

CONTRACT CITY OF FRESNO,
CALIFORNIA
HARDWARE FURNISH & INSTALL

THIS CONTRACT is made and entered into by and between CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "City"), and E.J. Ward, Inc., a Nevada corporation (hereinafter referred to as "Contractor") as follows:

1. Contract Documents. This Contract, along with its Exhibits, copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said documents, including Performance and Payment Bonds, if required, and the City's Standard Specifications ("Specifications"), are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. Scope of Work. Contractor shall furnish and install to the satisfaction of CITY the work described in **Exhibit A**, including all work incidental to, or necessary to perform, such work even though not specifically described in **Exhibit A**.

3. Term of Agreement and Time for Performance. This Contract shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through acceptable performance of all work, as determined by the City, subject to any earlier termination in accordance with this Agreement. The services of Contractor as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed in accordance with any performance schedule set forth in **Exhibit A**.

4. Compensation.

(a) Contractor's sole compensation for satisfactory performance of all work required or rendered pursuant to this Agreement shall be a total fee not to exceed Two Hundred Seventy Thousand Dollars (\$270,000), paid as set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Contract to increase or decrease the scope of services or provide for the rendition of services not required by this Contract, which modification shall include an adjustment to Contractor's compensation. Any change in the scope of services must be made by written amendment to the Contract signed by an authorized representative for each party. Contractor shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

5. Termination, Remedies and Force Majeure.

(a) This Contract shall terminate without any liability of CITY to Contractor upon the earlier of: (i) Contractor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Contractor; (ii) 7 calendar days prior written notice with or without cause by CITY to Contractor; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Contract, or insufficient funding for the Project; or (iv) expiration of this Contract.

(b) Immediately upon any termination or expiration of this Contract, Contractor shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of Contractor that are owned by CITY. Subject to the terms of this Contract, Contractor shall be paid compensation for work satisfactorily performed prior to the effective date of termination. Contractor shall not be paid for any work or work performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of Contractor to satisfactorily perform in accordance with the terms of this Contract, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Contract constitute a waiver by CITY of any breach of this Contract which may then exist on the part of Contractor, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Contract by Contractor, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Contract; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Contract. If it is determined that CITY improperly terminated this Contract for default, such termination shall be deemed a termination for convenience.

(e) Contractor shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event Contractor fails to comply with any terms or conditions of this Contract.

(f) Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Contractor shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

6. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by Contractor pursuant to this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Administrator. During the term of this Contract, and thereafter, Contractor shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Contract shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by Contractor pursuant to this Contract are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Contract. Contractor shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Contract.

7. Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

8. Insurance.

(a) Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Contract, with an insurance company(ies) either (i) admitted by the

California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all work and work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Contract. No action taken by CITY pursuant to this section shall in any way relieve Contractor of its responsibilities under this Contract. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Contractor and CITY prior to the commencement of any work by the subcontractor. Contractor and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Contract, Contractor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**.

During the term of this Contract, Contractor shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by Contractor in such statement.

(b) Contractor shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, Contractor shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Contractor and the respective subcontractor(s) are in full compliance with all laws and regulations. Contractor shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Contractor shall immediately notify CITY of these facts in writing.

(c) In performing the work or work to be provided hereunder, Contractor shall not employ or retain the work of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Contractor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Contract or any rights/benefits hereunder.

(e) Neither Contractor, nor any of Contractor's subcontractors performing any work on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any work pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Contractor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Contractor shall remain responsible for complying with Section 9(b), above.

(f) If Contractor should subcontract all or any portion of the work to be performed or work to be provided under this Contract, Contractor shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Contract.

10. Recycling Program. In the event Contractor maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Contractor at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and

facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Contract, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of Contractor's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Contract and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Contractor pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Contract.

(c) Prior to execution of this Contract by CITY, Contractor shall have provided evidence to CITY that Contractor is licensed to perform the work called for by this Contract (or that no license is required). If Contractor should subcontract all or any portion of the work or work to be performed under this Contract, Contractor shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the work called for by this Contract (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, Contractor shall not employ discriminatory practices in the provision of work, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Contract, Contractor agrees as follows:

(a) Contractor will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination

under any program or activity made possible by or resulting from this Contract.

(b) Contractor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Contractor shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Contractor's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the work provided for herein, Contractor is acting solely as an independent contractor. Neither Contractor, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which Contractor shall perform its work and functions. However, CITY shall retain the right to administer this Contract so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof.

(b) This Contract does not evidence a partnership or joint venture between Contractor and CITY. Contractor shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Contract, Contractor shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and

benefits available to CITY employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Contract, Contractor shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of Contractor'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Contract, Contractor may be providing work to others unrelated to CITY or to this Contract.

14. Notices. Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Contract or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Contract is personal to Contractor and there shall be no assignment by Contractor of its rights or obligations under this Contract without the prior written approval of the City Manager or his/her designee. Any attempted assignment by Contractor, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) Contractor hereby agrees not to assign the payment of any monies due Contractor from CITY under the terms of this Contract to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due Contractor directly to Contractor.

17. Compliance With Law. In providing the work required under this Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Contract.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract

may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Contract and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.

21. Severability. The provisions of this Contract are severable. The invalidity, or unenforceability of any one provision in this Contract shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Contract, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Contract is, by the reference, incorporated into and made a part of this Contract.

25. Precedence of Documents. In the event of any conflict between the body of this Contract and any Exhibit or Attachment hereto, the terms and conditions of the body of this Contract shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Contract, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties.

28. Extent of Contract. Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both CITY and

Contractor.

29. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract and will make my subcontractors aware of this provision.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Bruce Rudd
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Amanda B Freeman 6/2/17
Amanda B Freeman
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

EJ Ward, Inc.,
a Nevada corporation

By: Mark Ward

Name: Mark Ward

Title: President
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: Thomas Ward

Name: Thomas Ward

Title: Secretary
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

REVIEWED BY:

Mark Ward

Addresses:

CITY:
City of Fresno
Attention: Duane Myers
Fleet Manager
2101 G St., Bldg. F
Fresno, CA 93706
Phone: (559) 621-1186
FAX: (559) 485-2167

CONSULTANT:

EJ Ward, Inc.
Attention: Mike Wade
Director of Business Development
8801 Tradeway
San Antonio, TX 78217
Phone: 210-824-7383 or 800-580-9273
FAX: 210-824-2031

Attachments:

1. Exhibit A – Project Scope/Statement of Work and Pricing
2. Exhibit B – Insurance Requirements
3. Exhibit C – Disclosure of Conflict of Interest

EXHIBIT A

**E.J. Ward
Project Scope/Statement of Work
and Pricing**

INTRODUCTION/BACKGROUND

This statement of work has been put together to detail the installation of E.J. Ward (Ward) Fuel Management System Upgrade to the City of Fresno (City) for fuel control terminals, car wash terminal, and CANceiver W4's. The City already has the Ward 4 upgraded software. As a result of the software upgrade investment already made, the City will be able to utilize the complete W4 platform.

SCOPE OF WORK

The City will be installing the FCT-W4 version of Fuel Control Terminals. The FCT-W4 terminals come with 7" Color Screen, full QWERTY Keypad, HID Reader, 2 GB RAM/8 GB Flash Drive, UPS, Stainless Steel Enclosure Construction, CANceiver Ready and with WiFi - 802.11 /B/G & temperature rated switch. Ward will also provide a car wash terminal.

The City will be able to install the CANceiver W4. The CANceiver W4 does not require running a fuel ring antenna from the OBDII connected CANceiver to the fuel inlet as the previous generation installed W3 vehicle devices did. The new platform can utilize the W4 Ward EM-Tag as a replacement for the old ring antenna allowing for a more simple installation reducing time and effort by 2/3rds of the current installation time. The "Tags" can also be used to authenticate a fueling transaction for items like off road equipment and other assets like tractors, auxiliary fuel tanks etc.

PERIOD OF PERFORMANCE

The project implementation shall begin within 35 days of receipt of purchase order and be completed within four months of receipt of purchase order.

PLACE OF PERFORMANCE

Work will be performed at all City fueling locations and other designated buildings by EJ Ward certified technicians. Ward will assign a project manager to this project for the implementation.

WARRANTY

Hardware Warranty

Ward provides a one year limited product hardware warranty to purchasers of its products. Ward warrants that the products will be free from defects in materials and workmanship that result in a material deviation from the applicable published Ward technical specifications.

- Hardware Failure - Upon a hardware failure, Ward will repair or replace such products within three working days of its receipt of the failed hardware, if in advance of its receipt, such hardware was evaluated by a Ward technician, or Ward technical support person via telephone.
- Customer shall obtain a RMA number from Ward, the product hardware shall be shipped pre-paid to Ward, and the RMA number must be clearly indicated on the



shipping box and paperwork.

Hardware Repair Service

In the event of a hardware failure past the first 30 days, but within the first year of ownership from the Warranty start date, the unit will be either repaired, or at Ward's option, replaced with a new or reconditioned unit of equal or greater value.

- Customer will receive an RMA number from Ward, the product hardware must be shipped pre-paid to Ward, and the RMA number must be clearly indicated on the shipping box and paperwork.
- A repaired or replacement unit will be shipped at Ward's expense within five business days after receipt of the failed unit.

PRICING ON FOLLOWING PAGE



PRICING

Ward Fuel View Software				
<i>Note: Software requirements and customizations may affect final price.</i>				
DATABASE VERSION		Qty	Price	Extended
Part #	Product Description			
CASOFT - W4-E	Fuel View 4 - MS SQL Version - Unlimited use license for deployment in development and production environments - Requires customer installed MS SQL 2014 database and server operating system version 2012 - Standard: HID Module, OBD II Fleet Data Module, Ward Comm, Real-Time Connect (Requires Ward 4 FCT), Standard Export/Interface, Tank Monitoring Reporting Module.	1	\$24,180.00	Already Purchased

Software Implementation, Training & Project Management		Hour	Price	Extended
Part #	Product Description			
	Software Interface's and Implementation Includes 1 Year of Data Conversion before Archive from Existing Platform - Conversion of Existing Customized Reports and Interfaces	1	\$5,000.00	Already Purchased
	Software Training (Webinar) - Two (2) 4hr classes	0	\$1,800.00	\$0.00
<i>- Note: Final requirements and customizations may affect price.</i>				

Vehicle Products		Qty	Price	Extended
Part #	Model/Description			
CANceiver Kits	CANceiver Kit Includes - Standard: OBD Connector cable, 802.11 WiFi, 8 Digital I/O, 1 Analog I/O, Over-the-Air Reprogramming enabled, 8 MB Memory - Options: Passive GPS Antenna Support			
XIT-CVR-W4-WIFI	Kit CANceiver w/WiFi - LD	145	\$260.00	\$37,700.00
XIT-CVR-W4-WIFI	Kit CANceiver w/WiFi - HD	50	\$275.00	\$13,750.00
XIT-EM-TAG	Vehicle and Equipment - EM-Tag (Excludes Gas Cans & Miscellaneous Equipment)	200	\$45.00	\$9,000.00
Programmers				
XIT-JETTSCANW4	CANceiver W4 WiFi Programmer Standard Kit - Hardware	5	\$1,964.00	\$9,820.00
	Shipping and Handling	1	\$100.00	\$100.00
				\$70,370.00

Fuel Site Pricing

TERMINAL EQUIPMENT - <i>Note: Requested Specialized Equipment for the FCT's may affect final price.</i>				
Part #	Product Description - Standard: 7" Color Screen, QWERTY Keypad, HID Reader, Magstripe Reader, 2 GB RAM/8 GB Flash Drive, UPS, Stainless Steel Construction, VIT/CANceiver Ready, Client or AP WiFi - 802.11 B/G, Real-Time Connect	Qty	Price	Extended
FCT-W4-01-05H	Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 1 to 5 Hose - Hose Count: TBD	10	\$7,556.00	\$75,560.00
FCT-W4-06-09H	Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 6 to 9 Hose - Hose Count: TBD	3	\$8,060.00	\$24,180.00
FCT-W4-Wall	Ward Fuel Control Terminal (FCT-W4) - Car Wash	1	\$7,200.00	\$7,200.00
	Shipping and Handling	14	\$150.00	\$2,100.00
				\$109,040.00

Hardware Installation		Hr	Price	Extended
Part #	Product Description			
	Install Ward FCT (Pull and Replace - Existing FCT's) - Requires use of existing mechanical and electrical wiring, piping and other related connections and they must meet existing local, state, and national codes. - If replacement or additional materials such as conduit, EYS seal offs, AC power and low voltage wire, solenoids, switches or pulsers need replacement to be compliant; or a licensed electrician, permits or drawings are required, additional charges will apply. - Customer is responsible for Electrical, Network and CAT5 wiring to FCT and Access Point unless noted in quote. - Includes technician travel costs Includes Ward Technician System Startup and Testing with FCT use Training			
LABORFIELDTECH	Field Technician	220	\$181.35	\$39,897.00
LABORPM	Project Manager	86	\$161.20	\$13,863.20
				\$53,760.20

Peripheral Products and Training		Qty	Price	Extended
Part #	Model/Description			
Wireless Communications				
COMM RTR 4121	Access Point 4121 or equal 802.11 B/G IP65 Wi-Fi Kit (includes standard antenna and power over Ethernet POE). Customer responsible for AP network connection/drop and power.	11	\$1,813.00	\$19,943.00
RF Hose Modules				
KIT-HOSE-MOD-2.4S	Hose Module Kit - (one (1) per hose with CANCELver use)	41	\$302.00	\$12,382.00
San Antonio Training				
	Installation Training Classroom - 2 Day (San Antonio)	1	No Charge	
Tank Monitoring Interface				
VR-330020-425	TLS Interface - TLS must accept interface without firmware upgrade or additional charges will apply.	0	\$1,511.00	\$0.00
	Shipping and Handling	0	\$300.00	\$0.00
				\$32,325.00
Total Site Pricing				\$195,125.20
TOTAL PROJECT PRICING				\$265,495.20
Total with GPS for first year				\$269,769.20

Exhibit B

INSURANCE REQUIREMENTS **CONTRACTOR Service Agreement between City of Fresno ("CITY")** **and [CONTRACTOR Name] ("CONTRACTOR")** [Project Title] PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Technology Liability (Errors and Omissions) insurance appropriate to CONTRACTOR'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by CONTRACTOR in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not 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, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR, or any party the CONTRACTOR subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials,

employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it. CONTRACTOR shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONTRACTOR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Technology Liability insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONTRACTOR, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY hereunder shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONTRACTOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONTRACTOR, and CITY, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

CONTRACTOR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Exhibit C
DISCLOSURE OF CONFLICT OF INTEREST

[Project Title]
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Signature _____

Date _____

(name)

(company)

(address)

(city state zip)

Markay Ward

10-7-17

Markay Ward

E.J. Ward, Inc.

8801 Tradeway

San Antonio TX 78217
