



## ORDER FORM

### AssetWorks LLC

998 Old Eagle School Road, Suite 1215  
Wayne, PA 19087

Order #: Q-04150-1

Date: 5/1/2019

#### Ship To

Steve Ely  
City of Costa Mesa  
2310 Placentia  
Costa Mesa, California 92628  
714) 754-5154  
steve.ely@costamesaca.gov

#### Bill To

City of Costa Mesa  
PO Box 1200  
Costa Mesa, California 92628-1200

This Order Schedule is issued pursuant to the attached AssetWorks Professional Services Agreement. Parties agree to be bound by those terms and conditions. Pricing below is valid if this Order Form is signed on or by 9/30/2019.

### Service

Description	Line Total
Project Management Services: Training prep, scheduling, define training plan, and project administrative activities	USD 820.00
Training Services: 3 full days of training on-site.	USD 4,920.00
Travel Costs For 1 trip on-site	USD 2,000.00
<b>Service TOTAL:</b>	<b>USD 7,740.00</b>

<b>TOTAL: USD 7,740.00</b>
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### Training (Onsite) Professional Services Terms

Quote assumes one onsite trip for a minimum of 3 days of training (24 hours) and maximum of 40 hours. There is no limitation on the number of personnel to be trained.

Current supported version of FASuite is required.

Upgrade services for FASuite are not included.

Costs are estimated for a time and materials project and do not include applicable taxes.

Actual costs might be greater or lesser than those presented in this quote.

Training Content Assumptions:

# AssetWORKS

- Pre-training call will be held with Client Project Manager to discuss and finalize topics.
- Where applicable standard training materials will be utilized. Quote does not include customized training materials.
- Topics to include (Preliminary):
  - System Administrator training
  - Vehicle Acquisition Data input process/Discussion
  - Work order management and posting Labor, Parts and Commercial
  - Shop Activity – PM due maintenance process
  - Reports introduction/Discussion
  - Using Mobile Focus
  - FuelFocus activities
  - Parts management (1 hour) BARCODE INTEGRATION
  - Maintenance and parts review
  - Fuel activities
  - Creating custom fields or Additional data
  - AdHoc Query tool and views
  - Batch Processing and Dataloader utilities
  - Discussion of current and future modules
  - Planning for upgrades
  - Future training and onboarding

## **Standard Professional Services Terms**

FleetFocus license is based on the number of active units in fleet. The current number of active units in the fleet is 367. Substitution of vehicles to the fleet which do not increase the number of active units will not incur additional license fees.

Additional Components can be licensed at a rate of \$5 per component.

Crystal Reports Enterprise Required for FleetFocus Standard Reports.

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AssetWorks assumes that the client will install the required Oracle or SQL Server database licenses.

All software licenses and the first year maintenance fees will be invoiced upon contract execution.

All warranties conveyed by the manufacturer to AssetWorks are included.

Travel: Expenses will be reimbursed as incurred. Expenses include actual costs for lodging, air and ground travel and per diem rates for meal expenses (corporate rate/government agreement).

All costs quoted in USD.

Costs are estimated for a time and materials project and do not include applicable taxes.

Actual costs might be greater or lesser than those presented in this quote.

Professional Services engagements have 4-8 week lead time from execution of contract/order.

In the event Customer's business practices require that Customer issue a purchase order number prior to payment of any AssetWorks invoices issued under this Agreement, then such purchase order number must be entered below. Customer's execution of the Order Form without designating a purchase order number shall be deemed Customer's acknowledgement that no purchase order number is required for payment of invoices hereunder.

Purchase Order Number: \_\_\_\_\_

# AssetWORKS

**Accepted by Customer:**

Signature: Kelly Telford  
Name (Print): Kelly Telford  
Title: Finance Director  
Date: 11/5/19

**Accepted by AssetWorks:**

Signature: Steven Dechistini  
Name (Print): Steven Dechistini  
Title: Director of Finance  
Date: 9/30/19

**Approved as to form:** *insurance.*

Signature: Ruth Wang  
Name (Print): Ruth Wang  
Title: Human Resources Analyst  
Date: 11/6/19

Please sign and email to Tyler Beaty at [tyler.beaty@assetworks.com](mailto:tyler.beaty@assetworks.com).

THANK YOU FOR YOUR BUSINESS!



## ASSETWORKS STANDARD PROFESSIONAL SERVICES AGREEMENT

### 1. SERVICES.

This Agreement shall apply each time Customer engages AssetWorks to provide services. All services provided will be described in an AssetWorks' quotation or a mutually agreed upon "Statement of Work" ("SOW") as applicable (hereinafter referred to as "Services"), if attached. Initial SOW is the attached PO.

### 2. TERMS

**2.1 Requests for Service; Quotes and Orders.** Customer shall sign and return this agreement for the initial order for Services. All subsequent orders for Services must specify AssetWorks' quotation (if any), and reference the Service(s) requested and invoice address. All orders are subject to acceptance by AssetWorks.

**2.2 Prices.** The prices charged for Services purchased under this Agreement will be AssetWorks' then current charges for such services in each AssetWorks region or as quoted by AssetWorks. If the Services are being performed on a time and materials basis, any estimates provided by AssetWorks are for planning purposes only.

**2.3 Additional Fees; Taxes.** Prices are exclusive of all country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. Taxes imposed on AssetWorks (other than taxes related to AssetWorks' income) in connection with the Services purchased under this Agreement will be paid by Customer and will appear as separate items on AssetWorks' invoices.

**2.4 Invoicing and Payment.** Customer's payment terms will be net thirty (30) days from the date of invoice.

**2.5 Term.** This Agreement will begin on the effective date stated above and will continue until terminated in accordance with its terms. Each SOW will continue for the term stated therein, unless otherwise terminated pursuant to this Agreement.

**2.6 Termination.** Either party may terminate this Agreement by providing at least thirty (30) days prior written notice to the other. Termination of the Agreement will not terminate any outstanding SOWs and the terms of this Agreement will survive such termination to the extent that such terms are incorporated into any outstanding SOWs. Either party may terminate an individual SOW if the other party commits a material breach of such an agreement and the breach is not cured within thirty (30) days of receipt of written notice from the injured party. Termination of one or more SOW will not terminate this Agreement. Upon termination, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

### 3. PROPRIETARY RIGHTS

AssetWorks will retain exclusive ownership in all deliverables created by AssetWorks hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by AssetWorks under this Agreement.

AssetWorks will also retain all intellectual property rights with respect to the tools and/or software that AssetWorks uses to deliver the Services. Subject to payment in full for the applicable Services, AssetWorks grants Customer a perpetual, non-exclusive, non-transferable, royalty-free right to use the deliverables solely for Customer's internal use.

### 4. EXPORT; REGULATORY REQUIREMENTS

Customer acknowledges that the Services sold under this Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the Services are rendered and/or received. Customer agrees to abide by those laws and regulations. Customer further represents that any software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide AssetWorks with all of the information needed for AssetWorks to obtain export licenses from the United States government and to provide AssetWorks with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. AssetWorks may also require export certifications from Customer for Customer provided software. AssetWorks' acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the United States Government; AssetWorks is not liable for delays or failure to deliver Services or a product resulting from Customer's failure to obtain such license or to provide such certification.

### 5. CUSTOMER RESPONSIBILITIES

It is the Customer's responsibility to backup data on Customer's system. AssetWorks WILL NOT BE RESPONSIBLE FOR LOSS OF OR DAMAGE TO DATA OR LOSS OF USE OF ANY COMPUTER OR NETWORK SYSTEMS. Customer acknowledges that AssetWorks' performance and delivery of the Services are contingent upon: (i) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network and information and (ii) Customer's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Customer will promptly obtain and provide to AssetWorks any required licenses, approvals or consents necessary for AssetWorks' performance of the Services. Information disclosed by Customer pursuant to a separate Nondisclosure Agreement ("NDA") signed by both parties will be protected under the terms of the NDA. Customer acknowledges that any information or data disclosed or sent to AssetWorks that is not protected under a separate NDA is not confidential or proprietary to Customer.

## 6. WARRANTY & LIMITATION OF LIABILITY

### 6.1 Warranty.

ASSETWORKS WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, ASSETWORKS MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY RELATING TO THIRD PARTY PRODUCTS OR THIRD PARTY SERVICES; ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION ASSETWORKS MAY MAKE; AND, ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE DELIVERABLES OR OF ANY SYSTEM THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION ASSETWORKS MAY PROVIDE.

**6.2 Limitation of Liability.** NEITHER CUSTOMER, ASSETWORKS NOR ASSETWORKS' SUBCONTRACTORS WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY ASSETWORKS EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ASSETWORKS SHALL NOT HAVE LIABILITY FOR (I) LOSS OF INCOME, PROFIT, OR SAVINGS, WHETHER DIRECT OR INDIRECT, (II) LOST OR CORRUPTED DATA OR SOFTWARE, OR (III) PRODUCTS NOT BEING AVAILABLE FOR USE. EXCEPT FOR CLAIMS THAT THE SERVICES (EXCLUDING THIRD PARTY PRODUCTS) CAUSED BODILY INJURY (INCLUDING DEATH) DUE TO ASSETWORKS'S NEGLIGENCE OR WILLFUL MISCONDUCT. ASSETWORKS'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY SERVICES PURCHASED PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD. AssetWorks' total liability to City of Costa Mesa for damage to City of Costa Mesa's physical property shall not exceed \$50,000.

## 7. INDEMNIFICATION AND INSURANCE

**7.1 Indemnification of City:** AssetWorks hereby agrees to defend at its own cost and to indemnify the City of Costa Mesa, its officers, agents and employees, from and against any and all third party claims for liability, damages, reasonable costs, losses, claims and expenses, howsoever caused, resulting directly from the negligent performance of the contract (including but not limited to such liability, reasonable costs, damage, loss, claim, or expense arising from the death or injury to an agent or employee of AssetWorks, subcontractor, or the City of Costa Mesa or loss of, damage to, or destruction of the physical tangible property of AssetWorks or subcontractor), except where such liability, damages, costs, losses, claims or expenses are caused in whole by the negligent or wrongful acts of any third party or the City of Costa Mesa or any of its agents or employees other than negligent omission or

commissions of the City of Costa Mesa, its agents or employees in connection with the general supervision or direction of the work to be performed hereunder.

**7.2 Indemnification of AssetWorks:** CUSTOMER accepts responsibility for, and agrees to indemnify and hold AssetWorks harmless from, any and all liability, damages, claims or proceedings arising out of (i) the failure of CUSTOMER to obtain the appropriate license, intellectual property rights, or any other permissions, regulatory certifications or approvals required to support any SOW or AssetWorks' performance of the Services, excepting with respect to any software or other proprietary materials provided by AssetWorks to CUSTOMER or (ii) any inaccurate representations regarding the existence of an export license.

**7.3 Insurance:** AssetWorks shall maintain in full force during the term of this contract the following insurances, in a form and with companies as approved by the City, with limits not less than those specified: (a) Worker's Compensation and Employer's Liability complying with any statutory requirements; (b) Commercial General Liability insurance including broad form property damage, products/completed operations and contractual liability coverage, with a \$1,000,000 combined single limit each occurrence; Endorsements to the Commercial General Liability insurance shall be obtained by contractor, adding the following three provisions; (1) Additional Insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement." (2) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City." (3) Other Insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy." (c) Comprehensive Auto Liability (for non-owned and hired automobile hazards) with \$1,000,000 combined single limit each occurrence. If the City so desires, these limits may be increased or decreased.

## 8. MISCELLANEOUS ITEMS

**8.1 Assignment; Subcontracting.** Unless otherwise provided in the SOW, CUSTOMER may not assign this Agreement without the prior written consent of AssetWorks. AssetWorks has the right to hire subcontractors to perform the Services provided that AssetWorks shall remain responsible for the performance of Services under this Agreement, or to assign Services to its affiliates.

**8.2 Entire Agreement; Severability.** This Agreement (with attachments) is the entire agreement between AssetWorks and CUSTOMER with respect to its subject matter and supersedes all prior oral and written understandings, communications or agreements between AssetWorks and CUSTOMER. No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated.

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**8.3 Independent Contractor.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement.

**8.4 Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, acts of God, war, governmental action, labor conditions, material shortages or any other cause which is beyond the reasonable control of such party.

**8.5 Dispute Resolution.** The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute. If the dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. Nothing herein shall prevent either party from seeking a preliminary or permanent injunction to preserve the status quo or prevent irreparable harm during the negotiation process or diminish the respective rights of the parties to pursue any and all remedies available in law and/or equity at any time.

**8.6 Notices.** To give notice under this Agreement, the notice must be in writing and sent by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address which appears below each party's signature below or to such other address as any party shall specify by notice in writing to the other party and will be effective upon receipt.

**8.7 Section Headings.** The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**8.8 Governing Law, Jurisdiction and Language.** The laws of the State of California will govern this Agreement.

**8.9 Limitation Period.** Neither party may institute any action in any form arising out of this Agreement more than two (2) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of last payment.