

Typos fixed

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF YANKEETOWN, FLORIDA
AND SAFEbuilt FLORIDA, LLC**

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

RECITALS

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

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

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

1. SCOPE OF SERVICES

Consultant will provide the Services to the Municipality using qualified professionals. Consultant will perform Services in accordance with the Municipality's adopted codes and all applicable amendments and ordinances adopted by the Municipality. The professionals employed by the Consultant will maintain current certifications, certificates, licenses as required by State of Florida Statute 468 for the services that they provide to the Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement. Consultant will perform work at a level of competency in accordance with industry standards.

2. CHANGES TO SCOPE OF SERVICES

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

3. FEE STRUCTURE

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

4. INVOICE & PAYMENT STRUCTURE

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

5. TERM

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

6. TERMINATION

Either party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

All structures that have been permitted, a fee collected, and not yet expired at the time of termination may be completed through final inspection by the Consultant if approved by the Municipality. Consultant's obligation is met upon completion of final inspection or permit expiration, provided that the work to reach such completion and finalization does not exceed ninety (90) days.

Alternately, the Municipality may exercise the option to negotiate a refund for permits where a fee has been collected but inspections have not been completed. The refund will be prorated according to percent of completed construction as determined by Consultant and mutually agreed upon by all Parties. No refund will be given for completed work.

7. FISCAL NON-APPROPRIATION CLAUSE

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

8. MUNICIPALITY OBLIGATIONS

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

9. PERFORMANCE STANDARDS

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

10. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall be liable for and shall defend, save, indemnify, and hold harmless the Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of the Municipality, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities, by reason of personal injury, including bodily injury or death and/or property damage with respect to any third party claim ("Claim(s)") to the extent that any such injury, loss or damage is caused by the negligence of or material breach of any obligation under this Agreement by Consultant or any officer, employee, representative, or agent of Consultant. To the extent allowable by Florida law and without waiver of sovereign immunity, the Municipality shall be responsible for and shall defend, save, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities by reason of personal injury, including bodily injury or death and/or property damage with respect to Claims to the extent that any such injury, loss or damage is caused by the negligence or material breach of duty obligation under this Agreement by the Municipality or any officer, employee, representative, or agent of the Municipality. If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

11. ASSIGNMENT

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

12. INSURANCE

- A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Consultant pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.
- B. At a minimum, the Consultant shall procure and maintain, and shall cause any subcontractor of the Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee.
- D. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, and products. The policy shall contain a severability of interest provision, and shall be endorsed to include the Municipality and the Municipality's officers, employees, and consultants as additional insureds.
- E. Professional liability insurance with minimum limits of five million dollars (\$5,000,000) each claim and five million dollars (\$5,000,000) general aggregate.
- F. Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- G. The Municipality shall be named as an additional insured on Consultant's insurance coverage
- H. Prior to commencement of the Services, Consultant shall submit certificates of insurance acceptable to the Municipality.

13. INDEPENDENT CONTRACTOR

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

14. THIRD PARTY RELIANCE

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

15. OWNERSHIP OF DOCUMENTS

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

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

16. CONFIDENTIALITY

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

17. CONSULTANT PERSONNEL

Consultant shall employ a sufficient number of experienced and knowledgeable employees to perform the Services in a timely, polite, courteous and prompt manner. Additional staffing resources shall be made available to the Municipality when assigned employee(s) is unavailable. Consultant shall promptly inform the Municipality of any reasonably anticipated or known employment-related actions which may affect the performance of Services.

18. DISCRIMINATION & ADA COMPLIANCE

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

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

19. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS:

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. Consultant's federal work authorization user identification number is 254821; authorization date of September 23, 2009. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment

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

20. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES

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

21. NOTICES

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

If to the Municipality:	If to the Consultant:
Eric Kuykendal, Town Administrator Town of Yankeetown 6241 Harmony Lane Yankeetown, FL 34498	Gregory Toth, CRO SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538

22. FORCE MAJEURE

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

23. DISPUTE RESOLUTION

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

24. ATTORNEY'S FEES

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

25. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Consultant represents and warrants that he/she/they has/have the authority to so executed this Agreement and to bind the Consultant to the performance of its obligations hereunder.

26. CONFLICT OF INTEREST AND ETHICS REQUIREMENTS

This Agreement is subject to the State of Florida Code of Ethics. Consultant affirms that it is in compliance with the State of Florida Code of Ethics.

27. PUBLIC RECORDS

Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and agrees to:

- A. Keep and maintain all public records that ordinarily and necessarily would be required by the Municipality to keep and maintain in order to perform the services under this Contract.
- B. Provide the public with access to said public records on the same terms and conditions that the Municipality would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining said public records and transfer, at no cost, to the Municipality all said public records in possession of the Consultant upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure requirements. All records stored electronically must be provided to the Municipality in a format that is compatible with the information technology systems of the Municipality.

28. GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by the laws of the State of Florida and all services to be provided will be provided in accordance with applicable federal, state and local law, without regard to its conflict of laws provisions.

29. COUNTERPARTS

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

30. WAIVER

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

31. ENTIRE AGREEMENT

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

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

Town of Yankeetown, Florida


Signature

Name: Eric Kuykendall

Title: Town Administrator

Date: 09 / 20 / 2017

SAFEbuilt Florida, LLC


Signature

Name: Thomas P. Wilkas

Title: CFO

Date: 09 / 25 / 17

EXHIBIT A – LIST OF SERVICES

1. LIST OF SERVICES

As-Requested Inspection Services

- ✓ Consultant utilizes an educational, informative approach to improve the customer's experience.
- ✓ Perform consistent code compliant inspections to determine that construction complies with approved plans and/or applicable codes and ordinances
- ✓ Meet or exceed agreed upon performance metrics regarding inspections
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Leave a copy of the inspection ticket and discuss inspection results with site personnel

As-Requested Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review all plans, ensuring they meet adopted building codes and local amendments and/or ordinances
- ✓ Determine type of construction, use and occupancy classification using certified plans examiner
- ✓ Be a resource to applicants on submittal requirements and be available throughout the process
- ✓ Be available for pre-submittal meetings as warranted
- ✓ Be a resource for team members and provide support to field inspectors as questions arise in the field
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Interpret legal requirements and recommend compliance procedures as well as address any issues by documented comment and correction notices
- ✓ 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

As-Requested Code Enforcement Services

- ✓ Customize our approach at the direction of Municipal Council/Board and staff
- ✓ Customize services in compliance with Municipal ordinance requirements
- ✓ Proactively work with the Municipality and its citizens to maintain a safe and desirable community
- ✓ Respond to and investigate code violations
- ✓ Post violation notices and provide initial citizen notifications and follow-up inspections
- ✓ Provide monthly written reports that include digital photos of violations and action taken
- ✓ 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 statistical, narrative and detailed recap reports within agreed upon frequencies

As-Requested Floodplain Management Services

- ✓ Facilitate the flood oversight program as established by the Municipality
- ✓ Review elevation certificates for new construction projects
- ✓ Ensure all required flood plain documentation and elevation certificate are in order before issuance of certificate of occupancy
- ✓ Assess current practices to help ensure Municipality is credited with eligible CRS program elements and maintain or improve current classification rating
- ✓ Provide assistance with the establishment of a Program for Public Information (PPI) to increase public awareness and earn higher CRS program ratings to reduce flood insurance premiums
- ✓ Prepare annual re-certification statements and verify continuing program compliance

As-Requested Permit Technician / Administrative Services

- ✓ 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
- ✓ Form and maintain positive relationships with Municipal staff and maintain a professional image
- ✓ Determine and collect fees, if so desired
- ✓ Help Ensure that submittal documents are complete
- ✓ Provide inspection scheduling and tracking to ensure code compliance
- ✓ Provide input, tracking and reporting
- ✓ Assist the Municipality with ISO and CRS program requirements

Emergency Response Services

In cases of natural disaster, Consultant 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

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

2. MUNICIPAL OBLIGATIONS

- ✓ All fees will be collected by the Municipality
- ✓ Municipality shall provide Consultant with a list of requested inspections and supporting documents
- ✓ Municipality will intake permits, plans and related documents for pick up by Consultant and/or submit to Consultant electronically
- ✓ Municipality will provide zoning administration for projects assigned to Consultant

3. TIME OF PERFORMANCE

Services will be performed during normal business hours excluding Municipal holidays.

- ✓ Consultants representative(s) will be on-site weekly based on activity levels
- ✓ Consultants representative(s) will be available by cell phone and email
- ✓ Consultants representative(s) will meet with the public by appointment

Deliverables			
INSPECTION SERVICES	Provide inspection services one (1) day per week		
PLAN REVIEW	Provide comments within the following timeframes:		
TURNAROUND TIMES	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	15 business days	10 business days or less

EXHIBIT B – FEE SCHEDULE FOR SERVICES

1. FEE SCHEDULE

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

As-Requested Service Fee Schedule:		
Inspection Services	90% of adopted Levy County, FL Fee Schedule as modified	
Plan Review Services - excludes engineer review fees	90% of adopted Levy County, FL Fee Schedule as modified	
Structural Engineering Plan Review	\$150.00 per hour – one (1) hour minimum – requires prior approval from both Parties	
Code Enforcement Services	\$65.00 per hour – two (2) hour minimum	
Permit Tech/Administrative Services	\$45.00 per hour – two (2) hour minimum	
Floodplain Management Services (as listed above)	Minimum Floodplain Review	\$85.00
	New Residential & Commercial Project Review	\$300.00
	Substantial Improvements Review	\$200.00
ISO & CRS Program Assistance	Building Official	\$85.00 per hour – two (2) hour minimum
	Administrative	\$45.00 per hour – two (2) hour minimum
Municipal Owned/Occupied Properties	75% of total permit fees	
Emergency/After Hours Services	Building Official	\$125.00 per hour – two (2) hour minimum
	Inspector	\$112.00 per hour – two (2) hour minimum
	Code Enforcement	\$95.00 per hour – two (2) hour minimum
	Administrative	\$65.00 per hour – two (2) hour minimum
Natural Disaster Inspection/Plan Review	Up to and including forty (40) hours per week	\$85.00 per hour
	In excess of forty (40) hours per week	\$112.00 per hour