

## COMMUNITY DEVELOPMENT

201 DELAFIELD STREET  
WAUKESHA, WISCONSIN 53188-3633  
TELEPHONE 262/524-3750 FAX 262/524-3751

Jennifer Andrews, Director

[jmandrew@ci.waukesha.wi.us](mailto:jmandrew@ci.waukesha.wi.us)

January 7, 2016

Jennifer Andrews  
Community Development Director  
201 Delafield St.  
Waukesha, WI 53188

**Re: Supplemental Inspection Services Contract**

Jennifer:

In the fourth quarter of 2015 we solicited bids for a supplemental inspection services contract for the City of Waukesha for 2016. We were only able to find three options for companies or individuals providing this type of service in the region: Safebuilt, Wisconsin Building Inspections, LLP, and a list of inspectors available on a part time basis from the Building Inspectors Association of Southeast Wisconsin. Building Inspections, LLP did not respond to our request for proposal, and the list of inspectors from the BIASEW would not provide us with the reliability or consistency we need in order to maintain our inspections while our primary inspectors are out.

Safebuilt was the only company to submit a formal contract proposal. I feel that the rates and conditions of their contract are fair and reasonable. This company, formerly Independent Inspections, has provided inspection services for the City in the past, and I am comfortable moving forward with their contract.

Regards,

Michael Mazmanian  
City of Waukesha  
Chief Building Inspector / Zoning Administrator  
201 Delafield St.  
Waukesha, WI 53188  
ph: 262.5243750 fax: 262.524.3751  
[mmazmanian@ci.waukesha.wi.us](mailto:mmazmanian@ci.waukesha.wi.us)



**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF WAUKESHA, WISCONSIN  
AND SAFEbuilt WISCONSIN, LLC**

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This Professional Services Agreement ("Agreement"), is entered into by and between the City of Waukesha, Wisconsin, ("Municipality") and SAFEbuilt Wisconsin, LLC, ("Consultant"). The Municipality and the Consultant shall be jointly referred to as the "Parties".

**RECITALS**

WHEREAS, the Municipality is seeking a consultant to perform services listed in Exhibit A – List of Services, ("Services");

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Municipality and Consultant agree as follows:

**1. SCOPE OF SERVICES**

Consultant will provide "Services" to the Municipality using qualified professionals as directed by the Municipality. Consultant will perform services in accordance with State of Wisconsin adopted codes and Municipality adopted amendments and ordinances. The professionals employed by the Consultant will maintain current certifications, certificates, licenses as required by the State of Wisconsin as defined in SPS 305 of the Administrative Code for the services that they provide to the Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement. Consultant will perform work at a level of competency in accordance with industry standards.

**2. CHANGES TO SCOPE OF SERVICES**

Any changes to Services that are mutually agreed upon between the Municipality and Consultant shall be made in writing which shall specifically designate any changes in compensation for the Services and be made as a signed and fully executed amendment to the Agreement.

**3. FEE STRUCTURE**

In consideration of the Consultant providing services, the Municipality shall pay the Consultant for the Services performed in accordance with Exhibit B – Fee Schedule for Services.

**4. INVOICE & PAYMENT STRUCTURE**

Consultant will invoice the Municipality on a monthly basis and provide all supporting documentation. All payments are due to Consultant within 30 days of invoice date. The Municipality may request additional information before accepting the invoice. When additional information is requested the Municipality will identify specific disputed item(s) and give specific reasons for any request. If additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

**5. TERM**

This Agreement shall be effective on the latest date on which the Agreement is fully executed by both Parties. The initial term of this Agreement shall be twelve (12) months, subsequently, the Agreement shall automatically renew for a twelve (12) month term; unless prior notification is delivered to either party thirty (30) days in advance of the renewal date of this agreement. In the absence of written documentation, this Agreement will continue in force until such time as either party notifies the other of their desire to terminate this Agreement.

**6. TERMINATION**

Either party may terminate this Agreement, or any part of this Agreement upon thirty (30) days written notice, with or without cause. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within 30 days of the termination.

All structures that have had inspections made but are not completed at the time of termination may be completed through final inspection at the agreed fee rate if the Municipality so requests and if the Consultant agrees to do so, provided that the work to reach such completion and finalization does not exceed 90 days.

7. MUNICIPALITY OBLIGATIONS

The Municipality shall timely provide all data information, plans, specifications and other documentation required by Consultant to perform Services.

8. PERFORMANCE STANDARDS

Consultant shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services. Consultant represents to the Municipality and retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

9. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall be liable for and shall defend, save, indemnify, and hold harmless the Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of the Municipality, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities by reason of personal injury, including bodily injury or death and/or property damage to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of Consultant or any officer, employee, representative, or agent of Consultant. The Municipality shall be responsible for and shall defend, save, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities by reason of personal injury, including bodily injury or death and/or property damage to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of the Municipality or any officer, employee, representative, or agent of the Municipality. If either party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both parties shall cooperate fully in investigating the incident.

10. ASSIGNMENT

Neither party shall assign all or part of the rights, duties, obligations, responsibilities, nor benefits set forth in this Agreement to another entity without written approval of both parties; consent shall not be unreasonably withheld. Consultant is permitted to subcontract portions of the services to be provided. Consultant remains responsible for any subcontractor's performance. Subcontractors will be subject to the same performance criteria expected of Consultant. Performances clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

11. INSURANCE

- A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Consultant pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.
- B. At a minimum, the Consultant shall procure and maintain, and shall cause any subcontractor of the Consultant to procure and maintain, the minimum insurance coverage's listed below. Such coverage's shall be procured and maintained with forms and insurers acceptable to the Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of two million dollars (\$2,000,000) bodily injury each accident, two million dollars

(\$2,000,000) bodily injury by disease – policy limit, and two million dollars (\$2,000,000) bodily injury by disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

- D. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, products, and completed operations. The policy shall contain a severability of interest provision, and shall be endorsed to include the Municipality and the Municipality's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
- E. Professional liability insurance with minimum limits of five million dollars (\$5,000,000) each claim and five million dollars (\$5,000,000) general aggregate.
- F. Prior to commencement of the Services, Consultant shall submit certificates of insurance acceptable to the Municipality.

**12. INDEPENDENT CONTRACTOR**

The Consultant is an independent contractor, and neither the Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of the Municipality. As the Consultant is an independent contractor, the Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for the Municipality under this Agreement. The Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Consultant, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

**13. THIRD PARTY RELIANCE**

This Agreement is intended for the mutual benefit of the parties hereto and no third party rights are intended or implied.

**14. OWNERSHIP OF DOCUMENTS**

The Municipality shall retain ownership of all work product and deliverables created by Consultant pursuant to this Agreement. All records, documents, notes, data and other materials required for or resulting from the performance of the Services hereunder shall not be used by the Consultant for any purpose other than the performance of the Services hereunder without the express prior written consent of the Municipality. All such records, documents, notes, data and other materials shall become the exclusive property of the Municipality when the Consultant has been compensated for the same as set forth herein, and the Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in such manner and for such purposes as determined by it. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to the Municipality will be exported into a CSV file and become property of the Municipality.

The Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of the Consultant that are related to this Agreement for the purposes of audit or examination, other than the Consultant's financial records, and may make excerpts and transcriptions of the same.

**15. SEVERABILITY**

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

**16. DISCRIMINATION & ADA COMPLIANCE**

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity laws.

Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by the Municipality at any time during the term of this Agreement.

**17. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS:**

Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment eligibility. Consultant shall not enter into an agreement with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant is prohibited from using the program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. Consultant's federal work authorization user identification number is 254821; authorization date of September 23, 2009.

**18. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES**

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). The parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant's trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, the parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable.

**19. NOTICES**

Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

<b>If to the Municipality:</b>	<b>If to the Consultant:</b>
Jennifer Andrews, Community Development Director City of Waukesha 201 Delafield Street Waukesha, WI 53188 Email: <a href="mailto:jmandrew@ci.waukesha.wi.us">jmandrew@ci.waukesha.wi.us</a>	Greg Toth, Executive VP Business Development SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538 Email: <a href="mailto:gtoth@safebuilt.com">gtoth@safebuilt.com</a>

**20. DISPUTE RESOLUTION**

In the event a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure.

**21. GOVERNING LAW**

This Agreement shall be construed under and governed by the laws of the State of Wisconsin and all services to be provided will be provided in accordance with applicable federal, state and local law. This Agreement constitutes the complete, entire and final agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof.

**22. COUNTERPARTS**

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

City of Waukesha, Wisconsin

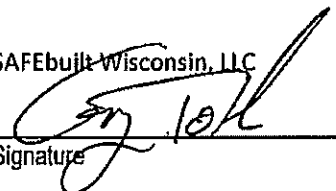
\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

SAFEbuilt Wisconsin, LLC

  
\_\_\_\_\_  
Signature

Name: Greg Toth

Title: Exec. VP Business Development

Date: 12/16/15

## EXHIBIT A – LIST OF SERVICES

### 1. LIST OF SERVICES

#### Building, Plumbing, Mechanical and Electrical Inspection Services

Our inspection staff recognize that an educational, informative approach is the most effective way to improve the customer's experience.

- ✓ Perform consistent code compliant inspections to determine that construction complies with approved plans and/or applicable codes and ordinances
- ✓ Meet or exceed agreed upon performance metrics regarding inspections
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Leave a copy of the inspection ticket
- ✓ Discuss inspection results with site personnel
- ✓ Provide copies of all inspections results to the Municipality

#### Reporting Services

We will work to develop a reporting schedule and format that meets your needs. We can provide monthly, quarterly, and annual reports summarizing activity levels; adherence to our performance metrics; and other items that are of special interest to you.

### 2. MUNICIPAL OBLIGATIONS

- ✓ Municipality shall provide zoning administration and zoning review associated with building permit applications
- ✓ Municipality shall provide Consultant with a list of requested inspections and supporting documentation
- ✓ Municipality agrees to provide a twenty-four (24) hour cancellation notice on all prescheduled inspection days

### 3. TIME OF PERFORMANCE

Consultant will perform Services commencing upon execution of the agreement. All Services will be performed during normal business hours; excluding Municipal holidays.

Deliverables	
<b>INSPECTIONS</b>	Perform all inspections received from the Municipality
<b>MOBILE RESULTING</b>	Provide our inspectors with field devices to enter results immediately
<b>APPLICANT SATISFACTION</b>	Put a survey in place that allows applicants to provide feedback on their experience throughout the process

## EXHIBIT B – FEE SCHEDULE FOR SERVICES

1. **FEE STRUCTURE**

Consultant fees for Services provided pursuant to this Agreement will be as follows:

<b>Inspection Service Fee Schedule:</b>	
Commercial Building & HVAC	\$61.00 per hour – four (4) hour minimum guaranteed per day when inspection coverage is requested
UDC Building & HVAC	
UDC Electrical	
Commercial Electrical	\$67.00 per hour – no minimum time block per day when inspection coverage is requested
UDC & Commercial Plumbing (provided by a Master Plumber)	
Time tracked will include travel time from Consultant's office to the Municipality/inspection site.	
A twenty-four (24) hour cancellation notice is required for requested inspections, or the four (4) hour minimum will be invoiced by the Consultant	

2. **INVOICE & PAYMENT STRUCTURE**

Consultant will invoice the Municipality on a monthly basis and provide all supporting documentation. All payments are due to Consultant within 30 days of invoice date. The Municipality may request additional information before accepting the invoice. When additional information is requested the Municipality will identify specific disputed item(s) and give specific reasons for any request. If additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.