

## Draw Tap GIS, LLC Agreement

### CITY OF POMONA

### PROFESSIONAL SERVICES AGREEMENT

#### 1. PARTIES AND DATE.

This Professional Services Agreement (this "Agreement") is made and entered into this 1<sup>st</sup> day of July, 2024 (the "Effective Date"), by and between the City of Pomona, a California charter city and municipal corporation, organized under the laws of the State of California, with its principal place of business at 505 South Garey Avenue, Pomona, California 91766 ("City") and Draw Tap GIS, LLC, a Delaware limited liability company, with its principal place of business at 1950 E. Chapman Ave., Suite #3, Fullerton, CA 92831 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

#### 2. RECITALS.

2.1 The City desires to engage Consultant to provide GIS Services and Support for the City's GIS services project (the "Project") as set forth in this Agreement.

2.2 Consultant is willing and agrees to perform and assume responsibility for the provision of certain professional Geographic Information System ("GIS") consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional GIS consulting services to public clients, and is familiar with the plans of City.

#### 3. SCOPE OF SERVICES AND TERM.

3.1 General Scope of Services. Consultant promises and agrees to use commercially reasonable efforts to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the professional GIS consulting services set forth on Exhibit A<sup>1</sup> ("Services"). The Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and in material compliance with all applicable local, state and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall commence on the Effective Date and continue until June 30, 2027 with two, one-year extension options, subject to written agreement by the Parties, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

#### 3.3 Responsibilities of Consultant

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services, including the assignment of personnel to the Project, subject to the requirements of this Agreement. City retains Consultant

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<sup>1</sup> Note: Draw Tap is not performing all services necessary for the Project, as some aspects of the Project are handled by City employees and other consultants hired by City.

on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during or after the term of this Agreement. Any personnel performing the Services under this Agreement on behalf of Consultant shall not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a professional and timely manner. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance of the Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Patrick Ward, President ("Key Person"). Staffing in addition to the Key Person shall be in the sole discretion of Consultant. Consultant agrees to cooperate and discuss with the City any material concerns raised by the City regarding the personnel of Consultant staffed on the Project.

3.3.5 City's Representative. The City hereby designates Sam Wong, Director of Innovation and Technology, or his/her designee or successor, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement, unless agreed upon by the Parties in writing. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents.

3.3.6 Consultant's Representative. Consultant hereby designates Patrick Ward, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using commercially reasonable efforts, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times during regular business hours, with appropriate advance notice.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Consultant agrees to cooperate and discuss with the City any material concerns raised by the City regarding the personnel of Consultant staffed on the Project.

3.3.9 Period of Performance. Consultant shall perform and complete all Services under this Agreement timely and expeditiously.

3.3.10 Laws and Regulations; Employee/Labor Certification. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and Consultant shall be solely responsible for any costs arising from its failure to comply with the terms in this Section 3.3.10 and shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.3.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City

shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.3.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.3.10.1.

3.3.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.3.10.1 or 3.3.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.3.10.2); or (3) failure to promptly remove from the Project any person found not to be in compliance with such requirements.

3.3.10.4 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.5 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

### 3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the

Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability. (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the

insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced promptly so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement,

to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this Section upon request of the City.

### 3.4 Fees and Payments.

3.4.1 Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement. The total compensation shall not exceed Two Million Three Hundred Twenty Six Thousand One Hundred Sixty Seven Dollars (\$2,326,167.00) without written approval of the City Council or City Manager as applicable, and shall be paid on a monthly basis as delineated in Exhibit "B" Fee Schedule.

3.4.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.4.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless included within Exhibit "A" and authorized in writing by City.

3.4.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work within the Scope of Services which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City. Should Parties agree to additional compensation for the Extra Work then this Agreement shall be amended to reflect the Extra Work and the compensation.

3.4.5 Rate Increases. Annual rate increases are included and delineated in Exhibit "B". No other increases will be provided.

### 3.5 Labor Code Requirements.

3.5.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code



within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.5.2 Labor Law Requirements. Consultant is aware of and will comply with all applicable federal, state and local labor and wage laws and regulations in connection with its employees and subcontractors. Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.6 Accounting Records.

3.6.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all expenses for which Consultant seeks reimbursement from City pursuant to Section 3.4.3 hereof. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. in connection with any such reimbursement request. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

4. **GENERAL PROVISIONS**

4.1 **Termination of Agreement.**

4.1.1 Termination for Convenience. City may terminate this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. If this Agreement is terminated as provided herein, Consultant shall be paid only the total amount equal to the service Consultant has provided to City as of the termination date.

4.1.2 Termination for Cause. If for any reason, Consultant fails to fulfill in a timely and proper manner its obligation under this Agreement, or if Consultant violates any of the covenants or stipulations in this Agreement, the City shall then have the right to terminate this Agreement by giving a five (5) calendar day written notice to Consultant. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The Consultant will be paid a total amount equal to the service Consultant has provided as of the termination date.

4.2 Solicitation of Employees and Other Parties. The City acknowledges and agrees that the Consultant's Confidential Information includes information relating to the Consultant's employees, consultants, and others and that City may not use or disclose such Confidential Information except as permitted by this Agreement or authorized by Consultant. City further agrees that, during the term of the term of this Agreement and for a period of two (2) years following the expiration or termination date of this Agreement, City shall not, directly or indirectly, (a) solicit or encourage any of the Consultant's employees or independent contractors to terminate their relationship with Consultant, (b) solicit, induce, recruit, encourage, take away,

or hire any employees or independent contractors of Consultant, either for itself or for any other person or entity, and (c) use any Confidential Information of Consultant to negatively influence any of Consultant's employees, independent contractors, clients, or commercial business partners to discontinue or reduce their business with Consultant. The foregoing restriction shall not restrict City from engaging in general solicitations of employment not directed at the Consultant's employees (e.g., through general advertisements, search firms, etc.) or hiring any employee or officer responding to such general solicitations without encouragement by City or its representatives.

4.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Consultant:	Draw Tap GIS 1950 E. Chapman Ave., Suite #3 Fullerton, CA 92831 ATTN: Patrick Ward Email: <a href="mailto:patrick.ward@drawtapgis.com">patrick.ward@drawtapgis.com</a>
City:	City of Pomona 505 South Garey Avenue Pomona, CA 91766 ATTN: Sam Wong Email: <a href="mailto:sam.wong@pomonaca.gov">sam.wong@pomonaca.gov</a>

4.4 Such notice shall be deemed made when personally delivered, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

4.5 Ownership of Materials and Confidentiality.

4.5.1 Ownership of Documents & Data. Consultant agrees that all intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data") shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City all Documents & Data. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such Documents & Data pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data in Consultant's possession for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

4.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing to assign any intellectual property in Documents & Data created by such subconsultant to City in accordance with the terms hereof.

4.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

4.5.4 Indemnification. Subject to the limitation in Section 5, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

4.5.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium, or in any other publication, without the prior written consent of the City.

4.5.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non

appealable order by a court of competent jurisdiction requires that City release such information.

4.5.7 Background Technology, Third Party Technology and Know-How

4.5.7.1 Documents & Data shall not include: (i) any creations (including, without limitation, any technology, inventions, discoveries, works of authorship or other prior creations) that were conceived, created or reduced to practice by or for Consultant (alone or with others) prior to commencement of Consultant's contractor arrangement with City (collectively, "Background Technology"); (ii) any software, materials or other technology which is owned or controlled by a third party ("Third Party Technology"); or (iii) technical skill and knowledge which is used or required to be used by Consultant in or in connection with the Services existing in any form ("Know How").

4.5.8 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL (a) CONSULTANT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE TOTAL CONTRACT AMOUNT OF \$2,326,167.00; AND (b) CONSULTANT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

6. INDEMNIFICATION. To the fullest extent permitted by law and as limited by Section 5 (Limitation of Liability), Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death ("Loss"), in any manner arising out of, pertaining to, or incident to any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses; provided, however, that in no event shall Consultant be required to indemnify for any Loss to the extent such Loss is caused by, arises from, or relates to the sole acts, errors or omissions of any City employee, paid or unpaid City intern, or any other consultants or independent contractor engaged by the City. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

7. MISCELLANEOUS TERMS

7.1.1 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

7.1.2 Governing Law; Dispute Resolution; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. All disputes hereunder shall be brought the courts of the state of California located in Los Angeles

County, provided that in addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

7.1.3 Legal Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and all other costs of such action.

7.1.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

7.1.5 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project. City agrees and acknowledges that Consultant shall have no obligation to train, supervise or control such other consultants, and has no obligation to indemnify the City or any party for any Loss arising from or related to the acts, errors and omissions of such other consultants.

7.1.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

7.1.7 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to assign this Agreement in violation of this section shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

7.1.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

7.1.9 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

7.1.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit,

privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

7.1.11 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

7.1.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

7.1.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

7.1.14 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

7.1.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

## 7.2 **Subcontracting.**

7.2.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON NEXT PAGE]**

SIGNATURE PAGE TO

PROFESSIONAL SERVICES AGREEMENT BY AND  
BETWEEN THE CITY OF POMONA AND DRAW TAP GIS

CITY OF POMONA

Draw Tap GIS

By:

  
Anita Gutierrez  
City Manager

By:

  
Patrick Ward  
President

Attest:

  
Rosalia Butler      for Rosalia,  
City Clerk              City Clerk

Approved as to Form:

  
Best Best & Krieger LLP  
City Attorney

## EXHIBIT "A" SCOPE OF SERVICES

Consultant shall provide GIS Services and Support for the Information Technology ("ITD") Department, in support of all City departments within the City.

Only those Services specifically set forth on this Exhibit A "Scope of Services" are contemplated, and the Scope of Services shall specifically exclude the following: (1) Non-Esri ArcGIS based software systems, (2) any project management, implementation, or administration of a Computer Maintenance Management System (CMMS), (3) work for a third party vendor contracted to provide services to City.

1. GIS Project Management and Consultation
  - a. Provide specialized project management and consulting services to the City on the Enterprise ArcGIS platform.
  - b. Oversee data creation and maintenance, produce maps, conduct specialized analyses, manage ArcGIS systems and applications, and supervise GIS personnel.
  - c. Conduct in-depth training sessions and promote the development of expertise in the use of GIS platforms, tools, web applications, and other relevant software to the City.
  - d. Coordinate with and support City staff on inquiries within Scope of Services, including the participation of meetings.
  - e. Respond timely to email and telephone inquiries.
  - f. Perform research to support GIS implementations and activities.
  - g. Feasibility assessment and ideation of new projects.
  
2. Management and upkeep of ArcGIS Enterprise Systems, including transitions to updated ArcGIS platforms and integration of future updates
  - a. Provide administration and maintenance to existing ArcGIS Enterprise systems, including the Information Technology Department's ArcGIS Enterprise System and ArcGIS Online, and Water Resources Department's ArcGIS Enterprise System under the small utility agreement.
    - i. Perform system upgrades, apply necessary patches, implement application enhancements, manage licenses, adhere to security standards, and execute change management protocols. Maintenance is to be performed outside of business hours. e.g. on weeknights and/or weekends.
    - ii. The services performed will address modifications necessitated by the ArcGIS Enterprise system, encompassing adjustments to the geodatabase schema, map services, and web applications. The provision will cover all Esri ArcGIS-based technologies in use, such as ArcGIS Server, Portal for ArcGIS, ArcGIS DataStore, ArcGIS Web Adaptor, ArcGIS Online, and related mobile applications. It is noted that non-Esri ArcGIS based software systems fall outside the purview of this Scope of Services.



- iii. Manage the reliability and integrity of enterprise GIS systems, both on premises and in the cloud, ensuring the implementation of security best practices in adherence to modern standards.
- iv. Administer the assignment of GIS access rights/privileges and monitor license usage for employees and staff.

3. GIS Data Management, Spatial Analysis, and Map Production

- a. Assist the City in managing data layers for each department, ensuring they are vetted and approved for production use through the geodatabase versioning process. The City and its departmental stakeholders will define criteria for what constitutes production readiness. Additionally, the consultant will offer services in spatial analysis and the production of cartographic maps.
- b. Create various maps and visualizations, such as thematic maps, interactive web maps and dashboards, and 3D city models, designed for both public and internal use and suitable for digital and/or physical distribution. Maps and visualizations should be user-friendly, accurate, and compliant with cartographic standards.

4. Planned Projects

In addition to the general scope defined above, the City have at least the following sizable initiatives and unique adoption of GIS services in scope:

- a. Development Services Department – Planning Division
  - i. Environmental Justice Map – create and implement geospatial map identifying environmental burdens within the City of Pomona.
- b. Innovation and Technology Department
  - i. Web App Builder to Experience Builder – migrate and transition applications from Web AppBuilder to Experience Builder, ensuring compatibility, functionality, and optimization of the current web applications reliant on the antiquated Web AppBuilder.
  - ii. Mobile App Integration Feasibility Assessment – review the City's current civic engagement app's API functionalities and determine feasibility on integrating Esri Workforce and Navigator features to enhance field staff interaction with service request portal to improve efficiency.
  - iii. Service Request Dashboard – extracts information from the City's civic engagement app and update metrics for public consumption to quantify city work and requests.
- c. Public Works Department – Engineering Division
  - i. Citywide Sign Inventory Program – create and implement a citywide inventory geospatial map to track signage within the city.
- d. Water Resources Department – Water Engineering Division
  - i. Ongoing development WRD Applications and Enterprise Tools for Esri ArcGIS-Centric Asset Management Solution.
  - ii. Continue to digitize stormwater atlas maps.
  - iii. Pavement and sidewalk dashboard, continue with quarterly updates with Engineering staff.

- iv. Digitize and incorporate drawing hyperlinks through Laserfiche and/or other means; and along with varied API integration/development as required with other software.
  - v. Laserfiche document hyperlinking for Infrastructure (water, sewer, stormwater).
  - vi. WRD Laserfiche Hyperlinking. Consultant will hyperlink documents into Laserfiche. This integration shall include archived drawings, construction specifications, written standards, drawn standards, approved product documentation, and hyperlinking within GIS feature attributes. This shall include documentation for the WRD warehouse and associated materials. This line item is limited to the support of WRD and excludes other City departments unless otherwise specifically named under this Scope of Services.
- e. Water Resources Department – Water Operations Division
- i. Reservoir Inspections and Maintenance within Field Maps with Management Dashboard.
  - ii. Booster Pump Inspections and Maintenance within Field Maps with Management Dashboard.
  - iii. Well Inspections and Maintenance within Field Maps with Management Dashboard.
  - iv. Treatment Inspections and Maintenance within Field Maps with Management Dashboard.
  - v. Clayton Valve (Cla-Val) pressure zone and flow control valve data management.
- f. Water Resources Department – Distribution & Operations Division
- i. Large Meter Inspection and Maintenance within Field Maps and data managed within Enterprise Geodatabase.
  - ii. Large Meter Management Dashboard.
  - iii. Virtual Valve Card development and Dashboard within ArcGIS Enterprise.
  - iv. Water Mainline Leak Survey123 and Management Dashboard integration.
  - v. Water mainline Maintenance and Inspection with Field Maps.
  - vi. Water Regulator Inspection and Maintenance within Field Maps with Survey123 integration.
  - vii. Regulator Management Dashboard.
  - viii. Confined Space Management with Field Maps.
  - ix. Confined Space Management Dashboard.
- g. Water Resources Department – Environmental Section
- i. Develop a program to track SUSMPs.
  - ii. Evaluate and provide assessment for a self-certification program for property owners to certify that they are doing the post construction BMPs.
  - iii. Maintenance with the Stormwater catch basin cleaning program.
- h. Water Resources Department – Water Quality Division
- i. Evaluate and provide assessment for integration with Swift Comply for

- backflow management and database updates
  - ii. Evaluate and provide assessment for backflow Inspections and Reporting within Field Maps with custom Email notifications and data managed within WRD Enterprise Geodatabase
- i. Water Resources Department – Wastewater Division
  - i. Evaluate and provide assessment to merge current CCTV video inspections to GIS maps. For example, if someone clicks on a sewer pipe segment they would have the option of reviewing the CCTV video inspection for the sewer main selected. This can potentially be accomplished by means of a hyperlink being added to the data fields or a file path to the video inspections
  - ii. Continue to work with WinCan to fine tune the Enterprise Solution for Wincan (project currently in progress)

5. GIS Staffing Levels

- a. The consultant must be GIS Professional certified (GISP) and part of Esri Partner Network with ArcGIS System Ready specialty or equivalent, such as Local and State Government specialty.
- b. The consultant is responsible for providing a team of adequately qualified and trained staff to meet the commitments specified in this scope of services, including, but not limited to: GIS Technicians, Specialists, Programmers (Python and SQL familiarity), Solution Engineers, System Administrators, and Architects.
  - i. A minimum of five personnel will be exclusively assigned to deliver services in the specified locations below. The consultant’s staff and their locations may be adjusted, added, or removed as necessary to accommodate the City’s requirements.
  - ii. The City may opt for additional contracted staff in which subsequent agreements will need to be adopted, such as for projects outside of scope or if the City simply needs more resources.
  - iii. At least one GIS staff designated for the IT Department must pass Peace Officer Standards and Training (POST) full background investigation due to potential access to sensitive law enforcement information.

<b>Department</b>	<b>Location</b>	<b>Position Title (number of staff)</b>
IT Department	Remote/City Hall	GIS Administrator (1)
IT Department	City Hall	GIS Technician (1)
Public Works Department	City Hall	GIS Technician (1)
Water Resources Department	Water Building	GIS Specialist (1)
Water Resources Department	City Hall	GIS Technician (1)

The GIS stakeholders and departments within the City will procure all essential hardware and software licenses required for the projects and initiatives outlined in this scope of services. Ownership of all acquisitions will be retained by the City.

All relevant GIS data must be provided to the City in formats compatible with the City’s ArcGIS Pro and ArcGIS Enterprise applications.

Negotiations on timelines and deliverables will be conducted with the consultant, and separate task orders will be issued as necessary.

**EXHIBIT B  
FEE SCHEDULE**

<b>Term</b>	<b>Monthly Fee</b>	<b>Total Fee per Term</b>	<b>5% Annual Increase</b>
<b>Year One</b>			
7/1/2024 – 6/30/2025	\$61,490	\$737,880	\$36,894
<b>Year Two</b>			
7/1/2025 – 6/30/2026	\$64,565	\$774,774	\$38,739
<b>Year Three</b>			
7/1/2026 – 6/30/2027	\$67,793	\$813,513	\$40,675

If Parties agree to extend the Agreement for two additional one-year terms, the increase in payment will be as follows:

<b>Optional Year Four</b>			
7/1/2027 – 6/30/2028	\$71,182	\$854,188	\$42,710
<b>Optional Year Five</b>			
7/1/2028 – 6/30/2029	\$74,741	\$896,898	