

**PROFESSIONAL SERVICES AGREEMENT
(Not Construction Related)**

RISK ASSEMENT SERVICES

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Safety & Risk Management Group, LLC, an Arizona limited liability company, authorized to do business in the State of Arizona, ("Consultant") as of the ____ day of _____, 2022 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. Discharge, Reassign, Replacement.
 - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
 - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City

without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

(3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors. Consultant shall not engage any subcontractor for the work or services to be performed under this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Consultant warrants that:

a. Consultant currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and

b. Neither Consultant nor any Subconsultant has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").

(1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.

(2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").

b. Subject to any limitations expressly stated in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$60,000 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
 - a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
 - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
 - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.

- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Consultant and its Subconsultants; and
 - (2) Unconditional waivers and releases on final payment from all Subconsultants as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.

- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provisions of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$500,000** per accident for bodily injury and property damage.
- c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. ~~Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.~~

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or

the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).

8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

- 8.7 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.
9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
10. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
11. **Attestation of PCI Compliance.** When applicable, the Consultant will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Consultant with oversight responsibility.
12. **Notices.**
- 12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.
- 12.2 Representatives.
- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Safety & Risk Management Group, LLC

c/o Bernie Frist
14017 S. 12th Place
Phoenix, AZ 85048

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Julie Ossege
7070 W. Northern Ave.
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

13. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

14. **Entire Agreement; Survival; Counterparts; Signatures.**

14.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

14.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

14.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

14.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. Term.

15.1 Renewals. The term of this Agreement commences upon the effective date and continues for a two year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional three years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

15.2 Extension for Procurement Process. Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City's sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension provided under this subsection will continue under the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

16. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

17. Cooperative Use of Contract. This agreement may be extended for use by other governmental agencies And political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link:
<http://www.mesaaz.gov/business/purchasing/save>

18. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Scope of Work

Exhibit C Schedule
Exhibit D Compensation

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager


ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Safety & Risk Management Group, LLC,
an Arizona limited liability company



By:
Its: Authorized Representative

EXHIBIT A
Professional Services Agreement

PROJECT

The City operates (2) two water treatments plants utilizing chlorine for treatment purposes. These plants are covered under OSHA's PSM standard (29 CFR 1910.119) and the EPA RMP Rule (40 CFR 68) due to the quality of chlorine gas in storage and used at facilities. Consultant will provide services as outlined in Attachment A.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

Consultant will assist the City with revisions and finalizing all documents to provide structured and cohesive programs documents that address PSM/RMP program elements and reflect how the City manages its responsibilities under the program. Detailed Scope of Work is outlined in Attachment A.

EXHIBIT C
Professional Services Agreement

SCHEDULE

Consultant will schedule site visits upon execution of agreement and a Purchase Order is issued. The estimated timeline for project completion will be determined after site visits and evaluations have been completed.

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Consultant will provide detailed invoices of services provided per the Fee Schedule outlined in Attachment A, page 4.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$60,000.

DETAILED PROJECT COMPENSATION

Per Attachment A, Page 4.



**Safety & Risk
Management Group**

June 17, 2022

Marc Miles
Water Services Superintendent
Water Treatment Plants
City of Glendale
7070 West Northern Ave.
Glendale, AZ 85303

via email: mmiles@glendaleaz.com

Subject: Revised Letter of Engagement for PSM/RMP Program Support

Dear Mr. Miles:

Pursuant to our recent emails and at your request, Safety & Risk Management Group, LLC (SRM Group) is providing this revised letter of engagement to assist the City of Glendale Water Services Department (City of Glendale) with updating its Process Safety Management (PSM) and Risk Management Program (RMP) documents for the Cholla and Pyramid Peak Water Treatment Plants (WTPs). These plants are covered under OSHA's PSM Standard (29 CFR 1910.119) and the EPA RMP Rule (40 CFR 68) due to the quantity of chlorine gas in storage and use at the facilities.

Based on perusal of the documents previously provided, it appears that PSM program documents and a Risk Management Plan have been prepared for each facility; however, all documents are presently in "draft" form and there are numerous inconsistencies and conflicts between the documents.

Scope of Work

SRM Group will assist the City of Glendale with revision and finalizing all documents to provide structured and cohesive program documents that address the PSM/RMP program elements and reflect how the City of Glendale manages its responsibilities under the programs.

Task 1: Program Documents

Considering that the WTP chlorine processes and management systems at each plant are assumed to be similar, SRM Group will use the existing Cholla WTP PSM/RMP program documents as templates for updates to program documents that will apply to both the Cholla and Pyramid Peak WTPs. This approach builds consistency in how the City of Glendale manages its PSM/RMP program across its facilities as staff adhere to a single program, and reduces potential for program conflicts in the future. It is our understanding that the following draft or partially completed documents exist:

This proposal and its contents shall not be duplicated, used or disclosed - in whole or in part - for any purpose other than to evaluate the proposal.

- PSM-Cholla-01, Introduction
- PSM-Cholla-02, Employee Participation
- PSM-Cholla-03, Employee Training
- PSM-Cholla-04, Process Safety Information
- PSM-Cholla-05, Process Hazard Analysis
- PSM-Cholla-06, Operating Procedures
- PSM-Cholla-07, Contractors/Vendors
- PSM-Cholla-08, Pre-Startup Safety Review
- PSM-Cholla-09, Mechanical Integrity
- PSM-Cholla-10, Management of Change
- PSM-Cholla-11, Hot Work Permits
- PSM-Cholla-12, Incident Investigation
- PSM-Cholla-13, Emergency Response
- PSM-Cholla-14, Compliance Audits
- Risk Management Program Summary

SRM Group will address the 2020 Triennial Compliance Audit Findings related to program documentation that are within our capabilities during the course of the project. Document revisions will require frequent input from Water Services staff to ensure that they reflect operating practices. Where current practices may not appear to be compliant with the regulations, corrections and adjustments will be discussed and a resolution will need to be determined by the Water Services Superintendent. Key assumptions are stated below.

Task 2: Recordkeeping Systems

SRM Group will review the City's existing PSM/RMP recordkeeping practices and recommend improvements in practices to promote compliance and management of records required by the program documents that will be updated under Task One.

Scope Assumptions & Exclusions

1. It is assumed that access to the plants will be provided as requested and adequate work space (desk or conference room) will be provided in the administrative office at each plant to facilitate completion of document edits while on site.
2. Operating procedures have been previously developed, reviewed, and certified to be accurate; development of new procedures is not included in this scope of work.
3. Revalidation of the Process Hazard Analysis is not included in this scope of work.

This proposal and its contents shall not be duplicated, used or disclosed - in whole or in part - for any purpose other than to evaluate the proposal.

4. Preparation of the 5-year Risk Management Plan update and submittal in the EPA CDX portal is not included in this scope of work.
5. Process Safety Information is assumed to be available. Development of engineering data and deliverables such as process & instrumentation drawings (P&IDs), process flow diagrams (PFDs), mass balance calculations, etc. is not included in this scope of work.
6. Mechanical integrity inspections and testing schedule to be provided/confirmed by Water Services staff. Mechanical integrity testing is not included in this scope.
7. The MOC and PSSR process flow and checklists will be reviewed and edits proposed and incorporated based on consultation with staff. The scope does not include preparation of missing documentation for MOCs or PSSRs.
8. This support does not constitute completion of a triennial PSM/RMP audit.

Project Team

Mr. Frist has over thirty years of experience in environmental, health and safety (EHS) program management, specializing in risk management and process safety; five years in a manufacturing environment and over twenty-two years in consulting. Mr. Frist has implemented and evaluated EHS, risk management, and process safety management (PSM) programs for research and development, pilot, and full-scale production manufacturing operations in process intensive industries, worldwide. His PSM experience includes compliance auditing and leading process hazard analyses (PHAs) for clients in diverse market sectors.

Mr. Frist's municipal PSM/RMP experience involving chlorine includes managing a PSM/RMP services contract with a major municipality in the Phoenix Metropolitan area, including leading Triennial PSM/RMP compliance audits, PHA revalidations, and preparing/submitting RMPs for certification in the EPA CDX portal. Further, Mr. First recently conducted a PHA revalidation for a chlorine tonner transfill and purification facility in the southeast.

Project Schedule

This project will commence at a mutually agreeable time following issuance of a purchase order. An estimated timeline for project completion will be provided after a PO is issued and the initial site visits are conducted. Please note that resource commitments are presently being schedule two to three months following receipt of authorization to proceed. Given that this project is local, there is a possibility that initial site visits could occur sooner.

This proposal and its contents shall not be duplicated, used or disclosed - in whole or in part - for any purpose other than to evaluate the proposal.



Mr. Marc Miles
City of Glendale
June 17, 2022

Fee, Terms & Conditions

This support will be provided for a fee of \$60,000 in accordance with attached Terms and Conditions. Progress billings will occur based on the deliverable schedule below.

<u>Deliverable</u>	<u>Fee</u>
PSM-01, Introduction	\$ 3,500
PSM-02, Employee Participation	\$ 2,500
PSM-03, Employee Training	\$ 3,500
PSM-04, Process Safety Information	\$ 5,000
PSM-05, Process Hazard Analysis	\$ 3,500
PSM-06, Operating Procedures	\$ 3,500
PSM-07, Contractors/Vendors	\$ 3,500
PSM-08, Pre-Startup Safety Review	\$ 3,500
PSM-09, Mechanical Integrity	\$ 5,000
PSM-10, Management of Change	\$ 5,000
PSM-11, Hot Work Permits	\$ 2,500
PSM-12, Incident Investigation	\$ 2,500
PSM-13, Emergency Response	\$ 3,500
PSM-14, Compliance Audits	\$ 2,500
Risk Management Program Summary	\$ 5,500
Review Recordkeeping Practices	\$ 5,000

Payment terms are Net 30 days and this proposal is valid for ninety (90) days.

To accept this proposal and authorize the work, please sign below and return a scanned copy of the signed proposal by email to bfrit@safetyriskmgmt.com. This acceptance is indication that a purchase order referencing this proposal and accompanying terms and conditions will be issued. Thank you for the opportunity to provide these services to the City of Glendale.

Sincerely,

Safety & Risk Management Group, LLC

Bernie Frist
Managing Principal

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Mr. Marc Miles
City of Glendale
June 17, 2022

cc:
Megan Sheldon, City of Glendale Deputy Director of Environmental Programs

Attachments:
Terms and Conditions

Proposal Acceptance:

City of Glendale
Cholla WTP &
Pyramid Peak WTP
PSM/RMP Program
Documentation Support

Signature

Title

Date

This proposal and its contents shall not be duplicated, used or disclosed - in whole or in part - for any purpose other than to evaluate the proposal.

General Terms and Conditions

1. WARRANTY / CHANGES TO THE SERVICES

1.1 Safety & Risk Management Group, LLC shall perform the professional Consulting Services (“Services”) required under this Agreement in accordance with standard of care, skill, training, diligence and judgment normally provided by competent professionals who perform work of a similar nature, at the time and in the same geographical regions as the work described in this Agreement and any Work Authorization. Unless Safety & Risk Management Group, LLC expressly agrees otherwise in writing, any items not manufactured by Safety & Risk Management Group, LLC (including incidental materials and consumables used in the Services) shall carry only the warranty that the original manufacturers provide, and Safety & Risk Management Group, LLC gives no warranty on behalf of the manufacturers of such items.

1.2 Safety & Risk Management Group, LLC agrees to correct, at its own expense, any Service provided under this Agreement that does not conform to the standard of care herein for a period of one (1) year following the completion of that Service.

1.3 Services performed under this Agreement may be more fully described in specific detail in individual Work Authorizations, including schedule requirements, approved by the Client and Safety & Risk Management Group, LLC and attached hereto, and which shall constitute a part of this Agreement.

1.4 Safety & Risk Management Group, LLC shall have no obligation to commence the Services as stipulated in this Agreement and/or any associated Work Authorization until both this Agreement and the applicable Work Authorization are fully executed and delivered to Safety & Risk Management Group, LLC.

1.5 At any time after execution of this Agreement, Client may order changes in Safety & Risk Management Group, LLC Services consisting of additions, deletions, and revisions within the general scope of services being performed by Safety & Risk Management Group, LLC under this Agreement. Whenever a change in the scope and/or time for performance of services occurs, or if Client has notified Safety & Risk Management Group, LLC of a change, Safety & Risk Management Group, LLC shall submit to Client an estimate of the changes in cost and/or schedule, with supporting calculations and pricing. Pricing shall be in accordance with the pricing of this Agreement. In addition, should Safety & Risk Management Group, LLC be obstructed or delayed in the commencement, performance or completion of the Services, without fault on its part, then Safety & Risk Management Group, LLC will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

2. TERMINATION OF AGREEMENT

2.1 Either Party may terminate this Agreement without cause and/or for convenience after giving five (5) days’ written notice to the other Party. However, Safety & Risk Management Group, LLC shall not have the right to terminate this Agreement, without cause, prior to completion by Safety & Risk Management Group, LLC of all Services required under the Agreement. In the event Client terminates Safety & Risk Management Group, LLC

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services without cause and/or for Client's convenience, Client shall be liable to promptly pay Safety & Risk Management Group, LLC for all work performed through the date of termination, all of Safety & Risk Management Group, LLC expenses directly attributable to the termination, including fair and reasonable sums for overhead and profit for work performed, and costs incurred by Safety & Risk Management Group, LLC in terminating any contracts entered into in connection with the performance of its Services.

3. USE OF DOCUMENTS

3.1 All documents provided by Safety & Risk Management Group, LLC pursuant to this Agreement are instruments of service of Safety & Risk Management Group, LLC, and Safety & Risk Management Group, LLC shall retain an ownership and property interest therein (including the right of reuse) until Client has made full payment to Safety & Risk Management Group, LLC for such documents pursuant to this Agreement. All documents generated by Safety & Risk Management Group, LLC pursuant to this Agreement are not intended or represented to be suitable for reuse by Client or others on any other project, or for any purposes other than that for which the same were created without the prior written consent of Safety & Risk Management Group, LLC. Reuse of said reports or other material by Client for any other purpose or on other projects without written permission or adaptation by Safety & Risk Management Group, LLC for the specific purposed then intended shall be at the Client's and user's sole risk, without liability on Safety & Risk Management Group, LLC' part, and Client agrees to indemnify and hold harmless Safety & Risk Management Group, LLC from all claims, damages and expenses, including attorneys' fees, arising out of such unauthorized reuse by Client.

4. INDEMNIFICATION

4.1 The Parties shall at all times remain entirely responsible for the results and consequences of their own negligence and agree to indemnify and hold harmless the other Party from and against any and all claims, losses, damages, costs and expenses, including attorneys' fees, which may arise or result from such Party's negligence.

5. LIMITATION OF LIABILITY

5.1 The total liability, in the aggregate, of Safety & Risk Management Group, LLC and its directors, officers, or employees, and any of them, to Client or anyone claiming by, under or through the Client for any and all injuries, claims, losses, expenses, and damages whatsoever arising out of or in any way related to Safety & Risk Management Group, LLC Services, shall be limited to the total fees paid to Safety & Risk Management Group, LLC for this project under this Agreement.

5.2 The Client and Safety & Risk Management Group, LLC waive incidental, indirect, or consequential damages, loss of revenues or profits from claims, disputes or other matters in question arising out of or relating to this Agreement, whether such claims arise from negligence, breach of contract, or strict liability. This disclaimer and exclusion shall apply even if the express warranty set forth herein fails in its essential purpose.

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6. PAYMENT TERMS

6.1 Client agrees to pay for the Services performed by Safety & Risk Management Group, LLC in accordance with this Agreement and any approved Work Authorization. The Work Authorization may also specify any required Mobilization Fee or other Retainer, Lump Sum Fees, then-current Hourly Billing Rates, and Reimbursable Expenses. Safety & Risk Management Group, LLC may adjust its rates annually, and at a minimum in accordance with the CPI-U Index plus one percent. Payment terms are Net 30 days.

6.2 Safety & Risk Management Group, LLC shall invoice the Client upon completion of the PHA sessions in accordance with Safety & Risk Management Group, LLC standard invoicing practices; provided however, Safety & Risk Management Group, LLC may in its reasonable discretion, invoice the Client in advance and/or bi-weekly, unless contrary to regulations or the Client's procurement procedures. Invoices are due and payable on receipt and should be remitted by check payable to:

Please Remit to:

Safety & Risk Management Group, LLC
14017 S. 12th Place
Phoenix, Arizona 85048

6.3 If Client fails to make any payment due Safety & Risk Management Group, LLC for services and expenses within thirty (30) days after receipt of invoice, the amounts due Safety & Risk Management Group, LLC will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from accounts not paid within thirty (30) days.

6.4 If Client reasonably objects to any portion of an invoice, Client shall provide written notification to Safety & Risk Management Group, LLC of Client's objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the disputed portion of the invoice. The undisputed portion shall be paid immediately and Client shall not offset amounts due Safety & Risk Management Group, LLC for any credit or disputes arising under a different agreement or work authorization. Client shall waive any objections to Safety & Risk Management Group, LLC invoice if it fails to timely provide such written notice to Safety & Risk Management Group, LLC. If payment of invoices by Client is not maintained on a current basis, Safety & Risk Management Group, LLC may, after giving seven (7) days' written notice to Client, suspend further performance until such payment is restored to a current basis. All suspensions shall extend the time for performance by a length of time equal to the duration of the suspension, and Safety & Risk Management Group, LLC shall be paid for Services performed and charges incurred prior to the suspension date, plus suspension charges. Suspension charges shall include, without limitation, putting of documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, additional insurance/bonding coverage, extended overhead and costs, and all other related costs and charges incurred and attributable to suspension.

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6.5 In the event of litigation or other proceeding to enforce performance of this Agreement or any payment obligation under this Agreement, the prevailing Party shall be entitled to recover from the other Party attorneys' fees and costs as may be reasonably incurred by reason of the litigation.

7. ACCESS TO SITE

7.1 During the term of this Agreement, Client shall grant to or cause to be made available to Safety & Risk Management Group, LLC reasonable and necessary nonexclusive access to the Site and other Sites, as necessary, for purpose of allowing Safety & Risk Management Group, LLC to perform the Services and fulfill its obligations under this Agreement. Safety & Risk Management Group, LLC shall comply with generally accepted safety procedures and all other safety procedures that have been communicated to Safety & Risk Management Group, LLC or its Personnel by Client. If the Site is sold or otherwise conveyed to a third party, Client shall immediately notify Safety & Risk Management Group, LLC if Client is unable to obtain necessary access within a timely manner. Should Safety & Risk Management Group, LLC be obstructed or delayed in the commencement, performance or completion of the Work, without fault on its part, by reason of not having full access to the Site, and then Safety & Risk Management Group, LLC will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

8. GENERAL PROVISIONS

8.1 No Third-Party Beneficiaries - The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Client and Safety & Risk Management Group, LLC, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Client and Safety & Risk Management Group, LLC that sub consultants and any other person other than the Client or Safety & Risk Management Group, LLC receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

8.2 Force Majeure –Neither Party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by forces beyond its reasonable control, including without limitation, strikes, lockouts, or other industrial disturbances, acts or omissions of subcontractors, compliance with any regulations, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics.