

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN VILLAGE OF WESTMONT, ILLINOIS  
AND SAFEbuilt ILLINOIS, LLC**

This Professional Services Agreement (“Agreement”) is made and entered into by and between Village of Westmont, an Illinois municipal corporation, (“Municipality”), and SAFEbuilt Illinois, LLC, an Illinois limited liability company and a wholly owned subsidiary of SAFEbuilt, LLC, a Delaware limited liability company (“Consultant”). Municipality and Consultant shall be jointly referred to as the “Parties”.

RECITALS

WHEREAS, Municipality is seeking a consultant to perform the services listed in Exhibit A – List of Services and Fee Schedule, (“Services”); and

WHEREAS, Consultant is ready, willing, and able to perform the Services.

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

1. SCOPE OF SERVICES

Consultant will perform the Services in accordance with codes, amendments and ordinances adopted by ~~the elected body of~~ Municipality. The qualified professionals employed by Consultant will maintain current certifications, certificates, and licenses as required for performance of the Services that they provide to Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement.

Unless otherwise provided in Exhibit B – Municipality Specified or Provided Software, Consultant shall provide perform the Services using hardware and Consultant’s standard software package. In the event that Municipality requires that ~~e~~Consultant utilize hardware or software specified by or provided by Municipality, then Municipality shall provide the information specified in Exhibit B. Consultant shall use reasonable commercial efforts to comply with the requirements of Exhibit B, and Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with the requirements of Exhibit B.

2. CHANGES TO SCOPE OF SERVICES

Any changes to the scope or type of the Services between Municipality and Consultant shall be made in writing that shall specifically designate changes in Service levels and compensation for Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Amendment executed by both Parties.

3. FEE STRUCTURE

In consideration of Consultant ~~performing~~ providing the sServices, Municipality shall pay Consultant for the Services performed in accordance with the fee schedule set forth in Exhibit A – List of Services and Fee Schedule.

4. INVOICE & PAYMENT STRUCTURE

Consultant will invoice Municipality as “SAFEbuilt, LLC”, on a monthly basis and provide therewith all necessary supporting documentation to substantiate the charges on each invoice. Municipality may request, and Consultant shall provide, additional information before approving the invoice. When additional information is requested Municipality will identify specific disputed item(s) and give specific reasons for any request. ~~All payments are due to Consultant within 30 days of Consultant’s invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one~~

~~and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. Municipality may request, and Consultant shall provide, additional information before approving the invoice. When additional information is requested, Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute. Consultant acknowledges that payment of any and all of its invoices is subject to the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., as amended from time to time (the "Act"), and payment of each invoice will be made by Municipality in accordance with the Act. Nothing in this Agreement, including in Exhibit A, or in any invoice shall be deemed a waiver by either Party of the Act, and to the extent that any portion of this Agreement or any invoice conflicts with the Act, the Act shall control. The text of the Act as in effect on the Effective Date of this Agreement is provided in Exhibit C – Illinois Local Government Prompt Payment Act.~~

**Comment [KAW1]:** This provision is not, on its face, contrary to the language of the Act, so I left it in knowing we also added the provision that the Act would control over any provision in the Agreement.

5. TERM

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties (the "Effective Date"). The initial term of this Agreement shall be twelve (12) months; subsequently, the Agreement shall automatically renew for consecutive twelve (12) month terms, unless such renewal is stopped by either Party pursuant to prior notification is delivered by the non-renewing Party to either the other Party at least thirty (30) days in advance of the next renewal date of this Agreement. In the absence of written documentation to the contrary, this Agreement will continue in force until such time as either Party notifies the other of their desire to stop the renewal of or to terminate this Agreement.

**Comment [KAW2]:** I am under the impression that the SAFEbuilt parent company in Colorado is mostly running the show, so I included a current copy of the Act for its benefit/convenience.

6. TERMINATION

Either Party may terminate this Agreement, or any part of this Agreement, upon ninety (90) days' prior written notice, with or without cause and with no penalty or additional cost beyond the ~~rates/fees~~ stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination pursuant to a final invoice issued to and paid by Municipality in accordance with Section 4.

All structures that have been permitted, a fee collected, and not yet expired at the time of termination may be completed through final inspection by Consultant if approved by Municipality. Consultant's obligation is met upon completion of final inspection or permit expiration, provided that the time period to reach such completion and finalization does not exceed ninety (90) days. Alternately, Municipality may exercise the option to negotiate a refund for permits where a fee has been collected but inspections have not been completed. The refund will be prorated according to percent of completed construction as determined by Consultant and mutually agreed upon by ~~all~~ the Parties. No refund will be given for completed work.

7. FISCAL NON-APPROPRIATION CLAUSE

Financial obligations of Municipality payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Municipality, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

8. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform the Services. Municipality grants Consultant full privilege, non-exclusive, non-transferable license to use all such materials as reasonably required to perform the Service.

9. PERFORMANCE STANDARDS

Consultant shall perform the Services using 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 Municipality that Consultant retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

#### 10. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. 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 Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person ~~providing~~performing the Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant ~~will~~may provide similar services to other clients while under contract with Municipality, and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall, at its sole discretion, assign and reassign qualified employees, as determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement, and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which ~~the s~~Services are ~~provided to~~performed for Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or where requested to perform the ~~s~~Services from office space provided by the Municipality, Consultant employees shall perform the ~~s~~Services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned an ~~Municipal~~ email address by Municipality as their ~~employee's~~ exclusive email address, ~~and~~ nor shall any business cards or other IDs ~~shall~~ state that the person is an employee of ~~Consultant~~Municipality or ~~providing~~performing the Services pursuant to a contractual agreement between Municipality and Consultant.

**Comment [KAW3]:** I am assuming that the word "Consultant" was originally used error here.

#### 11. ASSIGNMENT

Neither ~~p~~Party shall assign all or part of its rights, duties, obligations, responsibilities, ~~nor~~ benefits set forth in this Agreement to another entity without the ~~prior~~ written approval of both Parties; ~~consent~~which approval shall not be unreasonably withheld by the non-assigning Party. Notwithstanding the preceding, Consultant may assign this Agreement to its parent, subsidiaries or sister companies ("Affiliates") without the ~~prior written approval of~~notice to Municipality. Consultant may subcontract any or all of the ~~s~~Services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the ~~s~~Services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and 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.

#### 12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities ("Claims") alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the negligence of Consultant or any

officer, employee, representative, subcontractor, Affiliate, or agent of Consultant. Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from Municipality. Consultant shall further defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all Claims, demands for payment, and mechanic's, materialman's, and other construction liens made or otherwise imposed by any Affiliate or subcontractor of Consultant against or on Municipality.

To the fullest extent permitted by law and without waiver of sovereign immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) ~~the negligence of, or~~ material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from 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.

### 13. LIMITS OF LIABILITY

~~EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR INFRINGEMENT. IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY OTHER THAN WITH RESPECT TO PAYMENT OF OBLIGATIONS FOR SERVICES. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT, OR OTHERWISE) EXCEED THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT.~~

**Comment [KAW4]:** I deleted this provision because doing so is for the Village's benefit. However, I think it unlikely SAFEbuilt will accept such a revision.

### 14. INSURANCE

- A. Consultant shall procure and maintain and shall cause any subcontractor or assignee of Consultant to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to 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.
- B. 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 one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee. ~~Worker's compensation coverage in "monopolistic" states is administered by the individual state and coverage is not provided by private insurers. Individual states operate a state administered fund of workers compensation insurance which set coverage limits and rates. Monopolistic states: Ohio, North Dakota, Washington, Wyoming.~~
- C. 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

**Comment [KAW5]:** I believe this does not apply to or in Illinois, so I deleted it.

injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent ~~Consultant's consultants~~, and products. The policy shall contain a severability of interest provision and shall be endorsed to include Municipality and Municipality's officers, employees, and consultants as additional insureds.

**Comment [KAW6]:** Once again, I am assuming my revision is merely correcting an error.

- D. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- E. Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- F. Municipality shall be named as an additional insured on Consultant's insurance coverage.
- G. Prior to commencement of Services, Consultant shall submit certificates of insurance acceptable to Municipality.

#### 15. THIRD PARTY RELIANCE

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

#### 16. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all work product and deliverables created by Consultant pursuant to this Agreement, and all records, documents, notes, data and other materials required for or resulting from the performance of the Services hereunder (collectively, "Municipality Data") shall not be used by Consultant for any purpose other than the performance of the Services hereunder without the express prior written consent of Municipality. All such Municipality Data ~~records, documents, notes, data and other materials~~ shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and 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. Notwithstanding the preceding, Consultant may use the work product, deliverables, applications, records, documents and other materials required for or resulting from the Services, all solely in anonymized form, for purposes of (i) benchmarking of Municipality's and others performance relative to that of other groups of customers served by Consultant; (ii) sales and marketing of existing and future Consultant services; and (iii) monitoring ~~S~~service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all Municipality Data ~~records, documents, notes, data and other materials~~ maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file to be delivered to Municipality and to become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

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

#### 17. CONSULTANT ACCESS TO RECORDS

The Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement and solely for the purpose of performing the Services under this Agreement.

**Comment [KAW7]:** Need a definition for the capitalized term "Records."

18. CONFIDENTIALITY

Consultant shall not disclose, directly or indirectly, any confidential information or trade secrets of Municipality without the prior written consent of Municipality or pursuant to a lawful court order directing such disclosure.

19. CONSULTANT PERSONNEL

In addition to the Parties' respective rights and obligations under Section 10 above, Consultant shall employ a sufficient number of experienced and knowledgeable employees to perform the Services in a timely, polite, courteous and prompt manner. Consultant shall determine appropriate staffing levels and shall promptly inform Municipality of any reasonably anticipated or known employment-related actions which may affect the performance of the Services. Additional staffing resources shall be made available to Municipality when assigned employee(s) is unavailable.

**Comment [KAW8]:** This content has the same subject matter as some of the content cover in the second paragraph of Section 10.

20. DISCRIMINATION & ADA COMPLIANCE

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: -employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. 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 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 Municipality at any time during the term of this Agreement.

**Comment [KAW9]:** Do we want to add a requirement for the posting of IDOL notices?

21. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. 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 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 E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

22. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES

During the term of this Agreement and for one (1) year thereafter ("Non-Solicitation Period"), Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who performs provided the sServices to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the performance provision of such the sServices (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant) (collectively, "Consultant Employees"). 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 sSection 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 sSection enforceable. In the event that Municipality hires any such Consultant eEmployee during the specified Non-Solicitation pPeriod, Municipality shall pay to Consultant a placement fee equal to twenty-five percent (25%) of the Consultant eEmployee's annual salary, including bonus, for the first year of the Consultant Employee's employment with Municipality.

23. NOTICES

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

If to Municipality:	If to Consultant:
Steve May, Village Manager Village of Westmont, Illinois 31 West Quincy Avenue Westmont, Illinois 60559 Email: <a href="mailto:smay@westmont.il.gov">smay@westmont.il.gov</a>	Joe DeRosa, CRO SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538 Email: <a href="mailto:jderosa@safebuilt.com">jderosa@safebuilt.com</a>

24. FORCE MAJEURE

Any delay or nonperformance of any provision of this Agreement by either Party (~~with the exception of payment obligations~~) which is caused by events beyond the reasonable control of such Party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

25. DISPUTE RESOLUTION AND VENUE

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. The cost thereof professional, third-party mediator services therefor shall be borne equally by each the Parties. The Parties agree that the litigation of any dispute arising out of or related to this Agreement shall be brought in the Illinois Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois, or the U.S. District Court for the Northern District of Illinois (if federal jurisdiction applies to the dispute), because this Agreement has been negotiated in part in DuPage County, Illinois and the Services being performed under this Agreement have been performed in DuPage County, Illinois.

**Comment [KAW10]:** Are alternative dispute resolution clauses acceptable? If so, I will beef up the mediation language to fill some of the gaps (location, general procedure for selecting mediator, etc.). Also, I removed the reference to arbitration because, even if one form of ADR is acceptable, we do not want to have potentially to deal with two.

26. ATTORNEY'S FEES

In the event of dispute resolution or litigation to enforce any of the terms herein, each Party shall pay all its own costs and attorney's fees.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective ~~entities~~ Party to the performance of its obligations hereunder.

28. GOVERNING LAW AND VENUE

This Agreement shall be construed under, enforced in accordance with, and governed by the laws of the State of Illinois, without regard to its choice-of-law rules, and all sServices to shall be provided performed will be provided in accordance with all applicable federal, state and local laws, ordinances, regulations, and codes, without regard to its conflict of laws provisions.

29. 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.

30. ELECTRONIC REPRESENTATIONS AND RECORDS

The Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement, and scanned signatures emailed by PDF or otherwise shall be as valid as the original. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

31. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

32. ENTIRE AGREEMENT

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.

(Signatures to follow on next page)

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

\_\_\_\_\_  
Thomas P. Wilkas, CFO  
SAFEbuilt Illinois, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
Village of Westmont, Illinois

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title  
Village of Westmont, Illinois

## EXHIBIT A – LIST OF SERVICES AND FEE SCHEDULE

### 1. AS-REQUESTED REMOTE PLAN REVIEW SERVICES TO BE PERFORMED

#### As-Requested Remote Plan Reviews

- ~~✓ Provide plan review services electronically or in the traditional paper format~~
- ~~✓ Review plans for compliance with adopted building codes, local amendments or ordinances~~
- ✓ Consultant will perform reviews of ~~Provide~~ fire suppression, sprinkler, alarm system, fire access and hazmat storage plans ~~review~~ submitted by applicants seeking relevant permits from Municipality (“Applicants”)
- ✓ ~~Consultant will r~~Review such plans for compliance with Municipality’s adopted building codes, local amendments ~~or~~ and ordinances
- ✓ ~~Consultant will perform such~~ Provide plan review services electronically or in the traditional paper format
- ~~✓~~
- ✓ ~~Consultant will b~~Be a resource to ~~a~~Applicants on submittal requirements for such types of plans and be available throughout the submission and review process
- ✓ ~~Consultant will p~~Provide feedback to keep plan review process on schedule
- ✓ ~~Consultant will c~~Communicate plan review findings and recommendations in writing
- ✓ ~~Consultant will r~~Return a set of finalized plans and all supporting documentation
- ✓ ~~Consultant will p~~Provide review of plan revisions and remain available to an Applicant after the review is complete

#### Remote Plan Conveyance

- ✓ Electronic plan submittals will be reviewed and returned electronically
- ✓ Paper plans will be submitted via Consultant’s preferred carrier
- ✓ Applicants ~~will~~ must submit the number of hardcopies required by Municipality
- ✓ Consultant will return plans and supporting documents

#### Reporting Services

- ✓ Consultant will work with Municipality to develop a mutually agreeable reporting schedule and format

### 1-2. TIME OF PERFORMANCE

- ✓ Services will be ~~p~~erformed Services during normal business hours excluding Municipality holidays
- ✓ Services will be performed on an as-requested basis
- ✓ Consultant’s representative(s) will be available by cell phone and email

<b>REMOTE PLAN REVIEW DELIVERABLES</b>			
<b>PRE-SUBMITTAL MEETINGS</b>	Provide pre-submittal meetings to applicants by appointment via telephone		
<b>TURNAROUND TIMES</b>	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<b>Project Type:</b>	<b>1st</b> <del>First</del> <b>Comments</b>	<b>2nd</b> <del>Second</del> <b>Comments</b>
✓ Single-family <del>within</del>	<u>within:</u>	<u>within:</u>	
✓ Multi-family <del>within</del>	7 business days	5 business days or less	
✓ Small commercial <del>within</del>	10 business days	7 business days or less	
( <del>under</del> < \$2M in valuation)	10 business days	7 business days or less	
✓ Large commercial <del>within</del>	15 business days	10 business days or less	

2.3. FEE SCHEDULE

- ~~✓ Beginning January 01, 2021 and annually thereafter, the hourly rates listed shall be increased based upon the annual increase in the Department of Labor, Bureau of Labor Statistics or successor thereof, Consumer Price Index (United States City Average, All Items (CPI-U), Not Seasonally adjusted, All Urban Consumers, referred to herein as the "CPI") for the Municipality or, if not reported for the Municipality the CPI for cities of a similar size within the applicable region from the previous calendar year, such increase, however, not to exceed 4% per annum. The increase will become effective upon publication of the applicable CPI data. If the index decreases, the rates listed shall remain unchanged.~~
- ✓ Initial Consultant fees for Services ~~provided~~ performed pursuant to this Agreement will be as follows:

Remote Plan Review Fee Schedule:	
Plan Review:	
• Fire, Building, Plumbing, Mechanical, Electrical	\$90.00 per hour – one (1) hour minimum
Structural Engineer Plan Review	\$125.00 per hour – one (1) hour minimum
Consultant costs for shipping/handling of paper plans will be assessed at invoice – if applicable	

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- ~~✓ Beginning January 01, 2021 and annually thereafter, the hourly rates/fees listed in the "Remote Plan Review Fee Schedule" above shall be increased based upon the annual increase in the U.S. Department of Labor, Bureau of Labor Statistics or successor thereof, Consumer Price Index (United States City Average, All Items (CPI-U), Not Seasonally adjusted, All Urban Consumers;) (referred to herein as the "CPI") for the Municipality or, if not reported for the Municipality, the CPI for cities of a similar size within the applicable region from the previous calendar year, any such annual increase, however, shall not to exceed four percent (4%) per annum over the previous year's fees. The increase will become effective upon publication of the applicable CPI data. If the index/CPI decreases for a certain year, the hourly fees for that year/rates listed shall remain unchanged from the previous year's.~~

## EXHIBIT B – MUNICIPALITY SPECIFIED OR PROVIDED SOFTWARE

1. Consultant shall ~~provide~~perform the Services pursuant to this Agreement using hardware and Consultant's standard software package, unless otherwise provided below. In the event ~~that~~ Municipality requires that Consultant utilize hardware and/or software specified by and provided by Municipality, Consultant shall use reasonable commercial efforts to comply with Municipality's requirements.

2. Municipality, at its sole expense, shall provide such technical support, equipment or other facilities as Consultant may reasonably request to permit Consultant to comply with Municipality's requirements under Item 1.

Municipality will provide the following information to Consultant:-

- ✓ Municipal technology point of contact information including name, title, email and phone number
- ✓ List of technology services, devices and software that ~~the~~ Municipality will provide may include:
  - Client network access
  - Internet access
  - Proprietary or commercial software and access
  - Computer workstations/laptops
  - Mobile devices
  - Printers/printing services
  - Data access
  - List of reports and outputs

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## **EXHIBIT C – ILLINOIS LOCAL GOVERNMENT PROMPT PAYMENT ACT**

### **(50 ILCS 505/) Local Government Prompt Payment Act.**

(50 ILCS 505/1) (from Ch. 85, par. 5601)

Sec. 1. This Act shall be known and may be cited as the "Local Government Prompt Payment Act".  
(Source: P.A. 84-731.)

(50 ILCS 505/2) (from Ch. 85, par. 5602)

Sec. 2. This Act shall apply to every county, township, municipality, municipal corporation, school district, school board, forest preserve district, park district, fire protection district, sanitary district and all other local governmental units. It shall not apply to the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State, except as provided in Section 7.  
(Source: P.A. 85-1159.)

(50 ILCS 505/3) (from Ch. 85, par. 5603)

Sec. 3. The appropriate local governmental official or agency receiving goods or services must approve or disapprove a bill from a vendor or contractor for goods or services furnished the local governmental agency within 30 days after the receipt of such bill or within 30 days after the date on which the goods or services were received, whichever is later. If one or more items on a construction related bill or invoice are disapproved, but not the entire bill or invoice, then the portion that is not disapproved shall be paid. When safety or quality assurance testing of goods by the local governmental agency is necessary before the approval or disapproval of a bill and such testing cannot be completed within 30 days after receipt of the goods, approval or disapproval of the bill must be made immediately upon completion of the testing or within 60 days after receipt of the goods, whichever occurs first. Written notice shall be mailed to the vendor or contractor immediately if a bill is disapproved.  
(Source: P.A. 94-972, eff. 7-1-07.)

(50 ILCS 505/4) (from Ch. 85, par. 5604)

Sec. 4. Any bill approved for payment pursuant to Section 3 shall be paid within 30 days after the date of approval. If payment is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made.  
(Source: P.A. 84-731.)

(50 ILCS 505/5) (from Ch. 85, par. 5605)

Sec. 5. If the local governmental official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 3, the penalty for late payment of that bill shall be computed from the date 60 days after the receipt of that bill or the date 60 days after the goods or services are received, whichever is later.  
(Source: P.A. 84-731.)

(50 ILCS 505/6) (from Ch. 85, par. 5606)

Sec. 6. The time periods specified in Sections 3, 4 and 5, as they pertain to particular goods or services, are superseded by any greater time periods as agreed to by the local government agency and the particular vendor or contractor.  
(Source: P.A. 87-773.)

(50 ILCS 505/7) (from Ch. 85, par. 5607)

Sec. 7. If the funds from which the local governmental official or agency is to pay for goods or services are funds appropriated or controlled by the State, then the local governmental official or agency may certify to the State Treasurer, Comptroller and State agency responsible for administering such funds that a specified

amount is anticipated to be necessary within 45 days after certification to pay for specified goods or services and that such amount is not currently available to the local governmental official or agency. The State Treasurer, Comptroller and State agency shall than expedite distribution of funds to the local governmental unit to make such payments. The certification shall be mailed on the date of certification by certified U. S. mail, return receipt requested. Any interest penalty incurred by the local governmental unit under Section 3 or 4 because of the failure of funds to be distributed from the State to the local governmental unit within the 45 day period shall be reimbursed by the State to the local governmental unit as an amount in addition to the funds to be otherwise distributed from the State.

(Source: P.A. 85-1159.)

(50 ILCS 505/9) (from Ch. 85, par. 5609)

Sec. 9. Payments to subcontractors and material suppliers; failure to make timely payments; additional amount due. When a contractor receives any payment, the contractor shall pay each subcontractor and material supplier in proportion to the work completed by each subcontractor and material supplier their application less any retention. If the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount of payment. All interest payments received pursuant to Section 4 also shall be disbursed to subcontractors and material suppliers to whom payment has been delayed, on a pro rata basis. When, however, the public owner does not release the full payment due under the contract because there are specific areas of work or materials the contractor is rejecting or because the contractor has otherwise determined such areas are not suitable for payment, then those specific subcontractors or suppliers involved shall not be paid for that portion of the work rejected or deemed not suitable for payment and all other subcontractors and suppliers shall be paid in full.

If the contractor, without reasonable cause, fails to make any payment to his subcontractors and material suppliers within 15 days after receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 15-day period until fully paid. This Section shall also apply to any payments made by subcontractors and material suppliers to their subcontractors and material suppliers and to all payments made to lower tier subcontractors and material suppliers throughout the contracting chain.

(Source: P.A. 94-972, eff. 7-1-07.)

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