

EKT09WCM

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	EKTRON INCORPORATED
SUBJECT/PROJECT:	SOFTWARE LICENSE AGREEMENT FOR WEB CONTENT MANAGEMENT
CITY DEPARTMENT:	ADMINISTRATION
YEAR:	2009
EXPIRATION DATE:	12/31/2013
DESTRUCTION DATE:	01/01/2020

## EKTRON SOFTWARE LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the July 28/2009 (the "Effective Date") by and between Ektron, Inc. ("Licensor") and City of Grand Junction ("Licensee") whereby Licensor grants, and Licensee accepts, a license to use the Software (as defined in Section 1 below) on the following terms and conditions:

1. License: Licensor hereby grants to Licensee a worldwide, fully paid, royalty free, irrevocable non-exclusive license (the "License") to use the following Software:

CMS400.NET Enterprise Package with Unlimited Users and Unlimited URLs on a single server

The Software is licensed for use only in delivered code form. Delivered code is defined as the code base delivered by the Licensor to the Licensee and is comprised of Ektron's compiled and un-editable source code as well as additional modifiable and customizable code layers. Each copy of the Software is licensed for the number of seats, URLs, or servers listed above. Any use of the Software beyond the number of authorized seats or servers contained in the Professional or Enterprise Package as provided herein shall cause this license to terminate. Should Licensee wish to add seats or servers beyond the Professional / Enterprise Package, Licensee may add seats or servers at the then current price for additional seats.

For purposes of this section, the term "seat" shall mean an individual user provided access to the capabilities of the Software. A "server" should be defined as a specific physical or virtual server managed by the software.

Licensee may not modify, alter, reverse engineer, disassemble, or decompile the Software. The Software is licensed, not sold.

2. Duration: This License shall continue so long as Licensee uses the Software in compliance with this License. Should Licensee breach any of its obligations hereunder and the License is terminated in accordance with Section 6 hereof, Licensee agrees to return all copies of the Software and this License upon notification and demand by Licensor.

3. Copyright: The Software (including any images, "applets," photographs, animations, video, audio, music and text incorporated into the Software) as well as any accompanying written materials (the "Documentation") is owned by Licensor or its suppliers, is protected by United States copyright laws and international treaties, and contains confidential information and trade secrets. Licensee agrees to protect the confidentiality of the Software and Documentation. Licensee agrees that it will not provide a copy of this Software or Documentation nor divulge any proprietary information of Licensor to any person, other than its employees or contractors, without the prior consent of Licensor; Licensee shall use its best efforts to see that any user of the Software complies with this License.

4. Limited Warranty: Licensor warrants that the Software will perform in all material respects in accordance with the description in the documentation and that the Software will be free from defects in material and workmanship under normal, proper and intended usage for a period of three (3) months from the date of purchase. Licensor warrants that the Software at the time of purchase will be free of malicious code and disabling code and shall not infringe on the intellectual property rights of any third party. Except as provided in the preceding sentence, Licensor does not warrant the use of the Software will be uninterrupted or error free, nor that program errors will be corrected. This limited warranty shall not apply to any error or failure resulting from (i) machine error, (ii) Licensee's failure to follow operating instructions, (iii) negligence or accident, or (iv) modifications to the Software by any person or entity other than Company. In the event of a breach of warranty, Licensee's sole and exclusive remedy is repair of all or any portion of the Software. If such remedy fails of its essential purpose, Licensee's sole remedy and Licensor's maximum liability shall be a refund of the paid purchase price for the defective Software only. This limited warranty is only valid if Licensor receives written notice of breach of warranty no later than thirty days after the warranty period expires.

5. Limitation of Warranties and Liability: EXCEPT AS SET FORTH IN SECTION 4, THE SOFTWARE AND DOCUMENTATION ARE SOLD "AS IS" AND WITHOUT ANY WARRANTIES AS TO THE PERFORMANCE, MERCHANTABILITY, DESIGN, OR OPERATION OF THE SOFTWARE. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS OFFERED. EXCEPT AS DESCRIBED IN SECTION 4, ALL WARRANTIES EXPRESS AND IMPLIED ARE HEREBY DISCLAIMED. NEITHER LICENSOR OR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF DATA OR USE OF DATA, INTERRUPTION OF BUSINESS NOR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER OR ARISING OUT OF, OR IN ANY RELATED TO THIS AGREEMENT, HOWEVER, CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF LICENSOR OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

6. Indemnification:

(a) General. Except as otherwise expressly provided, each Party to this agreement shall defend, indemnify and hold harmless the other Party and any of the other Party's agents, employees, and invitees against all claims, liability, loss and expenses, including reasonable costs, collection expenses, court costs and attorney's fees, which may arise because of the negligence, misconduct, or other fault of the first Party in the performance of its obligations under this agreement.

(b) Indemnification for Infringement. Licensor will, at its expense, defend, and indemnify Licensee against any actual or threatened action or proceeding by a third party (a "Claim") that the Software infringes a United States patent or copyright of any third party, and will pay all losses, liabilities, damages and claims and all related costs and expenses (including reasonable attorneys' fees, litigation, settlement, judgment, interest and penalties) either awarded by a court or agreed to in an out-of-court settlement approved in advance in writing by Licensor. Licensor may, at its option, either procure for Licensee the right to continue using the Software or replace or modify the Software so that it becomes non-infringing. If, in Licensor's reasonable business or legal opinion, neither option is feasible, Licensee will return the infringing Software to Licensor, the License will be terminated and Licensor will reimburse Licensee a full refund. If Licensee elects to continue using the Software rather than return it to Licensor, Licensor will have no further liability to Licensee. Licensor will not indemnify Licensee for infringement if Licensee has modified the Software without Licensor's assistance.

(c) Indemnification Procedures. If Licensee becomes aware of a Claim that may require indemnification, Licensee will promptly notify Licensor in writing of the Claim and will allow Licensor to assume sole and full control of the defense and settlement of the Claim. Licensee will provide Licensor with reasonable assistance and information necessary to defend and settle the Claims. Licensee's counsel will have the right to participate in the defense and settlement of the Claim, at Licensee's own expense.

9. Assignment: Both parties shall be entitled to assign this Agreement in whole or in part, and its rights and obligations hereunder, without advance notice and without cost, to any current and future parent, subsidiary or affiliate of such assigning party and to a business entity in connection with a merger, or sale or contribution of some or all of its assets. Written confirmation notice of any assignment will be given by the assigning party to the other party to this Agreement as soon as commercially reasonable. Otherwise, all rights and obligations are not assignable without prior written consent of the other party, which consent shall not be unreasonably withheld.

10. Transfer: Upon completion of payment for the software referenced herein the Licensee shall receive perpetual, non-expiring license keys for their production environment. Once delivered to the Licensee, these keys exist in perpetuity in the Licensee's possession. In the event that the Licensee requests a change to the perpetual keys referenced above, Licensor requires a mutually signed license transfer document and Licensee must remit a license transfer fee equal to thirty (30) percent of the initial license purchase cost.

11. Miscellaneous: This Agreement and its performance and all claims arising from the relationship between the parties contemplated herein shall be governed by, construed and enforced in accordance with the laws of the State of Colorado without regard to conflict of laws principles thereof. The parties agree that any action brought in connection with this Agreement shall be maintained only in a court of competent subject matter jurisdiction located in the State of Colorado or in any court to which appeal there from may be taken. The parties hereby consent to the exclusive personal jurisdiction of such courts in the State of Colorado for all such purposes. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from governing this License. If

any provision of this License is to be held unenforceable, such holding will not affect the validity of the other provisions hereof. Failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. This Agreement may not be modified other than in a writing signed by both parties. This Agreement and the Schedules hereto represent the entire understanding between the parties with respect to its subject matter. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one document. Facsimile copies of signatures shall be acceptable as originals. All purchases made herein are governed by payment due to Licensee within Net 30 days of receipt of invoice from Licensor.

12. Notices:

To Licensor:

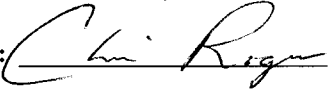
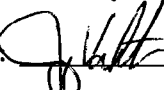
Ektron, Inc  
542 Amherst Street  
Nashua, NH. 03062  
Attn. Chris Rogers  
[Chris.rogers@ektron.com](mailto:Chris.rogers@ektron.com)

To Licensee:

Company: \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

LICENSEE HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND THAT IT UNDERSTANDS THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this Ektron License Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

<p><b>Licensor: Ektron, Inc.</b></p> <p>By: <u></u></p> <p>Name: Chris Rogers</p> <p>Title: Director, duly authorized</p> <p>Date: <u>08/06/09</u></p>	<p><b>Licensee: City of Grand Junction</b></p> <p>By: <u></u></p> <p>Name: <u>Jay Valentine</u></p> <p>Title: <u>Purchasing Manager</u>, duly authorized</p> <p>Date: <u>7/28/09</u></p>
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## Schedule A

### License and Maintenance Services Fees

Ektron Software, Services & Training Proposal.  
Annual Maintenance Cost (5-Year Plan, Billed  
Annually)

Product Name	Quantity	Users	2009	2010	2011	2012	2013
Ektron CMS400.NET Enterprise License	1	Unlimited	\$72,500.00				
Ektron CMS400.NET Maintenance	1	Unlimited	\$0.00				
Ektron Certified Developer training – at the Ektron training facility	2	N/A	\$1,950.00				
Ongoing Training – Years 3 and 5	2	N/A			\$3,000.00		\$3,000.00
Ektron Certified Onsite Admin/End user training	1	N/A	\$10,000.00				
Installation and Configuration Services (Year 1) - 5 days	1	N/A	\$7,500.00				
Ongoing Installation and Configuration Services (Years 2 through 5) – 3 days each year	4	4		\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
Best Practice Services – 6 months	1	N/A	\$24,000.00				
Additional 4 Years of Maintenance	1	Unlimited		\$17,375.00	\$17,375.00	\$17,375.00	\$17,375.00
Travel Expenses – 3 trips	1	N/A	\$6,000.00				

<b>Total</b>	<b>\$121,950.00</b>	<b>\$20,375.00</b>	<b>\$23,375.00</b>	<b>\$20,375.00</b>	<b>\$23,375.00</b>
Pre-Payment Discount:	\$20,950.00				
Additional Discount:	\$16,000.00				
<b>Grand Total:</b>	<b>\$85,000.00</b>	<b>\$20,375.00</b>	<b>\$23,375.00</b>	<b>\$20,375.00</b>	<b>\$23,375.00</b>

**Grand Total: USD \$172,500.00**

## MAINTENANCE TERMS AND CONDITIONS

Maintenance subscription period of performance begins the day contract is signed and ends one-year there after. This one-year renewable service, which automatically includes standard maintenance for the first year, includes:

- Unlimited telephone and email support (8AM to 8PM M – F)
- Free upgrade software for CMS400.NET (all releases)
- Two dev and testing domain non-production keys

You can renew maintenance subscriptions annually by contacting your dedicated Ektron account manager. Ektron understands and agrees that Licensee in its sole discretion may elect to renew or terminate the subscription agreement on an annual basis, and Ektron shall provide Licensee with a correct and accurate invoice prior to the expiration of the then current subscription agreement. In an event where Licensee opts to not renew their maintenance Licensee will lose the rights to the services provided by maintenance; specifically standard technical support, the ability to upgrade and the rights to use their test and development non-production keys. Notify Ektron on changes to contact information for maintenance renewal notices. Notices are sent via email approximately 45 days in advance of expire date.

Notwithstanding any other provision of this Agreement, the Customer's obligations under this Agreement are subject to annual appropriation by the City Council of Customer. Any failure of a City Council annually to appropriate adequate monies to finance Customer's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to Vendor of any failure to appropriate such adequate monies.

## DELIVERY OF LICENSE KEYS (FOR DOMAIN BASED LICENSES ONLY)

Ektron will deliver software electronically via email. In order to generate your license keys, please include the following URL address information with your order or provide the contact name, phone, and email address for the person(s) who can provide us that information in the contact section below.

Primary Authoring Site URL: \_\_\_\_\_  
Development Site URL: \_\_\_\_\_  
Staging or Other Test Site URL: \_\_\_\_\_

## CONTACT INFORMATION

**Primary Technical Contact** for license keys, upgrade notices and support access:

Company Name: City of Grand Junction  
Contact Name: Jeff Paine  
Mailing Address: 250 N. 5th Street  
City: Grand Junction State: CO Zip: 81501  
Email Address: jeff@city.org  
Phone Number: 970.244.1525

**Business Contact** for maintenance renewal notices, invoices and receipts::

Company Name: City of Grand Junction  
Contact Name: Jim Finlayson  
Mailing Address: 250 N. 5th Street  
City: Grand Junction State: CO Zip: 81501  
Email Address: jimf@city.org  
Phone Number: 970.244.1525

## **PURCHASE AND PAYMENT TERMS**

Ways to purchase:

- Fax a copy of your company purchase order along with a copy of this contract to Ektron at (603) 816-1989.
- If you do not have a company purchase order, sign where indicated and fax entire contract back to Ektron.

Payment Terms: Due upon receipt of invoice.

(Please Check Preferred Payment Method)

Please Invoice Me

Training Rescheduling / Cancellation Policy: If an onsite training course (QuickStart, End User, Onsite Developer or Admin) is rescheduled or cancelled within 15 days of its scheduled date, a \$1,200 reschedule / cancellation charge will be assessed.

**CITY OF**  
**Grand Junction**  
 COLORADO

**Original**  
**Purchase Order**  
**No. 2009-00020581**

**DATE 07/29/2009**

**Ph. (970) 244-1484**

**Fax (970) 244-1427**

**Ship To**  
 City of Grand Junction  
 250 N. 5th St., Suite 272  
 GRAND JUNCTION, CO 81501

**Bill To**  
 City of Grand Junction  
 250 N. 5th St., Suite 272  
 GRAND JUNCTION, CO 81501

**Vendor**  
**VENDOR NO. 5143**  
 Ektron Inc.  
 542 Amherst Street  
 NASHUA, NH 03062

**PAGE 1 of 1**  
**SHIP VIA**  
**DELIVER BY 08/07/2009**  
**FREIGHT TERMS**  
**Buyer Name: Scott D Hockins**  
**Buyer Email: scotth@gjcity.org**

QUANTITY	UNIT	DESCRIPTION	STATUS	UNIT COST	TOTAL COST
1.0000	Each	COMPUTER - SOFTWARE - Ektron Content Management System (CMS) Software	Item Changed	85,000.0000	\$85,000.00
<b>PURCHASE ORDER TOTAL</b>					<b>\$85,000.00</b>

**Special Instructions:** PURCHASE ORDER No. MUST APPEAR ON ALL INVOICES, SHIPPERS, PACKAGES, CORRESPONDENCE  
**Tax Exempt No. 98-03544**

By: Scott Hockins





What do you want  
your website to do?

Invoice	IVC051145
Date	7/28/2009
Page	1

**Bill To:**

City of Grand Junction  
Accounts Payable  
250 N. 5th Street, Suite 272  
Grand Junction CO 81501

**Ship To:**

City of Grand Junction  
Accounts Payable  
250 N. 5th Street, Suite 272  
Grand Junction CO 81501

Purchase Order No.	Customer ID	Salesperson ID	Customer Contact	Payment Terms	
2009-00020581	CIT8100	CROGERS	Scott D Hockins	Due Upon Receipt	
Qty	Description	Comment	Price Each	Discount	Ext. Price
1	Enterprise CMS400.Net Server Lic/Disaster Recv		\$72,500.00	\$22,729.50	\$49,770.50
1	Maintenance 20% of Current List Price		\$14,500.00	\$14,500.00	\$0.00
1	2 Days of eSync Set Up		\$2,500.00	\$2,500.00	\$0.00
1	Certified Developer Train @Ektron Training Ctr		\$1,500.00	\$778.50	\$721.50
1	Certified Developer Train @Ektron Training Ctr		\$1,500.00	\$1,253.50	\$246.50
3	Days of On-site Cert System Admin Training		\$2,500.00	\$797.50	\$6,810.00
5	Days of Installation and Configuration Services		\$1,500.00	\$478.50	\$5,107.50
6	Months of Best Practice Services		\$4,000.00	\$1,276.00	\$16,344.00
3	Trips of Travel Expenses		\$2,000.00	\$0.00	\$6,000.00

Don't Miss Ektron Synergy Worldwide Conference  
November 1-4, 2009 at Disney's Grand Floridian  
visit <http://synergy.ektron.com> for details.

Subtotal	\$85,000.00
Misc	\$0.00
Tax	\$0.00
Total	\$85,000.00

**Wire Information**

Bank Information: Silicon Valley Bank  
Bank Address: 3003 Tasman Dr, Santa Clara CA 95054  
Account Number: 3300660471  
Routing Number: 121140399



What do you **want**  
your **website** to do?

TRIM DOC IT 10/39

City of Grand Junction  
ScottHockins  
250 N. 5th Street  
Grand Junction CO 81501

Dear Scott,

Congratulations on your new Ektron CMS400.NET solution and welcome to the Ektron Community! By now you should have received an email with instructions on how to download your license key. In case you need any assistance, here is a list of key Ektron contacts who can be reached at 603-594-0249:

**Chief Executive Officer - Bill Rogers**  
**Senior Vice President of Sales – Mark Hardardt**  
**Support Manager – Heather Menchion**  
**Regional Sales Director / Maintenance Renewals – Tanner Strickler**

Being part of the Ektron Community makes many resources available to you. Here are some links and information you may find useful:

- The **Ektron DevCenter** is a great place to get advice and tips from your fellow developers. You can access the DevCenter at <http://dev.ektron.com/>
- The **Ektron News Letter** will give you the most up-to-date news, events and tips from the Ektron experts. You can sign up for the newsletter at [http://www.ektron.com/update\\_profile.cfm](http://www.ektron.com/update_profile.cfm)

As your designated Account Manager, I will now be your main point of contact at Ektron. I will be glad to assist you in securing the services that will help you achieve your goals. Ektron offers many training and consulting options for every stage of your project. If you have any questions, please feel free to contact me. I can be reached directly at 603-589-5205.

Whatever your answer to the question: What do you want your website to do? I want to assure you that CMS400.NET will enable you to do it and I will be here to assist you each step of the way. If there's anything you need, please feel free to contact me. I look forward to working with you!

Sincerely,

**Tanner Strickler | Account Manager**

**ektron, inc.**  
542 Amherst Street | Nashua, NH 03063  
direct: 603.589.5205  
fax: 603.816.1989  
[tanner.strickler@ektron.com](mailto:tanner.strickler@ektron.com)