

**PROFESSIONAL SERVICE CONTRACT BETWEEN THE
CITY OF COLUMBUS AND SAFEX, INC.**

This Contract is made and entered into by and between Safex, Inc., (herein referred to as "Contractor"), and the City of Columbus, Ohio, Department of Human Resources, (the "City").

WITNESSETH

WHEREAS, the City has identified money to engage the assistance of a industrial hygiene and safety professional for planning and implementing industrial hygiene and safety program and responding to employee exposure concerns; and

WHEREAS, from those proceeds the City shall pay the Contractor an amount not to exceed \$120,000 including analytical fees to provide services as described in Attachment A.

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

The specific services to be performed and/or deliverables to be provided to the City pursuant to this Contract are identified in Attachment A hereto.

ENTIRE AGREEMENT

This Contract sets forth the entire Agreement between the parties with respect to the subject matter hereof. Understandings, agreements, representations, or warranties not contained in this Contract, or as written amendment hereto, shall not be binding on either party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality, or specifications of this Contract shall be binding on either party without the written consent of both parties.

1 Contract Term

The initial term of this Agreement is March 1, 2007 to March 1, 2008 with the option by the City to renew for an additional year at the end of the of the contract term. Subsequent terms are subject to future monies being made available and approval by City Council.

2 Maximum Obligation

The maximum amount to be paid under any purchase order associated with this Agreement shall not exceed \$120,000 and includes analytical fees.

3 Pricing

The Contractor agrees to perform the Scope of Services as set forth in Attachment A. Laboratory analysis will be reimbursed at cost plus 10%. No other costs, rates, or fees shall be payable to the Contractor for services performed hereunder.

4 Equal Opportunity Clause

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or termination; rate of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that the Contractor is an equal opportunity employer.

It is the policy of the City of Columbus that business concerns owned and operated by minority and female persons shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the City. Safex is a woman-owned business.

The Contractor shall permit access to any relevant and pertinent reports and documents by the Executive Director for the sole purpose of verifying compliance with this Article, and with the regulations of the Contract Compliance Office. All such materials provided to the Executive Director by the Contractor shall be considered confidential.

The Contractor will not obstruct or hinder the Executive Director or Directors, deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Article I, Title 39.

The Contractor and each Subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The Contractor will take such action with respect to any subcontract as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.

The Contractor agrees to refrain from subcontracting any part of this Contract or Contract Modification thereto to a Contractor not holding a valid certification number as provided for in Article I, Title 39.

Failure or refusal of a Contractor or Subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract. (Ord. 2550-93.)

5 Taxes

Safex is responsible for payroll taxes associated with their staff members. Said contractor hereby further agrees to withhold all city income taxes due or payable under the provisions of Chapter 361, Columbus City Codes, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such city income taxes due under said chapter for services performed under this contract.

6 City's Contract Administrator

Chester Christie, Director, Human Resources, has designated Rick Brewer to serve as the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. Rick Brewer, will manage the Contract on behalf of the City and will be the principal point of contact for the City concerning the Contractor's performance under this Contract.

7 Contractor as an Independent Contractor

A. The Contractor shall be and shall remain an Independent Contractor with respect to all services performed hereunder and he/she agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remunerations paid to the Contractor or persons employed by the Contractor for work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now, or hereafter may be, issued or promulgated under said respective laws.

Contractor understands that this Agreement is entered into between himself and the City because the City is the recipient of the grant monies which are funding the work. This Agreement in no way establishes an employer/employee relationship between Contractor and the City nor will it now, or in the future, entitle Contractor to claim he is/was an employee of the City of Columbus for any purpose whatsoever.

8 Contract Administration

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Services as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

To City at:

City Hall, Dept. of Human Resources
Attn: Rick Brewer
90 W. Broad St., Rm. 311
Columbus, OH 43215

To: Dianne Grote Adams
President, Safex, Inc.
140 N. Otterbein Avenue
Westerville, Ohio 43081

9 Conflict of Interest

No officer or employee of the City of Columbus, or its designees or agents, and no other public official who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any Contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

Any such person, who prior to the execution of this Agreement, acquires any such incompatible or conflicting personal interest, or after the effective date of this Agreement involuntarily or voluntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his/her interest to the H.R. Department in writing. Thereafter, he/she shall not participate in any action affecting the work under this Agreement, unless the Department of H.R. shall determine that in the light of the personal interest disclosed, his/her participation in any such action would not be contrary to the public interest.

10 Applicable Law, Remedies

This Agreement shall be governed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.

11 Payment

Fees shall be paid for services rendered following: (1) the City's receipt of a correct invoice, which designates the specific applicable charges, and (2) issuance of a certified purchase order. Invoices shall be submitted. The City will not be subject to any late payment charges. Rates shall be firm during the term of this Contract. The City will process correctly documented invoices for payment and Contractor should receive payment for such invoice thirty (30) days from receipt by the City.

All invoices shall be submitted in triplicate to the address stated on the individual purchase order. The invoices shall include (but not be limited to) the following information:

City Purchase Order Number
Department, Division & Invoice Address per PO
Deliverable/Task Description
Date of invoice
Itemized invoice to include line item costs for services

12 Modifications

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the City Attorney and the Contractor and approved by the appropriate City authorities.

13 Contract Termination

Termination for Default

If either the City or the Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party shall give the other party written notice of a proposed correction to such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

Termination for Convenience

When it is in the best interest of the City, the Department of H.R. may terminate this Contract, in whole or in part by providing fourteen (14) calendar days or other appropriate length of time written notice to the Contractor prior to the effective date of termination. If this Contract is so terminated, the City is liable only for payments required by the terms of this Contract for services received and accepted by the City.

14 Nonexclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under the law.

15 Survivorship

All services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract, or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense in context are intended to survive this completion of the performance, cancellation or termination of this Contract, shall so survive.

16 Ownership of Work Product

Unless otherwise provided, data that originates from this Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the City. Data shall include, but not be limited to reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, or source code and object code. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the City with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the City at the time of delivery of data furnished under this Contract, of all known or potential infringements for privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The City shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

Contractor shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of the City Attorney.

17 Review of Contractor's Records

The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for as required by law. Records involving matters in litigation related to this Contract shall be kept as required by law including all appeals. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the City's Contract Administrator and/or the City of Columbus, Auditor's Office and state or federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Franklin County. During the required time period delivery of and access to these items will be at no cost to the City. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Contractor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the City's review unless the cost, or any other material issue under this Contract, is calculated or derived from these factors.

18 Save Harmless

Contractor shall protect, indemnify and save the City harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

The City shall protect, indemnify and save the Contractor harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of City, its employees, agents, or Subcontractors.

19 Force Majeure

Neither party will be liable for failure to perform its obligations hereunder if such failure results from force majeure, act of God, refusal of any license or consent of any act of any national, federal, state or local government authority or any

department, agency or representative thereof, fire, explosion, accident, industrial dispute, act of war, riot, epidemic or other natural disaster or anything beyond either party's reasonable control. Notwithstanding the foregoing, no such event shall excuse a failure by the City to pay for services performed by Contractor hereunder.

20 Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Contract are declared severable.

21 Waiver

Waiver of any breach, term, or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

22 Contractor's Proprietary Information

Contractor acknowledges that the City is subject to Chapter R.C.149.43, The State of Ohio Public Records Law and that this Contract shall be a public record as defined in this law.

23 Assignment

This Agreement may not be assigned or otherwise transferred to others by the Contractor without the prior written consent of the Director of Human Resources.

24 Authority to Bind

The signatories to this Contract represent that they have the authority to bind themselves and their respective organizations to this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

AGREED:

Safex, Inc.

CITY OF COLUMBUS

Dianne Grote Adams
President

Chester C. Christie
Director of Human Resources

Date: _____

Date: _____

ATTACHMENT A

SCOPE OF SERVICES:

- Preparing equipment for use.
- Providing ongoing training and support for the City and CHD safety personnel to prepare them to conduct routine monitoring.
- Conducting industrial hygiene and indoor environmental quality monitoring in response to complaints, concerns or hazardous materials incidents.
- Managing routine industrial hygiene monitoring conducted by City or CHD safety personnel.
- Maintaining industrial hygiene sampling results' database.
- Maintaining industrial hygiene equipment
- Providing written reports for industrial hygiene monitoring events.
- Providing employee notification letters for industrial hygiene monitoring events.
- Providing an annual summary of industrial hygiene activities.
- Providing safety training as needed.
- Providing safety tasks such as hazard assessments, program development as needed or in response to employee complaints.
- Providing CIH or CSP consulting services on an as needed basis.

Maximum expenditure is as follows:

- Maximum of \$12,000 for Equipment Calibration by vendor.
- Maximum of \$25,500 for Safety Training
- Maximum of \$50,000 in labor for routine IH management, IAQ investigations and safety tasks.
- Maximum of \$12,500 in labor for non-routine IH and IAQ sampling.
- Maximum of \$20,000 for Asbestos related projects.
- Analytical costs will be included in the above billing cost.
- If all of the dollars appropriated for in Attachment A are not utilized the remaining funds will be applied to the routine and non-routine expenditures.