

AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by and between, the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County" and E.J. Ward Inc., hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10417) for a "Turn-Key Fleet Management System", in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # 10417 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10417. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

RFP # 10417 dated May, 16, 2013, including all attachments and exhibits
Addendums #1 & #2
CONTRACTOR'S Proposal dated June 7, 2013,
AGREEMENT,
Certificate of Insurance,
Additional Insured Endorsements

- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT, CONTRACTOR'S Proposal, RFP #10417 including all attachments and

exhibits, Addendums #1 & #2, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF WORK

This AGREEMENT is designed to ensure COUNTY continuous trouble-free automated fueling system operation with a minimum of downtime or service interruption. The Agreement detailed below defines the entire Service and Support Agreement and may be modified in writing subject to the approval of both parties.

2.1 The Scope of Work

The Scope of Work includes but is not limited to the following:

- 2.2 CONTRACTOR shall provide the COUNTY with a robust all-inclusive Fuel Management System equipped to expand its functionality for its Fleet Operations. The Fuel System shall include functions that at a minimum address the following critical areas within the COUNTY'S fleet operations. The proposed system must be:
 - 2.2.1 Capable of tracking individual fuel fills per vehicle; and
 - 2.2.2 Capable of allowing management to view trends and costs of fuel consumption; and
 - 2.2.3 Capable of reducing overall labor time within the operations, through:
 - 2.2.3.1 Automated fuel reports; and

- 2.3 The provided system must be capable at providing at a minimum, but not limited to the following:
- 2.3.1 Tracking and monitoring driver habits, etc.; and
 - 2.3.2 Tracking and managing fuel inventory at multiple fuel locations; and
 - 2.3.3 Creating custom reports as needed; and
 - 2.3.4 Filtering data for export to PDF and Excel; and
 - 2.3.5 Track fuel consumption by individual piece of asset(s) utilizing an automated Fuel management system; and
 - 2.3.6 Supporting the ability to utilize Fuel Cards, such as but not limited to WEX, Voyager and others.

The specific functions mentioned in the above scope of work must remain throughout the life of the Agreement (including any extensions), including through revisions, updates, and maintenance of the product.

3.0 TERM OF AGREEMENT

- 3.1 CONTRACTOR shall begin work December 3, 2013 and CONTRACTOR shall thereupon work diligently to provide all the required services and activities described herein. The term of this AGREEMENT shall be five (5) years, commencing December 3, 2013 and ending December 3, 2018; provided however, that the effective date shall not commence until the date upon which the COUNTY has accepted the software according to the acceptance criteria in Exhibit-C to this Agreement.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions in writing.
- 3.3 Either party reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice or immediately with cause.
- 3.4 The yearly Maintenance Agreement is effective upon execution of AGREEMENT continuing for one year from its effective date; provided however, that the effective date shall not begin until after COUNTY has accepted the software according to the acceptance criteria in Exhibit-C to this Agreement. During the period of software installation and until the software is accepted, COUNTY will not be liable for any maintenance costs during product installation. **The Maintenance Agreement shall renew annually upon written notification by the COUNTY of County's intent to renew within thirty (30) days of expiration.** Cost adjustments shall be made by written amendment to the AGREEMENT on an annual basis up or down based on current labor rates, service history, and the addition or subtraction of hardware or software components with mutual written consent of both parties. **Annual Payment for the Service and Support Agreement to be made within 30 days of expiration of the initial Warranty**

Period or prior to Service and Support Agreement expiration date whichever is applicable.

- 3.5 In no event shall the term of this Agreement begin unless and until the software has been installed and found to operate in accordance with acceptance criteria relating to the software, services, and deliverables, as implemented in COUNTY equipment and facilities. The criteria are attached as Exhibit-C to this Agreement. COUNTY has 30 days from when the software is installed and operable to accept the product, as installed, as conforming to the acceptance criteria.**

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as Exhibit A.

4.1.1 Current Standard "Preferred" Rates:

Current Standard "Preferred" rates for the purpose of this AGREEMENT are defined as: standard rates of \$125.00 per hour regular time and \$187.50 per hour overtime. CONTRACTOR shall be paid for onsite service not less than four (4) hours for work performed at the request of the COUNTY. Onsite service required after normal business hours on weekends or holiday days will be paid at \$1500.00 per day or a portion thereof, but not less than four (4) hours. These are onsite rates and not inclusive of travel or other direct costs.

Labor and material is included in this AGREEMENT when so noted in the Price Option Selection.

- 4.2 Total maximum compensation to be paid hereunder for the satisfactory accomplishment and completion of all tasks set forth above shall in no event exceed the sum of \$510,000.
- 4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.2 Pricing as per this AGREEMENT is inclusive of all applicable taxes.

- 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Monterey County Fleet Department at the following address:

Attn: Fleet Manager
855 East Laurel Drive Building A
Salinas, CA 93905

- 5.2 CONTRACTOR shall reference the RFP/RFQ number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT is valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful

misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

- 6.2 CONTRACTOR hereby agrees to indemnify and hold harmless COUNTY, its directors, officers, employees, agents, and affiliates, from any and all claims, demands, suits, actions, proceedings, losses, costs, and damages of any kind or nature whatsoever, including personal injury or death (the "Actions"), including any Action brought by a third party against COUNTY, and including attorneys' fees and litigation costs related to the Actions, caused by, alleged to be caused by, or contributed to, in whole or in part, by any of the acts, omissions, errors, faults, mistakes, or negligence of CONTRACTOR, or CONTRACTOR'S directors, officers, employees, agents, or affiliates, in connection with the sale, installation and maintenance of the products by CONTRACTOR under this AGREEMENT. The foregoing indemnity will not be rendered inapplicable by the negligence of COUNTY, its directors, officers, employees, agents, or affiliates.

6.3 **Representations and Warranties**

6.3.1 CONTRACTOR makes the following representations and warranties:

- 6.3.1.1 No data will be stored in servers located outside of the continental United States.
- 6.3.1.2 No data will be transmitted outside the borders of the continental United States.
- 6.3.1.3 The data captured and/or stored by the product will be accessed only by Vendor and its affiliates, and only for the strict purpose of performing the services called for by this Agreement.
- 6.3.1.4 There are no third party license terms, conditions or fees, other than those expressly listed in this Agreement.
- 6.3.1.5 CONTRACTOR shall obtain prior written authority from COUNTY prior to instituting cloud hosting of data in connection with this Agreement.
- 6.3.1.6 CONTRACTOR shall notify COUNTY prior to adding or substituting affiliates for the hosting of data in connection with this Agreement.

6.4 **Limitation of Liability**

COUNTY acknowledges and agrees that once products are provided under this agreement by CONTRACTOR, and are delivered to COUNTY, COUNTY 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 CONTRACTOR, or its directors, officers, employees, agents, or affiliates, be liable to the COUNTY or to any third party for: (i) any lost profits, or loss of business; or (ii), any losses or damages of any kind or whatsoever, including personal injury or death, arising out of COUNTY'S or a third party's, misuse or unauthorized modifications of the products sold to COUNTY by CONTRACTOR,

6.5 Indemnification

COUNTY hereby agrees to indemnify and hold harmless CONTRACTOR, its directors, officers, employees, agents, and affiliates, from any and all claims, demands, suits, actions, proceedings, losses, costs, and damages of any kind or nature whatsoever, including personal injury or death (the "Actions"), including any Action brought by a third party against CONTRACTOR, and including attorneys' fees and litigation costs related to the Actions, caused by, alleged to be caused by, or contributed to, in whole or in part, by any of the acts, omissions, errors, faults, mistakes, or negligence of COUNTY, or COUNTY'S directors, officers, employees, agents, or affiliates, in connection with the misuse of the products sold to COUNTY by CONTRACTOR under this AGREEMENT. The foregoing indemnity will not be rendered inapplicable by the negligence of CONTRACTOR, its directors, officers, employees, agents, or affiliates.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform

Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be

accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any

confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully 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, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of

County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.

- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 10.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 10.4 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in SAMPLE AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.
- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws, that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

- 13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

- 14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 TRAVEL REIMBURSEMENT

Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

17.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments. To the extent permitted by law, this provision will not be construed so as to permit County to terminate this AGREEMENT in order to acquire or lease any other equipment or to allocate funds directly or indirectly to perform the same application and in the same manner for which the equipment is intended.

18.0 WARRANTY BY CONTRACTOR

CONTRACTOR shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by the COUNTY. CONTRACTOR shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

19.0 GUARANTEE OF MALWARE-FREE GOODS

All software/hardware purchased must be free of malicious code such as viruses, Trojan horse programs, worms, spyware, etc. Validation of this must be written into the contract. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spyware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spyware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers.

20.0 INTELLECTUAL PROPERTY RIGHTS

All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County.

For systems hosted or stored on equipment not owned by County, CONTRACTOR shall furnish all data to County upon request by County at any time during the term of this AGREEMENT in a useable format as specified by County and at no additional cost to County. Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

21.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
Email: derrm@co.monterey.ca.us

TO CONTRACTOR:

Mike Wade
E'J' Ward
8801 Tradeway
San Antonio, TX 78217
Tel. No.: (210) 824-7383
FAX No.: (210) 824-2031
Email: mwade@ejward.com

22.0 LEGAL DISPUTES

CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California. CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.


The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

23.0 PATENT AND COPYRIGHT INDEMNITY

- 23.1 CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software (“CONTRACTOR Products”) provided to County under this AGREEMENT infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless County, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, “Losses”) arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without County’s prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
- 23.1.1 If CONTRACTOR is obligated to defend County pursuant to this Section 17 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to County any and all losses, damages and expenses (including attorney’s fees and costs) incurred in relationship with County’s defense and/or settlement of such proceeding.
- 23.1.2 In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for County the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
- 23.2 County retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR products infringe any patent, copyright, or other intellectual property right.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY



Contracts/Purchasing Officer

Dated: 12-17-13

Approved as to Fiscal Provisions:



Deputy Auditor/Controller

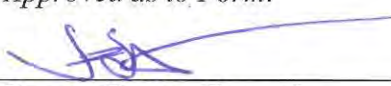
Dated: 12-3-13

Approved as to Liability Provisions:

Risk Management

Dated: _____

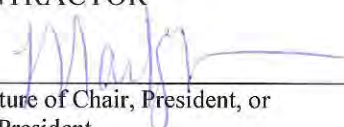
Approved as to Form:



Deputy County Counsel

Dated: 12/3/2013

CONTRACTOR

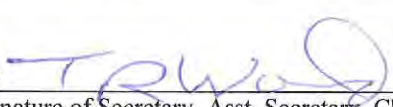
By: 

Signature of Chair, President, or Vice-President

Monkey Ward VP

Printed Name and Title

Dated: 11-18-13

By: 

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

T.R. Wood V.P./SEC

Printed Name and Title

Dated: 11/19/13

County Board of Supervisors' Agreement Number: 13-1311

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.