

CONTRACT FOR CONSULTING SERVICES BETWEEN THE CITY OF RENO
AND
TOTAL SAFETY COMPLIANCE, LLC

THIS CONTRACT is made and entered into by and between the City of Reno, a Nevada municipal corporation (hereinafter referred to as "City") and Total Safety Compliance, LLC ("TSCC"). As used in this contract, "City" refers to the City of Reno, the Reno Redevelopment Agency and any other agencies of the City of Reno.

WHEREAS, the City deems it advisable to retain the services of TSCC to conduct consulting services, namely a City-wide independent audit of health and safety risks;

NOW THEREFORE, in consideration of the premises and of their mutual and dependent agreements, the parties hereto agree as set forth in the following terms and conditions.

1. PROFESSIONAL STANDARDS. TSCC shall provide the services set forth herein in a workmanlike manner consistent with standards in the trade, profession, or industry; and shall conform to, or exceed, the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

2. EMPLOYMENT OF CITY EMPLOYEES. TSCC shall not engage the services of any person or persons now employed by the City, including any department, commission or board thereof, to provide services relating to this Contract.

3. NONDISCRIMINATION. In connection with the performance of work under this Contract, TSCC shall not discriminate against any employee or applicant for employment because of age, race, creed, religion, color, veteran status, sex, sexual orientation (meaning having or being perceived as having an orientation for heterosexuality, homosexuality, bisexuality, etc.), gender identity or gender expression (meaning a gender-related identity, appearance, expression, or behavior of a person regardless of the person's assigned sex at birth), physical condition, disability, national origin, or any other protected class status applicable under federal, state or local law, rule or regulation. Any violation of this provision shall constitute a material breach of contract.

4. CONTRACT TERM. The term is until work is completed.

5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party as follows:

City: City of Reno
Eric Sparks
Safety Management Analyst

If by personal service:
1 East First Street
Reno, NV 89501

If by mail:
P.O. Box 1900
Reno, NV 89505

Consultant: Total Safety Compliance, LLC
C/O Tim Page-Bottorff
9464 East Los Lagos Vista Avenue
Mesa, AZ 85209

6. CONSIDERATION. The parties agree that TSCC will provide the services specified in paragraph seven (7) in the not-to-exceed sum of \$204,000.00, to be paid in the following manner: TSCC will bill the City monthly in \$17,000.00 increments for 12 consecutive months, to be paid within thirty days of receipt of the invoice.

- a. Travel: Travel is included in TSCC's fees. There will no additional travel cost to the City. TSCC will provide the City with a written accounting of its travel costs upon request of the City, or, regardless of any such request, upon completion of its work under this Contract. The maximum number of days the consultant will be onsite will be no more than 8 days a month or 96 days in a twelve month period.
- b. Timeliness of Billing: The parties agree that timeliness of billing is of essence to the contract and recognize that the City is on a fiscal year that ends every June 30th. TSCC will submit its first invoice within thirty days of commencing its work under this Contract. Subsequent invoices will be submitted every month thereafter for the following eleven months.
- c. Payment Terms: The City will provide payment within 30 days of received invoices.

7. INCORPORATED DOCUMENTS – PROPOSAL. The parties agree that the scope of work shall be specifically described in Attachment A.

8. INSPECTION & AUDIT.

a. Books and Records. TSCC agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, or the State or United States Government in the event that they provide any funding, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all City ordinances, and state and federal regulations and statutes.

b. Inspection & Audit. TSCC agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting

procedures and practices of TSCC or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of TSCC where such records may be found during business hours, with or without notice by the City or its authorized agent (and State or Legislative Auditor when applicable), and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

9. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon thirty (30) days written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. Termination for Cause. This Contract may be terminated by either party in the event of failure by the other party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Contract for cause, the terminating party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing party. In all events of termination for cause due to non-performance by TSCC, the City shall be entitled to retain all or a portion of payments otherwise due and payable, which are necessary to protect The City until resolution of any dispute.

c. Termination for Non-Appropriation. The continuation of this Contract beyond the fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Reno City Council and/or federal sources. The City may terminate this Contract, and TSCC waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City Department/Agency's funding from City and/or federal sources is not appropriated or is withdrawn, limited, or impaired in either a City, State or federal fiscal year.

d. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. TSCC shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the City;

iii. TSCC shall preserve, protect and promptly deliver into City possession all property of the City.

10. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. LIMITED LIABILITY. The City will not waive and intends to assert available Nevada Revised Statutes chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any City breach shall never exceed the amount of funds appropriated and authorized for payment under this Contract, but not yet paid to TSCC, for the fiscal year budget in existence at the time of the breach. Damages for any TSCC breach shall not exceed the contract price. TSCC's tort liability shall not be limited.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION & HOLD HARMLESS. To the fullest extent permitted by law TSCC shall indemnify, hold harmless and defend, not excluding the City's right to participate, the City from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of TSCC, its officers, employees and agents.

The City agrees to defend, indemnify, and hold TSCC harmless for damages caused by the negligent acts, errors, or omissions of the City or any other party for whom the City is legally liable in the performance of its obligations under this Contract.

In the event claims or damages are found to be caused by the joint or concurrent negligence of TSCC and The City, they shall be borne by each party in proportion to its own negligence.

14. INDEPENDENT CONTRACTOR. TSCC is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, TSCC is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or

principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of TSCC or any other party.

15. INSURANCE. TSCC must carry policies of insurance and pay all taxes and fees incident hereunto.

TSCC shall provide, when required by state law, for all workers' compensation coverage for its employees.

TSCC must carry Comprehensive or Commercial General Liability Insurance (occurrence form) from a carrier licensed to do business in the State of Nevada with a Best rating of A – Class VII or better. Minimum acceptable policy limits shall be in an amount of not less than one million dollars (\$1,000,000.00), combined, single limit, occurrence based policy, in a form satisfactory to the City. Such insurance must (1) name the City and the Reno Redevelopment Agency, their Council members, officers, employees, agents and volunteers as an additional insured under the policy, (2) contain no language excluding coverage for the acts or omissions of the additional insureds, (3) be endorsed to provide primary and noncontributory liability coverage, and (4) include an endorsement waiving the insurer's rights of subrogation against the City. A certificate of insurance evidencing said coverage shall be supplied by TSCC upon request, naming the City as an Additional Insured under the liability policy. The liability policy shall contain a provision that such policy shall not be cancelled until at least thirty (30) days prior written notice of cancellation has been received by the City for any reason other than non-payment of premium and for non-payment of premium at least ten (10) days prior written notice of cancellation.

TSCC must have automobile coverage at least as broad as Insurance Services Office business auto coverage form CA OO 01 10 13 or an equivalent form covering automobile liability symbol 1 "Any Auto". In lieu of a separate business auto liability policy, the City may agree to accept auto liability covered in the CGL policy, if non owned and hired auto liability are included. TSCC shall maintain limits of no less than \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.

It is the specific intention of the parties and this requirement that all insurance held by the City shall be excess, secondary and non-contributory.

16. COMPLIANCE WITH LEGAL OBLIGATIONS. TSCC shall procure and maintain for the duration of this Contract any state, county, city or federal licenses, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by TSCC to provide the goods or services required by this Contract. TSCC will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law or ordinance. Real property and personal property taxes are the responsibility of TSCC in accordance with NRS 361.157 and NRS 361.159. TSCC agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

17. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

18. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

19. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. TSCC shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the City.

20. CITY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code, or any other documents or drawings, prepared or in the course of preparation by TSCC (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into City possession by TSCC upon completion, termination, or cancellation of this Contract. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection.

The City agrees not to audio or video tape any presentations TSCC delivers without prior written consent by TSCC. (Note: Council, Commission, Board and other public meetings are recorded.)

21. PUBLIC RECORDS. Pursuant to Nevada Revised Statute 239.010, information or documents received from TSCC may be open to public inspection and copying. The City has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. TSCC may label specific parts of an individual document as a trade secret or confidential proprietary information in accordance with Nevada Revised Statute 332.061, provided that TSCC thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

22. CONFIDENTIALITY. TSCC shall keep confidential all information, in whatever form, produced, prepared, observed or received by TSCC to the extent that such information is confidential by law or otherwise required by this Contract.

23. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Any services performed by TSCC before this Contract is effective, or after it ceases to be effective, or beyond its maximum authorized consideration, shall be performed at the sole risk of TSCC.

24. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada and the ordinances of the City of Reno, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the Second Judicial District Court, Washoe County, Nevada for enforcement of this Contract.

25. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Headings are for convenience only and shall not be construed as material. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed and approved by the respective parties hereto. This Contract may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

TOTAL SAFETY COMPLIANCE, LLC

By: 
Its: President and CEO

Date: 11-14-2022

CITY OF RENO

By: _____
Eric Sparks, City Safety Management Analyst

Date: _____

APPROVED AS TO FORM

By: _____
Mark Hughs
Deputy City Attorney

Appendix A – Scope of Services

Conduct a comprehensive evaluation to identify hazards/risks of all City of Reno departments and accessible operations in accordance with all generally accepted health and safety regulations, including but not limited to 29 CFR 1910, 29 CFR 1926, NRS 618, and applicable National Electrical Code (NEC), National Fire Protection Association (NFPA), and American National Standards Institute (ANSI) standards.

Identify general non-conformance with industry standards and regulations. Review, analyze and recommend changes to existing infrastructure, including Health and Safety Management System and related programs, and training related to equipment, tool and vehicle operations, and other prescribed training under the above-mentioned standards and regulations. Review, analyze and recommend changes to policies, procedures, and related documentation applicable to occupational safety and health. Quantify potential financial liabilities associated with the risk hazards.

The audit firm is to issue a report of all findings, including: classification of risk hazards based on the City of Reno's risk matrix or another quantifiable method of assessment consistent with industry standards, general non-compliance with regulatory requirements, and quantification of potential financial liabilities consistent with the 2022 Annual Adjustments to OSHA Civil Penalties.

The City will require all findings be individually documented, referenced with applicable standards, classified with the appropriate risk rating, with potential penalties quantified. A draft comprehensive and defensible audit report shall be made available for staff review prior to the issuance of a final report. The draft and final report must at a minimum include:

1. A summary of the number of findings, categorized by risk rating;
2. The range of potential regulatory penalties/liabilities;
3. Recommendations for improvement;
4. The complete audit report including individual findings;
5. Information Meetings.

TSCC shall provide assistance and follow-up of corrective actions, to the extent identified in TSCC's RFQ submission.

Consultant to schedule an initial meeting with the Director of Human Resources, Risk Manager, the Management Analyst for Safety, and the Management Analyst for Workers Compensation, to discuss the process and tasks to be performed in the audit. Consultant to meet with department heads, managers and supervisors to explain the audit and process to be used.

Consultant to provide monthly status updates to the Director of Human Resources, Risk Manager, and the Management Analyst for Safety, at a minimum. The audit firm will be

responsible for providing a technical briefing to City leadership upon completion, to include possible presentations to City Council.

The City will provide copies of all existing policies, procedures, training records, and related materials, and any other available in-house information requested by the selected consultant that may be required to complete the study. The City will make staff available to answer questions necessary to inform the study.

Any materials generated by TSCC which contain or reference confidential information, or which are generated from confidential information, shall be deemed confidential and will not be released to any outside party without the express written consent of the City.