

CONTRACT FOR CONSULTING SERVICES

Risk Prevention and Lifeguard Training

THIS CONTRACT FOR CONSULTING SERVICES ("Contract") is entered into this day May 1, 2024, ("Effective Date") by and between **City of Irvine** ("the Client") having its principal place of business at 1 Civic Center Plaza, Irvine CA 92606 and **StarGuard Elite, LLC**, a registered Florida LLC ("the Consultant" or "SGE") having its principal place of business at 13506 Summerport Village Parkway #810, Windermere, FL 34786. The Client and the Consultant are referred to collective as the "Parties" or individually as a "Party".

WHEREAS, the Client wishes to have the Consultant perform the Services hereinafter referred to on the terms and conditions provided in this Contract; and

WHEREAS, the Consultant is qualified to assume the responsibilities and perform the Services, and is willing to perform these Services as provided.

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Services

- A. Consultant offers a wide variety of services and programs, including lifeguard training and certifications, aquatic safety audits, and other general safety consulting and advisory services. Except as provided in Paragraph 1(B) below, the Consultant shall only perform for Client the services specified in Annex A, "Scope of Services," which is made an integral part of this Contract ("the Services").
- B. The Consultant can provide additional services listed in Annex B under item 2, "Incremental Pricing", at the request of the Client. Additional services shall be requested as outlined below in section E.
- C. The Consultant agrees that all Services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment, or personal property included within the Services herein shall be new, of good quality, and fit for the purpose intended.
- D. Consultant agrees to perform the Services to the satisfaction of Client within the time specified. If Client reasonably determines that the work is not satisfactory, Client shall notify Consultant in writing, including in reasonable detail, the deficiencies in Consultant's work. If Consultant does not cure such deficiencies within ten (10) days of Client's notice, Client shall have the right thereafter to take appropriate action in its discretion, including but not limited to: (i) meeting with Consultant to review the quality of the Services and resolve matters of concern; (ii) requiring Consultant to repeat unsatisfactory work at no additional charge; (iii) withholding payment; and/or (iv) terminating this Contract as hereinafter set forth.
- E. In the performance of this Contract, Consultant shall report to and receive instructions from the Client's Representative: **Jennifer Priest**. Services other than those specifically described in Annex A shall not be performed without the prior written approval of the Client's Representative.
- F. By executing this Contract, Consultant warrants that Consultant (i) has thoroughly investigated and considered the Services and Client's facilities, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Contract. Notwithstanding the foregoing, no verbal conversation or oral agreement with any Client

director, officer, employee, volunteer, or agent of the Client, including the Client's Representative, shall affect or modify any provision or obligation of this Contract.

- G. All individuals performing the Services shall have the skill and experience and any licenses and certifications required to perform the work assigned to them. If Client determines that any person employed by Consultant is not performing the Services in a proper, safe and skillful manner, then at the written request of Client specifying the relevant facts that form the basis of Client's determination, Consultant shall remove that person and that person shall not be re-employed to provide the Services without the prior written approval of Client in its sole discretion. If Consultant fails to remove such person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Services then Client may, in its sole discretion, suspend the Services by delivery of written notice to Consultant. Such suspension shall in no way relieve the Consultant of any obligation contained herein, or entitle the Consultant to an amendment or change in cost. The Client may withhold payment until suspension is remedied as outlined in section D above. Once compliance has been achieved, Client will notify Consultant in writing and Consultant shall promptly resume performance of the Services.

2. Term

- A. The Consultant shall perform the Services as provided herein during the period commencing on the Effective Date and continuing through **April 30, 2025** or any other period as may be subsequently agreed by the Parties in writing ("Termination Date"), subject to the provisions of Paragraph 15 below.

3. Payment

- A. For Services rendered pursuant to Annex A and Annex B Section 1, the Client shall pay the Consultant per the billing schedule in Paragraph 3(B) below. If applicable, costs referenced in Annex B Section 2 shall be billed on occurrence and paid Net 30. These amounts have been established based on the understanding that it includes all the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.
- B. The Client shall pay the Consultant for Services in US Dollars rendered on the following payment schedule:
- i. For the term of 5/1/2024 through 4/30/2025: Sixteen Thousand, Four Hundred Dollars (\$16,400); billed bi-annually in July and January.
- C. Late Payments
- i. All payments are Net 30 from time of receipt of invoice in Client's payment system.
 - ii. Failure to pay undisputed amounts within 30 days of the payment due date will result in a suspension of this Contract and all Services hereunder, including, but not limited to, access to Consultant's portal, covered under this Contract and other agreements with subsidiaries, sister companies, or strategic alliances of the Consultant; and, any studies, reports or other material (as identified in Paragraph 8 below), which have not been paid for within 30 days of the payment due date, shall not be the property of Client, and shall be returned to Consultant, and not be used by Client. This Contract and all Services hereunder shall be reactivated and all studies, reports and other materials returned to the Client upon payment in full of all undisputed amounts due and owing.

4. Reimbursable

- A. The Client shall pay the Consultant for reimbursable expenses, not otherwise included

within the scope of the Services, excluding travel expenses. These expenses must be approved by the Client in writing in advance of the expenditure incurred by the Consultant.

- B. If Consultant is charged an admission fee to any of Client's facilities during a site visit and/or safety audit, the Client agrees to refund the admission fee on site or via direct bill from the Consultant.

5. Project Administration

- A. The Consultant shall keep accurate and systematic records and accounts in respect of the Services. The Client reserves the right to audit, or to nominate a reputable accounting firm to audit, the Consultant's records relating to amounts claimed under this Contract during its term, and for a period of three months thereafter; such audit will be at Client's expense.

6. Performance Standard, and Representations

- A. The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. Consultant's programs are built on the core mission of being objective driven, innovative, and client focused, and to collaboratively develop and implement aquatic safety solutions and services, which help create a culture of safety in Client's aquatic facility and/or operation.
- B. Based upon the specific nature of the Services provided by Consultant, Client represents and agrees that it will be fully responsible for training its staff, up to the requirements of Consultant, as presented to Client's "trainers". For the avoidance of doubt, Client retains full responsibility for its day-to-day operations, supervision of its employees and risk management practices. Client will maintain oversight, supervision, and management of its staff after Consultant has completed the initial training Services, to ensure that they continue to perform up to the training standards taught by Consultant. Client acknowledges that the Services provided under this Contract do not include continuous monitoring of Client's staff after the training Services have concluded, and Client is solely responsible to see that its staff performs up to Consultant's standards and other industry standards as discussed by Consultant during the training.

7. Confidentiality

- A. For the purpose of this Contract, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business or prospective business of the Consultant or Client. Such information may include, but is not limited to manuals, handouts, training documents, Standard Operating Procedures, aquatic safety materials, and software to access Consultant's portal.
 - i. Confidential Information does not include information that either Party can demonstrate:
 - a. is now, or hereafter becomes, through no act on the part of the said Party, generally known to the public;
 - b. is rightfully obtained by said Party from a third party, without breach of any obligation to either Party; or
 - c. independently developed by either Party without use of or reference to Confidential Information.
- B. The Consultant:

- i. Shall not disclose any of Client's Confidential Information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client for the duration of the term of this Contract. Upon termination or expiration of this Contract, Consultant shall return to Client all of Client's Confidential Information held by Consultant.
- ii. Notwithstanding Paragraph 7(B)(i) above, Consultant may disclose the Client's Confidential Information as required by court order or other process of law. To the extent practicable, Consultant will provide the Client reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

C. The Client:

- i. Shall not, during the term of this Contract or thereafter disclose any of Consultant's Confidential Information relating to the Services, this Contract or the Consultant's business or operations without the prior written consent of the Consultant. Upon termination or expiration of this Contract, Client shall return all Confidential Information to Consultant that is not owned by the Client pursuant to Paragraph 8 below.
- ii. Notwithstanding Paragraph 7(C)(i) above, may disclose the Consultant's Confidential Information as required by the California Public Records Act, court order or other process of law.

8. Ownership of Material

- A. Any studies, reports or other documents, graphics, software or other materials (collectively, "Materials"), prepared by the Consultant for the Client under this Contract shall belong to and remain the property of the Client, free and clear of all liens, claims, security interests, or encumbrances, so long as Client is not in breach of Paragraph 3(C) above. The Consultant may retain a copy of such Materials at the Consultant's expense.
- B. The textbook content, Consultant portal, training guides, instructor materials, and other aids provided by the Consultant remain the property of the Consultant.
- C. Any enhancements to the training program that lead to new curriculum, patents, or intellectual property developed by Consultant are the property of Consultant.
- D. Any operational enhancements derived by the Client from the Consultant will be owned by the Client.

9. Insurance

- A. Throughout the term of this Contract, the Consultant will maintain General Liability insurance and Professional Liability insurance in the amount of at least two million dollars (\$2,000,000) per incident and four million dollars (\$4,000,000) aggregate and Workers Compensation coverage in the amount of one million dollars (\$1,000,000). The Consultant shall provide Client with proof of such insurance coverage upon request by the Client. The Client shall be added as additionally insured on the Consultant's policy as follows: City of Irvine and its officers, employees, agents, volunteers, and representative. 1 Civic Center Plaza, Irvine, CA 92606.
- B. For as long as the Client uses Consultant's training/aquatic program, Client agrees to carry Comprehensive General Liability insurance, with a company which is AM Best rated "A" or better.

10. Warranty

- A. The use of the Consultant's program does not warranty against aquatic or medical incidents that may occur at Client's facilities; such use, if properly implemented by Client, will only minimize the risks of the same occurring. Consultant provides training in standard of care and prevention of incidents, however, makes no warranty against said incidents.

11. Assignment

- A. Neither Party may assign or subcontract this Contract or any portion of it without the other's prior written consent.

12. Law Governing Contract

- A. This Contract shall be construed under and in accordance with the laws of the State of California. Exclusive jurisdiction and venue for any dispute arising from or relating to this Agreement shall be in the Orange County, California courts.
- B. This Contract constitutes the sole and only agreement of the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter herein.
- C. This Contract may not be modified or amended except by a written instrument signed by the Parties and referring specifically to this Contract. Course of performance, no matter how long it may continue, shall not constitute an amendment to this Contract. Waiver of a term of this Contract shall not affect any other term or subsequent performance of the waived term.
- D. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the Parties hereto shall be deemed to create any relationship between the Parties hereto other than the relationship of consultant and client.
- E. This Contract shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. Nothing herein contained shall be deemed to establish any rights of third parties against the Parties hereto; it being the intent that the rights and obligations set forth herein are those of the Parties hereto alone, with no third-party beneficiary rights intended.
- F. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof; and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- G. The Parties agree that both had the opportunity to fully review this Contract, with their respective counsel, and as such, to the extent that there is any ambiguity of terms, neither side will be deemed the drafter thereof, and there will be no strict construction of any term against the other.
- H. This Contract may be executed in several counterparts and by facsimile or electronic pdf, each of which shall be deemed an original and all of which shall constitute one and the same instrument.
- I. **The Parties hereby waive trial by jury** in any action, proceeding, or counterclaim brought by either Party against the other regarding any matter whatsoever arising out of

or in any way connected with this Contract, the relationship of the Parties created hereby, and/or claim for injury or damage. Client acknowledges and agrees that Consultant has been materially induced to enter into this Contract by the inclusion of the provision of this paragraph in this Contract.

13. Independent Contractor.

- A. The Consultant is an independent contractor and nothing herein shall constitute or designate Consultant or any of its employees, agents, subcontractors, or suppliers as employees of Client. The Services performed by the Consultant shall be at its sole cost, risk, and expense, and no part of the cost thereof shall be charged to Client, except for the payments to be made by Client to Consultant for the Services as provided herein. Client shall not be responsible Consultant's means, methods, techniques, sequences, or procedures of work.

14. Attorneys' Fees:

- A. Should either Party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Contract or for any other judicial remedy, the prevailing Party shall be entitled to receive from the non-prevailing Party all reasonable attorneys' fees, costs, and expenses in connection with said proceeding, including any attorneys' fees, costs, and expenses incurred in collecting upon any judgment, order, or award.

15. Termination

A. By Client

- i. The Client may terminate this Contract at any time with 60 days' written notice, with or without cause.

B. By Consultant

- i. The Consultant may terminate this Contract at any time with 60 days' written notice, with or without cause.

C. Termination Event

- i. In the event of termination prior to the end of the term of this Contract, the Client will pay Consultant for the pro-rated portion of the Services satisfactorily performed to the date of termination, and Consultant will deliver to the Client all goods, materials, and equipment paid for as part of the Services, whether or not in completed form.
- ii. Paragraphs 7 and 8 above shall survive termination of this Contract for any reason. Upon termination of this Contract, the Consultant will provide Client with a written list of work product belonging to Consultant pursuant to Paragraph 8 above, and Client agrees to return the work product within 30 days of receipt of notification.

16. Indemnification

- A. To the extent permitted by law, each Party (the "Indemnifying Party") agrees to fully indemnify, defend and hold the other Party (the "Indemnified Party"), and its directors, officers, employees, volunteers, crew members (if applicable), representatives, agents and parent, subsidiary and affiliated companies of all of the aforementioned entities and individuals (the "Party Agents"), harmless from and against any and all third party

liabilities, damages, injuries, claims, suits, judgments, causes of action and expenses (including reasonable attorneys' fees, court costs and out-of-pocket expenses) ("Claims") suffered or incurred by the Indemnified Party as a result of: (i) any negligent or intentional act or omission of the Indemnifying Party or its Party Agents related to its performance of this Contract or the Services; (ii) breach of any representation, warranty or other obligation under this Contract by the Indemnifying Party or its Party Agents; (iii) any allegation that the Indemnified Party's use of materials in accordance with this Contract infringes or violates any patent, copyright, trademark or other third party intellectual property right; (iv) any personal injury (including death) or damage to property resulting from the Indemnifying Party's or its Party Agents' negligent or intentional acts or omissions; or (v) a violation of any law, rule or regulation by the Indemnifying Party or its Party Agents related to this Contract. The Indemnified Party has the right to select its legal counsel notwithstanding the Indemnifying Party's obligation to pay the fees, costs, and expenses incurred by such legal counsel. This paragraph shall survive the termination or expiration of this Contract.

17. Dispute Resolution

- A. The Parties shall engage in non-binding mediation to resolve any dispute arising from or relating to this Contract or the performance of the Services. Unless the Parties mutually agree otherwise, the mediation shall be conducted through the American Arbitration Association or its successor. Request for mediation shall be filed in writing with the American Arbitration Association or its successor, with a copy to the other Party. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If mediation is unsuccessful, either Party may commence a civil action.

18. Notice

- A. Any notice required under this Contract shall be in writing and hand delivered or sent by certified/registered mail, return receipt requested, to the address set forth below each Party's respective signature. A notice sent by certified/registered mail is deemed given when received, or 3 business days after the date sent, if not accepted by the Party to whom it was sent, whichever is earlier.

19. Authority to Act

- A. By signing below, Client and Consultant represent that he/she has read, and fully understands all terms and conditions of this Contract, and, that he/she has full legal authority to act on behalf of, and legally bind the entities that are Parties to this Contract.

IN WITNESS WHEREOF, the Parties have signed this Contract for consulting services.

FOR THE CLIENT

City of Irvine

Chris Slama, Director of Community Services

FOR THE CONSULTANT

StarGuard Elite, LLC., a Florida Limited Liability Company

Wess Long, President

DocuSigned by:
Chris Slama
3204FF52A9CE497...
5/8/2024
Signature **Date**

DocuSigned by:
Wess Long
BA59D9C5997843B...
5/7/2024
Signature **Date**

Notice Address:
1 Civic Center Plaza
Irvine, CA 92606

Notice Address:
13506 Summerport Village Parkway
#810, Windermere, FL 34786

Attest:

By: *Carl Petersen*
0FCAD91F02E547D...
Carl Petersen

Its: City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

DocuSigned by:
Jeff Melching
E04AA49F95474A7...
Jeffrey Melching

LIST OF ANNEXES

Annex A: Scope of Services

Annex B: Flat Rate and Incremental Pricing Sheet

Annex A

Scope of Services

CONFIDENTIAL AND PROPRIETARY INFORMATION OF STARGUARD ELITE, LLC

Training

- Consultant to provide training services for Client lifeguards (train the trainer/instructor development)
- Consultant to provide a certification and license upon completion of an approved course.
 - These courses shall be as agreed between Client and Consultant and may include, but are not limited to these courses at participant, instructor, and instructor trainer levels:
 - StarGuard Lifeguard Instructor Training & Certification
 - StarGuard Lifeguard Training & Certification
 - ELITE Dispatch Training & Certification
 - ELITE Supervisor Training & Certification
 - STAR Basic Life Support (Safety Training Aquatic Rescue)
- Consultant will provide electronic StarGuard textbook access to Lifeguard or Lifeguard Instructor candidates via the Consultant portal online.
- Consultant will provide Regional or Custom Instructor Development Course (IDC) for the Client's new and existing instructor candidates to become certified or re-certified as instructors for Consultant programs.

Portal

- Consultant will provide a software license to the proprietary SGE Portal for the Client to manage the lifeguard training program including certifications, audits, in-service training, online documentation, and more.

Audits & Preseason Consultation

- Consultant will provide 3 onsite unannounced safety audits yearly at published rates.
- Audits will include at a minimum: observations (lifeguard, dispatch, and supervisor), skills assessments, documentation review, and physical facility review
- Audits are based on industry standard of care, location operating guidelines, and StarGuard training guidelines

CAMP

- Client can register facility representatives for Consultant's annual Conferences for Aquatic Management Professionals ("CAMP") held annually Florida, Chicago, and other venues at published rates.
- Registration will be at preferred rates and include admission, accommodations, local transportation, and food.
- Travel to and from the venue is not included. *Venue may change annually.*

Annex B

Flat Rate and Incremental Pricing Sheet

CONFIDENTIAL AND PROPRIETARY INFORMATION OF STARGUARD ELITE, LLC
City of Irvine - Billed Bi-Annually

1. Items included in the Flat Rate of \$16,400 bi-annually

License	Quantity
SGE Portal Software License	1 _____
StarGuard Certifications	200 _____
StarGuard Instructor Certifications	10 _____
Aquatic Safety Audits	3 _____
StarGuard Digital Textbooks	<u>Included</u>

2. Incremental Pricing (for services beyond those included in Section 1)

Certifications and Services	Unit Price
StarGuard (New)	\$50.00 _____
StarGuard (Renewal)	\$50.00 _____
Elite Dispatch (New/Renewal)	\$25.00 _____
STAR/BLS (New/Renewal)	\$25.00 _____
StarGuard Instructor (New)	\$425.00 _____
StarGuard Instructor (Renewal)	\$200.00 _____
On Site Audits	\$1,250 _____
Annual Site Visit	\$1,000 _____
Consultant Facilitated Training Class	<u>\$3,495 plus travel</u>
Aquatic Event Investigations	<u>Price to be negotiated</u>