

**RESOLUTION NO. 21-15**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CASTLE PINES, COLORADO APPROVING A PROFESSIONAL  
SERVICES AGREEMENT WITH SAFEbuILT COLORADO, LLC  
FOR BUILDING OFFICIAL AND INSPECTION SERVICES**

**WHEREAS**, the City of Castle Pines (the “City”) is authorized to contract for performance of necessary public services including building official and code enforcement services; and

**WHEREAS**, SAFEbuILT Colorado, LLC (the “Contractor”) has been performing building official and inspection services (“Services”) for the City in accordance with Resolution No. 19-15 and has the necessary skill and expertise to perform such Services; and

**WHEREAS**, the City Council desires to enter into a new Professional Services Agreement with Contractor for purposes of continuation of the Services and addition of general code enforcement services (“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 with Contractor in substantially the same form as attached hereto and incorporated herein as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Agreement.

**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 7 in favor and 0 against this 23<sup>rd</sup> day of March, 2021.




DocuSigned by:  
*Tera Stave Radloff*  
6E0C8EB279DC479  
Tera Stave Radloff, Mayor

**ATTEST:**

DocuSigned by:  
  
AD03A3B02032499  
\_\_\_\_\_

Tobi Basile, CMC, City Clerk

**APPROVED AS TO FORM:**

DocuSigned by:  
  
5241DE99B8FE444  
\_\_\_\_\_

Linda C. Michow, City Attorney

**EXHIBIT 1**

**Professional Services Agreement Between Castle Pines and SAFEbuilt Colorado, LLC**

*[ATTACHED]*

**City of Castle Pines, Colorado**  
**AGREEMENT FOR PROFESSIONAL SERVICES**

**Project/Services Name: Building Official and Inspection Services**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the City of Castle Pines, a municipal corporation of the State of Colorado, with offices at 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (the “City”), and SAFEbuilt Colorado, LLC, a Colorado limited liability company with offices at 3755 Precision Drive, Suite 140, Loveland, Colorado 80538 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

**RECITALS**

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. **Services.** Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. **Changes to Services.** A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, 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 or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. **Duty to Inform.** The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. **Time of Performance.** The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services.

## **II. TERM AND TERMINATION**

A. **Term.** This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until December 31, 2021, or until terminated as provided herein ("Termination Date"). Subject to annual appropriation, this Agreement shall automatically renew each year on January 1, commencing on January 1, 2022, for subsequent one (1) year terms up to two subsequent one (1) year terms, provided that there is no increase in Contractor compensation set forth in **Exhibit B** or decrease in the level of Services set forth in **Exhibit A** except as specifically provided in **Exhibit B**, unless and until the Agreement is terminated as provided herein. The Parties may mutually agree in writing to extend the Agreement beyond the two (2) automatic renewal terms. No increase in compensation or decrease in level of Service shall be authorized unless an amendment to this Agreement is reviewed and approved in accordance with Section IV.C of this Agreement.

B. **Unilateral Termination.** This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least thirty (30) days prior to termination. Contractor may terminate this Agreement for any or no reason upon 90 days advance written notice to the City. The City reserves the right to terminate this Agreement upon notice effective immediately in case of pandemic or other health crisis at any time after a declaration by the City in accordance with C.R.S. § 24-33.5-709. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of

termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension (not fewer than five days after the date of receipt of the notice by Contractor). Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

### **III. REPRESENTATIVES AND SUPERVISION**

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or his or her designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Joe DeRosa, CRO (“Contractor Representative”). The Contractor Representative shall act as the Contractor’s primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City’s need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

**IV. COMPENSATION**

A. Payment. Contractor shall perform the Services and shall invoice the City for work performed based on the rates and/or compensation methodology described in **Exhibit B**.

B. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City’s interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

C. Increases in Compensation or Addition of Reimbursable Expenses. Any increases or modification of compensation or the addition of a reimbursable expense(s) shall be subject to the approval of the City and shall be made only by written amendment to this Agreement executed by both Parties.

D. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered “reimbursable expenses” for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor’s monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services

- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

E. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law. Contractor shall be responsible at Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

D. CONTRACTOR DISCLAIMS ANY AND ALL EXPRESSS AND IMPLIED WARRANTIES OTHER THAN THOSE IN THIS SECTION V, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT.

## VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.



B. Liability for Employment-Related Rights and Compensation. 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. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. 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.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

## VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- 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 ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
  - Worker's Compensation insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law.
  - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. 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, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice 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. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy. For any and all insurance policies required hereunder, Contractor shall waive subrogation rights against the City.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify this the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance 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. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

## VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent

of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Notwithstanding the preceding, Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

#### **IX. ILLEGAL ALIENS**

The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The 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, the 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 this public contract for services and that the Contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. The Contractor is prohibited from using the e-verify program 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 the Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three 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 Colorado 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 this Agreement.

#### **X. REMEDIES**

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant,

insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

C. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, OTHER THAN PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR INDIRECT DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE REMAINING AVAILABLE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. OTHER THAN PAYMENT OBLIGATIONS, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT EXCEED THE GREATER OF THE AMOUNT PAID BY CITY TO CONTRACTOR OR THE APPLICABLE LIMITS OF INSURANCE SPECIFIED IN THIS AGREEMENT.

## **XI. RECORDS AND OWNERSHIP**

A. 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 by City 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.

B. City's Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Contractor may use such materials to perform its obligations under this Agreement and for internal business purposes, including training, product/service improvement and development. 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.

D. Return of Records to City. At the City's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

## **XII. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

**If to the City:****If to Contractor:**

City of Castle Pines Attn: City Manager 360 Village Square Lane, Suite B Castle Pines, Colorado 80108	Joe DeRosa, CRO SAFEbuilt Colorado, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538 Telephone: 970-292-2200 Facsimile: 877-203-2704 Email: jderosa@safebuilt.com
With Copy to: Castle Pines City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111	With Copy to:

E. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. **Modification.** This Agreement may only be modified upon written agreement signed by the Parties.

G. **Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. **Affirmative Action.** The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. **Governmental Immunity.** The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended ("CGIA"), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

J. **Rights and Remedies.** The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement

shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) Attorneys' Fees, shall survive the expiration or termination of this Agreement.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. In the event the Services include or



require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

T. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and bind their respective entities.

U. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGES FOLLOW*

**THIS AGREEMENT is executed and made effective as provided above.**

**CITY OF CASTLE PINES, COLORADO**

By: \_\_\_\_\_

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

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

Date of execution: \_\_\_\_\_, 2021

ATTEST:

\_\_\_\_\_  
Tobi Basile, CMC, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

\_\_\_\_\_  
Linda C. Michow, City Attorney

**CONTRACTOR:**

By: 

Printed Name: Thomas P Wilkas

Title: CFO

Date of execution: March 9, 2021

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF Larimer            )

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this 9 day of March, 2021, by Thomas Wilkas as CFO of SAFEbuilt Colorado, LLC, a Colorado limited liability company.

My commission expires April 27, 2023

(S E A L)

AMANDA GILLIAM NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20164016455 MY COMMISSION EXPIRES APRIL 27, 2023
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Notary Public

**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor shall provide the following Services, subject to the “Deliverables” table below. As used in this Exhibit A, “code” or “municipal code” shall refer to the City of Castle Pines Municipal Code.

Deliverables			
<b>INSPECTION SERVICES</b>	Inspections requested before 4:00 p.m. shall be completed the following business day and inspectors dispatched daily.		
<b>MOBILE RESULTING</b>	Provide our inspectors with field devices to enter results immediately		
<b>PRE-SUBMITTAL MEETINGS</b>	Provide pre-submittal meetings to applicants by appointment		
<b>PLAN REVIEW TURNAROUND TIMES</b>	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<u>Project Type:</u>	<u>First Comments</u>	<u>Second Comments</u>
	✓ Single-family	<u>Within:</u> 5 business days	<u>Within:</u> 5 business days or less
	✓ Multi-family	10 business days	5 business days or less
	✓ Small commercial (under \$5M in valuation)	10 business days	5 business days or less
	✓ Large commercial (greater than \$5M in valuation)	20 business days	10 business days or less

**1. Plan Review Services.** Contractor shall perform plan review on all building projects in the City, and more specifically, Contractor shall:

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- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Be available for pre-submittal meetings by appointment
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments or outside agencies, including water and sanitation districts, with the goal of avoiding signing off on permits for issuance prior to review by such relevant agencies.
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide review of plan revisions and remain available to applicant after the review is complete

**2. Building, Electrical, Plumbing, and Mechanical Inspection Services.** Contractor shall perform inspections required to determine that construction activity complies with approved plans and/or applicable codes and ordinances. In performing inspections, Contractor shall:

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- ✓ Utilize an educational, informative approach to improve customer experience
- ✓ Perform code compliant inspections to determine that construction complies with approved plans
- ✓ Meet or exceed agreed upon performance metrics regarding inspections

- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Leave a copy of the inspection ticket and discuss inspection results with site personnel

**3. Building Official and Administration Services.** Contractor will actively administer, monitor and enforce adopted building regulations for the City and shall:

- ✓ Be a resource for Contractor team members, City staff, and applicants
- ✓ Help guide citizens through the complexities of the building regulations in order to obtain compliance
- ✓ Monitor changes to the codes including state or local requirements and determine how they may impact projects in the area and make recommendations regarding local amendments
- ✓ Assist City staff in revising and updating the municipal code in relation to the building codes and implementation of the City's objectives, policies, and priorities
- ✓ Provide Building Code interpretations for City approval
- ✓ Oversee our quality assurance program and ensure Contractor is meeting agreed upon performance measurements and City expectations
- ✓ Provide training for Contractor inspectors on City-adopted codes and local amendments as needed
- ✓ Oversee certificate of occupancy issuance to prevent issuance without compliance of all departments
- ✓ Attend staff and Council meetings as requested by the City
- ✓ Be responsible for annual and monthly reports to the City
- ✓ Work with Municipal staff to establish and/or refine building department processes
- ✓ Issue stop-work notices for non-conforming activities related to provided services – as needed
- ✓ Maintain an office space adjacent to City administrative offices ("SAFEbuilt office") with Contractor staff present in accordance with paragraph 9 below to provide building service/permitting support to include: answering telephone, issuing building and contractor permits, collection of applicable fees and taxes, accounting of fees and taxes, record keeping, interfacing with builders, contractors and residents on building services matters.

**4. Licensing and Permit Technician Services.** Contractor shall:

- ✓ Provide qualified individuals to perform the functions of this position
- ✓ Facilitate the permitting process from initial permit intake to final issuance of permit
- ✓ Review submittal documents and request missing information to ensure packets are complete
- ✓ Provide front counter customer service as necessary
- ✓ Answer questions concerning the building process and requirements at the counter or over the phone
- ✓ Ensure compliance with and collection of permit fees in accordance with City adopted fee schedules
- ✓ Form and maintain positive relationships with City staff and maintain a professional image
- ✓ Work with City Clerk to facilitate Colorado Open Records Act requests, if requested
- ✓ Provide inspection scheduling and tracking to ensure code compliance

- ✓ Act as an office resource to inspectors in the field
- ✓ Process applications for City boards and commissions upon City's request
- ✓ Provide input, tracking and reporting to help increase efficiencies
  
- ✓ Provide on-site staff for customer service, field inspections and revenue collection services in the administration of the City's contractor license regulations
- ✓ Provide for issuance of licenses and collection of fees including maintaining electronic and paper copy of all licenses issued
- ✓ Notify contractors who are operating in the City and are not licensed in accordance with the City's policies and procedures
- ✓ Ensure compliance of contractor's liability and workers compensation insurance requirements
- ✓ Ensure compliance with and collection of business license fees owed the City
- ✓ Notify contractors of insufficient funds payments within five (5) business days from notification from the City and perform the resulting collection of the amount due
- ✓ Maintain detailed records of each registered and licensed contractor
- ✓ Manage contractor license renewal notifications, generate corresponding contractor licenses, and perform collection activities of license renewals

5. **Disaster and Emergency Response Services.** In cases of natural disaster, Contractor 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. Contractor will post the structure with the appropriate placard.

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

6. **As-Requested Code Enforcement Services.** Upon request, Contractor will provide code enforcement services 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, with a focus on achieving code compliance without confrontation and at minimum cost. Specifically, Contractor shall, upon the City's request:

- ✓ Respond to and investigate municipal code violations
- ✓ Customize Contractor's approach at the direction of City Council and/or staff
- ✓ Provide services in compliance with applicable municipal code and ordinance requirements
- ✓ Proactively work with the City and its citizens to maintain a safe and desirable community
- ✓ Post violation notices and provide initial citizen notifications and follow-up inspections
- ✓ Address specific code enforcement issues at the direction of the City
- ✓ Provide monthly written reports that include digital photos of violations and action taken, in addition to statistical, narrative, and detail recap reports
- ✓ Prepare cases for court appearances, provide presentations and attend meetings as needed
- ✓ Participate in educational activities and customer service surveys related to code enforcement
- ✓ Provide professional recommendations for code revisions – upon City's request
- ✓ Attend staff meeting and make presentations to Municipal boards upon City's request
- ✓ Provide agreed upon reports to demonstrate our performance against set measurements

**7. As-Requested Planning Consultation Services.** Contractor shall provide planning and zoning consultation upon City request. Services may include:

- ✓ Review of Building Permits for Zoning Code compliance
- ✓ Review of zoning applications and site plans
- ✓ Preparation of staff reports and recommendations to Planning Commission and elected officials
- ✓ Training programs for Planning Commission and Appeals Board
- ✓ Preparation of Zoning Code amendments
- ✓ Updates to the Zoning Code and other land development regulations
- ✓ Preparation of new master plan
- ✓ Preparation of special studies (subarea plans, corridor studies, etc.)

**8. Permit Software and Permitting Portal Services.** Contractor shall provide the City with a mutually agreed upon number of user licenses to access its permitting software for City and Contractor tracking, logging, and review of permits and applications. Contractor will maintain established City accounts and workflows based on the City's input. Contractor will provide technical support for the software, one (1) day of training per year on the software as requested by the City, and will review the process and workflows with the City on an annual basis if requested to implement changes.

In addition, Contractor shall host a public-facing online building permit portal system on the City's official website for use by the public to submit building permit applications and pay associated fees.

**9. Time of Performance.** Contractor will adhere to the following:

- ✓ Contractor will perform Services during normal business hours excluding City holidays
- ✓ Building Official will be on-site at the SAFEbuilt office five (5) days per week, Monday through Friday, between the hours of 8:00 am and 4:30 pm; notwithstanding this provision, Contractor may request reduced on-site hours given the continuing pandemic, which reduced hours shall be effective upon written approval by the City Representative (such reduction in on-site hours shall in no way impact any other provisions of this Scope of Services)
- ✓ Permit Technician will be on-site at the SAFEbuilt office five (5) days per week, Monday through Friday, between the hours of 8:00 am and 4:30 pm; notwithstanding this provision, Contractor may request reduced on-site hours given the continuing pandemic, which reduced hours shall be effective upon written approval by the City Representative (such reduction in on-site hours shall in no way impact any other provisions of this Scope of Services)
- ✓ Inspectors will be dispatched daily
- ✓ Contractor representative(s) will be available by cell phone and email five (5) days per week, Monday through Friday, between the hours of 8:00 am and 4:30 pm

**10. 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.

11. 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.



**EXHIBIT B  
COMPENSATION**

**1. FEE SCHEDULE**

- ✓ Municipality and Consultant will review the Municipal Fee Schedule and valuation tables annually to discuss making adjustments to reflect increases in the costs incurred by Consultant to provide Services.
- ✓ Beginning January 01, 2022 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.
- ✓ Contractor fees for Services provided pursuant to this Agreement will be as follows:

<b>Service Fee Schedule:</b>	
Plan Review Services	80% of Municipal Plan Check Fee as established by ordinance or resolution
Structural Engineering Plan Review	\$150.00 per hour – one (1) hour minimum
Inspection Services • Building, Mechanical, Plumbing, Electrical	80% of Municipal Permit Fee as established by ordinance or resolution
Re-Inspection Fee	80% of Municipal Re-Inspection Fee
After Hours/Emergency Inspection Services	\$100.00 per hour – two (2) hour minimum
Other Miscellaneous Building Department Fees	80% of Municipal Fee
Code Enforcement Services	\$55.00 per hour – one (1) hour minimum
Building Official Services	Included in percentage of fees above
Permit Technician Service	Included in percentage of fees above
Permit Software – CCS	No Charge
Jurisdiction Owned Project Fees	50% of normal Municipal Fee
Testimony / Investigation Fee	\$100.00 per hour – two (2) hour minimum
Contractor Licensing Fee	50% of fees invoiced by the Municipality
<b>Planning Consultation Service Fees</b>	
Planning Manager	\$153.00 per hour
Senior Planner	\$127.00 per hour
Planner	\$72.00 per hour
Planning Technician	\$61.00 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 a 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.

**Waiver of Certain Fees:**

The Parties recognize and understand that the City is or may be required by law to waive building fees on a limited number of public projects during a calendar year or may, at its discretion, waive or reduce building fees for certain projects that provide a substantial and direct public benefit (e.g., governmental buildings or important economic development projects). The City shall notify the Contractor of such circumstance(s) at the earliest opportunity and the City may request that the Contractor perform building and inspection services at no cost or at a reduced cost. Provided that the Contractor and the City can reach a mutually acceptable written agreement as to a waiver or reduced cost services (which agreement may be appended to this Agreement), the Contractor shall perform such services. The Contractor retains the right to reject one, more, or all City requests to perform such free or reduced cost services.