the preceding sentence, Licensee shall be permitted, upon notice to Licensor, to assign this License in connection with any merger, consolidation, sale of stock, or re-organization of substantially all the business or assets or equity securities, or otherwise of Licensee. Any purported sale, assignment, transfer, conveyance, license or sublicense without such consent will be null and void ab initio and will automatically terminate this License.

5. Enterprise Installation

Licensor hereby permits Licensee to install the following onto the appropriate environment, which Licensee shall perform at any time after the Effective Date:

    A. A single software installation for the production environment

    B. As applicable Licensee hereby permits Licensor to install the following with the assistance of Licensor after the Effective Date:
        (i) Two (2) additional licensed instances for use in:
           a. Staging
           b. or pre-production testing environment c.

Sections 5 (A) and (B) shall be collectively hereafter be referred to as the "Initial Enterprise Installation".

6. Term and Termination

    A. The License commences as of the Initial Installation or Licensee uses the Software for its intended purpose whichever comes first and will remain in force until either party terminates this License pursuant to the terms herein. Upon proper termination of this License, Licensee will: (i) return all copies of the Software to Licensor without demand or notice; or (ii) permanently delete or destroy all copies of the Software in its possession and submit to Licensor a sworn affidavit signed by Licensee attesting to such destruction.

    B. Except as set forth in the provisions of this License that provide for automatic termination in the event of breach of confidentiality or unauthorized use or transfer, if Licensee breaches any other provision of this License, Licensor may terminate this License, provided, however, that Licensor has given Licensee at least fourteen (14) business days written notice of and the opportunity to cure the breach. Termination for breach shall not alter or affect Licensor's right to exercise any other remedies for breach.

7. Confidentiality

Except where required by applicable law and applicable federal and local public records laws, Licensee agrees to observe complete confidentiality with respect to the Software, Hardware defined herein and will not copy, reproduce, publicize or otherwise disseminate it to third parties. Licensee shall not make Software and Hardware available in any form to any person other than its employees, or whose job performance requires access and who are under obligations of confidentiality. Licensee shall take appropriate action to protect the confidentiality of licensed products and ensure that any person permitted access does not disclose or use them except as permitted by this agreement. Licensee shall give immediate written notice of any unauthorized disclosure or use of the licensed products as soon as Licensee learns or becomes aware of such unauthorized disclosure or use. Any breach of confidentiality by Licensee will automatically terminate this License. Licensee agrees that Licensor's remedies at law for breach of confidentiality are inadequate and that Licensor will be entitled to equitable relief, including without limitation, injunctive relief, specific performance and/or other remedies to the extent permissible by law.

8. Licensee's Obligation to Notify of Infringement

Licensee will immediately notify Licensor of any infringement or attempted infringement of Licensor's rights in the Software or Hardware of which it becomes aware. Licensee will affirmatively cooperate with Licensor in any legal or equitable action that Licensor may undertake to protect any of its rights in connection with the Software or Hardware defined in this License.

9. Warranty of Title

Licensor warrants that it is the lawful owner of the Software, Firmware and Hardware and that it has the complete authority to grant the License specified herein.

10. Software Warranty and Disclaimer

Licensor warrants that the Software has been developed in a workman like manner, and in conformity with generally prevailing industry standards. Licensee must report any material deficiencies in the Software to Licensor in writing within thirty (30) days of initial installation of the Software. Licensee's exclusive remedy for the breach of the above warranties will be the correction of the material deficiency within a commercially reasonable time. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

11. Limitation of Liability, Indemnification

EXCEPT AS OTHERWISE PROVIDED BY ANY PORTION OF THE AGREEMENT NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCURRED OR SUFFERED BY THE OTHER ARISING AS A RESULT OF OR RELATED TO THE USE OF THE SOFTWARE OR HARDWARE, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE OTHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

12. Maintenance

No additional software maintenance is included under the terms of this License unless the Licensee has purchased the Software, Firmware and Hardware as a service (SaaS). However, Licensor is responsible for any patches or repairs to the current version of the Software during the initial one (1) year Warranty commencing on the initial installation date and while the user has a paid SaaS subscription. Licensor's obligations with respect to maintenance and support after initial warranty period, including updates or upgrades, if any, will be set forth in a separate written agreement between the parties for all products not provided as a service, bundled or otherwise.

13. Relation of Parties

Nothing in this License will create or imply an agency relationship between Licensor and Licensee, nor will this License be deemed to constitute a joint venture or partnership between the parties.

14. Severability

If any term of this License is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this License will remain in full force and effect.

15. Force Majeure

Neither party will be held responsible for any delay or failure in the performance of any part of this License to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

16. No Waiver

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights. This License may be modified only by a written instrument executed by authorized representatives of the parties hereto.

17. Venue

This License shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the courts within the State of Texas, county of Bexar County, Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. If any term or provision of this License is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Notice

All notices and correspondence to the parties must be delivered by hand, emailed, sent by registered or certified mail (RRR), or by Federal Express, Express Mail or other reliable overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be considered to have occurred upon receipt, if hand- delivered or emailed; five (5) business days from the date of mailing, if mailed; or the next business day after transmittal by Federal Express, Express Mail or other reliable overnight delivery service that provides a receipt to the sender. All notices and correspondences shall be delivered to the respective addresses below, or to any other address as a party may notify the other party in writing from time to time:

If to E.J. Ward, Inc.:
Robert E. Kettyle
Chief Operating Officer

E.J. Ward, Inc.
12621 Silicon Drive, Suite 113,
San Antonio, Texas, 78249
rkettyle@ejward.com

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors.   If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

(1) One business entity has a controlling ownership interest in the other business entity;
(2) there is shared management and control between the entities; or
(3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: <u>E.J. Ward, Inc.</u>

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

   Yes ☐   If yes, skip Question Nos. 3-4 and go to Question No. 5 No X☐

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, <u>if</u> the individual actively supports the matter <u>and</u> has a financial interest in the decision: _Not Applicable_____

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):
   Markay Ward
   _____

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
Not Applicable	

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
Not Applicable		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter <u>and</u> (2) has a financial interest in the decision <u>and</u> (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
<u>Not Applicable</u>		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board <u>and</u> (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
Not Applicable	

9. Was a campaign contribution, of more than $250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

   No   X☐   If **no**, please skip Question No. 10.

Yes ☐   If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: Not Applicable

Name of Contributor: Not Applicable

Date(s) of Contribution(s): Not Applicable

Amount(s): Not Applicable

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.