



**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201
(703) 228-3410**

AGREEMENT NO. 22-DES-SLA-515

THIS AGREEMENT is made, on 4/18/2022, between E.J. Ward, Inc., 8620 N. New Braunfels Ave Suite 200, San Antonio, Texas, 78217 ("Contractor"), a Texas corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – SaaS Warranty and Support Agreement
- Exhibit B – Scope of Work
- Exhibit C – Contract Pricing

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit B), the primary purpose of the Work is hardware and software support services for the E.J. Fuel-Management Terminals. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Work will commence on October 1, 2021 and must be completed no later than September 30, 2022 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a bilateral Notice of Renewal, authorize continuation of the Agreement under the same contract prices for not more than two (2) additional 12-month periods, from October 1, 2022, to September 30, 2024 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit C for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

This is a fixed-price contract. The Contractor agrees that the total payment for the Work will not exceed \$39,017.91, regardless of the number of hours spent in the performance of the Work.

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit B unless those additional goods or services are covered by a fully executed amendment to this Contract.

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

7. REIMBURSABLE TRAVEL-RELATED EXPENSES

The County will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget. For employees located outside this area, the County will reimburse for pre-approved travel-related expenses, documented with receipts, as follows:

Meals: The County will reimburse at the U.S. General Services Administration's ("GSA") per diem rates for the destination, current for the date of travel, with the first and last days of travel counted at 75% of the per diem rate.

Lodging: The County will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the Work is performed, up to the GSA's daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be

reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the Work, including a spouse, the County will reimburse for only the cost of a single room.

The applicable GSA per diem rates can be obtained at <http://www.gsa.gov/portal/content/104877>.

Transportation:

General

Reservations must be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. The County will reimburse for the business use of personal or company vehicles, if allowed, at the GSA's mileage rates current at the time of travel. The Contractor's request for reimbursement may not include any personal use of the vehicle.

The County may approve reimbursement for rental of vehicles or use of taxicabs if the Contractor can demonstrate that to be the most economical option. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance if the Contractor's or the employee's existing insurance coverage provides such protection.

Air Travel

The County will reimburse for air travel at the lowest available fare, typically economy. Tickets must be purchased at least seven days in advance, unless otherwise approved by the County.

Time limit: The County will not honor requests for travel reimbursement that are submitted more than 60 days after completion of the travel.

Non-reimbursable Expenses: The County will never reimburse for the following expenses:

1. Alcoholic beverages
2. Personal phone calls
3. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (e.g. laundry, valet, haircuts)
5. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
6. Auto repairs, maintenance and insurance costs for personal vehicles

8. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

12. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

16. SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's

sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

17. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

18. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

19. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 30 days ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 60 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. This amount will not exceed the amount previously paid during the preceding twelve months of the contract. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 60 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

20. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

23. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

24. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract, provided that the affected party gives notice to the other party as soon as practicable after the force majeure event, including reasonable detail and the expected duration of the event's effect on the party.

25. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

26. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

27. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

28. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

29. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County. Such assignment shall not be unreasonably withheld.

30. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

31. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

32. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

33. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

34. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

35. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

36. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

37. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

38. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

39. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

40. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

41. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

42. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Leslie Patterson, Customer Success Manager
E.J. Ward, Inc.
8620 N. New Braunfels Avenue, Suite 200N
San Antonio, Texas 78217
Email: Lpatterson@ejward.com
Phone: 210-824-7383

TO THE COUNTY:

Ryan Jones, Project Officer
2100 Clarendon Blvd. Suite 900
Arlington, VA 22201
Email: rtjones@arlingtonva.us,
Phone: 571-238-2822

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

43. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

44. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

45. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Cyber insurance - \$2,000,000 per occurrence
- e. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be listed as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- h. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor

can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

46. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

E.J. WARD, INC.

AUTHORIZED DocuSigned by:
SIGNATURE: Tomeka D. Price
5950D4E0ACC0472...

AUTHORIZED DocuSigned by:
SIGNATURE: Leslie Patterson
EA4532FD8309491...

NAME: TOMEKA D. PRICE

NAME: Leslie Patterson

TITLE: PROCUREMENT OFFICER

TITLE: Inside Sales & Account Manager

DATE: 4/18/2022

DATE: 4/14/2022

EXHIBIT A
SAAS WARRANTY AND SUPPORT AGREEMENT

The Agreement detailed herein defines the entire service provided for continuous, trouble-free operation of the Hardware and Software provided by either E.J. Ward, Inc. or SimplyFuel Solutions LLC when sold as part of, or included with its cloud hosted Software as a Service.

“End User(s)” must contact “EJW” or “SFS” directly for all Support and On-site repair requests. If “End User(s)” contacts a third-party service provider directly, “End User(s)” shall be responsible for payment directly to the third party for all parts and services performed by the third-party provider, even if that provider is a local authorized or certified “EJW”, “SFS” service and repair provider.

Definitions:

- “CUSTOMER” for this agreement shall also be known as the “End User(s)”.
- "END USER" means a third party sublicensed by SIMPLYFUEL SOLUTIONS, E.J. WARD INC, RESELLER or DISTRIBUTOR to use a PRODUCT(S) for the END USER's customary internal business purposes, and not for redistribution.
- E.J. WARD INC. for this agreement shall be known as the “Seller” or “EJW”.
- SIMPLYFUEL SOUTIONS LLC for this agreement shall be known as the “Seller” or “SFS”.
- DISTRIBUTOR" means a third party appointed by either EJW or SFS to distribute PRODUCT(S) directly to an END USERS, subject to the terms and conditions imposed by their agreement.
- "RESELLER" means a third party appointed by either EJW or SFS to distribute PRODUCT(S) directly to END USERS, subject to the terms and conditions imposed by their Agreement.
- SERVICE RESPONSE vs SERVICE REPAIR means the Service Response requirements as defined in this agreement. The actual time to Service Repair the equipment, however, cannot be determined or controlled by the response time period. Each service call will require analysis to determine the failure, actual repair, and testing to confirm the unit is working within specifications. In special cases, the repair may require unique parts which require additional time to obtain.
- EXCHANGE POLICY Exchange and/or repair of components is normally two to three (2 - 3) days after the receipt of the items in need of repair or exchange or after the receipt of a request for shipment (RMA) if there is no exchange or repaired item is available. End User(s) exchange and shipment to EJW must comply with the published Return Material Authorization (RMA) policy and reference a ticket number assigned by “EJW” or “SFS” Technical Support.
- “EXCESSIVE” is defined for the purpose of this agreement as time spent beyond what is considered industry acceptable, proper, usual, or necessary to solve the problem solely based on the judgment of the “seller”.
- THIRD PARTY HARDWARE SUPPORT “EJW” or “SFS” agrees to provide “End User(s)” with limited technical support in troubleshooting problems associated with “Third-Party” or “Non-Covered” hardware or software. “EJW” may consult with representatives of other support organizations, if required.
 - If the time required to resolve third party issues is excessive, “End User(s)” will be contacted for authorization to proceed before charges are incurred.
- “NORMAL BUSINESS HOURS” for the purpose of this agreement are defined as Monday – Friday, 8 am - 5pm. CST, excluding Local, State, and Federal holidays.

- “PREFERRED RATES” for the purpose of this agreement are defined as those rates in the current published semi-annually EJW or SFS price book using Sourcewell (formally NJPA) or other similar cooperative group discounts.
- “ONSITE LABOR” for the purpose of this agreement is defined as a single technician’s time spent at the hardware’s location to troubleshoot, repair or replace defective components. It does not include travel time or mileage charges to and from the service call.
- “OVERTIME RATES” for the purpose of this agreement are defined as charges equal to 1.5 times the base rate (preferred or otherwise) for work performed after normal business hours, on weekends or holidays. For work performed after normal business hours, weekends, or holidays invoiced at a minimum of four (4) hours, not inclusive of travel or other direct costs.

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

Extent of Coverage:

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

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

1. This service will be provided 24 hours by 7 days per week
2. “On-site” technician service will be approved after consultation with call center staff member.
3. On-site Emergency service after hours is available per the On-site Overtime Service Rates.

“EJW” or “SFS” will return the service call within the following time requirements:

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

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

Recorded issues will be addressed in the following manner:

1. Priority 1 – Requires immediate attention as performance is unreasonably degraded (i.e., the system is completely down). Every effort will be made in providing an immediate resolution.
2. Priority 2 – Requires urgent action, as failures are extremely inconvenient (i.e., a site is down). Every effort will be made to provide a resolution as soon as possible.
3. Priority 3 – Requires routine action, as failure is only somewhat inconvenient, resolution will be provided as soon as possible.

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

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

Service Limitations:

“EJW” or “SFS” cannot be deemed non-compliant with Warranty or Support agreement requirements inclusive, but not limited to the following conditions:

1. **Non-access:** Situations where “EJW” technicians are denied access to the fuel terminal sites due to locked fences, blocked passages, or no one answering the phone number provided to the service call operator.
2. **Malicious Acts:** Inclusive of but not limited to; vandalism, theft, gun shots, rock throwing, fire, and anywhere damage is not attributable to normal, fair wear and tear of hardware components.
3. **Third Party Negligence:** Inclusive of but not limited to; third party contractors hired by the “End User(s)” to perform fuel site maintenance that would impair the performance of “EJW” or “SFS” equipment by disrupting electrical service or making non-authorized adjustments or modifications to the installed hardware or fuel control terminals.
4. **Procedural Changes:** Inclusive of but not limited to; the “End User(s)” changing the manner in which their employees interact with the fuel automation hardware. These changes may require systemic changes which are considered outside the normal software maintenance activities (i.e., operating systems “OS”, business rules or software customization requests).
5. **Non-“EJW” or “SFS” Equipment or Systems Failure:** Inclusive of but not limited to; “EJW” dispatching a technician and the cause of incident is found to be other than an agreement covered product. Standard published pricing will apply for authorized repairs from that point forward.

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

- | | |
|--|--|
| 1. Dispensers, Pumps and Pulsers | 11. Vehicles or Fleet Assets |
| 2. Tank Level Monitoring (TLS) | 12. CANceiver, VIT, Cables or GPS antenna |
| <i>Unless specifically added to the agreement</i> | 13. EM-Tag or Ring Antenna |
| 3. Electrical System | 14. All hardware, and software versions of the SFT, JettScan or device programmers |
| 4. Network (TCP/IP) | 15. Cards, Datakeys, Fobs, Encoders, Embossers, Printers |
| 5. Network Switch(s) | 16. Equipment Upgrades |
| 6. Wi-Fi Access Points | |
| 7. Customer’s local Servers (Virtual or Physical) | |
| 8. CAT 5 Cable, Routers, Bridges | |
| 9. Cabinet, Base, Lock Assembly | |
| 10. Hose Modules or Batteries | |

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

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

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

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

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

Items Not Covered: “End User(s)” supplied, or Third Party-supplied software, computer or network equipment not specifically contracted for under this agreement. Non-covered software and equipment include, but are not limited to:

1. Customer’s local Servers, Laptop and Desktop computer software and hardware
2. Support for Customer’s Browser or Local Application Software or Databases
3. Customer’s Local Network Management Hardware and Software
4. Third-Party Software, and or its Operating Systems and Relational Databases

It is “End User(s)’s” responsibility to update and maintain all patches and fixes for Third-Party software and databases. “End User(s)’s” responsibility includes, but is not limited to:

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

Third-Party Software Support:

“EJW” agrees to provide the “End User(s)” with limited technical support in resolving problems associated with “Third-Party” operating systems, database and network problems. “EJW” will consult with representatives of other support organizations as necessary.

1. If the time required to resolve external issues is excessive, “End User(s)” will be contacted for authorization to proceed prior to billing for this additional service.

Vehicle Equipment: “EJW” will provide phone support only for issues pertaining to Vehicle Mounted Equipment, Hose Module, EM-Tag, JettScan or SimplyFuel Tool.

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

Miscellaneous Additional Conditions: Future SaaS Support Agreement costs will be adjusted to reflect additional equipment as needed. **Based solely on the judgment of “EJW”, “EJW” or “SFS” shall retain the exclusive right to refuse adding or may remove equipment from this agreement based on the equipment’s serviceability.**

Shipping: The standard method of shipping is by ground for this agreement.

1. "End User(s)" may request expedited shipments such as "next day" or "two days" for additional cost.

"EJW" will attain prior authorization from the County prior to utilizing any expedited shipping method.

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

If "End User(s)" chooses to terminate the SaaS agreement or not carry a Service and Support Agreement, On-site service, or work performed at E.J. Ward's San Antonio Texas service facility will be provided at the MSRP rates published in the current Semi-Annual Price Book for labor, software and hardware services.

Limitation and Disclaimer of Warranties: "End User(s)" acknowledges and agrees that the products, including all software components thereof, purchased or supplied under this agreement from "EJW" or "SFS" are "Goods" within the meaning of Article 2 of the Uniform Commercial Code. EXCEPT AS SET FORTH HEREIN, "EJW" or "SFS" MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS SOLD OR PROVIDED UNDER THE TERMS OF THIS AGREEMENT TO "END USER(S)", AND EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability: Once products sold or provided under this agreement by "EJW" or "SFS" are delivered to "End User(s)", "End User(s)" shall be solely responsible for the use of such products, including any and all results caused by the use or misuse of the products, and including using such products in compliance with all applicable local, state, federal, and international laws. In no event shall "EJW" or "SFS", or its directors, officers, employees, agents, or affiliates, be liable to the "End User(s)" or to any third party for: (i) any lost profits, any data loss, any loss of business, or any indirect, consequential, exemplary, incidental or special losses or damages of any kind or nature whatsoever in connection with or arising out of the use or sale of products to "End User(s)" by "EJW" or "SFS"; or (ii), any losses or damages of any kind or whatsoever, including personal injury or death, arising out of "End User(s)" or a third party's installation, misuse, use, whether such use is proper or improper, or modifications of the products sold to "End User(s)" by "EJW" or "SFS", not even in the case where "EJW" or

"SFS" has been advised of the possibility of such loss or damage. The sole and exclusive remedy of "End User(s)" or any third party for any claim, loss, or damage not excluded under clauses (i) or (ii) of the preceding sentence and that in any way relates to, or arises out of, the products sold to "End User(s)" by "EJW" or "SFS" shall be limited to repair or replacement of such products sold or provided under the terms of this agreement to "End User(s)" by "EJW" or "SFS" during the initial first calendar year placed into service, except that the limitations of this provision do not apply to claims of intellectual property 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 HARDWARE OR SOFTWARE, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE OTHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

EXHIBIT B
SCOPE OF WORK

E.J. Ward, Inc. (EJW) shall provide the hardware and software support services for the fuel control terminal (FCT) that was installed as part of the automated fuel-management system (AFMS). The AFMS is at the Arlington Transit Light Maintenance Facility located at 3201 South Eads Street, Arlington, VA 22202.

The following products are supported under this agreement, as detailed in Exhibit A – SaaS Warranty and Support Agreement:

Hardware Covered

Included in this coverage are the hardware components of the FCT that were installed as part of the AFMS either by E.J. Ward, Inc. (EJW) Technicians or a certified Contractor Technician.

Software Covered

EJW will ensure the proper operation of all EJW copyrighted software programs and their interface to external programs previously installed by EJW. Included in this coverage are the following EJW copyrighted software programs installed on the primary cloud servers and backup system:

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

Any existing component that is not explicitly identified shall not be covered by this Agreement.

Prior to performing any work on any requested enhancement, EJW agrees to provide a written statement of work and cost estimate to the County. Any such work that is outside of this scope of work will require a contract amendment.

**EXHIBIT C
CONTRACTOR PRICING**

SAAS WARRANTY AND SUPPORT pricing for a three-year term.

Year 1 \$12,706.94

Year 2 \$12,961.07

Year 3 \$13,349.90