CITY OF POMONA

PROFESSIONAL SERVICES AGREEMENT

1.   PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 20___, 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 NJBSoft, LLC, an Arizona limited liability company, with its principal place of business at 202 East Earll Drive Suite 110, Phoenix, Arizona 85012 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2.   RECITALS.

2.1   Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional water quality compliance software implementation and support services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional water quality compliance software implementation services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2   Project.

City desires to engage Consultant to render such professional water quality compliance software implementation services for the Water Quality Compliance Software implementation project ("Project") as set forth in this Agreement.

3.   TERMS.

3.1   Scope of Services and Term.

3.1.1   <u>General Scope of Services</u>. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional water quality compliance software implementation services necessary for the Project ("Services").   The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2   <u>Term</u>. The term of this Agreement shall be from February 24, 2025 to February 23, 2030, 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.

3.2   Responsibilities of Consultant.

3.2.1   <u>Independent Contractor; Control and Payment of Subordinates</u>.   The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement.   Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also 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.

3.2.2   <u>Schedule of Services</u>. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. 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 to meet the Schedule of Services.

3.2.3   <u>Conformance to Applicable Requirements</u>.   All work prepared by Consultant shall be subject to the approval of City.

3.2.4   <u>Substitution of Key Personnel</u>. 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. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Pranam Joshi, President.

3.2.5   <u>City's Representative</u>. The City hereby designates Chris Diggs, Water Resources Director, or his/her designee, 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 Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person

other than the City Manager, City's Representative or his/her designee.

        3.2.6   Consultant's Representative. Consultant hereby designates Pranam Joshi, President, 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 his/her best skill and attention, 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.

        3.2.7   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.

        3.2.8   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. As provided for in the indemnification provisions 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. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

        3.2.9   Period of Performance and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Consultant shall pay to the City as fixed and liquidated damages the sum of Five Hundred Dollars ($500) per day for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

        3.2.10 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 regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant 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.

3.2.10.1 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.

3.2.10.2 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 3.2.10.1.

3.2.10.3 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 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 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 or engagement 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.

3.2.10.5   Air Quality.   To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB).   Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine.   Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.6   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.   Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11   Insurance.

3.2.11.1   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.

3.2.11.2   Types of Insurance Required.   As a condition precedent to the effectiveness of this Agreement and 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) excluding 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.

(D)   Professional Liability (Errors & Omissions):   Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than $1,000,000.   Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(E)   Technology Professional Liability Errors and Omissions Liability Insurance appropriate to Consultant's profession and work hereunder, with limits not less than $1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

3.2.11.3   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 (a) be restricted to "ongoing operations"; (b) exclude "contractual liability"; (c) restrict coverage to "sole" liability of Consultant; or (d) 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)   Professional Liability (Errors & Omissions): (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) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D)   Technology Professional Liability Errors and Omissions Liability Insurance: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced without endeavoring to provide a thirty (30) day written notice of cancellation to the Organization. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of Consultant.

(E)   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.

3.2.11.4   <u>Primary and Non-Contributing Insurance</u>.   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.

3.2.11.5   <u>Waiver of Subrogation</u>.   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.

3.2.11.6   <u>Deductibles and Self-Insured Retentions</u>. 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.

3.2.11.7   <u>Evidence of Insurance</u>. 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 canceled or reduced and not replaced immediately 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.

        3.2.11.8 <u>Acceptability of Insurers</u>. 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.

        3.2.11.9 <u>Enforcement of Agreement Provisions (non estoppel)</u>. 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.

        3.2.11.10 <u>Requirements Not Limiting</u>. 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.

        3.2.11.11 <u>Additional Insurance Provisions</u>

        (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.

3.2.11.12 <u>Insurance for Subconsultants</u>.   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.

3.2.12 <u>Water Quality Management and Compliance</u>.

3.2.12.1   <u>Storm Water Management</u>.   Storm, surface, nuisance, or other waters may be encountered at various times during the Services.   Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.12.2   <u>Compliance with Water Quality Laws, Ordinances and Regulations</u>.   Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3   <u>Standard of Care</u>. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 3.2.12.2 of this Agreement.   Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

3.2.12.4   <u>Liability for Non-compliance</u>.

(A)   Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.12.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify

and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B)   Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C)   Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3   Fees and Payments.

3.3.1   <u>Compensation</u>.   Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred Sixty-Six Thousand Nine Hundred Two Dollars ($266,902.00) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2   <u>Payment of Compensation</u>.   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.

3.3.3   <u>Reimbursement for Expenses</u>. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.3.4   <u>Extra Work</u>. 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 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.

3.3.5   <u>Rate Increases</u>. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal

as set forth in Exhibit "C."

3.4   Labor Code Requirements.

3.4.1   <u>Prevailing Wages</u>. 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.

3.4.2   <u>Registration/DIR Compliance</u>. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.4.3   <u>Labor Certification</u>. By its signature hereunder, 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.

3.5   Accounting Records.

3.5.1   <u>Maintenance and Inspection</u>. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. 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. 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.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of 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 seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.6.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 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:	NJBSoft, LLC
	202 East Earll Drive Suite 110
	Phoenix, Arizona 85012
	ATTN: Pranam Joshi, President
City:	City of Pomona
	752 West Commercial Street
	Pomona, CA 91768
	ATTN: Chris Diggs, Water Resources Director

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.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or

sublicense any and all copyrights, designs, and other 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"). All 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 reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. 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 pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file 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.

> 3.6.3.2 <u>Subconsultants</u>. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

> 3.6.3.3 <u>Right to Use</u>. 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.

> 3.6.3.4 <u>Indemnification</u>. 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.

3.6.3.5   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 be held confidential by Consultant. Such materials 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. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. 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 without the prior written consent of City.

3.6.3.6   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.

3.6.3.7   Security Standards. To the extent Consultant's Services require Consultant to access, use, transfer, or maintain City's data, Consultant shall implement and maintain industry-standard cybersecurity measures to protect the City's data. Access to such data should be limited to access required for Consultant to meet its obligations under this Agreement. Consultant shall immediately notify City in writing of any suspected or confirmed data breach, unauthorized access, or cybersecurity incident involving City's data. Upon termination or expiration of this Agreement, Consultant shall permanently delete all City Data from its systems, including backups, within 30 days and shall provide the City with a written certification of deletion. If deletion is not practicable, Consultant shall notify the City in writing and shall continue to protect such data in accordance with this Agreement's security requirements until deletion is possible. Consultant shall not retain, use, or disclose City Data for any purpose after termination, except as required by law.

3.6.4   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.

3.6.5   [Reserved]

3.6.6   Indemnification.

3.6.6.1   To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), 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, in any manner arising out of, pertaining to, or incident to any 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. 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.

3.6.6.2   If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.6.3   Consultant shall indemnify, defend, and hold harmless the City, its officials, officers, employees, agents, and volunteers from any claims, fines, penalties, damages, or regulatory violations arising from:

(i) software failures, malfunctions, or defects;

(ii) incorrect data processing, reporting, or system errors that cause regulatory noncompliance;

(iii) cybersecurity breaches, unauthorized access, or data corruption caused by Consultant's system.

Consultant shall remedy all material defects within 10 business days of notification at no additional cost to the City.

3.6.7   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. This Agreement may only be modified by a writing signed by both parties.

3.6.8   Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. 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.

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

3.6.10   City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

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

3.6.12   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 do so 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.

3.6.13   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.

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

3.6.15   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.

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

3.6.17   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.

3.6.18   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.

> 3.6.19 <u>Authority to Enter Agreement.</u> 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.

> 3.6.20 <u>Counterparts</u>. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7 Subcontracting.

> 3.7.1 <u>Prior Approval Required</u>. 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

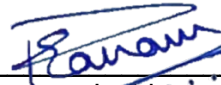**PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF POMONA AND NJBSoft, LLC**

CITY OF POMONA   **NJBSoft, LLC**

By: _____   By: _____
       Anita D. Scott   Pranam Joshi
       City Manager   President

Attest:

_____
City Clerk

Approved as to Form:

/s/ Aysha Majeed
_____
Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

This Scope of Services defines the SAMS Water Software ("SAMS") implementation services that Consultant shall perform for the City.

Consultant shall provide the following services:

1. Provide and configure SAMS as Software as a Service (SaaS) as identified in this Scope of Services
2. Provide guidance and expertise to the City for the implementation of SAMS including data migration from mutually agreed electronic formats such as Microsoft Excel
3. Provide SAMS customization
4. Provide SAMS training to the Administrator and End Users of the City

There shall be no limits or restrictions on the number of authorized users who can access SAMS and all associated databases at any given time. There are also no restrictions to the amount of data that can be stored in the associated databases.

Scope of Services

Tasks and deliverables required to implement SAMS for the City are as following:

Task 1: Project Kickoff and Software Delivery
- Delivery and access to SAMS
- An electronic document that details all mutually agreed tasks, milestones and "Hyper-Care" periods

Task 2: Project Plan, City Data Request and Review

Task 3: Project Development
- Libraries, schedules, standard reports, dashboards and forms

Task 4: Historical Data Migration

Task 5: Integrations for Supervisory Control and Data Acquisition (SCADA), Laboratory Information Management System (LIMS), 3rd Party Labs and Geographic Information System (GIS)

Task 6: Field Data Collection Forms Development
- Apps and forms

Task 7: Sampling Templates and Schedules Development
- Sampling schedules, templates and projects

Task 8: Queries, Reports, and Dashboards Development
- Custom queries, reports and dashboards
- An electronic document detailing how to utilize the queries, reports and dashboards, to import data, to map sites and to arrange layouts

Task 9: User and System Testing

Task 10: SAMS Training for Administrator and End Users

Task 11: "Hyper-Care" and Ongoing Support with Service Level Agreement (SLA)

Task 1: Project Kickoff Meeting and Software Delivery

At the outset of the project, Consultant shall provide the City delivery of SAMS and schedule a kickoff meeting. The kickoff meeting must review all phases of the project. The key goals of this meeting are to:

1. Introduce the Consultant's project manager and team and identify points of contacts for both Parties
2. Review and finalize architecture and system requirements
3. Review project objectives and schedule
4. Review initial information and data needs and requests
5. Identify and clarify current and future uses of SAMS

Task 2: Project Plan, City Data Request and Review

Consultant shall identify the requirements, risk, and implementation criteria, and develop the deployment architecture and communications plan. Additionally, Consultant shall provide a Request For Information (RFI) of data needed to meet the requirements identified in this task in a mutually agreed upon format(s).

Below is an example list of information that Consultant will request from the City:
1. Current schedules and monitoring requirements at each data collection site for water compliance and process (internal and special) sampling locations
2. Current waivers or reduced monitoring approvals
3. Copies of compliance reports that SAMS shall generate
4. General IT philosophy and architecture
5. Compliance philosophy, data management, and infrastructure setup
6. Copy/Sample of the data collection spreadsheets currently in use
7. Integration Requirements related to corresponding technologies (field and lab data equipment)
8. Users for associated system and their rights requirements

Status meetings shall be conducted as following:
1. Frequency
   a) Once every two weeks
   b) Plus meetings as deemed necessary and requested by either party
      - More frequent meetings (weekly) at the start of project
2. Participants
   a) Consultant: Project Manager and Implementation Staff
   b) City: Project Manager and additional City Staff as necessary

Consultant shall provide the City a status report prior to the status meetings. These reports must contain but are not limited to a list of tasks completed during the prior period, tasks scheduled for the next period, overall completion percentage and Risks, Assumptions, Issues, and Dependencies (RAID).

Task 3: Project Development

Consultant shall work with the City to create templates such as tables and forms of information for the following:

1. Input Templates for Data
2. Analyte Library and Container Library
3. Project Library
4. Rules Library
5. User Library
6. Rules Water Quality Definition
   a) Defines the proactive steps required to maintain and update federal and state compliance requirements
   b) Local and City internal requirements, defined by the City
7. Update Utility Management
   a) Custom fields
   b) Signatory controls
   c) Regulatory Agency controls
8. Chain of Custody (COC) development and workflows
9. Dashboard Development with Criticality View Search and Conditional Formatting
   a) Dynamic Dashboards with Alert and Notifications
   b) Maximum Contaminant Level (MCL) and Operational Exceedances
   c) Missing or upcoming sampling events
   d) Missing Lab Results
10. Field Data Collection Forms
    a) Three (3) custom forms including below
    b) Field Sampling
    c) Facility and Well Field Report
       i) Meter Readings
       ii) Lead/Lag Vessel changes
       iii) Seven (7) additional operational values
11. Sampling Templates and Schedules
12. Document Management Controls and Relations
13. Report Templates
    a) Three (3) custom reports such as below
       i) "Watermaster Reports"
    b) Standard template reports which are all reports and forms submitted to the State on Monthly, Quarterly, and Annual basis
       i) Monthly or Quarterly State Reports for Water Quality and Production (all associated forms including below)
          a. Well production
          b. Blend calculations
       ii) Annual Consumer Confidence Reports (CCRs)
14. Submittal Workflows

These libraries shall be incorporated into the SAMS database. To allow for potential future adjustments to these libraries, an import process shall be developed or provided by vendor and utilized by City Staff. City Staff must also have the ability to adjust as needed. Should the import method be selected, then deliverables shall be Microsoft Excel templates and imported data tables.

Task 4: Historical Data Migration

Consultant shall work with the City to migrate up to twenty-five (25) years of historical data and create reports that are dependent on historical data such as Lab Results, Production Daily Reports, and SDWIS data. Historical data must be provided in the City's electronic formats such as Microsoft Excel.

Safe Drinking Water Information System (SDWIS) data shall be imported directly into SAMS via Consultant's Data Analytics Application Programming Interface (API).

NOTE: Clean-up of Historical data is not included. Clean-up of data shall be completed by the City, if required. Consultant shall provide expert guidance and advice.

Task 5: Integrations for SCADA, LIMS, 3rd Party Labs and GIS

Using the existing data transfer solution, Web API or other existing file transfer methods, Consultant shall setup and transfer information from SCADA and LIMS (any data management system that the City uses) to allow the transfer of data into and out of SAMS as deemed necessary by the City. SAMS will immediately have the data available for blend calculations for SCADA. No duplicated data import shall be allowed.

COCs and bottle labels shall be generated with the 3rd Party lab information and processed in sampling workflow via SAMS. Third Party Labs shall be integrated using Microsoft Excel based COC and an email address for Microsoft Excel based Electronic Data Deliverables (EDDs).

Using SAMS-Representational State Transfer (REST) API service, the City's GIS data shall be pushed to SAMS as background layers to map out sample sites and to create sampling routes.

SAMS Data Analytics API must be connected for data processing and machine learning (ML) suggestions.

Task 6: Field Data Collection Forms Development

Consultant shall review out-of-the-box field data collection procedures, identify necessary changes, and deploy a configurable form-based field data collection. This includes the forms detailed in Task 3 for up to three (3) custom forms. The City shall be able to utilize the standard forms already available within SAMS, and they are not included in three (3) forms.

Features of operational data collection tools shall include:

1. Complete control over the layout of all forms
   a) Including specific field validation checks such as additional sampling needed for a low chlorine residuals and valid pH ranges
2. User defined and predefined fields
3. Working across various in-support operating systems (e.g. Windows, iOS, Android, and ChromeOS) and browsers (e.g. Chrome, Firefox, and native device browsers)
4. "Point and Click" application development
5. Off-line data storage and synching of data back into the server
6. Camera integration for identifying location using barcode/QR Code scanning
7. Mic integration for dictation in the field
8. Automated rules for work order creation, emails and text messaging
9. Working within in-browser environment and mobile app, supporting mobile operating systems such as Windows, iOS, Android, ChromeOS
10. Complete Do-It-Yourself tools built in
11. Ability to create efficient field data collection routes including surveys
12. Ability to search query and view lab/SCADA or any data available online in the field
13. Dashboards, Graphing and Trending tools in the field
14. Mapping Tools

Task 7: Sampling Templates and Schedules Development

Based on the current monitoring schedules for compliance sampling requirements and various internal projects, Consultant shall work with City Staff for input and create sampling schedule templates, replicating the City's sampling schedule, and set up projects from the SAMS project template library and individual projects for the City's water system.

The sampling schedules shall include the conditional and triggered sampling events for the Coliform, Granular Activated Carbon (GAC) vessels, and higher frequency monitoring. The schedules shall be automatically changed and managed by the well status, so that a change in the well status must automatically activate and deactivate sampling events.

The sampling schedule templates shall cover all tests and frequencies of the City's all sampling locations per following rules and regulations:

1. All permits and permit amendments
2. Vulnerability assessments
3. All federal, state, and local regulations
4. Special and internal monitoring

Task 8: Queries, Reports and Dashboards Development

Consultant shall analyze the reports available within SAMS to identify out-of-the-box solutions and the City's reports to meet the submissions for all compliance reports to the State and up to three (3) custom reports for the City's special needs. This includes the reports detailed in Task 3.

Custom reports shall be developed using the SAMS template/excel/access template or template report mechanism, to generate a report such as the "Watermaster Reports".

The Dynamic Dashboards include all necessary alerts and notifications available in the SAMS workflows and automations, and up to three (3) user-specific custom dashboards will be developed.

The City shall be able to utilize the standard queries, reports and dashboards already available within SAMS to create unlimited number of custom dashboards and reports as the City see fit.

Task 9: User and System Testing

Consultant shall establish two (2) non-production environments: "QA/Sandbox" and "Development". The QA/Sandbox environment shall be copied during go-live, so when initial and future testing are completed the changes and corrections can be applied to the live "Production" environment. The Development environment will be reserved for use with new features, functions, and/or configuration changes before being advanced to QA/Sandbox.

End User Acceptance Testing:

Designated City Staff shall carry out full testing of the software based on the scripts developed by Consultant in collaboration with the City.

System Integration Testing Plan:

The Systems Integration Testing shall include testing of the system for system level functionality, security, recovery, restart, performance, external interface, usability, and the integration of the different modules under it. This phase is recursive and shall be repeated, as many times as needed

Business Rules (Compliance Calculations) Testing Plan:

Consultant shall establish standard test scripts for testing various phases of the compliance, operations and permit rules.

Performance Measurements:

1. Ability to manage sampling schedules
2. Ability to import data from internal and external sources
3. Ability to enter data in the field and generate COCs
4. Generate reports (all internal and regulated/compliance reports)
5. Generate dashboards and associated alerts and notifications
6. Ability to integrate with SCADA, LIMS, 3rd Party Labs, and GIS

Task 10: SAMS Training for Administrator and End Users

Administrator Training shall:

1. Be targeted to the City staff who is managing the setup and maintenance of the SAMS modules from day to day
2. Include user rights, user groups, locations, facilities, schedules, audits, tasks, frequencies, parameters, alert levels, email, and alert notifications
3. Include adding, deleting, and modifying different operational and management criteria
4. Be one-day training course

<u>End User Training shall:</u>

1. Consist of SAMS specific compliance features
2. Involve using SAMS with simulated data to walk through different compliance decision points on the algorithm and to demonstrate the workflow and results
3. Include the data management of SAMS, reporting functionality of the SAMS out-of-the-box solutions, charting, trending, and mapping results and using forecasting tools to track the trends on SAMS
4. Involve understanding of the usage of integration tools with other database technologies
5. Be a one-day training course

Task 11: "Hyper-Care" and Ongoing Support with Service Level Agreement (SLA)

"Hyper-Care" is defined as expedited post implementation support services provided by the Consultant. Consultant shall provide four (4) weeks of "Hyper-Care" support after the Go-Live date. All implementation, functional, and performance issues shall be addressed by the Consultant's implementation team within one (1) business day.

Ongoing Support shall include all updates, upgrades, and unlimited support.

The following is the **Service Level Agreement (SLA)** for SAMS as SaaS between the Parties, under which Consultant provides services for City. It sets forth the Parties' objectives and the performance levels Consultant strives to meet in providing the services. This SLA will remain in effect until the termination of the Agreement.

1. **Definitions**

   For the purposes of this SLA, the following terms have the meanings set forth below. Any revisions to the service levels must be in writing and authorized by both parties.

   a. **Unscheduled Downtime:** The total amount of time during any calendar month, measured in minutes, during which City is not able to access the features and functions of SAMS as contemplated in this SLA, other than Scheduled Downtime.

   b. **Scheduled Downtime:** The total amount of time during any calendar month, measured in minutes, during which City is not able to access the SAMS, as hosted by Consultant, due to planned system maintenance performed by Consultant, as set forth in the table below. Consultant will exercise reasonable efforts to perform scheduled system maintenance between the hours of 6:00 PM and 3:00 AM Pacific Time. Consultant reserves the right to change the aggregated times set forth in the table below, provided that Consultant provides reasonable prior notice prior to

modifying such Scheduled Downtime. Consultant will notify City of scheduled maintenance a week in advance and unscheduled maintenance as soon as possible, or within 2 hours.

When Scheduled Downtime will occur on a regular basis:	Purpose of Scheduled Downtime:	Maximum Duration of Scheduled Downtime:
Each Weekend	System maintenance	2 hours
Each Weekend	Database maintenance	1 hour
Once per calendar month	Application/ Operating System maintenance	6 hours

2. **City Requirements**

a. **Obligations:** City is responsible for maintenance and management of its computer network(s), servers, software, and maintenance and management of related equipment or services. City is responsible for correctly configuring its systems according to the Consultant's instructions, if provided, to ensure access to the features and functions of SAMS. To allow Consultant to monitor City's data management system (or other applicable platform accessing SAMS) for system performance pursuant to Section 3.b(iv), City must also provide Consultant with the ability to perform testing from an IP address to be provided by Consultant at regular intervals.

b. **Reporting of Unscheduled Downtime:** City must promptly notify Consultant if Unscheduled Downtime occurs. Unscheduled Downtime begins on the earlier of when Consultant receives accurate notification from City, or when Consultant first becomes aware of it.

c. **Non-Performance:** Consultant's obligations in this SLA will be excused if any failures result in whole or in part from City's or City Staff's failure(s) to meet their obligations.

3. **Performance**

a. **SAMS Availability:** Consultant will undertake commercially reasonable measures to ensure that SAMS Availability via Amazon Web Services (AWS) is available as set forth in this SLA.

b. **Unscheduled Downtime:** Consultant will undertake commercially reasonable measures to ensure that the Unscheduled Downtime is no more than 1 hour during each calendar month (the "Service Standard" which is 0.1% unscheduled

downtime and 99.9% uptime), provided that any Unscheduled Downtime occurring as a result of (i) City's breach of any provision of this SLA; (ii) non-compliance by City with any provision of this SLA; (iii) incompatibility of City's or City Staff's equipment or software with the Product; (iv) performance of AWS, City's systems, or the Internet; (v) modifications or updates by third party manufacturers/licensors to systems or software that interact with the Product; (vi) a Service Suspension (defined below), or (vii) force majeure shall not be considered toward any reduction in SAMS Availability measurements.

c. **Access to Support and Response Times:** City may report Unscheduled Downtime at any time by emailing Consultant at info@njbsoft.com or by calling (602) 759-1905. Consultant will exercise commercially reasonable efforts to initiate remedial activity within sixty (60) minutes of each report of Unscheduled Downtime during business hours (5:00 AM to 6:00 PM Pacific Time, Monday through Friday, excluding Consultant holidays) for issues affecting connectivity and server availability. During non-business hours, Consultant will initiate remedial activity within two (2) hours for issues affecting connectivity and server availability. The table below outlines the SLA for support tickets.

Severity	Response Time	Case Example
Severity 1 (High)	24/7 1 hour during business hours; 2 hours during after hours	Service Availability / Performance
Severity 2	24/5 (Monday - Friday) 8 hours	Integration failures
Severity 3	24/5 24 hours	Issue with business process approval
Severity 4	24/5 24 hours	Error message or wording
Severity 5 (Low)	24/5 48 hours	Customer Care request

d. **Service Suspension:** Consultant may temporarily suspend City's and City Staff's access to any portion of, or all of the SAMS if (i) Consultant reasonably determines that (a) there is a threat or attack on any of SAMS; (b) City's or any City Staff's use of SAMS disrupts or poses a security risk to SAMS or any of Consultant's other customers or vendors; (c) City or any City Staff is using SAMS for illegal activities; (d) City has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (e) applicable law prohibits Consultant's provision of SAMS to City or City Staff; or (f) Consultant's vendor has suspended or terminated Consultant's access to or use of any third party services or SAMS required for City

to access SAMS (each such suspension, in a "Service Suspension"). Consultant will make commercially reasonable efforts to provide City notice of any Service Suspension and to provide access updates following any Service Suspension. Consultant will use commercially reasonable efforts to provide access to SAMS as soon as reasonably possible after curing the Service Suspension. Consultant is not liable for any damage, liabilities, or losses that City or any City Staff may incur from a Service Suspension.

4. **Remedies**

    a. **Corrective Action:** In the event that SAMS Availability is less than as provided in this SLA, Consultant will take reasonable corrective action to correct any related issues. Except as set forth in the following Section 4(b), City's rights under this Section 4(a) are City's sole and exclusive remedy with respect to any Unscheduled Downtime or any failure by Consultant to meet this SLA.

        i. Recovery Time Objective (RTO): Consultant must restore system access and operations within 4 hours of an official disruption declaration. The system access and operations resume typically within a few minutes after a disruption. The duration of the disruption may vary depending on the service location and cause for the disruption. The City will be on AWS in the following locations: Northern California (primary) and Columbus, Ohio (backup).

        ii. Recovery Point Objective (RPO): Consultant must ensure that no data is lost for more than 12 hours. Data backups are performed daily with incremental changes, and full data sets are backed up weekly.

    b. **Termination:** Consultant acknowledges that SAMS Availability is important to City's business processes. Accordingly, City may exercise its rights to terminate the Agreement if (i) Consultant fails to meet this SLA three (3) or more times during any twelve (12)-month period; or (ii) Unscheduled Downtime for any single calendar month is more than 2 hours.

[END OF SCOPE]

EXHIBIT "B"
SCHEDULE OF SERVICES

The schedule of tasks and milestones of the implementation services is listed in the table below. Schedule of services other than implementation shall be provided on an as-needed basis. The implementation of tasks and respective milestone shall be completed within the time provided herein and deemed complete by City and Consultant.

		TASKS	DAYS TO COMPLETE
1		**Project Kickoff Meeting and Software Delivery**	
	1.1	Software Delivery	2
	1.2	Project Kick-Off Workshop	2
2		**Project Plan, City Data Request and Review**	
	2.1	Data Request	7
	2.2	Data Review	14
	2.3	Project Plan	21
3		**Project Development**	
	3.1	Water Schedules	14
	3.2	Inspection Requirements and Libraries	7
	3.3	Standarized Reports	7
	3.4	Standarized Dashboards	2
	3.5	Configurable Forms	3
4		**Historical Data Migration**	
	4.1	Process existing data from the Town and input	4
5		**Integration with SCADA, LIMS, 3rd Party Labs and GIS**	
	5.1	Complete Integrations	30
	5.2	Data Validation Checks and Review	7
6		**Field Data Collection Forms Development**	
	6.1	Coordinate Data Collection Needs with City Staff	7
	6.2	Develop and Review Data Collection and Inspections	28
	6.3	Finalize Field Data Collection Workflow and Automation	7
7		**Sampling Templates and Schedules Development**	
	7.1	Template and Schedule Development	7
	7.2	Finalize Templates and Schedules	2
8		**Queries, Reports and Dashboards Development**	
	8.1	Development of Queries, Report and Dashboard	30
	8.2	Finalize Queries, Report and Dashboard	2
9		**User and System Testing**	
	9.1	End User Acceptance Testing	45
	9.2	System Integration Testing Plan	45
	9.3	Business Rules (Compliance Calculations) Testing Plan	45
10		**SAMS Training for Administrator and End Users**	
	10.1	Administrator Training	1
	10.2	End User Training	1
11		**Hyper-Care Support**	
	11.1	Go/No Go Meeting	1
	11.2	Go Live	28
	11.3	Final Sign Off	1

EXHIBIT "C"
COMPENSATION

The total contract amount for the Project shall not exceed $266,902.00.

Description	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29	Contract Total
Implementation Services	$98,000	NA	NA	NA	NA	
"SAMS Water" Subscription	$30,000	$30,000	$31,350	$32,761	$34,235	
"SAMS Data Analytics API"	$2,000	$2,000	$2,090	$2,184	$2,282	
Annual Total	$130,000	$32,000	$33,440	$34,945	$36,517	**$266,902**

Additional support services beyond the Scope of Services shall be provided on an As-Needed basis through 2029 at an hourly rate of $150/hour.