

RESOLUTION NO. 13-40

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO
APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
SAFEUILT COLORADO, INC. FOR BUILDING INSPECTION SERVICES**

WHEREAS, the City of Castle Pines is authorized to contract for performance of necessary public services including building inspection; and

WHEREAS, SAFEuilt Colorado, Inc. (the “Consultant”) has been performing building inspection services for the City of Castle Pines since January, 2011 and has the necessary skill and expertise to perform such building inspection services as more fully described in the Professional Services Agreement Between Castle Pines and SAFEuilt Colorado, Inc. attached hereto as **Exhibit A** (the “Agreement”); and

WHEREAS, the City and the Consultant wish to continue with the services and desire to enter into the Agreement to set forth the terms, conditions and obligations of the parties; and

WHEREAS, the City administrative staff recommends that the City Council approve the attached Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby (a) approves the Agreement in substantially the form attached hereto as **Exhibit A**, including all exhibits thereto, (b) authorizes the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the Agreement as may be appropriate that do not substantially increase the obligations of the City, and (c) authorizes the Mayor to execute the same on behalf of the City.

Section 2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

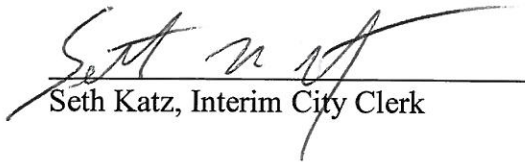
Section 3. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES by a vote of 6 in favor, 1 against and 0 absent this 10th day of December, 2013.




Jeffrey T. Huff, Mayor

ATTEST:



Seth Katz, Interim City Clerk

APPROVED AS TO FORM:



Linda C. Michow, City Attorney

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT BETWEEN
CASTLE PINES AND SAFE BUILT COLORADO, INC.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CASTLE PINES AND SAFE BUILT COLORADO, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (“*Agreement*”) is made and entered into by and between the **CITY OF CASTLE PINES**, a Colorado municipal corporation (the “*City*”), and **SAFE BUILT COLORADO, INC.**, a Colorado corporation (the “*Contractor*”) (the City and the Contractor may be collectively referred to as the “*Parties*” and each individually as “*Party*”), and is effective as of the date of the last signature of the Parties below (“*Effective Date*”).

RECITALS AND REPRESENTATIONS

WHEREAS, the City and Contractor previously entered into a professional services agreement for the provision of building inspection services that is set to expire on December 31, 2013; and

WHEREAS, the City and Contractor desire to enter into a new professional services agreement as provided herein.

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. LINE OF AUTHORITY: The City Manager or his or her designee as identified in writing (the “*City Authorized Representative*”), is designated as the City Authorized Representative for the purpose of administering, coordinating, and approving the work performed by the Contractor under this Agreement. For purposes of this Agreement, the Contractor’s designated representative is Eric Pendley (the “*Contractor Authorized Representative*”).

2. SCOPE OF SERVICES:

a. Contractor shall perform all services described in Exhibit A (Scope of Services) diligently and professionally and in a manner satisfactory to the Authorized Representative. The City may, from time to time, request changes to the Services to be performed hereunder. If agreed to by both Parties, Contractor will, within a reasonable time period, provide to the City in writing a price and modification to services for the proposed addition to Services. Such changes, including any increase or decrease in the amount of the Contractor’s compensation, when mutually agreed upon between the City and Contractor, shall become an amendment to and part of this Agreement, provided any such change is in writing and signed by the City Authorized Representative and by the Contractor Authorized Representative. Unless otherwise stated in the written amendment, Contractor will invoice the City on the next billing cycle after completion of the addition to Services or if the change involves an ongoing new addition to the Services, Contractor will include the associated adjustment to the monthly compensation amount.

b. If Contractor proceeds without such written change authorization, then the Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or by implied by a course of action, relating to the terms and scope of this Agreement. If Contractor performs any work beyond the Services described in **Exhibit A**, it does so at its own risk.

c. The Services to be provided hereunder shall be performed within the City boundaries based upon the City's adopted Building Code, Mechanical Code, Plumbing Code, Electrical Code, and any other adopted codes and amendments or applicable State and Federal requirements, and other City-adopted regulations, standards, and requirements related to building construction ("City Building Codes").

d. The Contractor shall provide Administrative/Permit Technician staffing to the City two business days per week.

e. The City hereby appoints the Contractor as the building official for the City and grants the Contractor all rights and privileges established by ordinance or statute for such position.

3. STANDARDS OF PERFORMANCE:

a. Standards. In performing the Services, the Contractor shall use that degree of care and skill ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. The Contractor represents to the City that the Contractor and the Contractor's employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement. In addition, more specific standards of the Contractor performance are attached to this Agreement in **Exhibit A** (Scope of Services).

b. Notice of Changes That May Affect Services Performance. The Contractor shall promptly inform the City's Authorized Representative of any reasonably anticipated or known employment-related actions (e.g., terminations, resignations, reduction in hours/service, hiring, and substitutions of employees) which may affect in any manner the performance of the Services. Employment-related actions shall specifically include the securing of, retention of, or modification in relationships with any subcontractors performing Services under this Agreement. The City shall be provided a reasonable advance opportunity to make recommendation to the Contractor regarding any proposed hiring, retention, or selection of any new employee or any subcontractor that will either: (1) have a supervisory role in the performance of the Services; or (2) engage in direct and substantial contact with the public. Such recommendation by the City concerning an employment-related action shall not be binding on the Contractor.

c. Relationships and Representation. The Contractor and all the Contractor's employees providing Services hereunder shall, at all times, foster and maintain professional and harmonious relationships with the members of the City Council, all employees of the City, all employees of the City's contract services providers and all City businesses, residents, customers and shall represent the City in the best light possible to members of the public, staff, elected and appointed officials and media.

4. ASSIGNED PERSONNEL PROVIDING SERVICES:

a. Identification. For all City related matters, including incoming and outgoing mail, the Contractor shall use the City's business address. It is the intent and purpose of this paragraph that the Contractor, although at all times exercising independent judgment and discretion in administering the City's policies and recognizing its role as an independent contractor, perform the Services in a manner that best represents the City and displays that the City has retained professional building services for its citizens.

b. Drug Test Screening. The Contractor shall cause all the Contractor's employees that will perform any Service under this Agreement (existing and new hires) to undergo drug testing through a testing laboratory or service. The Contractor shall receive the results of the testing and shall immediately remove any Contractor employee from service to the City in the event of a testing failure. The monitoring and cost of testing shall be borne by the Contractor.

c. Criminal Record and Background Check/Hiring.

(i) The Contractor shall cause to be performed a criminal record and background check for every prospective new or rehired employee that will perform any Service under this Agreement. For existing employees hired to perform services for other Contractor clients and not for the City, the Contractor shall cause to be performed a criminal record and background check for the existing employee prior to the employee's performance of any Service for the City under this Agreement. All such checks shall be performed by one or more commercially available professional background investigation agencies. The Contractor shall obtain and retain a written background check report performed in accordance with this Agreement.

(ii) The Contractor shall not extend an offer of employment to any prospective employee, or assign any Services for the City to an existing employee, for which the background report indicates such employee is or was a registered sex offender in Colorado or another state or which report indicates that the prospective employee was convicted or pled no contest to a charge of obscenity, prostitution or child prostitution (including solicitation, pandering, procurement, pimping, inducement, or patronizing), public indecency, distribution of materials harmful to children, bribery of a public official, abuse of public office, or unlawful sexual behavior (as defined by article 3 of Title 18, C.R.S.).

(iii) The Contractor shall not extend an offer of employment to any prospective employee or assign Services to an existing employee for which a background report indicates the prospective employee or employee was convicted or pled no contest to a felony within the ten (10) years prior to the prospective date of commencement of employment with the Contractor unless the City Manager has consented in writing to the Contractor's employment of the prospective employee or assignment of Services to an existing employee. The City Manager shall respond in writing to the Contractor within not more than five (5) business days of the Manager's receipt of the Contractor's request for consent. The City Manager's consent shall not be unreasonably withheld provided that the City Manager may withhold consent where the Manager finds that the employment of the employee and the felony offense, and/or the circumstances surrounding such offense, may subject the City to public criticism.

(iv) If, subsequent to the assignment of an employee to perform Services, the Contractor learns that the employee was convicted or pled no contest to a charge of obscenity, prostitution or child prostitution (including solicitation, pandering, procurement, pimping, inducement, or patronizing), public indecency, distribution of materials harmful to children, bribery of a public official, abuse of public office, or unlawful sexual behavior (as defined by article 3 of Title 18, C.R.S.), the Contractor shall promptly remove the employee from performing Services for the City.

- (v) If, subsequent to the assignment an employee to perform Services, the Contractor obtains knowledge that an employee was convicted or pled no contest to a felony within the ten (10) years prior to the date of such knowledge by the Contractor, the Contractor shall notify the City Manager in writing of such knowledge and request that the City Manager consent in writing to the employee's continued performance of Services for the City. The City Manager shall respond in writing to the Contractor within not more than five (5) business days of the Manager's receipt of the Contractor's request for consent. The City Manager's consent shall not be unreasonably withheld provided that the City Manager may withhold consent where the City Manager finds that the continued Services to the City by the employee and the felony offense, and/or the circumstances surrounding such offense, may subject the City to public criticism.

d. Dissatisfaction with Performance of Services by Designated Employees or Subcontractors. The Parties recognize that the Contractor's employees and subcontractors (if any) will interact with City staff, City contractors, and the general public in the performance of the Services. Further, the Parties understand and agree that a professional and respectful approach to delivery of the Services is a primary or principal goal of both Parties. Therefore, in the event the City Manager becomes dissatisfied with the professionalism of the performance of a Contractor employee or subcontractor providing Services under this Agreement, utilizing an objective standard based upon performance which may include, but is not limited to, behavior which brings discredit upon the City, the City Manager may, in her or his sole discretion, provide timely notification to the Contractor of such dissatisfaction. The notification shall include the known facts which give rise to the problem, and may include a request by the City that the Contractor transfer or otherwise reassign such employee or subcontractor out of service to the City when such employee or subcontractor is failing to effectively perform professional customer service, including but not limited to, receipt of multiple complaints from residents or businesses regarding the Contractor's employee's or subcontractor's professionalism in the performance of the Services. Thereafter, representatives of the Contractor and the City Manager shall meet to discuss possible remedies of the problems as described in the notification. The Contractor agrees to act within thirty (30) calendar days and in good faith to resolve any problems experienced by the City. If problems persist after the Contractor has taken such action in good faith, and provided the City Manager has notified the Contractor of the City's continuing dissatisfaction in accordance with this Section, the City Manager shall have the right to reasonably prohibit any Contractor employee or subcontractor from performing any work for the City, reasonably limit, in any manner, the work done for the City by any Contractor employee or subcontractor and to require the Contractor to transfer or reassign any of the Contractor's employees or subcontractors out of service to the City or to a different position acceptable to the City Manager. Upon such City Manager request, the Contractor agrees to permanently transfer or reassign any the Contractor employee or subcontractor as soon as reasonably possible.

5. COMPENSATION FOR SERVICES: In consideration for the provision of Services described in Exhibit A, the City agrees to compensate the Contractor based on the following:

a. Fee. In consideration for the provision of Services specified herein, the City shall pay Contractor a fee in accordance with the fee schedule set forth in **Exhibit B (Compensation)**. The City and Contractor may mutually agree to extend the Scope of Services, in which case the Contractor and City may amend this Agreement to include such additional services and compensation based on the agreed upon fee for such additional services. Any

increases, decreases, or other modification of such compensation shall be subject to the approval of both the City and the Contractor and shall be made only by written amendment of this Agreement executed by both Parties. The City may request of the Contractor a reduction or elimination of certain Services with a corresponding reduction in compensation when determined by the City to be necessary to address adverse economic conditions and/or declining City revenues. Prior to making such a determination, the City shall consult with the Contractor and the Contractor shall reasonably cooperate with the City to both identify potential Services to be reduced or eliminated and to determine appropriate compensation adjustments to address the circumstances. In the event that the Contractor is unwilling or unable to reduce or eliminate Services as requested by the City or to accept a corresponding reduction in compensation, the Contractor shall be entitled to unilaterally terminate this Agreement in accordance with the terms set forth herein.

b. Invoices. The Contractor shall submit monthly invoices for compensation to the City in accordance with the terms of this Agreement. Contractor's invoices shall be in a format acceptable to the City, shall be supported by information in such detail as may be required by the City and shall be sufficient to substantiate that the Contractor has performed the Services described in **Exhibit A**. With each monthly invoice, to the extent possible, the Contractor shall submit an activity service report detailing the Services provided in accordance with **Exhibit A** in a form acceptable to the City. At a minimum, each invoice shall detail the following information:

- Summary of monthly permit and plan review billing.
- If requested by the City Authorized Representative, a summary of monthly work performed by the Contractor sufficient to identify the relative allocation of work effort on supervisory matters and on non-supervisory matters (such as in-field building inspection).

c. Payment. Following receipt of any invoice in accordance with this Section, the City shall compensate the Contractor in accordance with its usual and customary accounts payable processes. The City may withhold payment for work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily. The City may request in writing additional information from the Contractor that is reasonably related and relevant in justifying or substantiating the performance of Services for which the Contractor is requesting compensation. The Contractor shall provide such requested additional information promptly and in no case more than 15 days following receipt of the City's written request. Request for additional information shall not delay payment of compensation. When additional information is requested, the City shall advise the Contractor in writing, giving its reasons, following the same procedure if it objects to the payment of any item on an accepted invoice as being outside the scope of this Agreement. Payment shall be deemed made and completed upon hand delivery to the Contractor or any employee or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor. The Contractor acknowledges that the City is a public entity and a political subdivision of the State of Colorado and, except as expressly provided by this Agreement, may officially act only through its elected City Council during a properly scheduled and conducted public meeting; therefore, the City may be delayed in acting upon certain requests as a result of unforeseen events or irregularities in meetings and in setting meeting schedules, including but not limited to holidays or lack of a quorum of the City Council.

6. EQUIPMENT AND RECORDS:

a. **City Equipment.** City owned equipment, if acquired during the Term of this Agreement, shall be used only for City purposes in performance of this Agreement, and shall not be used for any purely corporate, non-governmental Contractor business or personal purposes. City shall maintain required insurance for the City owned equipment.

b. **Records Ownership and Copyright.** Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. The Contractor shall provide the City with copies of any documents produced in association with the Contractor's Services within five (5) business days upon written request of the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

c. **Records Retention and Open Records Act Compliance.** All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

7. **TERM:** It is mutually agreed by the Parties that the term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2014, unless earlier terminated by the terms of this Agreement. This Agreement may be renewed or extended by mutual agreement of the Parties signed in writing. This Agreement and/or any extension of its original term beyond the current fiscal year shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the City's satisfaction with all Services received during the preceding term.

8. **CONFLICT OF INTEREST:** The Contractor agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Services described herein, and the Contractor further agrees not to hire, pay, or contract for services of any official, officer or employee of the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interest of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City.

9. INDEPENDENT CONTRACTOR: The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent Contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-Contractors, Contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions. The Contractor 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 Contractor, 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. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

10. INDEMNIFICATION, HOLD HARMLESS AND DEFENSE OF CLAIMS:

a. General. The Parties acknowledge that the Contractor's employees and any subcontractors will represent themselves as City building and licensing personnel, officers, or similar positions and that such representation shall not be construed to alter, undermine or impair the Contractor's status as an independent contractor to the City. Nothing in this Agreement is intended to impair the Contractor's independent ability, if permitted and to the extent permitted by law, to assert a right to governmental immunity in the Contractor's defense of any claim.

b. No City Indemnification. Except as otherwise set forth in subparagraph (e) of this Section, the City cannot, and by this Agreement does not, agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity whatsoever.

c. Contractor Indemnification and Hold Harmless. Except as otherwise set forth in subparagraph (e) of this Section, the Contractor shall defend, indemnify and hold harmless the City, its elected officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, in any way resulting from or arising from this Agreement; provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the negligence of City's elected officials, officers, directors, agents, and employees. Contractor's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Contractor to defend in litigation, indemnify or insure the City against liability arising out of the death or bodily injury to person or damage to property caused by the negligence or fault of the City or any third party under the control or supervision of the City.

d. Notice of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a claim or an allegation of a claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.

e. Claims Challenging City Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third party against the City and/or the Contractor (or the Parties' employees, agents, or subcontractors) alleging that any law, statute, ordinance, rule or approved City policy or procedure is unlawful, unconstitutional or otherwise improper, then:

- i. The Contractor shall not be entitled to and shall not defend such claim; and
- ii. The City may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and
- iii. The Contractor shall reasonably cooperate with the City in any City defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and
- iv. The City shall indemnify and hold the Contractor harmless for any damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.

f. Defense of Claims.

- i. Claims Against Both the City and the Contractor. In the event any claim is asserted by a third party against both the City and the Contractor arising out of performance of the Services which claim is not within the scope of subparagraph (e) above, the City shall be entitled to elect to defend such claim on behalf of both the City and the Contractor subject to the provisions governing indemnification set forth in this paragraph. In the event that the City elects to defend such claim, the City shall consult with the Contractor in such defense but the City is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the City elects to defend such claim, the Contractor may at its own cost and expense elect to assume the defense of the Contractor, in which case the Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this paragraph.
- ii. Claims Against Only One Party. In the event of any claim asserted by a third party against only one Party to this Agreement arising out of performance of the Services which claim is not within the scope of subparagraph (e) above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this paragraph. Where appropriate, the defending Party may also elect to join the other Party through third party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may

defend such claim subject to indemnification pursuant to this paragraph. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved City policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this paragraph.

11. INSURANCE: The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement, including the indemnification obligations set forth in Section 10. Contractor's insurance shall provide that the insurer will give the City a minimum of thirty (30) calendar days written notice prior to the cancellation or material modification of any policy of insurance obtained to comply with this Section 11. The Contractor shall be solely responsible for any insurance deductible. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

a. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of Services under this Agreement, and Employer's Liability insurance with minimum limits of one hundred thousand dollars (\$100,000) each accident, one hundred thousand dollars (\$100,000) disease – policy limit, and one hundred thousand dollars (\$100,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

b. 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 (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interest provision, and shall be endorsed to include the City and its 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.

c. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and one million dollars (\$1,000,000) general aggregate.

12. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City, its elected officials, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time, or otherwise available to the City.

13. ASSIGNMENT: The Contractor covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part without the prior written approval of the City. Any attempt by the Contractor to assign or transfer its rights hereunder shall, at the option of the City Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Contractor hereunder.

14. CITY REVIEW OF RECORDS: The Contractor agrees that, upon a reasonable request of the Authorized Representative, at any time during the term of this Agreement or three (3) years thereafter, will make available for inspection and audit upon request by the City Authorized Representative or any of their authorized representatives, those books and records of the Contractor's work performed under this Agreement. Nothing construed herein shall be construed as a requirement that Contractor shall provide its financial records determined to be proprietary by the Contractor. The Contractor shall maintain such records until the expiration of the three (3) years following the end of the term of this Agreement.

15. TERMINATION:

a. **City Unilateral Termination.** This Agreement may be terminated by the City for any or no reason upon sixty (60) days' written notice delivered to the Contractor. The Parties may mutually agree to a longer period of time for the Contractor termination to transition the Services to another contractor or City staff. In the event of such termination, the City shall pay the Contractor all invoiced fees incurred up to the date of termination unless such fees or expenses are subject to objection as provided by Section 5(c) of this Agreement.

b. **Contractor Unilateral Termination.** This Agreement may be terminated by the Contractor for any or no reason upon sixty (60) days' written notice to the City. The Parties may mutually agree to a longer period of time for the Contractor termination to transition the Services to another contractor or City staff. Notwithstanding the foregoing, the Contractor may terminate this Agreement at anytime in the event of a City-requested reduction or elimination of Services with a corresponding reduction in compensation for which the Contractor is unable or unwilling to accommodate pursuant to this Agreement.

c. **Termination for Non-Performance.** Should a Party fail substantially to perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party in accordance with this section. The performing Party shall first notify in writing the non-performing Party of the specific failure to perform which notice shall demand that such non-performance be cured or remedied within not less than ten (10) days of the date of the delivery of such notice. In the event the non-performing Party fails to timely cure or remedy such non-performance following such notice and demand, the performing Party may elect to terminate the Agreement by notifying the non-performing Party in writing of its election to terminate for non-performance which termination shall be effective upon the non-performing Party's receipt of such notice of termination.

d. **Notwithstanding the above,** the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor. The Contractor's indemnification obligations hereunder shall survive termination of this Agreement

e. **Limited Permit Inspection Services Following Termination.** Unless otherwise required in writing by the City, the Contractor shall continue to process to conclusion

(customarily, to issuance of certificate of occupancy) any building inspection permit application submitted prior to the date of termination of this Agreement and this Agreement shall remain in effect as to such outstanding permit application until conclusion. In the event that such continuing service is not required by the City for a permit application submitted prior to the date of termination of this Agreement and for which a building permit fee has been paid to the Contractor, the Contractor shall immediately pay to the City any such permit fee held by the Contractor less an amount determined by the Contractor as proportional and appropriate compensation for services actually performed by the Contractor for such permit application as of the date of termination. The Contractor shall report in writing to the City any compensation claimed and withheld pursuant to this subsection (e). In the event that the City disputes the compensation claimed and withheld by the Contractor, which dispute must be made in writing delivered to the Contractor within ten (10) days of the City's receipt of the Contractor's report, the Parties shall select a mutually acceptable third-party to review and determine the appropriateness of the Contractor's claimed compensation and such third-party's decision shall be binding upon the Parties. All costs of such third-party review shall be paid by the Contractor.

16. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

To the City: City Manager of the City of Castle Pines
7501 Village Square Drive, Suite 100
Castle Pines, CO 80108

with a copy to: Widner Michow & Cox LLP
City Attorney for Castle Pines
13313 E. Arapahoe Rd., Suite 100
Centennial, CO 80112
Facsimile (303) 754-3395

To the Contractor: Mike McCurdie, President
Safe Built Colorado, Inc.
3755 Precision Drive, Suite 140
Loveland, CO 80538
Telephone: 866-977-4111, ext. 203
Facsimile: 877-203-2704
Email: mike.mccurdie@safebuilt.com

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first class U.S. mail, via facsimile, or other method authorized in writing by the City Authorized Representative and the Contractor Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) working days after the date of mailing, whichever is earlier. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

17. NONDISCRIMINATION: In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of

race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

18. ILLEGAL ALIENS: Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

19. TABOR: Article X, Section 20/TABOR. The parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City 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 City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

20. GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. The Contractor expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

21. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the work performed under this Agreement by the Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Contractor shall also comply with all applicable ordinances, regulations, and resolutions of the City and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

22. **SEVERABILITY:** In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Agreement it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

23. **NO THIRD PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

24. **HEADINGS; RECITALS:** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The Recitals to this Agreement are incorporated herein.


25. **ENTIRE AGREEMENT:** The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the City Authorized Representative and/or the Contractor Authorized Representative, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Agreement.

26. **FORCE MAJEURE:** Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Contractor's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Contractor, such items shall be handled in accordance with Section 2 and 3.

27. **INCORPORATION OF EXHIBITS:** All exhibits referenced in this Agreement and attached hereto shall be incorporated into this Agreement for all purposes.

IN WITNESS WHEREOF, the City and the Contractor have executed this Professional Services Agreement as of the above date.

CONTRACTOR:
SAFE BUILT COLORADO, INC., a Colorado corporation

BY: 
Printed Name David Thomsen
Title: v.ice President

DATE: 12.18.13

CITY:
CITY OF CASTLE PINES, a Colorado municipal corporation

BY: 
Jeffrey T. Huff, Mayor


DATE: 12-11-13

ATTEST:


Seth Katz, Interim City Clerk

DATE: 12/13/13

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

DATE: 12/13/13

EXHIBIT A
SCOPE OF SERVICES

Note: This list of services can be updated as necessary to ensure the City's needs are met and the services provided satisfy the City, property owners, and the building community.

Plan review services being provided as part of this contract

Perform plan review on all building projects in the Municipality. These include, without limitation, single-family residential construction; basement finish projects; pools; new commercial buildings; tenant improvements in existing commercial buildings; decks, porches, carports and garages; pole barns and agriculture buildings; and existing home upgrades and remodels.

First comments for plan reviews will be issued within the following timeframes:

Project	Maximum Time to First Comments
New residential – International Residential Code	<input type="checkbox"/> 5 working days or less to first comments
Small commercial–less than \$5M valuation International Building Code	<input type="checkbox"/> 10 working days or less to first comments
Large commercial–greater than \$5M valuation International Building Code	<input type="checkbox"/> 15 working days or less to first comments
Alter residential	<input type="checkbox"/> 5 working days or less to first comments
Alter commercial	<input type="checkbox"/> 10 working days or less to first comments
Miscellaneous	<input type="checkbox"/> As negotiated

1. Permit fees shall be determined by Contractor based on project valuation as determined by Contractor acting as the Building Official and shall be defined as the total value of all construction work for which the permit is issued, and shall include but not be limited to: all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, permanent equipment, architectural/engineering services and contractors profit. The valuation shall be, at a minimum, as stated in the "Building Valuation Data" table. This table is published every February and August by the International Code Council Building Safety Journal. Building valuation shall be adjusted at least annually according to International Code Council Building Safety Journal.

2. The Contractor shall investigate complaints of City Building Code violations when directed by the Authorized City Representative, or when such complaints are received directly from a resident of the City, a construction professional working in the City, or other credible source. Following such investigation, the Contractor shall report to the Authorized City Representative and, when instructed to do so, shall provide a written summary of such investigation to the Authorized City Representative. At the request of the City and upon approval of the Contractor, and subject to payment at the rate identified on Exhibit B for such services, the Contractor shall assist the City in pursuing administrative, criminal, and/or civil remedies against any violator of the City's Building Codes, including but not limited to, providing testimony by Contractor's inspectors in any proceedings regarding the violation.

3. If City Building Codes do not specify when a permit expires, the Contractor will remove from active status (expire) all permits that have been inactive for a period greater than 180 calendar days. Inactive permits are those where work has been suspended, abandoned, or no inspections have been requested, and the permit applicant has not requested an extension during any consecutive 180 calendar day period.

Construction Inspection Services

Perform inspections required to determine that construction activity complies with approved plans and/or applicable codes and ordinances. Inspections scheduled prior to 4:00 pm will be performed on the following business day.

Building Official and Administration Services

Under the terms of this contract, Safe Built Colorado Inc. will actively administer, monitor and enforce adopted building codes for the city. This active administration includes:

- ✓ Review and recommend local ordinances as they relate to the building codes
- ✓ Participate in the development and implementation of the City's objectives, policies and priorities
- ✓ Offer our services and knowledge of building department functions to address design, format, and frequency of reports, forms, letters and correspondence
- ✓ Provide research and recommendations on matters related to the building codes, records retention and document storage
- ✓ Issue stop work orders,

- ✓ Investigate complaints concerning code violations and the abatement of dangerous buildings
- ✓ Attend council and community meetings as requested
- ✓ Provide and complete all agreed upon forms, reports, letters or other correspondence as are required by the City

Disaster and Emergency Response Services

In cases of natural disaster, Safe Built Colorado Inc. will provide emergency disaster response. This response will consist of a rapid assessment of the structural integrity of damaged buildings using appropriate forms. The purpose of these evaluations is to determine whether damaged or potentially damaged buildings are safe for use, or if entry should be restricted or prohibited. Safe Built Colorado Inc. will post the structure with the appropriate placard.

Safe Built Colorado Inc. will coordinate any disaster or emergency response with the appropriate local, state or federal agency. Safe Built Colorado Inc. will track all hours and expenses for reimbursement from federal agencies if appropriate.

Code Enforcement and Unsafe Building Services

Upon request, Safe Built Colorado Inc. will provide additional resources to support code enforcement efforts related to investigating code violation complaints or enforcing adopted codes with regard to unsafe structures, existing building, rental property maintenance, property maintenance and energy code compliance.

Permit Software Services

While this contract is in effect, Safe Built Colorado Inc. will provide the City with mutually agreed upon number of user licenses to access its Permitting Software. Safe Built Colorado Inc. has established an account for the city and generated workflows based on the City's input. Under this contract, Safe Built Colorado Inc. will provide technical support for the software, one (1) day of training per year on the software as requested, and will review the process and workflows with the City on an annual basis if requested to implement changes.

EXHIBIT B
COMPENSATION

NEW PERMITS: THE FOLLOWING FEE SCHEDULE WOULD APPLY TO ALL NEW PERMITS ISSUED AFTER EFFECTIVE DATE OF AGREEMENT:

PLAN REVIEW SERVICES	75% OF PLAN REVIEW FEE
CONSTRUCTION INSPECTION SERVICES	
BUILDING PERMIT FEES	80% OF PERMIT FEE
RE-INSPECTION FEE	80% OF RE-INSPECTION FEE
OTHER MISCELLANEOUS BUILDING DEPARTMENT FEES	80% OF CITY FEE
BUILDING OFFICIAL AND ADMINISTRATION SERVICES	NO CHARGE
PERMIT TECH – 2 DAYS A WEEK UNTIL ACTIVITY WARRANTS ADDITIONAL DAYS.	NO CHARGE
DISASTER & EMERGENCY RESPONSE SERVICES	NO CHARGE
PERMIT SOFTWARE SERVICES	NO CHARGE

Other Fees:

Jurisdiction Owned Project Fees	50% of normal jurisdiction fee
Testimony & Investigation Fee – 2 hour minimum	\$100.00 per hour

1. Any cost and expense incurred by the Contractor in performance of the Services shall be non-reimbursable and shall be borne by the Contractor.
2. As all or a portion of the Contractor's compensation is based upon or derived from receiving or retaining all, a percentage, allocation, or a portion of a rate, fee, or charge (regardless of name) paid by a customer receiving Services from the Contractor on behalf of the City, the following shall not be included in computing compensation to the Contractor:
 - A. Any federal, state, or local tax regardless of the taxing entity imposing such tax; or
 - B. Any fee, assessment, or charge (regardless of name or title) imposed by the City upon the Services which fee, assessment, or charge is intended to pay or reimburse the City for an City-incurred administrative expense (such as, and by way of example only, a "convenience fee" or "service charge" imposed by the City on a transaction to recoup or recover the cost of a third party credit card or financial institution processing fee); or
 - C. Any fine, assessment, or penalty (regardless of name) imposed by law or court order for the violation of any law, rule, or regulation (including any portion of a building inspection fee that is imposed as a penalty and not intended as payment for services rendered); or
 - D. Any other fee or charge paid by a recipient of Services that is unrelated to the Services, such as but not limited to a financial institution's late payment or insignificant funds, or overdraft fee.
3. For a large project within the City with a valuation of Three Million Dollars (\$3,000,000) or greater, the percentage based compensation schedules set forth in this Exhibit B shall be amended to reduce the Contractor Compensation Amount by 5% with a maximum allowable cap on fees attributable to any such project as shall be determined by the parties in good faith and reduced to writing signed by the Parties prior to any Services being performed for any such project.