



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA  
Memo No. MUA16-057**

**#12**

**FEB 25 2016**

**1. Agenda Item Number:**

**2. Council Meeting Date:**  
February 25, 2016

**TO: MAYOR AND COUNCIL**

**3. Date Prepared:** February 10, 2016

**THROUGH: CITY MANAGER**

**4. Requesting Department:** Municipal Utilities

**5. SUBJECT:** Agreement with NJBSoft, LLC, for a Water Regulatory Compliance System

**6. RECOMMENDATION:** Staff recommends City Council approve Agreement No. 3536, with NJBSoft, LLC, for implementation of a water regulatory compliance system, in an amount not to exceed \$119,100.

**7. BACKGROUND/DISCUSSION:** The Municipal Utilities Department (M.U.D.) operates public water and wastewater systems that consist of treatment facilities, recharge facilities, groundwater wells, wellhead treatment systems, reservoirs, and distribution pipelines. M.U.D. is responsible for ensuring that these systems are managed according to Federal, State, and County compliance standards. Compliance for the water and wastewater operations requires ongoing monitoring, sampling, testing, reporting, and recordkeeping.

A compliance management software program increases the efficiency of reporting and recordkeeping to assist staff with meeting regulatory requirements. M.U.D.'s previous software program was purchased seven years ago and only included tracking and reporting activities for drinking water. The new software system has increased functionality and integration capabilities as it will be used for tracking and reporting activities for both drinking water and wastewater, in addition to generating the federally-mandated annual Drinking Water Quality Consumer Confidence Report and the annual Discharge Monitoring Report.

**8. EVALUATION:** Staff researched all possible solutions to replace the current system. Because this type of system has a very small position in the marketplace, there was only one system found that could meet all of the City's requirements. Technical and internal discussions, a solution demonstration, and reference checks determined that the NJBSoft, LLC, system is the best solution to meet the City's needs.

Because the software is proprietary, it is only available from NJBSoft, LLC. Completion time is fifteen (15) weeks following Notice to Proceed.

This agreement also provides for five (5) years of support and maintenance. The first year is included with the cost of software implementation. Thereafter, NJBSoft, LLC, will hold the annual cost for support and maintenance at \$20,000 each year, for years 2 through 5, which will be paid out of annual operating funds.

**9. FINANCIAL IMPLICATIONS:**

Cost: \$119,100  
Savings: N/A  
Long Term Costs: N/A

**Fund Source:**

<u>Account No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
601.3820.5346.6WA210	Water Bonds	Water Treatment Plant Improvements	Yes	\$119,100

**10. PROPOSED MOTION:** Move City Council approve Agreement No. 3536, with NJBSoft, LLC, for implementation of a water regulatory compliance system, in an amount not to exceed \$119,100.

**ATTACHMENTS:** Agreement

**APPROVALS**

**11. Requesting Department**

*Lori McCallum*

Lori McCallum, Water Quality Program Manager

**12. Procurement Officer**

*Carolee Stees*

Carolee Stees, CPPB

**13. Department Head**

*Gregg W. Capps*

Gregg Capps, Acting Municipal Utilities Director

**14. Acting City Manager**

*Marsha Reed*

Marsha Reed

**CITY OF CHANDLER SERVICES AGREEMENT  
WATER REGULATORY COMPLIANCE SYSTEM  
AGREEMENT NO.: 3536**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, (the "Effective Date") by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and NJB Soft, LLC hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

**1. AGREEMENT ADMINISTRATOR:**

**1.1. Agreement Administrator.** Contractor shall act under the authority and approval of the \_\_\_\_\_ or designee (Agreement Administrator), to provide the services required by this Agreement.

**1.2. Key Staff.** This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.

**1.3. Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.

**1.4. Subcontracts.** Contractor shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

**2. SCOPE OF WORK:** Contractor shall provide professional services to implement a hosted regulatory compliance system, NJBSoft software, licensed in compliance with Exhibit C, End User License Agreement, all as more specifically set forth in Exhibit A, Scope of Work (the "Services"), attached hereto and made a part hereof by reference.

**2.1 Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

**2.2 Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.

**2.3 Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.

**2.4 Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

**2.4.1** The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

- 2.4.2 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.5 The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
3. Contractor represents and warrants that the Services provided hereunder will be performed in a manner consistent with the standards and the general customs and practices of the computer services industry.
4. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.
5. **Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.
- 5.1. **Audit.** At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 5.2. **Intellectual Property.** . During the Term of this Agreement, as a result of Contractor's efforts under this Agreement, Contractor may generate ideas, inventions, suggestions, copyrightable materials or other information that are protected by copyright, trademark, trade secret, patent and other intellectual property laws (collectively, "Intellectual Property"). The parties agree on the following ownership terms:
- a. To the extent that the work delivered to the City includes newly-created material subject to copyright, Contractor agrees that the work is done as "work for hire" as that term is defined under U.S. copyright law, and that as a result, the City shall own all newly-created copyrights in the work. To the extent that the work does not qualify as a work for hire under applicable law, and to the extent that the work includes newly-created material subject to Intellectual Property rights protection, Contractor hereby assigns to the City, its successors and assigns, all right, title, and interest in and to the newly-created material including all copyrights in the same, and in all renewals and extensions of the copyrights that may be secured under the laws now or hereafter in force and effect in the United States of America or in any other country or countries. At the City's request, Contractor shall execute and deliver such instruments and take such other actions as may be required to carry out the assignment granted by this section. The Contractor shall retain, and the City shall not acquire, any rights to materials that are not accepted.
- b. The terms of this Agreement shall not be construed to limit either party's right to use for any purpose the residuals resulting from access to or work with the other party's confidential information. The term

"residuals" means information in non-tangible form, which may be retained by persons who have had access to the confidential information, including without limitation ideas, concepts, know-how or techniques contained therein provided that such does not represent the City's confidential information which: (1) identifies the City as the source of the information; or (2) contains any financial, statistical, personnel information of the City or any transactional or other information concerning the City's business.

**4. PRICE:**

- 4.1. City shall pay Contractor a fee not to exceed \$119,100 as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.2. **Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 4.3. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.
- 4.4. **Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.
- 4.5. **Optional Professional Services Pricing.** For two years following the "Go-Live" date, the Contractor agrees that it will continue to offer the pricing shown on Exhibit B for per hour services provided by the positions noted for work that is outside that which is detailed in Exhibit A on tasks related to this project
- 4.6. **Support and Maintenance Pricing.** For five (5) years following the "Go-Live" date, the Contractor agrees that it will continue to offer the pricing shown on Exhibit B for support and maintenance identified under the heading of "Annual Support and Maintenance" on Exhibit B.

**5. TERM:**

- 5.1. Following execution of this Agreement by City, the Contractor shall immediately commence work and shall complete all implementation services described herein within fifteen (15) weeks from the date the Contractor is notified to proceed.
- 5.2. The term of the on-going maintenance will commence on the first day of the second year after the system go-live date and can be extended for up to four additional terms of one year (s) each.

6. **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

- 6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](http://www.maricopa.gov/materials) and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency.

The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

**6.2 Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

**6.3 Non-Exclusive Agreement:** This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

## **7. CITY'S CONTRACTUAL REMEDIES:**

**7.1. Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

**7.2. Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

**7.3.** If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

**7.4. Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

**7.5. Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

**7.6. Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

## **8. TERMINATION:**

**8.1.1 Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein.

**8.1.2 Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

**8.3. Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.

**8.4. Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

**8.5. No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**8.6. Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

**9. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

**10. DISPUTE RESOLUTION:**

**10.1. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

**10.2. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

**10.3. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

**11. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

**12. INSURANCE:**

1. General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The

Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope And Limits Of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.* Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the Contractor, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Contractor must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Contractor, or anyone employed by the Contractor, or anyone whose acts, mistakes, errors and omissions the Contractor is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the Contractor, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed

by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The Contractor's insurance must contain broad form contractual liability coverage.
  3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.
  4. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
  5. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  6. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
  8. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
  9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.
  10. By signing this Agreement, the Contractor certifies it is fully aware of Insurance Requirements contained in the Agreement and assures the City of Chandler that it is able to produce the Insurance coverage required.
  11. Should the Contractor become unable to produce the Insurance coverage specified within ten working days, the Contractor is fully aware and understands that it may not be considered for further projects by City of Chandler.
13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY  
Agreement City of Chandler

In the case of the CONTRACTOR  
Firm Name: NJBSoft, LLC

Administrator:	_____	Contact:	_____
Contact:	<u>Purchasing</u>	Address:	<u>Pranam Joshi</u>
Mailing Address:	<u>PO Box 4008 MS</u>		<u>202 E Earll Dr Ste 110</u>
	<u>901</u>		
Physical Address:	<u>175 S Arizona Ave</u>	City, State, Zip	<u>Phoenix, AZ 85012</u>
City, State, Zip	<u>Chandler, AZ 85244</u>	Phone:	<u>602-759-1905</u>
Phone:	<u>480-782-2400</u>	Email:	<u>Pranam.joshi@njbsoft.com</u>
FAX:	<u>480-782-2410</u>		_____

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

**14. CONFLICT OF INTEREST:**

- 14.1. No Conflict of Interest.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. § 38-503. Any such interests were disclosed in Contractor's proposal to the City.
- 14.2. Kickback Termination.** In accordance with A.R.S. § 38-511, City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement.

**15. GENERAL TERMS:**

- 15.1. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the Services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.2. Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.
- 15.3. Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.
- 15.4. Independent Contractor.** The Contractor under this Agreement is an independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.
- 15.5. No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.6. Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly

authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

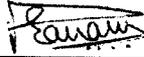
15.7. **Confidentiality.** The parties will comply with the terms and conditions set forth in Exhibit D regarding confidentiality.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_ day of \_\_\_\_\_, 2016.

FOR THE CITY OF CHANDLER

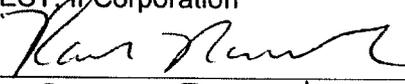
FOR THE CONTRACTOR

\_\_\_\_\_  
Mayor

By:   
Signature

ATTEST:  
\_\_\_\_\_  
City Clerk

SEAL

ATTEST: If Corporation  
  
~~Secretary~~ Director

Approved as to form:  
\_\_\_\_\_  
City Attorney (kb)

## EXHIBIT A SCOPE OF WORK

### **TASK 1: SAMS PROFESSIONAL SERVICES**

Task 1 includes set up of the software incorporating the City's drinking water compliance elements for SAMSWater, Industrial Pretreatment Requirements for SAMSIPP and XConnection Program requirements for SAMSXConnection. This relates to the install and implementation of SAMSWater/IPP and XConnection out-of-the-box solution and associated services. This task is broken down into several subtasks.

#### **Task 1A – Data Request**

In order to set up the software specific to the City's compliance needs, documents and data will be required from the City. In this task Contractor will develop a detailed data request that will be used for the rest of the project. This data request will include information at a minimum:

##### SAMSWater/SAMSWastewater:

- Current latitude and longitude of every sampling location and water source specifically Lead and copper, distribution system, EPDS, UCMR, Surface Water Treatment, Groundwater and DBP sample locations.
- All schedules and monitoring requirements within the City for water
- Copies of the Permits that need to be managed by the software
- Current waivers or reduced monitoring approvals
- Compliance philosophy, data management and infrastructure setup.
- Copy/Sample of the Sample Master Database currently in use
- ArcGIS Webserver deployment details (if GIS connection is desired)
- Copy/Sample of GIS data available and accessed
- Reports that need to be generated by the software

##### SAMSIPP:

- Current latitude/longitude of industrial users and monitored locations
- Sampling and inspection schedules
- Copy of annual reports and other reports
- Copy of inspection forms
- Historical digital data

##### SAMSXConnection:

- Current premise locations with latitude and longitude
- Account inventory
- Device inventory
- Copy of notices
- Copy of reports
- Testers and Testing companies
- Test requirements
- Historical test information

#### **Deliverables**

1. Data Request Memorandum
2. Summary of the received data and data gap update summary

#### **Tasks 1B– Create Input Templates**

In this task, the team will use the information collected in Tasks 1A to create input templates in Excel spreadsheet. The input templates created in excel spreadsheet allows a single click setup of the entire system. For drinking water systems, all the compliance logic is pre-built and provided into the software. Additional compliance logic for water (if requested) will be prepared.

#### **Deliverables**

1. SQL Database with the system setup

### **Tasks 1C– ArcGIS Integration**

ArcGIS served through the web services consists of multiple configuration and setup requirements. If the City desires, CONTRACTOR will identify the webmap configuration to host the SAMS Software. If the City would like to use the default ArcGIS Viewer with the SAMS solutions, then the team will configure the software accordingly.

### **Tasks 1D– Import of Historical Data**

In this task historical results and data will be uploaded into the software. Then the City can view the data through queries or reports. The city will need to contact the outside laboratory to request all the relevant results for drinking water compliance. The data should be requested in EDD format or spreadsheet format. Then this data can be uploaded into the software. Once this is done the City will need to review the data for any data gaps.

#### **Deliverables**

1. Historical data upload to view and utilize in the software.

### **Tasks 1E– Setup Standardized Reports and Notices**

#### SAMSWater/SAMSWastewater:

The software will generate drinking water compliance reports from the results and data uploaded from the laboratory or hand entered data. The City is to provide to Contractor with the each type of compliance report that is submitted to the regulatory agency for compliance. The reports must be the one currently being used and approved for submittal and have correct information to ensure that reports generated by the software are also current and correct. From the past reports Contractor will create template reports and upload them into the software. Once uploaded the final report with the applicable data can be generated by the software by selecting the date range for the report.

Custom reports can also be generated by the software. During this task the City would provide examples of custom reports that the software would generate. As with the compliance reports, templates would be created, uploaded into the software and then the reports can be generated by the software.

#### SAMSIPP

The software will generate annual report and setup is included in the scope. While any other reports that the City requires can be generated by the software, setup of the reports is not included in the scope. Contractor would be pleased to provide additional scope of work to incorporate additional reports. Alternatively, any other report can be generated by the City without any additional cost from Contractor.

#### SAMSXConnection

The Scope of work includes development of 30, 60, 90 and overdue notices. While any other reports that the City requires can be generated by the software, setup of the reports is not included in the scope. Contractor would be pleased to provide additional scope of work to incorporate additional reports. Alternatively, any other report can be generated by the City without any additional cost from Contractor.

#### **Deliverables**

1. Reports by supplying the report parameters such as start date/end date and the report can be printed.

### **Task 1F- Installation**

In this task the team will install the software and provide a license for the software is applicable. Implementation includes a user interface. Contractor will coordinate with the users to implement the software and apply the same work flow currently being used. This task includes setting up the database management as well as user rights management. This will also include updating the database for SAMS from the templates developed in the previous task and incorporating the

City's specific requirements. This task will provide the City users with access to the software as a release version. If the City is purchasing the license for on-site environment it is assumed that the City has an IIS server and SQL server with appropriate licensing available.

### **Task 1G – Training**

Training will be provided to the City in two phases. There will be one day of administrator training and two days of end user training to ensure all requirements of the software for integration, display and workflow are met. The training will include software training and setup training. Once the training is complete the City can begin using and testing the software.

#### **1. Administrator Training:**

This will be a one day training course with a maximum of 15 people. This will be targeted to the City's staff who would like to take the ownership of the integration tools developed for the City. This would involve IT as well as programming staff. This training is targeted for the City staff for software maintenance related tasks identified below:

- Software update with the release of new versions that may include additional functionality as well as incorporation of new regulations
- Occasional update of the database to include update of the regulations
- Database management best practices
- Software Integration /Training Tools for Administrators

#### **2. End User Training:**

Software specific compliance training will involve using the software with uploaded data to walk through different compliance decision points on the algorithm and demonstrate the workflow and results. It will also include training on the data management of the software, reporting functionality of the out-of-the-box software solution, charting, trending and mapping sample results and using forecasting modules to track the trends on the software. It will also involve understanding of the usage of integration tools with other databases and technologies. This will be a 2 day training course with a maximum of 15 users in the class to ensure that the class can proceed smoothly. As a part of this training, Contractor will provide a user's manual describing these use cases. This will allow the City staff to refresh the training as needed. The team will allow the City to make changes and use training material for future trainers. The training materials will be provided electronically for the City's future use.

#### **Deliverables**

1. Training for end users and administrators for up to 15 people
2. Written Training Manual available electronically

### **PROJECT SCHEDULE**

Week 1 – City to provide Contractor list of all sample locations with addresses, latitude and longitude, sample location name, type of sample, list of contaminants required for sampling for each sample location type with trigger levels (if different from Safe Drinking Water Rule levels)

Week 2 – Contractor to develop Excel Template

Week 2 – City to provide to Contractor any other compliance and other requirements to be managed by the software

Week 3 – City to review, edit and approve

Week 4&5 – Contractor to incorporate permits and plans in Excel Template and setup initial test site

Week 6 – Contractor to provide Interface familiarity workshop

Week 6 – City to review and provide feedback on site setup and information uploaded

Week 7 – City to request lab and other external data sources to send required documents

Week 7 – City to provide Contractor electronic copies of all compliance reports to be generated by the software

Week 8, 9, 10 and 11 – Contractor to create compliance report templates in the software

Week 12 – City to review, edit and approve Report Templates

Week 13 – Contractor to load templates  
Week 14 – Training of software  
Week 15 – City to test and provide comments and corrections  
Week 15 – Contractor to make final corrections

## **ON-GOING SUPPORT AND MAINTENANCE**

Support Levels: Support includes unlimited phone support, email and chat support. Furthermore, a dedicated account manager will be available as a first level of support. The account manager can get appropriate developer/support specialist or other specialists involved as needed.

Staffing model is a traditional staffing model with developers, technical support specialist, account managers, sales and marketing force. It has further built in flexibilities including ability to tap into resources of the sister engineering consulting firm NCS. Because of the sister engineering firm, Contractor can tap into resources that specializes in compliance management (compliance officers in previous work), employees who have worked at ADEQ and worked with several EPA research projects related to water quality. The principals and employees of the firms have worked on significant projects with regulatory agencies (WERF and EPA) in compliance and water quality related tasks. Overall the team provides a well-rounded experience in software development, regulatory knowledge and know-hows.

For development model, significantly relies on the team experience, client feedback and severity assessment. Any feature request that has a significant utility impact on a client gets the first attention and resolution. Client feedback is at the core of the development priorities and included in the roadmap. Dedicated team of developers ensures that bugs and feature request based on road map prepared are addressed as soon as possible and patches provided.

**EXHIBIT B  
FEE SCHEDULE**

<b>Software Purchase Fee</b>	
SAMSWater Compliance Software License purchase (includes annual maintenance for Year 1)	\$25,000
SAMSIPP Compliance Software License purchase (includes annual maintenance for Year 1)	\$30,000
SAMSXConnection Software License purchase (includes annual maintenance for Year 1)	\$30,000
SAMSWastewater Compliance Software License purchase (includes annual maintenance for Year 1)	\$15,000
<b>Sales Tax</b>	<b>\$8,100</b>
<b>Professional Services to Setup, Deploy and Train Software</b>	
All services required to setup and deploy the software, mobile applications, end user and administrator training per Exhibit A	\$11,000
<b>TOTAL</b>	<b>\$119,100</b>

<b>Annual Support and Maintenance Fee</b>	
Year 2	\$20,000
Year 3	\$20,000
Year 4	\$20,000
Year 5	\$20,000

<b>Optional Professional Service Hourly Rates</b>	
Project Manager	\$140
Senior Software Engineer	\$120
Junior Software Engineer	\$105
Environmental Compliance Specialist	\$97
Training Consultant	\$120
Clerical	\$40

**EXHIBIT C  
END USER LICENSE AGREEMENT  
FOR NJBSOFT SOFTWARE**

**IMPORTANT – READ CAREFULLY:** This End-User License Agreement (“EULA”) is a legal agreement between you (either an individual or a single entity) and NJBSoft, Incorporated (“NJBSoft”) for the NJBSoft software and associated documentation that accompanies this EULA, which includes the associated media and NJBSoft internet-based services (“Software”).

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If this agreement is translated into a language other than English and there is a conflict of terms between the English and the other language, the English version will control. You should keep a copy of this EULA for your records. NJBsoft may update or amend the EULA at any time without notice to you; however, the form of EULA in effect at the time of the Software acquisition will apply.

## **Section 1: Terms and Conditions**

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- 1.10. "Utility" means a water distribution system, wastewater collection system, water treatment system, storm water collection system or wastewater treatment system.
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26. **GOVERNING LAW.** This EULA will be governed by and construed in accordance with the substantive laws in force in the State of Arizona. The state courts located in Phoenix, Arizona and the federal courts located in Phoenix, Arizona shall have exclusive jurisdiction over all disputes relating to this Agreement. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and of the Uniform Computer Information Transactions Act, as it may have been or hereafter may be in effect in any jurisdiction shall not apply to this Agreement.
27. **SEVERABILITY.** The provisions of this EULA shall be deemed to be separable and the invalidity of any provision hereof shall not affect the validity of the remainder of this Agreement.
28. **NOTICES.** Please send all notices under this EULA to NJBSoft, Incorporated, 202 E Earll Dr. Suite 110, Phoenix, AZ 85012.