

Professional Services Contract
City of Waukesha – EPLEX, LLC
Building Plan Review

This Contract is by and between the City of Waukesha, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and EPLEX, LLC, 12605 West North Avenue, PMB 189, Brookfield, Wisconsin 53005-4629, referred to as EPLEX. Together, the City and EPLEX are referred to as the Parties.

Recitals

The City has been delegated authority by the State of Wisconsin Department of Safety and Professional Services to enforce the commercial building code, the Uniform Dwelling Code, and the fire suppression and fire alarm code, and the authority to conduct plan review and inspections of all size buildings for compliance with those codes, pursuant to Wisconsin Statutes §101.12(3g) and Wisconsin Administrative Code SPS 361.60.

The City wishes to engage the services of a firm capable of performing such plan reviews for it, and to review applications for code variances and provide the City with recommendations for the applications.

EPLEX is capable and willing to contract with the City to perform such services.

Now, therefore, in consideration of the mutual promises of the Parties herein, City and EPLEX agree as follows:

1. **EPLEX Services.** EPLEX shall perform the following services for the City:
 - a. Plan reviews for compliance with, and approval or disapproval according to, the following codes:
 - i. Commercial Building Code, Wis. Admin. Code Chapters SPS 361 to 366.
 - ii. Uniform Dwelling Code, Wis. Admin. Code Chapters SPS 320 to 325.
 - iii. Commercial Plumbing Code, Wis. Admin. Code Chapters SPS 381 to 382.
 - b. Code variance reviews, and approval or disapproval, pursuant to Wis. Admin. Code SPS 361.22; and SPS 303.001 to 303.03.
2. **Review Standards.** Each review will be performed by an EPLEX-employed Plans Examiner. EPLEX warrants that each Plan Examiner shall be certified by the Wisconsin Department of Safety and Professional Services (DSPS) under Wis. Stat. §101.12(3)(g) and Wis. Admin. Code Chapter SPS 305 with respect to the subject matter of the plan reviews he or she performs. Plan reviews shall be conducted using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing substantially the same services required by this Contract, and the standards established by DSPS.
3. **Procedure.** Commercial building plans and variance applications will be submitted directly by applicants to EPLEX. Applicants shall pay EPLEX directly for the applicable fees shown in the EPLEX Fee Schedule. UDC building plan applications shall be submitted to EPLEX and paid for by the City, if City elects to use EPLEX's services for UDC review. EPLEX shall perform review of building plans and variance applications, and shall return the plans electronically to the City with either EPLEX's stamp signifying compliance or an explanation of the plans' non-compliance, or a recommendation regarding the variance application. EPLEX shall perform all reviews and deliver results to the City as promptly as possible, but in no case longer than 15 business days after EPLEX's receipt of all required documents.
4. **Retention and Review of Certain Matters by City.** The City has the capability of performing some plan and variance review in-house, and those matters may be retained by the City for review and not forwarded to

EPLEX, at the City's discretion. UDC plan review is routinely done by the City and will be submitted to EPLEX only when City is unable to review, at the City's discretion. All other commercial plans and variance applications will be submitted exclusively to EPLEX. EPLEX shall review all matters submitted to it, and may not refuse to review any matters pertaining to properties within the City, unless (i) no payment accompanies the submission, (ii) payment fails to clear the bank collection process, (iii) EPLEX is not capable of performing the review due to excessive workload, conflict of interest, or lack of qualification, or (iv) by the mutual agreement of the Parties. In these events, EPLEX shall notify the City and the applicant in writing and shall return all submitted materials to the applicant.

5. **Fire-Code Compliance Review.** EPLEX shall perform plan reviews for compliance with the Fire Code, Waukesha Municipal Code Chapter 21, only at the request of the Waukesha Fire Department.

6. **Fees and Payment.**

- a. Fees for EPLEX's commercial plan review services shall be as shown in the attached Fee Schedule, which is incorporated into this Contract by reference.
- b. Fees for EPLEX's UDC plan review services shall be \$125 per hour, with a maximum of \$500 per review. The fees for UDC plan review shall be paid by the City, and City shall be responsible for obtaining payment from applicants.
- c. EPLEX shall retain 85% of all commercial plan review fees collected by it, and shall remit 15% to the City. Payments to the City shall be made monthly, shall be due on the 15th of each month for the previous month, and shall be accompanied by an accounting of the fees collected for projects completed in that month. The accounting shall include, at a minimum, the applicant's name, the addresses of the relevant properties, and the amounts of the fees collected.
- d. EPLEX shall be solely responsible for the payment of any fees imposed by the State of Wisconsin in connection with EPLEX's services, from the fees retained by EPLEX.
- e. The hourly rate for services beyond those specified in this Contract, if requested by the City, shall be rendered at the following rates. The Parties shall document the agreement for such additional services in a separate writing.
 - i. Commercial plan review consultation and training services, \$190 per hour.
 - ii. Professional engineering, project management, and emergency tactical response services, \$225 per hour.
 - iii. If City-requested services require third-party professional consultation, and if City consents in advance in writing, then EPLEX will hire such professionals and City shall reimburse EPLEX for such services.

7. **Collection of Payments.** EPLEX shall be solely responsible for collection of all fee payments. EPLEX shall not be obligated to perform plan review for any applicant whose payment does not clear collection or become good funds. EPLEX shall only be obligated to remit to the City 15% of the commercial plan review fees it actually collects. The City will not issue building permits to the applicants if EPLEX notifies the City that payment failed to clear collection, and once notified, will only issue building permits if notified by EPLEX that payment has been made in good funds.

8. **Term and Termination.** The Term of this Contract shall commence on the date of execution shown below, and shall continue until terminated by either Party, by written notice specifying a termination date no sooner than 30 days after the date of the notice. EPLEX shall accept all plans submitted by the City prior to the termination date, and shall complete all review work in process as of the date of termination. All payment terms

stated in section 6 shall continue to apply after the termination date, until all fees have been collected and the City's 15% share has been paid in full.

9. **Assignment.** EPLEX may not assign any portion of its plan review to third parties or subcontractors, and all plan review shall be performed by EPLEX employees.
10. **Insurance.** EPLEX shall maintain insurance of the following kinds and for not less than the following limits, at EPLEX's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for professional errors and omissions coverage. EPLEX shall obtain an endorsement making the City an additional insured on all policies, and EPLEX's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, EPLEX shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - b. Umbrella, \$5,000,000.
 - c. Professional errors and omissions, \$1,000,000 per occurrence, \$2,000,000 aggregate.
11. **Relationship of Parties.** The City and EPLEX are independent contractors, are not agents for one another, and neither may bind the other to contracts or be in any way responsible for the acts of the other. Nothing in this Contract shall be deemed to create any relationship other than independent contractors.
12. **Ownership of Work Product.** All materials produced by EPLEX in its performance of services under this Contract and delivered to the City shall be the sole property of the City.
13. **Record Keeping.** EPLEX shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. EPLEX acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
14. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
15. **Permits and Licenses.** EPLEX shall be responsible, at EPLEX's expense, for obtaining all permits and licenses required for its performance of services under this Contract.
16. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Jennifer Andrews
City of Waukesha
201 Delafield St
Waukesha WI 53188
262-524-3753
jandrews@waukesha-wi.gov

To EPLEX: David Adam Mattox
EPLEX LLC
12605 W North Ave PMB 189
Brookfield WI 53005-4629

414-736-4721
damattox@eplanexam.com

17. **Corporate Authorization.** The individuals executing this Contract on behalf of EPLEX warrant and represent that they are duly authorized to bind EPLEX to this Contract. EPLEX warrants and represents that the execution of this Contract is not prohibited by EPLEX's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order.
18. **Dispute Resolution, Costs of Enforcement.** The Parties agree that they will mediate in good faith any disputes between them before a mediator mutually chosen by them before initiating any litigation. The cost of mediation shall be split evenly between the Parties. If litigation is necessary to enforce any term or condition of this Contract, then if a judgment is taken the unsuccessful Party will pay the successful Party's costs incurred in such legal action, including actual attorney fees and court costs, and the amounts will be added to the judgment.
19. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
20. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

Contract dated the _____ day of _____, 2024.

City of Waukesha

By Shawn N. Reilly, Mayor

Attested by Gina L. Kozlik, City Clerk-Treasurer

EPLEX, LLC

By David Adam Mattox, President

Fee Schedule

Commercial Plan Review – Building/HVAC/Fire Alarm/Fire Suppression

1. New construction, additions, alterations and parking lots fees are computed per this table.
2. New construction and additions are calculated based on total gross floor area of the structure.
3. A separate plan review fee is charged for each type of plan review.

Area (Square Feet)	Building Plans	HVAC Plans	Fire Alarm System Plans	Fire Suppression System Plans
Less than 500	\$150.00	\$100.00	\$100.00	\$100.00
501 - 2,500	\$360.00	\$195.00	\$100.00	\$100.00
2,500 - 5,000	\$420.00	\$260.00	\$100.00	\$100.00
5,001 - 10,000	\$720.00	\$390.00	\$130.00	\$130.00
10,001 - 20,000	\$960.00	\$520.00	\$195.00	\$195.00
20,001 - 30,000	\$1,440.00	\$650.00	\$260.00	\$260.00
30,001 - 40,000	\$1,920.00	\$1,040.00	\$455.00	\$455.00
40,001 - 50,000	\$2,520.00	\$1,430.00	\$650.00	\$650.00
50,001 - 75,000	\$3,480.00	\$1,820.00	\$910.00	\$910.00
75,001 - 100,000	\$4,320.00	\$2,600.00	\$1,300.00	\$1,300.00
100,001 - 200,000	\$7,200.00	\$3,380.00	\$1,560.00	\$1,560.00
200,001 - 300,000	\$12,600.00	\$7,930.00	\$3,900.00	\$3,900.00
300,001 - 400,000	\$18,600.00	\$11,440.00	\$5,720.00	\$5,720.00
400,001 - 500,000	\$22,200.00	\$14,040.00	\$7,280.00	\$7,280.00
Over 500,000	\$24,000.00	\$15,730.00	\$8,320.00	\$8,320.00
Note:	<ol style="list-style-type: none"> 1. A Plan Entry Fee of \$100.00 shall be submitted with each submittal of plans in addition to the plan review and inspection fees. 2. At the sole discretion of the Supervisor of Building Inspection and Plans Examiner; Fees may be modified, reduced or waived based on scope of services, project type, or other relevant factors. 			
Determination of Area	The area of a floor is the area bounded by the exterior surface of the building walls or the outside face of columns where there is no wall. Area includes all floor levels such as subbasements, basements, ground floors, mezzanines, balconies, lofts, all stories, and all roofed areas including porches and garages, except for cantilevered canopies on the building wall. Use the roof area for free standing canopies.			
Structural Plans and other Component Submittals	When submitted separately from the general building plans, the review fee for structural plans, precast concrete, laminate wood, beams, cladding elements, other facade features or other structural elements, the review fee is \$250.00 per plan with an additional \$100.00 plan entry fee per each plan set.			
Accessory Buildings	The plan review fee for accessory buildings less than 500 square feet shall be \$125.00 with the plan entry fee waived.			
Early Start	The plan review fee for permission to start construction shall be \$75.00 for all structures less than 2,500 sf. All other structures shall be \$150.00. The square footage shall be computed as the first floor of the building or structure.			
Plan Examination Extensions	The fee for the extension of an approved plan review shall be 50% of the original plan review fee, not to exceed \$3,000.00.			
Resubmittals & revisions to approved plans	When deemed by the reviewer to be a minor revision from previously reviewed and/or approved plans, the review fee shall be \$75.00. Any significant changes or alterations beyond minor amendments as determined by the Plans Examiner and Building Inspection Department may result in additional charges as appropriate.			

Submittal of plans after construction	Where plans are submitted after construction, the standard late submittal fee of \$250.00 will be assessed per each review type that occurred after construction. This is in addition to any other plan entry fees, structural components and base fees applied to a project.
Variance Review	When approved by the State of Wisconsin Department of Safety and Professional Services to approve and review variances of State code for equivalency, the fee for processing any variance at the time of application shall be \$2,000.00.
Expedited Priority Plan Review	The fee for a priority plan review, which expedites completion of the plan review in less than the normal processing time when the plan is considered ready for review, shall be 200% of the fees specified in these provisions.

Commercial Plan Review – Plumbing				
1. New construction, alterations and remodeling fees are computed per the following table				
2. New construction fee is calculated based on square footage of the area constructed.				
3. Alterations and remodeling fee is based on the number of plumbing fixtures.				
Area (Square Feet) (New Construction & Additions)	Plumbing Plan Review Fee		Number of Fixtures (Alteration, Remodeling, and Site Work)	Plumbing Plan Review Fee
Less than 3,000	\$360.00		<15	\$240.00
3,001 - 4,000	\$480.00		16-25	\$360.00
4,001 - 5,000	\$660.00		26-35	\$540.00
5,001 – 6,000	\$780.00		36-50	\$660.00
6,001 – 7,500	\$840.00		51-75	\$960.00
7,501 – 10,000	\$1,020.00		76-100	\$1,080.00
10,001 – 15,000	\$1,080.00		101-125	\$1,260.00
15,001 – 20,000	\$1,140.00		126-150	\$1,380.00
20,001 – 30,000	\$1,320.00		>151	\$1,380.00
30,001 – 40,000	\$1,500.00		Plus \$160 for each additional 25 fixtures (rounded up) beyond 150 Fixtures	
40,001 – 50,000	\$1,860.00			
50,001 – 75,000	\$2,520.00			
Over 75,000	\$3,000.00			
Plus \$0.0072 per each additional sq. ft. over 75,000 sq. ft.				
Note:	1. A Plan Entry Fee of \$100.00 shall be submitted with each submittal of plans in addition to the plan review and inspection fees.			
	2. At the Sole discretion of the Supervisor of Building Inspection and Plans Examiner; Fees may be modified, reduced or waived based on scope of services, project type, or other relevant factors.			

<p>Determination of Area</p>	<p>The area of a floor is the area bounded by the exterior surface of the building walls or the outside face of columns where there is no wall. Area includes all floor levels such as subbasements, basements, ground floors, mezzanines, balconies, lofts, all stories, and all roofed areas including porches and garages, except for cantilevered canopies on the building wall. Use the roof area for free standing canopies.</p>
<p>Resubmittals & revisions to approved plans</p>	<p>When deemed by the reviewer to be a minor revision from previously reviewed and/or approved plans, the review fee shall be \$75.00. Any significant changes or alterations beyond minor amendments as determined by the Plans Examiner and Building Inspection Department may result in additional charges as appropriate.</p>
<p>Submittal of plans after construction</p>	<p>Where plans are submitted after construction, the standard late submittal fee of \$250.00 will be assessed per each review type that occurred after construction. This is in addition to any other plan entry fees and base fees applied to a project.</p>
<p>Expedited Priority Plan Review</p>	<p>The fee for a priority plan review, which expedites completion of the plan review in less than the normal processing time when the plan is considered ready for review, shall be 200% of the fees specified in these provisions.</p>