

**TOWN OF MEAD, COLORADO  
RESOLUTION NO. 69-R-2020**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO, APPROVING AN  
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE TOWN OF  
MEAD AND SAFE BUILT COLORADO, LLC, FOR BUILDING OFFICIAL AND  
INSPECTION SERVICES**

**WHEREAS**, the Town of Mead is authorized under C.R.S. § 31-15-101 to enter into contracts for any lawful municipal purpose; and

**WHEREAS**, the Town has need of professional building inspection and building official services (“Services”); and

**WHEREAS**, the Town issued a Request for Proposals for the Services on or about June 12, 2020 (“RFP”) and received seven (7) timely proposals by the deadline set forth in the RFP; and

**WHEREAS**, Town staff has evaluated the proposals pursuant to the evaluation criteria listed in the RFP and recommends selecting SAFEbuilt Colorado, LLC (“Contractor”) to provide the Services to the Town; and

**WHEREAS**, Town staff therefore recommends entering into an agreement for professional services (“Agreement”) with Contractor, a copy of which is attached to this Resolution as **Exhibit 1** and incorporated herein by this reference; and

**WHEREAS**, the Board of Trustees desires to approve the Agreement in substantially the form attached to this Resolution and delegate authority to the Mayor to execute the Agreement on behalf of the Town of Mead once in final form.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

**Section 1.** The Board of Trustees hereby: (a) approves the Agreement in substantially the same form as is attached hereto and incorporated herein; (b) authorizes the Town Attorney, in cooperation with the Town Manager, to make non-material changes to the Agreement as may be necessary that do not increase the Town’s obligations; and (c) authorizes the Mayor to execute the Agreement when in final form.

**Section 2. Effective Date.** This resolution shall become effective immediately upon adoption.

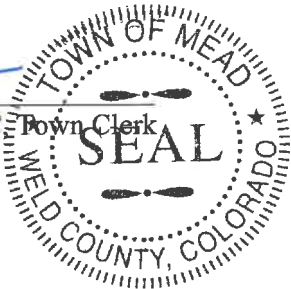
**Section 3. Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND ADOPTED THIS 10TH DAY OF AUGUST, 2020.**

**ATTEST:**

By: 

Mary E. Strutt, MMC Town Clerk



**TOWN OF MEAD:**

By: 

Colleen G. Whitlow, Mayor

**Exhibit 1**  
Agreement for Professional Services

*[see attached agreement]*

**Town of Mead, 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 Town of Mead, a municipal corporation of the State of Colorado, with offices at 441 Third Street, Mead, Colorado 80542 (the "Town"), and SAFEbuilt Colorado, LLC, a Colorado limited liability corporation and wholly owned subsidiary of SAFEbuilt, LLC, with offices at 3755 Precision Drive, Suite 140, Loveland, Colorado 80538 ("Contractor") (each individually a "Party" and collectively the "Parties").

**RECITALS**

WHEREAS, the Town 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 Town 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 Town has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the Town 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 Town, 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 Town, no agent, employee, or representative of the Town 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 Town 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 completed, or 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 Town Board of Trustees, Town 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"). This Agreement shall automatically renew each year on January 1, commencing on January 1, 2021, for 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**, unless and until the Agreement is terminated as provided herein. No increase in compensation or decrease in level of Service shall be authorized unless an amendment to this Agreement is reviewed and approved by the Board of Trustees in writing in accordance with Section IV.C of this Agreement.

B. Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least thirty (30) days prior to termination. In the event of the Town'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 Town and such documents, data, studies, and reports shall become the property of the Town; and

3. The Contractor shall submit to the Town a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses authorized by this Agreement and 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 Town within thirty (30) days of the date of termination; thereafter, the Town shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Contractor Termination. Contractor may terminate this Agreement, or any part of this Agreement upon provision of one hundred eighty (180) days' advance written notice to the

Town, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Contractor shall be entitled to receive payment for work completed up to and including the date of termination. 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 Town within fifteen (15) days of the termination date contained in the written notice. Thereafter, the Town shall not accept, and Contractor shall not submit, any other invoice, bill, or other form of statement of charges owing to the Contractor.

D. 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.D, "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 Town within fifteen (15) days of the termination date contained in the written notice. Thereafter, the Town 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.D, nothing in this Section II.D shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

E. Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town'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. Upon Contractor's receipt of such notice of suspension from the Town, 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 Town.

F. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the Town 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. Town Representative. The Town representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the Town Manager or his or her designee ("Town Representative"). The Town Representative shall act as the Town's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be **Russ Weber** ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the Town. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the Town.

C. Town Supervision. The Contractor shall provide all Services with little or no daily supervision by Town staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the Town'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 Town for work performed based on the rates and/or compensation methodology described in **Exhibit B**.

B. Free or Reduced Cost Services. The Parties recognize and understand that the Town 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. government buildings, or important economic development projects). The Town shall notify Contractor of such circumstance(s) at the earliest opportunity and the Town may request Contractor to perform building and inspection services at no cost or at a reduced cost. Provided that Contractor and the Town can reach a mutually acceptable written agreement as to such free or reduced cost services (which agreement may be appended to this Agreement), Contractor shall perform such services. Contractor retains the right to reject one or more Town requests to perform such free or reduced cost service.

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 Town and shall be made only by written amendment to this Agreement executed by both Parties.

D. Payment Processing. Contractor shall submit invoices and requests for payment in a form acceptable to the Town. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the Town. Unless otherwise directed or accepted by the Town, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) for the Services during the stated period of the invoice. Following receipt of Contractor's invoice, the Town shall promptly review Contractor's invoice.

E. Receipts. The Town, 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 Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

F. 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 Town 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 Town 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 Town and shall not be paid by the Town.

G. No Waiver. The Town'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.

H. Town Dispute of Invoice or Invoiced Item(s). The Town may dispute any compensation requested by Contractor described in any invoice and may request additional information from Contractor substantiating any and all compensation sought by Contractor before accepting the invoice. When additional information is requested by the Town, the Town shall advise Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The Town shall pay Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the Town disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the Town following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the Town shall be deemed made and

completed upon hand delivery to Contractor or designee of Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to Contractor.

## V. PROFESSIONAL RESPONSIBILITY

A. Qualifications and Licenses. 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 Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations, including environmental, health and safety laws and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if included 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. General Contractor Responsibilities.

1. Contractor shall become fully acquainted with the available information related to the Services. Contractor is obligated to affirmatively request from the Town such information that Contractor, based on Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.
2. Contractor shall employ a sufficient number of employees sufficiently experienced and knowledgeable to perform the Services in a timely and prompt manner and such employees shall at all times act in a professional, polite, and courteous manner to all persons regardless of the circumstances. The Town may at its discretion demand the removal of any Contractor employee from the performance of the Services, and Contractor shall promptly remove such employee from performance of the Services, in the event that the Town determines that Contractor employee lacks the necessary experience or knowledge, or unjustifiably acts in an unprofessional, impolite, or discourteous manner to any person.



## 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 Town 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 Town 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.

B. Insurance Coverage and Employment Benefits. The Town will not include the Contractor as an insured under any policy the Town has for itself. The Town 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 TOWN 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.**

C. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town; and the Contractor will reimburse the

Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town's employee, and all attorneys' fees and costs the Town 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. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.
  - 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 Town as Certificate Holder and name the Town, 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 Town as Certificate

Holder and name the Town, 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 Town 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 Town. 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 Town, 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.

C. Insurance Certificates. Contractor shall provide to the Town 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 Town may immediately terminate this Agreement, or, at its discretion, the Town 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 Town, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the Town immediately upon demand by the Town. At the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

## **VIII. INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including 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 to the extent caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence,

or other fault 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. 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 Town 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).

Except only as may be expressly set forth herein, and with respect to the Community Core Systems or similar software utilized by Contractor in the performance of the Services under this Agreement, Contractor expressly disclaims any and all warranties of any kind, whether express or implied, including without limitation any warranties of merchantability, fitness for a particular purpose, error-free operation, performance, accuracy, or infringement. In no event shall Contractor or the Town be liable to one another for indirect, incidental, consequential, reliance, exemplary, or special damages including without limitation, damages for lost profits, lost revenues, lost data or other information, or lost business opportunity, regardless of the form of action, whether in contract, indemnity, negligence, warranty, strict liability, or tort, even if advised of the possibility of such damages and notwithstanding the failure of essential purpose of any remedy other than with respect to payment of obligations for services. Except with respect to payment obligations, in no event shall the liability of the Town or Contractor under this Agreement from any cause of action whatsoever (regardless of the form of action, whether in contract, tort or under any other legal theory, and whether arising by negligence, intended conduct, or otherwise) exceed the available limits of insurance specified under Section VII of this Agreement, calculated on a policy-year basis. Nothing in this section shall apply with respect to any payment obligations of the Town.

## **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 Town 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 Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, 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 Town 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 Town 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 Town; and/or

4. Terminate this Agreement in accordance with this Agreement.

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

## **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 Town's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town 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 Town. For purposes of CORA, the Town 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. Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town 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 Town 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 Town of Mead upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the Town. 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 Town not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the Town and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town 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 Town.

D. Return of Records to Town. At the Town'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 Town in a reasonable format and with an index as determined and requested by the Town.

## **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 Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town 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 Town:**

**If to Contractor:**

Town of Mead Attn: Town Manager 441 Third Street P.O. Box 626 Mead, Colorado 80542	SAFEbuilt Colorado, LLC Attn: Russ Weber 3755 Precision Drive, Suite 140 Loveland, CO 80538 Email: rweber@SAFEbuilt.com
With Copy to: Michow Cox & McAskin LLP Attn: Mead Town Attorney 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 Town, 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 Town 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 Town 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 Town'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 Town not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Town 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 Town, 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 Town'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. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the Termination Date of the Agreement shall survive such Termination Date and shall be enforceable in the event of a failure to perform or comply.

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 Town 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, pandemics, 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. Authority. The individuals executing this Agreement represent that they are



expressly authorized to enter into this Agreement on behalf of the Town of Mead and the Contractor and bind their respective entities.

T. 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.

U. Protection of Personal Identifying Information. In the event the Services include or require the Town 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 service providers.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGES FOLLOW*

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


**TOWN OF MEAD, COLORADO:**

By: Colleen G. Whitlow  
Colleen G. Whitlow, Mayor

Date of execution: 8/16/2020

ATTEST:

Mary Strutt  
Mary Strutt, MMC, Town Clerk

The seal of the Town of Mead, Colorado, is circular with a double-lined border. The outer ring contains the text "TOWN OF MEAD" at the top and "MEAD COUNTY, COLORADO" at the bottom, separated by two stars. The center of the seal features the word "SEAL" in a bold, serif font, with two horizontal lines above and below it.

APPROVED AS TO FORM *(excluding exhibits)*:

Marcus McAskin  
Marcus McAskin, Town Attorney

**CONTRACTOR:**

By: 

Printed Name: Thomas P. Wilkas

Title: Chief Financial Officer

Date of execution: August 10, 2020

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Larimer )

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this 10 day of August, 2020, by Thomas Wilkas as CFO of SAFEbuilt Colorado, LLC, a Colorado limited liability company.

My commission expires: 4.27.23

(S E A L)

  
Notary Public

AMANDA GILLIAM  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20164016466  
MY COMMISSION EXPIRES APRIL 27, 2023

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

1. **LIST OF SERVICES**

**Building Official Services**

- ✓ Manage and help administer the department and report to Town's designated official
- ✓ Be a resource for Contractor team members, Town staff, and applicants
- ✓ Help guide citizens through the complexities of the codes 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 Town staff in revising and updating municipal code to comply with adopted requirements
- ✓ Provide Building Code interpretations for final approval
- ✓ Oversee our quality assurance program and will make sure that we are meeting our agreed upon performance measurements and your expectations
- ✓ Provide training for our inspectors on Town 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 mutually agreed upon
- ✓ Responsible for reporting for Town – all permitting statistics
- ✓ Responsible for client and applicant satisfaction
- ✓ Work with Town staff to establish and/or refine building department processes
- ✓ Issue stop-work notices for non-conforming activities – as needed
- ✓ Provide Business license inspections as needed

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

- ✓ Contractor utilizes an educational, informative approach to improve the customer's 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
- ✓ Maintain ability to provide inspection services remotely as pandemic-related and other circumstances may dictate.

#### Plan Review Services

- ✓ 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 Mountain View Fire, Little Thompson Water and St. Vrain Sanitation, 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

#### Emergency Response Services

In cases of natural disaster, Contractor will provide emergency disaster response including:

- ✓ Rapid assessment of the structural integrity of damaged buildings using appropriate forms
- ✓ Determine whether structures are safe for use or if entry should be restricted or prohibited
- ✓ Post the structure with the appropriate placard

- ✓ Coordinate any disaster or emergency response with the appropriate local, state or federal agency(s)
- ✓ Track all hours and expenses for reimbursement from federal agencies when appropriate
- ✓ Survey construction sites for control of debris hazards
- ✓ Coordinate emergency permitting procedures

#### Reporting Services

- ✓ Contractor will work with Town to develop a mutually agreeable reporting schedule and format

### 2. COMMUNITY CORE SYSTEMS

- ✓ Contractor shall provide Services using Community Core Systems, formerly known as Meritage, hardware and software package including the Community Connect, Business license and Contractor licensing modules, and other modules that may become available and desirable for use by the Town and/or SAFEbuilt.
- ✓ Contractor will provide software at no cost to the Town

### 3. TOWN OBLIGATIONS

- ✓ Town will issue permits and collect all fees; Contractor will not issue permits or collect fees unless otherwise authorized by the Town.
- ✓ Town will intake plans and related documents for pick up by Contractor or submit electronically

### 4. TIME OF PERFORMANCE

- ✓ Perform Services during normal business hours excluding Town holidays
- ✓ Inspectors will be dispatched on a daily basis
- ✓ Inspectors will pick-up and drop-off plans and permits
- ✓ Contractor's representative(s) will be available by cell phone and email

Deliverables			
<b>INSPECTION SERVICES</b>	Inspections requested before 4:00 p.m. completed the following business day. This includes any virtual inspection requests.		
<b>TWO HOUR INSPECTION WINDOW</b>	Permit holder may request a phone call the morning of the inspection with a two (2) hour ETA inspection time		
<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 within	5 business days	5 business days or less
	✓ Multi-family within	10 business days	5 business days or less
	✓ Small commercial within (under \$2M in valuation)	10 business days	5 business days or less
	✓ Large commercial within	20 business days	5 business days or less
			10 business days or less

**EXHIBIT B**  
**COMPENSATION**

**1. FEE SCHEDULE**

- ✓ Town will promptly notify Contractor of any revisions or amendments to Town Fee Schedule
- ✓ Town will periodically review its Town Fee Schedule and International Code Council valuation tables and make adjustment to reflect increases in the cost incurred by Contractor in providing Services
- ✓ Building permit fees are based on project valuation as determined by Contractor. Valuation is defined as the total value of all construction work for which the permit is issued, including but not limited to: all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, permanent equipment, architectural/engineering services and contractor's profit. Valuations are calculated using the most current International Code Council valuation data.
- ✓ Contractor fees for Services provided pursuant to this Agreement will be as follows (see table on next page):



<b>Service Fee Schedule:</b>	
Inspection Services	55% of Town Building Permit Fee
Plan Review Services	55% of Town Plan Review Fee Excluding engineer review
Building Official Services	Included in percentage of fees above
Structural Engineering Plan Review	100% of Town Fees
Re-Inspection and cancellation	
Inspections Outside of Normal Business Hours	
Additional plan review required by changes, conditions or revisions to plans	
Temporary Certificate of Occupancy (TCO)	55% of Town Fees
Re-Activation of Expired Permits	
Investigation	
Contractor licensing	
Fence permit (over 6 feet tall)	
Business License Inspection	
Stock Model / "Same As" Plan Review (no changes or minor changes to master)	
Electrical (based on state fee schedule)	
Water/Sewer Service	
Pre-Move Inspection of Dwellings	
Mobile / Manufactured / Factory Built home review/inspection (including sales trailers)	
Single-Stop Permits: <ul style="list-style-type: none"> <li>• Furnace or A/C Replacement</li> <li>• Water Heater Replacement</li> <li>• Lawn Sprinkler</li> <li>• Roof / Reroof</li> <li>• Siding Replacement</li> <li>• Window Replacement</li> <li>• Demolition</li> </ul>	55% of Town Single-Stop Fees