



**SERVICE CALL CENTER AND SUPPORT AGREEMENT
BETWEEN
E.J. WARD, INC.
AND
CITY OF CLEARWATER, FLORIDA**

The Agreement detailed herein defines the entire service provided for continuous, trouble-free operation of the Hardware and Software purchased from EJ Ward Inc.

This agreement may be modified in writing subject to the approval of both parties. Furthermore, either party may cancel in part or all of this agreement with sixty (60) days written notice of intent to cancel.

Definitions:

- **City of Clearwater**, for this agreement shall be known as the “Buyer”.
- **E.J. Ward, Inc.**, for this agreement shall be known as the “Seller” or “EJW”.
- **Excessive**, is defined for the purpose of this agreement as time spent beyond what is considered acceptable, proper, usual, or necessary to solve the problem solely based on the judgment of the “seller”.
- **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 Price List defined as 10% off list for customers who maintain a Platinum Plan to include Software and Hardware supplied by “EJW”.
- **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.
- **On-site Overtime Service 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, weekends, or holidays with 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” shall provide the “Buyer” service call support on a 24 hour / 7-days per week basis
2. “Buyer” will use the “EJW” Support Number to report an issue. Service requests to “EJW” are broken into one of 2 categories by the “Buyer” caller: (1) Phone support; or (2) Site support.

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



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 24/7 per terms outlined in each plan option
2. "On-site" Emergency service after hours is available as required
 - a. On-site Emergency service after hours is available per the On-site Overtime Service Rates. "Buyer" must provide Server and Database access before "EJW" technician is dispatched to "Buyer" site.

"EJW" will return the service call within the following time requirements:

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

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 Regional Field Service Manager will be contacted.

Reported 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. Issue resolution is normally no more than forty-eight (48) hours.
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, in most cases, within five (5) Business days.
3. Priority 3 – Requires routine action, as failure is only somewhat inconvenient. Resolution will be provided as soon as possible and in most cases within fourteen (14) business days.

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

Exchange Policy: Exchange and/or repair of components is 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 board available. Customer's exchange and shipment to Ward must comply with Ward's Return Material Authorization (RMA) policy and reference a ticket number assigned by "EJW" Technical Support.



Service Limitations: “EJW” cannot be deemed non-compliant with service requirements inclusive, but not limited to the following conditions:

1. **Acts of God and Man Made Events:** Disruptions caused by heavy rains, earthquakes, flooding, tornadoes, lightning strikes, hurricanes, fires, snow, ice, sleet, or road closures and detours caused by Town, City or State construction projects where normal street or interstate traffic patterns to the customer site are disrupted or stopped.
2. **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.
3. **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.
4. **Negligence:** Inclusive of but not limited to; third party contractors hired by the “Buyer” to perform fuel site maintenance that would impair the performance of “EJW” equipment by disrupting electrical service or making non-authorized adjustments or modifications to “EJW” installed hardware or terminals.
5. **Procedural Changes:** Inclusive of but not limited to; the “Buyer” changing the manner in which their employees interact with the “EJW” 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).
6. **Non-“EJW” 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.

Service Response versus Service Repair: “EJW” will meet the service response requirements as defined in this agreement. The actual time to repair your equipment however, cannot be determined or controlled by the response time period. Each service incident 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 will require additional time to obtain.

Definition of Maintenance: Under the terms of this agreement with the “Buyer”, “EJW” agrees to provide contracted for maintenance activities to address normal fair wear and tear issues found with the normal use of the equipment

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 |
| 3. Electrical System | 13. EM-Tag or Ring Antenna |
| 4. Network (TCP/IP) | 14. All hardware, and software versions of the Jettscan or vehicle device programmers |
| 5. Moxa 508A Network Switch | 15. Cards, Datakeys, Fobs, Encoders, Embossers, Printers |
| 6. Wi-Fi Access Points | 16. Equipment & Software Upgrades |
| 7. Servers (Virtual or Physical) | |
| 8. CAT 5 Cable, Routers, Bridges | |
| 9. Cabinet, Base, Lock Assembly | |
| 10. Hose Modules | |



Third Party Hardware Support: “EJW” agrees to provide “Buyer” with limited technical support in troubleshooting problems associated with “Third-Party” or “Non-Covered” hardware or software. “EJW” will consult with representatives of other support organizations, if required.

1. If the time required to resolve third party issues is excessive, “Buyer” will be contacted for authorization to proceed before charges will be incurred by “Buyer”.

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 **upgrades** are not included (examples are W3.x to W4.x or Access to SQL or to Oracle or any other combination).

Software Covered: Included in this coverage are the following “EJW” copyrighted software programs installed on the server / 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: “Buyer” supplied or 3rd 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. Servers, Laptop and Desktop computer hardware
2. Support for Server / PC Moves / Transfers of the application software or Databases
3. Network Hardware
4. Third Party Software, Operating Systems and Relational Databases

It is “Buyer’s” responsibility to update and maintain all updates, patches and fixes for 3rd party software and databases. “Buyer” responsibility includes, but is not limited to:

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



Third Party Software Support:

“EJW” agrees to provide the “Buyer” 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, “Buyer” will be contacted for authorization to proceed.

Disaster Recovery: It is “Buyer’s” responsibility to provide enterprise and / or system level disaster recovery in accordance with its own information technology standards and business risk requirements.

1. “EJW” can provide assistance to “Buyer” in the absence of IT standards recommend best practices. Assistance will be limited to best practice recommendations only.

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

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: Additional equipment may be added to this agreement at any time; existing Warranty will be taken into consideration. Initial repairs, when required to qualify for addition to this Agreement, are based solely on the judgment of the “EJW” and will be billed separately at the published labor rates, and then current list price of parts. Future Support Agreement costs will be adjusted to reflect additional equipment as needed. **Based solely on the judgment of “EJW”, “EJW” 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, for additional information refer to “EJW”’s published Price List for shipping information:

1. “Buyer” may request expedited shipments such as “next day” or “two day” for additional cost.
2. “EJW” shall retain the sole right to use those expedited methods to insure system up time at its cost when “EJW” determines such actions are warranted under this agreement and its use does not establish precedent for future shipments.

Sites greater than one hundred (100) miles from service center: Location of hardware or software requiring service or support on-sites greater than 100 miles from an “EJW” 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.



Platinum Plan Agreement Pricing

- Includes Annual Call Center Support and Hardware, Service, & Parts
- **10% off list price based on EJW current published Price List** related to Labor, Software and Hardware for items not covered under this agreement (only one discount shall be applied towards purchases. Third Party contract purchases excluded)

Annual Call Center Support Fee

- Ensures the proper operation of the “EJW” Software, communication programs, listeners and parsers, Database Interface Programs written by “EJW”, Business Rule Operating Systems “OS”, Reports, Screens, Scripts and Data Files
- Includes scheduled and periodic updates, fixes, and patches as released within the customer’s current version of Fuel View Software.
- Unlimited calls per month; 24x7 Call Center support for Software and Hardware supplied by “EJW”

Total – Call Center Support Fee = \$4,500

Hardware Service, & Parts Pricing - Annual

- Only “EJW” FCTs less than ten (10) years old or under previous support agreement.
- “EJW” FCTs greater than ten (10) years old may require inspection, consult factory for pricing.
- FCT-XT is no longer covered under this plan unless noted below.
- “EJW” cannot be held liable if parts are no longer available due to end of life (EOL) or unavailable from subcomponent suppliers for its product lines.
- On-site, Labor and Parts included - **Sites over 100 miles from an “EJW” office are subject to additional technician time and travel costs.**

a. Year One = Warranty

b. Year Two = \$85 per Fuel Control Terminal (FCT-W4-05H) per month - (\$1,020 per year each)

FCT-W4-05H - Total 2 X (\$ per year) = \$ 2,040 Annual Fee

*Additional Hardware may be added and priced separately for parts and labor support.

Miscellaneous Services:

OPTIONAL SERVICE – One (1) site visit per year to each FCT for preventive maintenance.

Only available if system is within 100 miles of an “EJW” regional service center.
Sites over 100 miles are subject to travel costs.

a. \$375 per Fuel Control Terminal (FCT) per year

Total FCT Count _____ X \$375 = \$ _____ Annual Fee



Total Annual Agreement Fees

	Annual Fee	(Choose Plan by marking with "X")
Call Center Support	\$4,500	
Hardware, Service, & Parts	\$2,040	
Miscellaneous	\$	

Annual Platinum Agreement Fees – All Sub Sections \$6,540

If “Buyer” or E.J. Ward System owner and/or their third-party service provider chooses to terminate or not carry a Service and Support Agreement; telephone support, On-site service, or work performed at E.J. Ward’s San Antonio Texas service facility will be provided at the rates published in the current Price List for labor, software and hardware.

Limitation and Disclaimer of Warranties: “Buyer” acknowledges and agrees that the products, including all software components thereof, purchased or supplied under this agreement from E.J. Ward, Inc. are “Goods” within the meaning of Article 2 of the Uniform Commercial Code. EXCEPT AS SET FORTH HEREIN, E.J. WARD, INC. MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS SOLD OR PROVIDED UNDER THE TERMS OF THIS AGREEMENT TO “BUYER”, 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 E.J. Ward, Inc. are delivered to “Buyer”, “Buyer” 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 E.J. Ward, Inc., or its directors, officers, employees, agents, or affiliates, be liable to the “Buyer” 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 “Buyer” by E.J. Ward, Inc.; or (ii), any losses or damages of any kind or whatsoever, including personal injury or death, arising out of “Buyer’s” or a third party’s installation, misuse, use, whether such use is proper or improper, or modifications of the products sold to “Buyer” by E.J. Ward, Inc., not even in the case where E.J. Ward, Inc. has been advised of the possibility of such loss or damage. The sole and exclusive remedy of “Buyer” 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 “Buyer” by E.J. Ward, Inc. shall be limited to repair or replacement of such products sold or provided under the terms of this agreement to “Buyer” by E.J. Ward, Inc. during the initial first calendar year placed into service.

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.



Venue: This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas. This Agreement shall be construed, governed by and interpreted in accordance with the laws of the State of Texas. Any legal action for enforcement or any other issue relating to this contract shall be instituted in the Superior Court of the State of Texas located in Bexar County. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

This Call Center, and Support Agreement is effective _____ continuing to _____. The agreement does automatically renew and requires annual notification by the "Buyer" within sixty (60) of expiration for cancellation. Cost adjustments to the agreement are applied on an annual basis based on current labor rates, service history, and the addition of hardware or software components. Annual payment for the agreement to be made within thirty (30) days of expiration of the initial Warranty period or Agreement start date, whichever is applicable. "EJW" may cancel the agreement if Annual payment for the Service, Call Center and Support Agreement has not been received within 60 days of Agreement start date.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

CITY OF CLEARWATER, FLORIDA

E.J. WARD, INC.

Countersigned:

George N. Cretekos
Mayor

Markay Ward
Markay R. Ward
President

By: _____
William B. Horne II
City Manager

Leslie A. Patterson
Leslie A. Patterson
Inside Sales & Account Manager

Approved as to form:

Assistant City Attorney

Attest:

Rosemarie Call
City Clerk