

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Master Services Agreement
with Safetec Compliance
Systems, Inc. for management
of City of Everett Safety Data
Sheets

_____ Briefing
_____ Proposed Action
_____ Consent
 X Action
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Public Hearing
_____ Budget Advisory

COUNCIL BILL # _____
Originating Department Labor Relations
Contact Person Megan Munro
Phone Number 425-257-8775
FOR AGENDA OF August 31, 2016

Initialed by:
Department Head _____
CAA 
Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
		Master Services Agreement Scope of Services	Labor Relations, Legal

Amount Budgeted	-0-	
Expenditure Required	\$5,250.00	031-532-0000-494 032-520-0000-480 401-5-200-111-410 501-5-900-000-410
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

State law requires Everett to maintain current copies of Safety Data Sheets (SDS) for chemicals used by employees so that they can be accessed and archived for 30 years after use.

Safetec Compliance Systems, Inc. is a software-as-a-service company that four separate City departments have been using for 10 years. This Master Services Agreement would consolidate the records, reduce unit pricing and streamline SDS management for employee health and safety. The annual cost is \$3/SDS. The current SDS collection is approximately 1600. This agreement contains an indemnification clause.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign a Master Services Agreement with Safetec Compliance Systems, Inc. for management of City of Everett Safety Data Sheets in the amount of \$5,250.00.

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "**Agreement**"), effective as of July 12, 2016, is by and between **SAFETEC COMPLIANCE SYSTEMS, INC.**, a Washington corporation, with offices located at 7700 NE Parkway Drive, Suite 125, Vancouver, Washington 98662 ("**SafeTec**") and City of Everett, a Washington corporation, with offices located at 3200 Cedar Street, Everett, WA 98201 ("**Customer**").

RECITALS:

A. SafeTec is a Software-as-a-Service (SaaS) provider that develops, hosts, implements and supports an Internet-based solution providing Material Safety Data Sheet ((M)SDS) and Safety Data Sheet (SDS) Management, and Chemical, Risk and Compliance solutions, including SDS Authoring services, project management and other expertise related to information services, data management, and business analytics (collectively, the "**Services**").

B. Customer, from time to time, desires to engage SafeTec to render certain Services and to provide certain related documents, work product, and other materials (collectively, the "**Deliverables**"), as requested in accordance with this Agreement, and SafeTec desires to accept such engagement.

AGREEMENT:

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

1. Services.

1.1 Delivery of Services. During the Term of this Agreement, SafeTec shall provide the Services and Deliverables to Customer pursuant to each applicable Statement of Work entered into by the parties, attached hereto substantially in the form of Exhibit A (the "**Statement of Work**"). The Services and Deliverables shall be provided in accordance with the terms and conditions of this Agreement and the applicable Statement of Work. Absent the execution of a Statement of Work, this Agreement does not in and of itself represent a commitment by either party to provide any minimum amount of fees or services.

1.2 Statement of Work. Each Statement of Work shall be in a format similar to that of Exhibit A, and at a minimum, include the following information: (a) a detailed description of the Services to be performed pursuant to the Statement of Work; (b) the date upon which the Services will commence and the term of such Statement of Work; (c) the fees to be paid to SafeTec under the Statement of Work; (d) a payment schedule for the Services; (e) any criteria for completion of the Services; and (f) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

1.3 Execution of Statement of Work. Each Statement of Work, when executed by an authorized representative of both parties, shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement. In the event of any conflict between any Statement of Work and terms and conditions of this Agreement (exclusive of such Statement of Work), the terms and conditions of this Agreement shall govern, except if and to the extent such Statement of Work expressly states that it is amending this Agreement.

2. **SafeTec's Obligations.**

2.1 **SafeTec.** During the Term of this Agreement, SafeTec shall:

2.1.1 Comply with, and ensure that all SafeTec personnel comply with, all rules, regulations and policies of Customer that are communicated to SafeTec in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Customer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures; and

2.1.2 Maintain complete and accurate accounting records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by SafeTec in providing the Services, in accordance with generally accepted accounting principles. During the Term, and for a period of one (1) year thereafter, upon Customer's written request, SafeTec shall allow Customer or Customer's representative to inspect and make copies of such records; provided, that any such inspection shall take place during regular business hours no more than once per year and Customer provides SafeTec with at least ten (10) business days advance written notice.

2.2 **SafeTec Personnel.** SafeTec is responsible for all SafeTec personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

2.3 **Time of the Essence.** SafeTec acknowledges that time is of the essence with respect to SafeTec's obligations under this Agreement and that prompt and timely performance of all such obligations is strictly required.

3. **Customer's Obligations.**

3.1 **Customer.** During the Term of this Agreement, Customer shall:

3.1.1 Cooperate with SafeTec in all matters relating to the Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

3.1.2 Provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by SafeTec, for the purposes of performing the Services;

3.1.3 Respond promptly to any SafeTec request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for SafeTec to perform Services in accordance with the requirements of this Agreement;

3.1.4 Provide such information as SafeTec may, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

3.1.5 Ensure that all Customer information, data, or materials, provided by Customer and used directly or indirectly in the provision of Services is accurate to the best of Customer's knowledge and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements, and to promptly notify SafeTec of any error therein;

3.1.6 Ensure that all Customer equipment, systems, or facilities provided by Customer and used directly or indirectly in the provision of Services is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements;

3.1.7 Obtain and maintain all necessary licenses and consents and comply with any relevant statute, law, ordinance, regulation, or other requirement or rule of law (collectively, "Law") in relation to the Services, in all cases before the date on which the Services are to start; and

3.1.8 Review and approve all Deliverables for accuracy and completeness, which approval shall not be unreasonably withheld.

3.2 **Act or Omission of Customer.** If SafeTec's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, SafeTec shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

4. **Change Orders.**

4.1 **Submission.** If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. SafeTec shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than ten (10) business days after receipt of Customer's written request), provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of this Agreement.

4.2 **Negotiate and Agree.** Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 18.8 (Amendments and Waiver).

5. **Fees and Expenses; Payment Terms.**

5.1 **Fees and Expenses.** In consideration of the provision of the Services by SafeTec and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the applicable Statement of Work. Payment to SafeTec of such fees and the reimbursement of expenses pursuant to this Section 5 shall constitute payment in full for the performance of the Services and Customer shall not be responsible for paying any other fees, costs or expenses.

5.1.1 **Time and Material Basis.** Where the Services are provided on a time and materials basis: (a) the fees payable for the Services shall be calculated in accordance with SafeTec's fee rates for SafeTec personnel set forth in the applicable Statement of Work; and (b) SafeTec shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this Section 5.1.1.

5.1.2 **Fixed Price.** Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to SafeTec in installments, as set out in the Statement of Work.

5.1.3 **Reimbursement of Expenses.** Customer agrees to reimburse SafeTec for all actual, documented and reasonable travel and out-of-pocket expenses incurred by SafeTec in connection with the performance of the Services that both parties have mutually agreed are required to perform the obligations under this Agreement.

5.2 **Fee Increase.** The parties agree that after the initial twelve (12) months of the Term for Services provided on a time and materials basis, SafeTec may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; provided, that: (a) SafeTec provides Customer written notice of such increase at least ninety (90) days prior to the effective date of such increase; (b) such increases occur no more frequently than once per contract year of the Term; and (c) the amount of such increase shall not exceed five percent (5%).

5.3 **Taxes.** SafeTec shall be solely responsible for any taxes imposed on the performance of Services or the payment for such Services, including withholding of state and federal income, sales, or ad valorem, unemployment compensation, worker's compensation, Federal Insurance Contribution Act, Federal Unemployment Tax Act, or other taxes, costs, or expenses incurred in the performance of any engagements hereunder.

5.4 **Invoice.** SafeTec shall issue invoices to Customer in accordance with the terms of this Section 5 and Customer shall pay all properly invoiced amounts due to SafeTec within thirty (30) days of the date of such invoice (the "Due Date"). All payments hereunder shall be in US dollars and made by check or wire transfer.

5.5 **Past Due Amounts.** Any payments not received by SafeTec by the Due Date will be considered past due and interest will accrue on unpaid amounts at a rate of one and one-half percent (1.5%) per month. SafeTec, in its sole discretion, may discontinue the Services or institute collection proceedings if Customer does not pay any invoice within thirty (30) days of the Due Date.

6. **Term.** This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of three (3) years and shall automatically renew thereafter for successive one (1) year terms, unless sooner terminated pursuant to Section 7 (Termination).

7. **Termination.**

7.1 **Without Cause.** Either party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party.

7.2 **With Cause.** Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party: (a) breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or (b) becomes insolvent or admits its inability to pay its debts generally as they become due; or (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; or (d) is dissolved or liquidated or takes any corporate action for such purpose; or (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3 **Effects of Termination.** Upon expiration or termination of this Agreement for any reason:

7.3.1 **Compensation for Work Done.** Customer shall compensate SafeTec for (a) any work that has been approved by Customer and may be in process prior to the date of expiration or termination of this Agreement, or (b) any work that has been completed but not yet delivered, so long as SafeTec agrees to stop all work to the extent specified in the written notice of termination.

7.3.2 **Return Documents.** Each party shall (a) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (b) permanently erase all of the other party's Confidential Information from its computer systems, and (c) certify in writing to the other party that it has complied with the requirements of this clause.

8. **Independent Contractor.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9. **Public Representations.** During the Term of this Agreement, and thereafter SafeTec shall not represent itself to be owned or controlled by Customer, to be employed by Customer, or as authorized to represent Customer or to obligate Customer with respect to any matters not expressly provided in this Agreement. SafeTec may represent to the general public or to any person that it is an independent contractor providing Services to Customer, unless specifically prohibited from doing so by Customer in writing.

10. **Intellectual Property Rights.** Except as otherwise provided in addendum attached hereto substantially in the form of **Exhibit B**, Customer acknowledges and agrees that SafeTec is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Services, including all Intellectual Property Rights therein. For purposes of this Agreement, "**Intellectual Property Rights**" shall mean the following: all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. Except as expressly stated herein, this Agreement does not grant Customer any rights to or in Intellectual Property Rights, or any other rights or licenses in respect of the Services.

11. **Confidential Information.**

11.1 **Definition.** SafeTec and Customer understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, proprietary or confidential information of the other party, including, but not limited to trade secrets and technical information, or any other information designated as "confidential" by a party ("**Confidential Information**").

11.2 **Nondisclosure.** SafeTec and Customer agree that they shall not, during the term of this Agreement and after its termination, use the other party's Confidential Information for any purpose other than as expressly authorized by this Agreement, or disclose the Confidential Information of the other Party without the prior written consent of the other Party. The receiving party will promptly return or

destroy all Confidential Information in its possession upon the request of the Disclosing Party and certify same in writing to the disclosing party.

11.3 **Exclusions.** Notwithstanding the foregoing, Confidential Information shall not include information that is: (a) already in the possession of the recipient without obligation of confidence; (b) now or later becomes publicly available without violation of this Agreement by the recipient; (c) received by the recipient from a third party which is not under a direct or indirect obligation of confidentiality to the other party; (d) independently developed by the recipient without reference nor access to the other party's Confidential Information; and (e) required by order of a court or an administrative governmental agency to be disclosed, provided that the recipient, if legally permitted, gives prompt prior notice to the other party of the impending disclosure in time for such party to appear and oppose the disclosure. Each party understands and agrees that any breach of the restrictions contained in this Section 11 will cause irreparable harm to the other party and entitle such party to injunctive relief in addition to all other legal remedies.

12. **Representations and Warranties.**

12.1 **Both Parties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2 **SafeTec.** SafeTec represents and warrants to Customer that: (a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; (b) it is in compliance with, and shall perform the Services in compliance with, all applicable Laws; and (c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work. During the warranty period specified for a Deliverable in each Statement of Work, SafeTec will, at no additional charge to Customer, perform Services and provide Deliverables as shall be necessary to correct any errors or defects in said Deliverables and to maintain said Deliverable in good working order in accordance with this Agreement. Unless otherwise stated in the applicable Statement of Work, the warranty period for each Deliverable shall be one-hundred eighty (180) consecutive calendar days from the date of Customer's acceptance of said Deliverable.

12.3 **Customer.** Customer represents and warrants to SafeTec that: (a) it shall ensure that all Customer information, data, or materials provided by Customer and used directly or indirectly in the provision of Services is accurate to the best of Customer's knowledge and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements, and that it will promptly notify SafeTec of any error therein; and (b) it shall devote adequate resources to meet its obligations under this Agreement.

12.4 **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND SAFETEC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

13. Indemnification.

13.1 SafeTec.

13.1.1 SafeTec shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns (each, a "**Customer Indemnitee**") from and against all Losses arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of SafeTec or SafeTec personnel; and (b) SafeTec's material breach of any representation, warranty or obligation of SafeTec set forth in this Agreement.

13.1.2 SafeTec shall defend, indemnify and hold harmless the Customer Indemnitees from and against all Losses awarded against a Customer Indemnitee in a final judgment based on a claim that any of the Services or Deliverables or Customer's receipt or use thereof infringes any Intellectual Property Right of a third party arising under the Laws of the United States; provided, however, that SafeTec shall have no obligations under this Section 13.1.2 with respect to claims to the extent arising out of: (a) any Customer Materials or any instruction, information, designs, specifications or other materials provided by Customer in writing to SafeTec; (b) use of the Deliverables in combination with any materials or equipment not supplied to Customer or specified by SafeTec in writing, if the infringement would have been avoided by the use of the Deliverables not so combined; or (c) any modifications or changes made to the Deliverables by or on behalf of any party other than SafeTec or SafeTec personnel.

13.1.3 In the event that the Services or Deliverables provided by SafeTec, or any portion thereof is held to constitute an infringement or violation of any third party's intellectual property or other proprietary rights, or in the reasonable opinion of SafeTec might constitute an infringement or violation of any third party's intellectual property rights, then SafeTec shall have the immediate right to, at its sole expense and at Customer's option: (a) modify the Deliverable without impairing in any material respect the functionality or performance, so that it is non-infringing or non-violative; (b) procure for Customer the right to continue to use the infringing or violative Deliverable; (c) replace said Deliverable with an equally suitable, non-infringing product; or (d) if none of the foregoing alternatives are available to SafeTec, Customer shall receive a repayment of all sums paid to SafeTec under the relevant Statement of Work for the infringing or violative Deliverable and Customer shall have no obligation to make any additional payments to SafeTec for such Deliverable, and SafeTec shall accept return of the Deliverable at its sole expense, once Customer has arranged for the continuation of the functions performed thereby. This Section 13.1.3 states SafeTec's entire responsibilities and Customer's entire remedies for any infringement of third party intellectual property by SafeTec's Services or Deliverables

13.2 **Customer.** Customer shall defend, indemnify and hold harmless SafeTec and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded against SafeTec in a final judgment arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the negligent or willful acts or omissions of Customer; and (b) Customer's material breach of any representation, warranty or obligation of Customer set forth in this Agreement.

14. Limitation of Liability.

14.1 IN NO EVENT SHALL SAFETEC BE LIABLE FOR LOSS OF USE OR OF DATA; LOSS OF PROFIT; DOWN TIME; OR INTERRUPTION OF BUSINESS; PROVIDED, HOWEVER, THAT IF ANY DATA PROPERLY PROVIDED BY CUSTOMER IN ACCORDANCE WITH THIS AGREEMENT IS LOST OR NOT AVAILABLE DUE TO THE GROSS NEGLIGENCE OF SAFETEC, SAFETEC SHALL BE LIABLE FOR THE ACTUAL DIRECT DAMAGES RESULTING FROM SUCH DATA LOSS OR UNAVAILABILITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, HOWEVER CAUSED, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SAME, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SAFETEC IS NOT LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED IN ANY WAY TO: (a) THE ACCURACY OR COMPLETENESS OF CUSTOMER INFORMATION; (b) THE ACCURACY OR COMPLETENESS OF THE DELIVERABLES OR INFORMATION DERIVED FROM THE DELIVERABLES; (c) USE OF PRODUCTS OR SERVICES; OR (d) MODIFICATIONS TO PRODUCTS OR SERVICES; WHETHER SUCH DAMAGES ARE SUFFERED BY CUSTOMER OR ANY THIRD PARTY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS SET FORTH IN THIS AGREEMENT.

14.2 EXCEPT AS PROVIDED IN SECTION 14.3, EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY APPLICABLE STATEMENT OF WORK WILL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER, FOR THE SERVICE THAT IS THE SUBJECT OF THE ACTION, FOR THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE BREACH FOR WHICH THE DAMAGES ARE CLAIMED. CUSTOMER ACKNOWLEDGES THAT SAFETEC PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION 14.2 WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

14.3 The exclusions and limitations in Sections 14.1 and 14.2 shall not apply to: (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 10 (Intellectual Property Rights; Ownership); (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 11 (Confidential Information); (c) a party's indemnification obligations under Section 13 (Indemnification); (d) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts; (e) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions; and (f) a party's obligation to pay attorneys' fees and court costs in accordance with Section 18.12.

15. Insurance.

15.1 **Types of Insurance.** SafeTec agrees to maintain Errors and Omission Liability Insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate to cover the acts and omissions of its employees and agents for Services rendered pursuant to this Agreement. SafeTec will maintain Commercial General Liability Insurance with limits no less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. SafeTec shall also maintain Automotive Liability Insurance with not less than One Million Dollars (\$1,000,000) per occurrence, and will maintain Workmen's Compensation Insurance for all SafeTec employees that complies with the applicable laws wherever the Services are performed and wherever SafeTec's contracts of employment are entered into.

15.2 **Evidence.** SafeTec agrees to furnish Customer with a current and valid Certificate of Insurance relating to the extent of liability coverage and SafeTec agrees to keep and to maintain said insurance coverage in full force and effect during the Term of this Agreement. Insurance carriers for Errors

and Omission Liability and Commercial General Liability Insurance will have a minimum rating of "A" by AM Best or its equivalent. SafeTec shall be responsible for maintaining insurance covering its personal property used by it in its work. Any modification or alteration of such coverage or program, which shall have a material effect on this Section 15, shall be promptly communicated to Customer.

15.3 **Minimums.** All insurance requirements set forth in this Section 15 are minimum required levels of insurance and are not intended as limits on SafeTec's liability to Customer for violations of any duties, responsibilities, or obligations of SafeTec as set forth in this Agreement and any attachments thereto.

16. **Non-Exclusivity: Non-Compete.** SafeTec retains the right to perform the same or similar type of services for any and all third parties during the Term of this Agreement.

17. **Force Majeure.**

17.1 **No Liability.** Neither party shall not be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; shortage of adequate power or telecommunications or transportation facilities; or any other event which is beyond the reasonable control of the party (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17.2 **Termination.** This Agreement shall not be regarded as terminated or frustrated as a result of such failure of performance that does not exceed two (2) months, and the parties shall proceed under this Agreement when the causes of such non-performance have ceased or have been eliminated.

18. **Miscellaneous.**

18.1 **Further Assurances.** Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

18.2 **Publicity.** SafeTec and Customer agree that SafeTec may publicize the fact that Customer is a user of the Services in a mutually agreed upon initial press release. Thereafter, SafeTec will use Customer name only in a list of other SafeTec customers. Additional publicity, if any, will require Customer's prior written consent.

18.3 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or

registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below or at such other address for a party as shall be specified in a notice given in accordance with this Section 18.3.

If to SafeTec: SafeTec Compliance Systems, Inc.
7700 NE Parkway Drive, Suite 125
Vancouver, WA 98662
Attention: Betty Hicks
Facsimile: 267-295-2012
Email: bhicks@hsi.com

With a copy to: Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, Oregon 97209
Attn: Ernest G. Bootsma
Facsimile: (503) 226-0079
Email: egb@aterwynne.com

If to Customer: City of Everett
3200 Cedar Street
Everett, WA 98201
Attention: Megan Munro
Facsimile:
Email: MMunro@everettwa.gov

18.4 **Entire Agreement.** This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

18.5 **Binding Effect; Assignment.** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party; provided, that, upon prior written notice to the other party, either party may assign the Agreement to a division, subsidiary or other affiliate of such party. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.6 **Successors and Assigns.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

18.7 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

18.8 **Amendments and Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.9 **Severability**. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.10 **Governing Law and Venue**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Washington. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Washington in each case located in the County of Clark, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

18.11 **Equitable Relief**. Each party acknowledges that a breach by a party of Section 10 (Intellectual Property Rights; Ownership) or Section 11 (Confidential Information) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

18.12 **Attorneys' Fees**. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

18.13 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SAFETEC COMPLIANCE SYSTEMS, INC.

By: Betty J. Hicks

Name: Betty J. Hicks

Title: Vice President, Operations & Authoring

[CITY OF EVERETT]

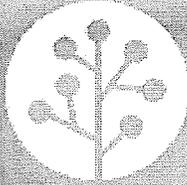
By: _____

Name: _____

Title: _____

EXHIBIT A
STATEMENT OF WORK

[Please see attached.]



Proposed Services

(M)SDS Management



Prepared for: Megan Munro
City of Everett
mmunro@everettwa.gov

Prepared by: Kirsten Moss
SafeTec Compliance Systems
kirstenm@safetec.net



SafeTec gives Environmental, Health & Safety professionals the support, technology and know-how to make informed decisions about the chemicals in their organization. We unlock the data within safety data sheets and use automation to deliver the structured information you need to manage thousands of chemicals safely and sustainably.

About the Organization

SafeTec is a privately-held corporation headquartered in Vancouver, Washington. Since 1998, SafeTec has partnered with Environmental, Health, and Safety professionals to help take on the heavy lifting in (M)SDS management. The SafeTec Community includes more than 300 customers across a myriad of industries and sizes.

About the SafeTec System

SafeTec offers comprehensive, automated (M)SDS and chemical inventory management solutions via a Software as a Service (SaaS) platform.

- We help you improve understanding of the hazardous materials in your workplace
- We reduce the complexity and costs of chemical management by customizing our system as needed so EHS professionals across industries have more time to focus on their top priorities.
- We help advance collective chemical knowledge for the benefit of the environment as well as industry by employing the latest technology, support tools, and field services in every engagement.

In the ever-shifting landscape of chemical compliance and management, you can rely on SafeTec to provide the support and solutions that advance chemical intelligence for your operation and for the world at large.

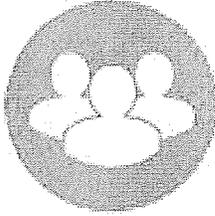
Customer Care Commitment

SafeTec employs people who are passionate about what they do. From handling customer service requests to pioneering tools tailored to meet the unique challenges of our customers, we offer more than software, we deliver peace-of-mind for you and your employees.

The SafeTec System

The adaptable SafeTec System™ goes beyond (M)SDS documentation to help you fully understand, analyze, and report on the chemicals used in your organization.

The City of Everett SafeTec System will include:



Unlimited User Access: Unlimited employee and administrative users

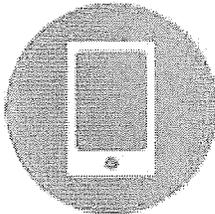


Multi-Browser Support:

Internet Explorer: versions 7, 8, 9, 10, 11

Google Chrome: latest version

Mozilla Firefox: latest version

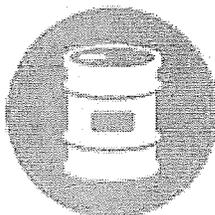


SafeTec Mobile: SafeTec websites automatically resize to work on any smartphone, tablet or computer, providing a third method of backup to your (M)SDS data



Regulatory Reporting:

1. Automated Tier II calculation and reporting
2. Tier II Export toolset, for locations that use E-Plan and Tier2Submit
3. Form-R/TRI calculation reporting, based on usage data capture



Labeling Engine: Secondary container labeling for NFPA & GHS



Technical Support: 24/7/365 technical support for emergencies via toll free number. Live attended hours for non-emergency customer service available 8am-4pm PST

Statement of Work

Service & Support Provided

SafeTec will provide the following services for City of Everett:

1. Continued access to electronic (M)SDS database to house City of Everett's (M)SDS library.
2. Extraction of information from each City of Everett (M)SDS to SafeTec's structured database; data indexing detail within Data Indexing section below.
3. Setup and hosting of two websites through which the (M)SDS Management System is accessed; this includes a City of Everett admin site, and a user-friendly Right-to-Know site.
4. Maintenance and secure backup of the (M)SDS database.
5. Scanning, information indexing, and upload of submitted, new, and revised (M)SDS documents throughout the term of the agreement.
6. Quarterly delivery of corporate (M)SDSs data back-up, delivered via CD/DVD or digital download. This software is a complete, stand-alone OSHA compliant (M)SDS tool that can be run on an independent PC or accessed over a network.
7. Train-the-Trainer training: two (2) two-hour, structured, pre-recorded web-based conference sessions, providing training for City of Everett's Safetec System. Each session accommodates up to 25 participating PCs. *Note: multiple users can participate from one PC.*
8. Incremental updates to the SafeTec System software
9. Storage and access to archived (M)SDSs for the life of the agreement
10. Detection and removal of duplicate (M)SDSs in the system, performed automatically by SafeTec Operations team
11. Implementation of SafeTec Monitor service, helping keep all active (M)SDSs current with the most up-to-date copy available from the manufacturer/supplier. This process is applied over a 3 year period of time

Data Indexing Described

Standard Fields	Chemical Ingredients	Secondary Container Labeling
Product Name	Name	NFPA
Manufacturer	CAS #	HMIS
Revision Date	Weight Percentages	GHS

On-going Submission of (M)SDSs

City of Everett may submit (M)SDSs (in hard copy or electronic format) to SafeTec on an as needed basis for processing. SafeTec will process submitted (M)SDSs and ensure that each document is available for search and viewing on the City of Everett website as soon as reasonably possible.

Technical Support

Technical support is included with the annual subscription fee. This support includes installation and troubleshooting. In addition, one hour of web site customization is included within the first ninety (90) days after the Effective Date of this SOW. Additional customization after such ninety (90) day period will be billed at the rate of \$180.00 per hour.

Publicity

Both parties agree that SafeTec may publicize City of Everett in a list of SafeTec customers. Any further publicity will require City of Everett's written approval.

Project Fees

Service Item	Cost
(M)SDS Management Cost (1500 Products @ \$3.50/product)	\$5,250.00
Fee is based on a price of \$3.50 per (M)SDS document per year.	
Year 1 Project Total	\$5,250.00

Payment Terms

Good Faith Estimate

The above pricing for SafeTec's software and services are estimates. These estimates are based on information, specifications, and/or requirements provided to SafeTec by City of Everett and may be affected by an increase in the number of actual (M)SDSs acquired and days of inventory needed (where

applicable). Any change in scope will be documented and submitted to City of Everett for approval.

User Licensing

The SafeTec System allows for unlimited employee and administrative users.

Users are defined as an employee or authorized contractor of the City of Everett.

Payments/Fees

City of Everett's annual subscription fee will be based on active, unique (M)SDSs. SafeTec will bill future annual fees at \$3.50 per unique (M)SDS. Any adjustment in the annual subscription fee for an increase/decrease in the number of active, unique (M)SDSs will be made at the beginning of each new contract year.

Invoices will be sent via email and/or mail to the facility point of contact or designated individual. All invoices are due and payable within thirty (30) days of receipt. Any invoice not paid within thirty (30) days of receipt will incur a 1.5% per month late fee. A suspension of service may result if payments are not received within ninety (90) days of receipt of invoice.

EXHIBIT B
AUTHORING ADDENDUM

[Please see attached.]

ADDENDUM

(WASHINGTON STATE TRANSPARENCY LAWS)

The City of Everett ("City") and _____ ("Vendor") are parties to an agreement entitled " _____ " (the "Agreement"). The parties agree that the provisions of this addendum control all provisions of the Agreement:

A. Scope. Regardless of anything to the contrary in the Agreement, all provisions in the Agreement that require the City to not disclose information or otherwise preserve confidentiality are strictly limited to the following: designs, drawings, computer source code and/or object code

(the "Confidential Records").

If the Parties desire anything additional be Confidential Records, then a new addendum shall be executed by the parties. The City has no nondisclosure or confidentiality obligations with respect to anything that is not a Confidential Record as defined by this addendum.

B. Washington Public Records Act. Vendor acknowledges that the City is subject to the Washington Public Records Act, chapter 42.56 RCW and other Washington statutes related to open government (collectively, the "Act"). If the City receives a records request under the Act that requests any Confidential Records, then the City shall give reasonable written notice to Vendor. The City has no obligation to provide such notice for anything that is not Confidential Records. If Vendor desires that the Confidential Records not be disclosed, Vendor shall commence an action in Snohomish County Superior Court before the disclosure date. **Notwithstanding anything to the contrary in the Agreement, the City has no liability whatsoever to Vendor the disclosure of any record containing Confidential Records when that disclosure is pursuant to an order applying the Act entered by the Snohomish County Superior Court or a Washington appellate court.**

C. Venue. The exclusive venue for any dispute regarding the subject matter of this addendum are the federal and state courts located in Snohomish County.

CITY:

RAY STEPHANSON, MAYOR

VENDOR:

Safe Tec. Compliance Systems
By: [Signature]
Title: vice President Operations & Admin

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY