

**PROFESSIONAL SERVICES AGREEMENT BY AND  
BETWEEN THE CITY OF JOHNS CREEK, GEORGIA  
AND SAFEbuilt GEORGIA, LLC**

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This Professional Services Agreement (“Agreement”) is entered into by and between the City of Johns Creek, Georgia, a Georgia municipal corporation, (“Municipality”) and SAFEbuilt Georgia, LLC, a Georgia limited liability company, (“Consultant”). The Municipality and the Consultant shall be jointly referred to as the “Parties”.

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2. RECITALS

WHEREAS, the Municipality is seeking a consultant to perform the services listed in Exhibit A – Scope 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 the Consultant agree as follows:

3. PERFORMANCE

3.1. Professionalism. The 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 and in accordance with the State of Georgia’s adopted codes, the Municipality’s adopted Code of Ordinances, and industry standards.

3.2. Key Performance Indicators. As provided in Exhibit B – Key Performance Indicators, the Parties have agreed to measure performance utilizing Key Performance Indicators which are designed to provide a high-level executive perspective on the Consultant’s overall performance. The Consultant has direct influence over its performance on the Key Performance Indicators, each indicator is tied to a core competency of the Services, and each indicator is correlated with a specific performance target.

3.2.1. Changing Key Performance Indicators. Key Performance Indicators and the specific performance targets may be changed, by mutual consent of the Parties, through a written amendment to the Agreement.

3.3. Performance Measures and Workload Measures. To supplement the Key Performance Indicators, as provided in Exhibit C – Performance Measures and Workload Measures, the Parties have identified Performance Measures and Workload Measures for Services.

3.3.1. Performance Measures are performance-based measures that are designed to provide management an in-depth perspective on the Consultant’s efficiency, effectiveness, and performance of the Services. The Consultant has direct influence over its performance on Performance Measures, each measure is tied to a component of the Services, and each measure is correlated with a specific performance target.

3.3.2. Workload Measures track and monitor the workload of the Consultant. The Consultant has little influence over the workload, so no specific targets are assigned to workload, but the Parties see benefit in tracking Workload Measures as important in identifying community trends and resource allocation.

3.3.3. Changing Performance and Workload Measures. The Parties recognize that over the Term of the Agreement, flexibility will be necessary in order to meet the Municipality’s evolving needs and priorities. The Performance and Workload Measures may be adjusted by mutual consent of the City Manager and the Consultant.

3.3.4. Relief to Performance Targets. The City Manager, in his or her sole discretion, may grant relief from the performance targets associated with Performance Measures due to changes in the Municipality’s needs, priorities, or reallocations as deemed merited in the City Manager’s sole discretion.

3.4. Reporting. Consultant will record and report Key Performance Indicators, Performance Measures, and Workload Measures in a timely and professional manner

3.4.1. Beginning on October 1, 2017, the Consultant shall track Key Performance Indicators, Performance Measures, and Workload Measures.

- 3.4.2. Beginning in November 2017, the Consultant shall submit monthly reports of Key Performance Indicators, Performance Measures, and Workload Measures by the fifth of every month detailing data from the month prior.
  - 3.4.3. Annual reports to the Municipality detailing, at a minimum, the Consultant's performance for the previous fiscal year, including Key Performance Indicators, Performance Measures, and Workload Measures shall be provided to the Municipality no later than October 31 of each year.
  - 3.5. Customer Service. Both Parties have an interest in ensuring a high level of customer service and developing ways to evaluate the effectiveness of the Consultant's interactions with the public. The Consultant will work with the Municipality during the Term of the Agreement to identify both hard and soft metrics and methods to gauge customer service such as surveys, secret shoppers, and other more innovative efforts. The Municipality will be responsible for costs associated with additional efforts to gauge customer service not included in the Key Performance Indicators and Performance Measures.
  - 3.6. Continuous Improvement. Both Parties have an interest in ensuring the Services are provided in a manner that is highly efficient, effective, and utilizes innovation and continuous improvement. To that end, the Consultant in its normal course of delivery of the Services, during the Term of the Agreement will review operations in key areas and identify processes and procedures that can be improved. On an annual basis, the Consultant will report its finding to the City Manager for further review and consideration of implementation of new technologies or processes for the improved performance of the Services. If the implementation of new technologies or processes result in a change in the cost of providing the Services, the Parties shall mutually agree, through good faith negotiations, to an equitable adjustment to the Fees for the Services.
  - 3.7. Third Party Failures. To the extent that the Consultant must cooperate and/or perform services in conjunction with third parties, the Consultant is not responsible for failures of third parties to fulfill their obligations or duties so long as the Consultant made best efforts to complete the Consultant's obligations and duties. If the City requests the Consultant take over obligations or duties of a third party the process outlined in the following Changes to Scope of Services section should be followed.
4. CHANGES TO SCOPE OF SERVICES
- 4.1. Adjustments. The Parties recognize that over the Term of the Agreement, flexibility will be necessary in order to meet the Municipality's evolving needs and priorities. With concurrence from the City Manager, the Consultant may temporarily (defined as a period not to exceed ninety (90) days) reallocate resources to meet shifts in the Municipality's needs and priorities so long as the reallocations do not adversely affect the cost of services (as measured in the fee for Services) or the quality of Services (as measured by the Key Performance Indicators and Performance Measures).
  - 4.2. Amendments. Permanent (defined as a period exceeding ninety (90) days) reallocations or changes to Services must be mutually agreed upon between the Parties and shall be made in writing as an amendment to this Agreement. If the permanent change impacts the fee for the Services, an amendment to this Agreement shall specifically designate the change to fees for the Services.
5. TERM
- 5.1. Term. Notwithstanding fiscal non-appropriation as defined under O.C.G.A. § 36-60-13, the effective date ("Effective Date") of this Agreement shall be October 1, 2017, with a term of sixty (60) months, and the expiration date ("Expiration Date") shall be September 30, 2022.

- 5.2. Renewal. This Agreement shall renew for up to five, one-year options at the sole option of the Municipality upon written notice to the Consultant by July 1 of each year following the Term.

## 6. FEES & FINANCIAL PENALTY PROVISIONS

- 6.1. Fee. In consideration of the Consultant providing the Services, the Municipality shall pay the Consultant for the Services performed in accordance with Exhibit D – Fee for Services.
- 6.2. Increases. All inflationary costs and merit increases for Consultant Personnel are included within the cost listed within Exhibit D – Fee for Services. The Municipality shall not be obligated to renegotiate or increase any fee for the Services during the Term of the Agreement or renewal options to further address inflationary or merit increases for Consultant Personnel.
- 6.3. Fringe. All of the Consultant's overhead costs, including, but not limited to, costs of travel, training, and insurance coverage, are included within the costs listed within Exhibit D – Fee for Services.
- 6.4. Miscalculations. The Municipality shall not be obligated to renegotiate or increase any fee for the Services during the term of the Agreement based on a Consultant's mistake or miscalculation of prices, underestimation of costs, or for any other reason.
- 6.5. Municipality Permit Structure. Agreement is based on Municipalities permit requirements as of the Effective Date of this Agreement. Any future changes to Municipality's permit requirements affecting permit volume and/or fees allows the Consultant the opportunity to renegotiate Exhibit D – Fee for Services.
- 6.6. Financial Incentives. Exceeding the Exhibit B – Key Performance Indicators shall, notwithstanding fiscal non-appropriation as defined under O.C.G.A. § 36-60-13, result in financial incentives for the Consultant to a maximum aggregate of Twenty Thousand Dollars (\$20,000) per year. The intent of the financial incentives mechanism is to directly connect surpassing Key Performance Indicators to an increase in the Consultant's compensation.
- 6.7. Financial Penalties. Failure to meet the Exhibit B – Key Performance Indicators shall result in financial penalties levied against the Consultant to a maximum aggregate of Twenty Thousand Dollars (\$20,000) per year. The intent of the financial penalty calculation mechanism is to directly connect failure to meet a Key Performance Indicator to an erosion of the Consultant's compensation.

## 7. INVOICE & PAYMENT STRUCTURE

- 7.1. Invoicing. Consultant will invoice the Municipality on a monthly basis the fees as set forth in Exhibit D – Fee for Services.
  - 7.1.1. With services commencing on October 1, 2017, the first invoice is anticipated between November 1, 2017 and November 5, 2017.
- 7.2. Payments Due. Municipality shall compensate the Consultant within thirty (30) days of the Municipality's receipt of an invoice ("Due Date").
- 7.3. Additional Information. The Municipality may request, and the Consultant shall provide, additional information from the Consultant that is reasonable related and relevant in justifying or substantiating the performance of the Services for which the Consultant is requesting compensation. The Consultant shall provide such requested additional information promptly and in no case more than fifteen (15) days following receipt of the Municipality's request. The Due Date will be stayed during the period of time from when the Municipality requests such additional information and the additional information is received by the Municipality from the Consultant.
- 7.4. Penalty for Delayed Payments. Payments owed to the Consultant but not made within sixty (60) days of the receipt of an invoice shall bear simple interest at the rate of one percent (1%) per month commencing upon

the 61<sup>st</sup> day following such invoice receipt where the Consultant affirmatively advises the Municipality in writing following the Due Date but prior to the 61<sup>st</sup> day following the receipt of an invoice that it will seek interest on an unpaid invoice.

## 8. EQUIPMENT

- 8.1. Data. The Municipality shall provide all data, information, plans, specifications and other documentation within its possession reasonably requested by Consultant to perform Services.
- 8.2. Office Space. The Municipality shall provide office space within the City Hall, or such other location as agreed upon by the Parties, for all full-time office-based Consultant Personnel providing Services under this Agreement. The Consultant shall be solely responsible to provide for office space for other Consultant Personnel.
  - 8.2.1. The Consultant shall keep the provided office space free from accumulation of waste materials and other debris resulting from provision of the Services. At the completion of each work day, the Consultant shall place all waste materials and debris in waste bins.
  - 8.2.2. Should the Municipality decide to move the office space to a different location, the Municipality shall be responsible for its associated relocation expenses, including but not limited to transport, re-assembly of Municipality's furnishings and equipment, associated infrastructure, network cabling, internet, telephones, and computer equipment supplied by the Municipality.
- 8.3. Utilities. The Municipality shall provide a power supply, utility services, and a common-use (shared) printer for all full-time office-based Consultant Personnel providing Services under this Agreement. The Consultant shall be solely responsible to provide for a power supply, utilities, and printers for other Consultant Personnel.
- 8.4. City Equipment. The Municipality shall supply furniture, fixtures, and equipment for all City Hall offices and full-time office-based Consultant personnel. Equipment includes those items customarily supplied to office staff such as chairs, computers, phones and office supplies ("City Equipment").
  - 8.4.1. All City Equipment shall be used only for Municipality purposes in performance of this Agreement and pursuant to City policies, and shall not be used for any purely corporate, other municipality Consultant business, non-governmental Consultant business, or personal purpose. All City Equipment utilized by Consultant Personnel shall be kept clean, free of damages, and in safe operating condition.
  - 8.4.2. Cellular phones are issued to Municipality employees only. If Consultant Personnel requires a phone, smart device, tablet, etc. in order to accomplish the Services of this Agreement, the Consultant is expected to provide such equipment to the Consultant Personnel directly. The Consultant is required to comply with all open records and Information Technology Department security requirements associated with data and usage of such equipment.
- 8.5. Safety Equipment. The Consultant shall provide all safety equipment necessary for Consultant Personnel operating in the field or other situations necessitating safety equipment.
- 8.6. Vehicles. The Consultant shall supply vehicles necessary to perform the Services of the Agreement. The quantity of the vehicles shall be sufficient to provide each person who routinely performs field work (e.g. Inspectors) have access to a vehicle when needed. Pooled vehicles are acceptable as long as the quantity in the pool is sufficient to meet this requirement. As a minimum standard, Consultant shall maintain vehicles in a manner acceptable to the Municipality. Vehicles shall be free of any major defects. Paints, body, and interior shall have only minor (if any) blemishes, and there shall be no major mechanical problems. There shall be little or no rust on the vehicles. Engine compartment shall remain clean, with no fluid leaks. Tires shall match and maintain substantial available tread wear. Vehicles must have a clean title history. Vehicles must pass all required emissions tests. Vehicles shall be replaced at the Consultants expense at any time

the vehicle does not meet the Municipality's standard, no less often than when the age of the vehicle reaches ten (10) years or 150,000 miles.

8.6.1. Vehicles utilized in providing Services shall display only the Municipality logo.

## 9. INDEPENDENT CONTRACTOR

- 9.1. Independence. The Consultant is an independent contractor, and neither the Consultant, nor any employee or agent thereof ("Consultant Personnel"), 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. Accordingly, 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 under O.C.G.A. § 34-9-1 *et seq.* or any other amenities of employment to any of the Consultant Personnel or any other liabilities whatsoever unless otherwise specifically provided herein.
- 9.2. Not Joint Employers. Nothing contained in this Agreement shall be construed to create a joint employer relationship between the Municipality and the Consultant with respect to any Consultant Personnel.

## 10. CONSULTANT PERSONNEL

- 10.1. Qualified Personnel. The Consultant represents and warrants to the Municipality that it will retain qualified professionals that possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.
- 10.2. Certifications. The professionals employed by the Consultant will maintain certifications, certificates, and licenses as required for the services that they individually and collectively provide to the Municipality.
- 10.3. Background Checks. Prior to assigning any individual to the Municipality, the Consultant shall subject said individual to a full background check which shall include, at a minimum: motor vehicle records, criminal records, credit records (when appropriate due to position), educational records, past and current employers, references, military records, and state licensing records (when applicable).
- 10.3.1. The Consultant shall exclude any person from the performance of Services for the Municipality if that person's background check reveals behavior that demonstrates the person is not fit or would not meet industry standards in performing duties assigned under this Agreement.
- 10.3.2. The Consultant shall subject current Consultant Personnel to a full background check every two (2) years unless relief from this requirement is waived by the City Manager.
- 10.3.3. The City Manager shall have the right, with respect to any Consultant Personnel, to approve, deny, restrict, or remove access to a Municipality vehicle, City Equipment, or Municipality property.
- 10.4. Non-discrimination. The 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.

- 10.5. ADA. The 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.
- 10.6. Drug Free Workplace. The Consultant shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Consultant certifies that a drug-free workplace will be provided for the Consultant's employees during the performance of this Agreement.
- 10.7. E-Verify. The Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. The Consultant's federal work authorization user identification number is 254821; authorization date of September 23, 2009.
- 10.8. Authorized Workers. Pursuant to O.C.G.A. § 13-10-91 and Rule 300-10-1-.02, Consultant warrants, represents, acknowledges, and agrees that:
  - 10.8.1. The Consultant does not knowingly employ or contract with an illegal alien;
  - 10.8.2. The Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien;
  - 10.8.3. The Consultant shall execute an affidavit verifying that the Consultant has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. § 13-10-90, et.seq., and Georgia Department of Labor Regulations Rule 300-10-1-.02. The appropriate affidavit is attached hereto as "Exhibit E – Immigration & Security Form" and incorporated herein by reference and made a part of this Agreement.
- 10.9. Federal Immigration and Nationality Act. The Consultant shall execute an affidavit verifying status for city public benefit required pursuant to O.C.G.A. § 50-36-1, verifying United States citizenship or status as a permanent resident or qualified alien or non-immigrant under the Federal Immigration and Nationality Act. The appropriate affidavit is attached hereto as "Exhibit F – O.C.G.A § 50-36-1(e)(2) Affidavit" and incorporated herein by reference and made a part of this Agreement.
- 10.10. Unsatisfactory Personnel. In no event shall the Municipality be responsible for monitoring or assessing the suitability of any Consultant Personnel. However, the Consultant shall transfer promptly from the Municipality any employee or employees that the City Manager advises are not satisfactory and replace such personnel with employees satisfactory to the Municipality.
- 10.11. Changes in Personnel. The Consultant shall promptly notify the Municipality prior to changes in Consultant Personnel. When practicable, the Consultant will provide the Municipality with at least a two week notice period prior to changes in Consultant Personnel.
  - 10.11.1. The Consultant will encourage Consultant Personnel choosing to voluntarily leave employment with the Consultant to provide a two week notice period prior to their departure.
  - 10.11.2. Consultant shall have the right to reassign Consultant Personnel from the Agreement provided that prior to approaching Consultant Personnel regarding potential reassignments (internal or external), the Consultant has discussed with the City Manager.
    - 10.11.2.1. Not including any transfers of unsatisfactory Consultant Personnel, the Consultant shall take reasonable actions, and collaborate with Municipality as needed, to encourage Consultant

Personnel retention during the Term and utilize best efforts to limit reassignment of Consultant Personnel for reasons other than promotion, career advancement, or personal reasons.

- 10.11.3. For the purpose of this Agreement, the Chief Building Official position is considered a Key Personnel position ("Key Personnel").
- 10.11.3.1. In the event of a vacancy of a Key Personnel position, the Consultant shall fill such position within sixty (60) days from the date such position is vacated with a permanent replacement. If the position is not permanently filled within the required sixty (60) days, the Municipality shall be refunded an amount prorated according to the percent of services normally provided by Key Personnel position based on Exhibit D – Fee for Services.
- 10.11.3.2. In the event of a vacancy for a Key Personnel position, the City Manager shall be provided an opportunity to an opportunity to review and interview Consultant's proposed candidates. No person shall be appointed to a Key Personnel position without the concurrence of both Parties.
- 10.11.4. In all Consultant Personnel replacements, the Consultant shall ensure the replacement Consultant Personnel has the education, qualifications, or experiences to reasonably ensure continuity or improvement to the degree of care, skill, and professionalism in performing the Services.
- 10.11.5. If removing personnel without intent to replace, the Consultant shall take necessary steps to ensure all Services, Key Performance Indicators, and Performance Measures are met.
- 10.12. Attire. Consultant Personnel shall wear neat-appearing appropriate attire for the Services rendered in applicable setting (either office, field, or some combination) including footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- 10.12.1. Consultant Personnel are not required to wear attire with the Municipality's logo. However, if Consultant Personnel chooses to wear Municipality-approved attire with the logo of the Municipality when, and only when, they are performing Services for the Municipality.
- 10.12.2. Consultant Personnel shall not wear attire with the logo of the Consultant when performing Services for the Municipality.
- 10.12.3. Consultant Personnel shall wear or carry an identification card and access badge which will be issued by the Municipality. Each individual who is issued an identification card and access badge shall be required to sign personally for the card and badge. The Consultant shall be held accountable for the card and badge and must assure that they are returned to the Municipality upon termination of an individual's employment with the Consultant or termination of the Agreement.
- 10.13. Subsequent Employment. In the event of partial termination, full termination, or expiration of this Agreement the Parties agree to meet and discuss to provide for an orderly transition. The Municipality or a third party performing similar services under a subsequent agreement with the Municipality shall have the right to offer employment to any Consultant Personnel performing Services under this Agreement.
- 10.13.1. The Consultant shall not enter into an arrangement, contractual or otherwise, with Consultant Personnel which would prohibit an individual's ability to accept an employment offer from the Municipality or a third party.
- 10.13.2. For the avoidance of doubt, in the event of a partial termination, Municipality shall have the right to offer employment only to those Consultant Personnel performing Services effected by partial termination. Unless mutually agreed between the Parties, the Municipality shall not either directly or indirectly solicit, induce, recruit or encourage any of the Consultant Personnel to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or hire Consultant Personnel. Nothing contained in this provision shall prohibit the hiring of such Consultant Personnel if such hire was not induced and the employee independently and without notice of



opportunity by the Municipality applied for the position and the position was both open to the public for application and the employee was subject to a competitive process.

## 11. INDEMNIFICATION

- 11.1. Consultant 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 to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of Consultant or any officer, employee, representative, or agent of Consultant.
- 11.2. Municipality Indemnification. To the extent allowable by Georgia law, 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 to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of the Municipality or any officer, employee, representative, or agent of the Municipality.
- 11.3. Incidents. If either of the Parties becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other in writing within twenty-four (24) hours of the incident and both Parties shall cooperate fully in investigating the incident.
- 11.4. Consequential Damages. In disputes between Municipality and Consultant, in no event shall either party, its subcontractors or their officers or employees be liable to the other party for any special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, provided, however, such limitation does not include any liability for which Consultant is obligated to indemnify Municipality based upon special, indirect or consequential damages suffered by any third parties.
- 11.5. Civil Penalties. The Parties agrees that Consultant shall be liable for fines or civil penalties to a maximum aggregate of One Hundred Fifty Thousand Dollars (\$150,000) per year, which may be imposed by any federal or state department or regulatory agency that are a result of Consultant's negligent operation. The Municipality will assist the Consultant to contest any such fines in administrative proceedings and/or in court prior to any payment by the Consultant. The Consultant shall pay the costs of contesting any such fines. The Consultant shall not be liable for such fines or civil penalties that result from violations that occurred prior to the effective date of this Agreement or for the effects of prior violations by the Municipality that have contributed to the assessment of any such fine or civil penalty caused by the Consultant's negligent operations.

## 12. INSURANCE

- 12.1. Insurance. 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. 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.

- 12.1.1. 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.
- 12.1.2. 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.
- 12.1.3. Professional liability insurance with minimum limits of five million dollars (\$5,000,000) each claim and five million dollars (\$5,000,000) general aggregate. Consultant shall be responsible for maintaining professional liability insurance for a minimum of two (2) years from the date of expiration of this Agreement.
- 12.1.4. Cyber Liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and one million dollars (\$1,000,000) general aggregate.
- 12.1.5. Excess liability insurance with minimum limits of ten million dollars (\$10,000,000) each occurrence and ten million dollars (\$10,000,000) in general aggregate.
- 12.1.6. Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than one million dollars (\$1,000,000) combined single limit each accident.
- 12.2. Additional Insured. The Municipality shall be named as an additional insured on Consultant's insurance coverage.
- 12.3. Certificates of Insurance. Prior to commencement of the Services, Consultant shall submit certificates of insurance acceptable to the Municipality.
- 12.4. Notice. Every policy of insurance shall provide that the Municipality will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.
- 12.5. Failure to Maintain. The Consultant's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Consultant arising from performance or non-performance of this Agreement. Failure on the part of the Consultant 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 Municipality may immediately terminate this Agreement.

### 13. ASSIGNMENT

- 13.1. 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 prior written approval of both Parties; consent shall not be unreasonably withheld.
- 13.2. Subcontracting. The Consultant shall not subcontract portions of the Services without written approval of the Municipality. If the Consultant intends to subcontract portions of the Services, the Municipality must be provided with information detailing the skills, qualifications, and professionalism of the persons or entities

with which Consultant intends to subcontract and the portion of the Services the subcontractor is proposed to perform.

13.2.1. If the Parties agree to the use of subcontractors, the Consultant remains responsible for the subcontractor's performance or failure to perform. Subcontractors will be subject to the same performance criteria expected of the Consultant. Performance clauses shall be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

#### 14. CONFLICTS OF INTEREST

14.1. Ineligible for Other Contracts. In the performance of this Agreement, the Consultant may have access to and use of the Municipality's sensitive financial and management data as well as to proprietary data from various Municipality contracts and contractors. As such, the Consultant shall be ineligible to perform any other contract for the Municipality without prior written authorization of the City Manager. This restriction shall remain in effect for the duration of the Agreement.

14.2. Other Clients. The Consultant will not review or perform any services regarding any application made to the Municipality by any other client of Consultant, unless the services Consultant performs for such client are unrelated to the Municipality. In such instance, Consultant shall disclose the relationship immediately to the City Manager, who may retain a third party or alternate service provider to Consultant for those services the performance of which by the Consultant would create a perceived or real conflict of interest. The fees for the alternate to Consultant shall be deducted from the fee paid to the Consultant.

14.3. Incompatible Relationships. Neither the Consultant nor any of its officers or employees shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment related to its performance under this Agreement.

14.4. No Kickbacks. Neither Consultants nor any of its directors, officers or Consultant Personnel shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any Municipality purchases or transactions.

14.5. No Collusion. Consultant shall not collude with other Municipality service providers regarding Municipality business or matters. Consultant shall not enter into any business relationships with other Municipality service providers regarding Municipal business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.

14.6. No Fees for Agreement. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Provided however, this provision does not encompass Consultant's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the Municipality shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

#### 15. THIRD PARTY RELIANCE

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

#### 16. RECORDS

- 16.1. Public Access. The Consultant understands that the public shall have access, at all reasonable times, to all records, documents, notes, work product, other material, and information pertaining to the Municipality, subject to the provision of O.C.G.A. §50-14-1 *et seq.* and agrees to allow access by the Municipality and the public to all documents subject to disclosure under applicable law.
- 16.2. Compliance Required. Consultant's willful failure or refusal to comply with requests for access may result in the immediate termination of this Agreement by the Municipality.

17. OWNERSHIP OF DOCUMENTS

- 17.1. Ownership. The Municipality shall retain ownership of all records, documents, notes, data, work product, deliverables, and other materials 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.
- 17.2. Transfer of Documents. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored by Consultant pertaining to the Services will be provided to and become property of the Municipality.
- 17.3. Documents for Audit. At reasonable times, and for a period of up to three (3) years following the termination or conclusion of this Agreement, 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.
- 17.3.1. Consultant agrees to maintain all such books and records at its place of business for a period of three (3) years after final payment is made under this Agreement. Consultant shall make all necessary books and records available for audit in Fulton County, Georgia.

18. NOTICES

- 18.1. Written Notice. Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the Parties designate the following as the respective places for giving of notice:

If to the Municipality:	If to the Consultant:
Warren Hutmacher, City Manager	Gregory Toth, Chief Revenue Officer
City of Johns Creek	SAFEbuilt, LLC
12000 Findley Road, Suite 400	3755 Precision Drive, Suite 140
Johns Creek, GA 30097	Loveland, CO 80538

- 18.2. Electronic Copy. A copy of any notice sent in writing shall also be sent by e-mail. For the present, the Parties designate the following as the respective individuals for giving e-mail copy of notices:

If to the Municipality:	If to the Consultant:
warren.hutmacher@johnscreekgga.gov	bmoore@safebuilt.com

18.3. Changes in Designee. Either party shall give written notice to the other party of any change in its designee and/or place for giving notice.

19. DISPUTES

19.1. Process. 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.

19.2. Mediation. If a dispute cannot be negotiated within thirty (30) calendar days, a third-party mediator shall be selected by joint agreement of the Parties and such mediation shall be scheduled to occur as soon as is reasonably possible, depending on the nature of the dispute. Each party shall pay fifty percent (50%) of the costs of third-party mediation.

19.3. Litigation. In the event that the mediator is not able to resolve the dispute, either Party may file for litigation.

19.4. Venue. When federal jurisdiction is permitted, the Parties submit to the jurisdiction of federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any federal action to enforce this Agreement shall be in United States District Court, Northern District of Georgia, Atlanta Division. Otherwise venue for any action brought hereunder shall be in the Superior Court of Fulton County, Georgia.

19.5. Attorney's Fees. If either party is required to enforce the terms of this Agreement by court proceedings or otherwise due to breach of this Agreement, whether or not formal legal action is required, the prevailing party shall recover its attorney's fees and costs incurred due to such.

19.6. Continued Performance. Unless otherwise agreed in writing, Consultant shall continue to provide services during any dispute resolution proceedings. If Consultant continues to perform, Municipality shall continue to make payments in accordance with this Agreement.

20. DEFAULT

20.1. Default. An event of default shall mean a material breach of this Agreement. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

20.1.1. The Consultant fails to perform the Services specified in the Agreement.

20.1.2. The Consultant fails to meet the Key Performance Indicators specified in Exhibit B – Key Performance Indicators for three (3) consecutive months in a twelve (12) month period or four (4) months within a rolling twelve (12) month period during the Term of this Agreement shall constitute a material breach of this Agreement. Any event that constitutes a Force Majeure will not count against that month's Key Performance Indicators.

20.1.3. The Consultant fails to meet seventy-five percent (75%) of the Performance Measures specified in Exhibit C – Performance Measures and Workload Measures agreed to by the Parties for three (3) consecutive months in a twelve (12) month period or four (4) months within a rolling twelve (12) month period during the Term of this Agreement shall constitute a material breach of this Agreement. Any event that constitutes a Force Majeure will not count against that month's related Performance Measures. Any instances of staffing or resource reallocations deemed merited by the City Manager for which relief was granted to performance targets will not count against that month's related Performance Measures.

20.1.4. The Consultant has refused or failed, except in the case for which an extension of time is provided, to supply properly skilled personnel.

- 20.1.5. The Consultant has failed to obtain the approval of the Municipality where required by this Agreement.
- 20.1.6. The Consultant fails to perform any of the other provisions of this Agreement, subject to any right to cure.
- 20.1.7. The Consultant has been adjudged as bankrupt or the Consultant makes a general assignment for the benefit of creditors, appoints a receiver on account of insolvency, or files a petition to take advantage of any debtor's act.
- 20.1.8. The Municipality fails to pay the amount required to be paid to the Consultant in a timely manner more than twice in a single fiscal year.
- 20.1.9. Any representation or warranty of either party hereunder is found to be false or inaccurate in any material respect which materially and adversely affects the legality of this Agreement or the ability of either party to carry out its obligations hereunder.
- 20.2. Reasonable Cure. In the event of a default, the Agreement may be terminated after written notice of the default, which shall specify the default, provide both a demand to cure the default and a reasonable time to cure the default and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the default. For purposes of this section, "reasonable time" shall be ten (10) calendar days except when the failure affects the public health, safety or welfare, in which case reasonable time may be less than ten (10) days or when failure is related to meeting Key Performance Indicators or Performance Measures for which "reasonable time" shall be three months in which performance of Key Performance Indicators and Performance Measures must meet or exceed all established targets. A failure to cure a default within the specified time shall result in termination of the Agreement on the date set forth in the notice of default if such notice of default has not been removed in writing.
- 20.3. Damages. The Consultant shall be liable for all damages resulting from default by the Consultant. The compensation to the Consultant through termination shall be prorated for any completed Services minus any damages assessed pursuant to default liability.
- 20.4. Other Remedies. Subject to the dispute provisions contained in Section 19. Disputes, either party may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the party. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The Parties' rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to either party in law or in equity.

## 21. TERMINATION

- 21.1. Fiscal Non-Appropriation. Financial obligations of the Municipality for the Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Municipality. Pursuant to O.C.G.A § 36-60-13(a)(1), this Agreement shall terminate absolutely and without further obligation on the part of the Municipality upon the failure to appropriate funds for the Agreement. In the event of the Municipality's termination for fiscal non-appropriation, the Consultant shall be paid for those Services performed up unto the point of fiscal non-appropriation.
- 21.2. Termination - Municipality. The Municipality may partially or fully terminate this Agreement upon up to ninety (90) calendar days written notice, with or without cause and with no penalty or additional cost beyond the Fees stated in this Agreement. In case of such partial termination, Consultant shall be entitled to receive

payment for work completed up to and including the date of termination within thirty (30) calendar days of the termination.

21.2.1. 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.

21.2.2. 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. 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.

21.3. Termination - Consultant. The Consultant may partially or fully terminate this Agreement upon one hundred and eighty (180) days written notice, with or without cause and with no penalty or additional cost beyond the Fees stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) calendar days of the termination. The Consultant will negotiate in good faith any modifications to said Services and a commensurate reduction in the fees in Exhibit D - Fee for Services to facilitate any partial termination of Services.

21.3.1. 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.

21.3.2. 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. 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.

21.4. Equipment and Property. If this Agreement is terminated in whole or in part, the Consultant shall protect and preserve City Equipment and Property in its possession in which the Municipality has an interest, until the Consultant is relieved of this need.

21.5. Continuation. In the event of the full termination, or expiration of this Agreement, and in the further event that the Municipality is unable to provide the same level of services at the time of such termination or expiration, the then pending term of this Agreement may be extended by the Municipality for a period of ninety (90) days or until Municipality is capable, in its sole discretion, of rendering such services, whichever occurs sooner. The remuneration to be paid to Consultant during the transition period shall be based upon actual cost of providing such services during the transition period plus a mutually agreed upon fee, provided, however such fee shall not exceed the fees in Exhibit D - Fee for Services which would be due and owing to the Consultant for the provision of said services pursuant to the terms of this Agreement.

## 22. FORCE MAJEURE

Except as otherwise provided in Exhibit A – Scope of Services, neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, strike, acts of God, failure of a third party to cooperate in providing services, or other occurrences, beyond its reasonable control. The party invoking this Force Majeure clause shall notify the other party immediately by verbal

communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of Force Majeure.

23. 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.

24. GOVERNING LAW

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

25. 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.

26. 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.

*[signatures on following page]*



City of Johns Creek, Georgia

SAFEbuilt Georgia, LLC

\_\_\_\_\_  
Signature

Name: Michael E. Bodker

Title: Mayor

Date: \_\_\_\_\_

Attest

\_\_\_\_\_  
Signature

Name: Joan C. Jones

Title: City Clerk

Date: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Signature

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

Title: City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

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

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

Date: \_\_\_\_\_

Attest

\_\_\_\_\_  
Signature

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

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

Date: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Signature

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

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

Date: \_\_\_\_\_

## EXHIBIT A – SCOPE OF SERVICES

### Building Permits and Inspections

A division of Johns Creek’s Community Development Department, building permits and inspections promote and protect the City by managing current and long-range planning efforts through permitting and inspecting changes to the build environment. The community-facing Division provides professional and efficient customer service and is responsible for working with the citizens of Johns Creek, boards and commissions, the development community and the elected officials.

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## Division Administration

### (1) Reporting Structure

The Community Development Director manages the Chief Building Official. The Chief Building Official serves as the division manager for Building Permits and Inspections. The division is a component of the Community Development Department.

*Workload: Regular communication with Community Development Director.*

*Workload: Bi-weekly meetings with Community Development Director.*

*Workload: Review of monthly activity/performance reports to ensure work is forwarding established priorities of City.*

*Workload: Review of monthly invoices to ensure requests for payment from the City match the work performed.*

### (2) Division Management

The Chief Building Official manages all Building Permit and Inspections staff to ensure that all division work requirements are performed effectively and efficiently.

*Workload: Current staffing includes six (6) Consultant Personnel – a Chief Building Official/Plan Reviewer, a Plans Coordinator, two (2) Permit Technicians, and two (2) Building Inspectors (managed by SAFEbuilt)*

### (3) Other Departments and Divisions

Coordinate with other departments and divisions such as Public Works related to transportation issues and the Fire Department for life safety code implementation.

*Workload: Daily coordination/communication/collaboration with other departments is necessary for the effective operation of the Community Development Department*

### (4) Policies and Procedures

Prepare and recommend division-related processes, procedures, and policies and make amendments and/or improvements based on current circumstances, industry standards changes, and any other changes considered necessary to best serve the City and the City's interests.

*Workload: Collaborate with Community Development Director (or designee) to develop a written procedural manual to document each divisional procedural policy and conduct annual staff-level review of each policy / procedure*

### (5) Building Ordinance

Maintain the Building Ordinance and bring any recommended amendments or changes to the City Council for consideration. Administer all aspects of the City's Building Ordinance including, but not limited to, reviewing and recommending revisions and updates and providing interpretations of the provisions of the Ordinance. Administer all aspects of the State of Georgia's Minimum Standard Codes, as adopted and amended by the state Department of Community Affairs including the International Building Code, International Fuel Gas Code, International Mechanical Code, International Plumbing

Code, National Electric Code, International Fire Code, International Energy Conservation Code, International Residential Code and the appendices of said codes as adopted and amended by the state.

*Workload: Annualized average of 1 ordinance amendment per year*

*Workload: At least daily interpretations from the Chief Building Official are currently necessary*

*Performance: Consistent interpretation of City Ordinances and International Property Maintenance Code*

(6) Budget Recommendations

Following the Budget schedule promulgated by the Finance Director, identify and submit requests to forward the City's established Comprehensive Plan and Short Term Work Program to the Community Development Director for his or her for consideration in Community Development Department budget recommendations.

(7) Meetings

Attend city meetings to represent Building Permits and Inspections Division (such as City Council meetings) and attend regional meetings (such as Atlanta Regional Commission meetings) to represent the City as requested.

*Workload: Average of 1 Council Work Sessions/Meetings.*

(8) Community Education

Provide information to the Communications Department for the dissemination of educational material about the services of the Building Permits and Inspections Division (such as presentations, guides, and graphs for the website and town halls or community meetings).

*Workload: No significant historical workload.*

(9) Litigation

Provide support to the City Manager and City Attorney on all Building Permits and Inspections-related litigation. Reproduce all the applicable files and records. Consult with the City Attorney and any designated outside counsel regarding the history and facts of the case. Provide depositions on behalf of the City/Department. As necessary, serve as city representative in the case of trial.

*Workload: No historical workload.*

(10) Trends and Operational Improvements

Research current and relevant trends and laws that might have an impact on the City and service delivery, provide communication on the impact of the events to the City Manager (or designee) as well as make suggestions related to operational improvements to increase efficiencies, improve service and reduce operating expenses. Research into current trends is intended to allow for more proactive response to emerging issues and minimize the need for reactive problem solving.

*Workload: Quarterly reports to the City Manager (or designee)*

*Performance: Dollars saved from operational improvements*

(11) Other Duties

Identify and perform other duties and functions reasonable and customarily associated with the delivery of Building Permits and Inspection services (not otherwise provided by the Community Development Department) in accordance with local, state, and federal laws including, but not limited to, the City Charter, City Ordinances, and the laws of the United States and the State of Georgia where the need could be reasonably anticipated, but not specifically set forth above.

**Administration**

(12) Budget Administration

Following the adoption of the annual Budget by the City Council, manage division spending including entering, reviewing, and approving invoices for purchase orders and purchases as well as preparing information related to year end close out and audit. For capital projects, manage expenses across fiscal years in accordance with City policies.

*Workload: Average of \$2.9M in annual department budget for Community Development; Building Permits and Inspections is a division of the department.*

*Performance: Review and process invoices by due dates*

(13) Division Procurements

Following the adoption of the annual Budget by the City Council, manage division procurements including drafting the scope of work for task orders and contracts, working with the City Purchasing Manager to establish procurement schedules, prepare advertisements, review, and make recommendations on consultants/contractors.

(14) Inquiries

Respond to inquiries from citizens, boards and commissions, the development community, design professionals, sub-consultants, and elected officials regarding building, land development, inspections, and any activities related to Building Permits and Inspections. Inquiries are received by various means including but not limited to phone, e-mail, fax, and office visit.

*Workload: Annual averages of 180 office visits, 15,828 phone calls returned, and 8,412 e-mails sent in response to inquiries*

*Performance: Inquiries returned within 1 business day of receipt*

(15) Commendations and Complaints

Investigate and address commendations and complaints related to the services of the Building Permits and Inspections Division received by the City.

*Workload: Average of 1 commendation received per month and 1 complaint received per quarter*

(16) Open Records Requests

Coordinate with the City Clerk's Office to assess and fulfill any and all Open Records Requests related to the records of the Building Permits and Inspections Division.

*Workload: Annualized average of 87 requests for Building Permitting and Inspections (based on Q4 2016 data)*

*Performance: Review request and determine timeframe for producing documents within three days of receipt by the City Clerk's Office*

(17) Records Retention

Maintain all City records in the Building Permits and Inspections Division accordance to the City's records retention policy including both archival and destruction.

(18) Data Base Maintenance

Maintain an accurate and organized data base including records of decision-making process and original files of all building permits and inspections applicable to each. Maintenance includes monthly reports of building activity for the United States Census Bureau.

*Workload: Maintain between 3,500-4,000 files (including but not limited to permits and certificates of occupancy)*

*Workload: 12 monthly reports of building activity to the United States Census Bureau.*

*Performance: Digitize/scan, and file all records within 2 business days of the completion of each document*

(19) Performance and Workload Tracking

Track, maintain, and report performance indicators for Building Permits and Inspections Division established in coordination with the City Manager (or designee).

*Workload: Tracking roughly 30 workload and performance areas*

*Performance: Remit data monthly by the 5<sup>th</sup> of the month following*

**Operations**

(20) Plan Intake

Intake and route for review all projects requiring building plan review (such as new construction, improvements in existing buildings, additions, cell towers, demolitions, retaining walls, and swimming pools) as well as projects requiring plan review related to other aspects of Community Development (such as walls, fences, signs, special events, final plats, and land disturbance).

*Workload: Annual average of 1,044 plans (requiring plan review), 3,020 projects (not requiring plan review), and 3,653 contractor licenses verified (based on Q4 2016 data)*

*Performance: Verify contractor licenses while customer waits*

(21) Plan Review

Review submitted plans for compliance with applicable codes and Ordinances (City, state, federal), within the approved time limits established by the City, and either issue a permit or issue a letter

stipulating corrections required in order to issue a permit in compliance with codes and Ordinances. Applicable state codes include the Department of Community Affairs Minimum Standard Codes for Construction. Types of plans requiring building review include but are not limited to: single-family residence construction, basement finish projects, new commercial buildings, tenant improvements in existing commercial buildings, decks, porches, carports, garages, pole barns and agricultural buildings, existing home upgrades and remodels, and swimming pools.

*Workload: Annual average of 1,044 plans (requiring plan review) (based on Q4 2016 data)*

*Performance: Complete building permit for plans within 5 business days*

*Performance: New residential and residential alterations within 5 business days*

*Performance: New commercial (under \$5M in valuation), commercial alteration, and other building projects within 10 business days*

*Performance: Commercial alteration (valuation over \$5M) within 20 business days*

*Performance: Commercial alteration (valuation over \$5M) within 10 business days*

## (22) Permits

Issue building, land development, and other associated or required permits for projects with approved building/development plans and projects not requiring plan review, within the approved time limits established by the City.

*Workload: Annual average of 3,104 permits issued for 3,736,648 square feet of projects (based on Q4 2016 data)*

*Performance: Process front counter building permits (those not requiring plan review) while the customer waits*

## (23) Inspections

As requested by applicants/developers/builders/homeowners, perform inspections and assess each project's compliance with applicable local, state and federal codes, including all provisions of the issued permit, within the approved time limits established by the City to ensure life safety and code compliance. Federal codes include the International Building Code's requirements for structural tests and special inspections. Performance of inspections includes receiving requests for inspections, responding to requests for inspections, recording and communicating results of inspections, issuing Stop Work Orders for work done without a permit, and issuing Dangerous Building Notices for vehicles or fire-damaged buildings as appropriate.

*Workload: Annualized average of 14,028 inspections completed including 2,052 mechanical, 2,280 electrical, 1,752 plumbing, 3,572 framing/structural, and 5,828 other inspections. (based on Q4 2016 data)*

*Workload: Annualized average of 364 homeowner inspections requested for 1-hour window*

*Workload: Annualized average of 9,688 e-mails sent regarding inspection results*

*Workload: Annualized average of 40 stop work orders issued and 3 dangerous building notices.*

*Performance: Complete inspections within 1 business day of request (for requests received by 4 p.m. the business day prior)*

*Performance: Schedule 1-hour window for homeowner inspections (upon request)*

*Performance: Send e-mail regarding inspection results*

(24) Third-Party Inspections

At the discretion of the Chief Building Official, allow for third-party inspections as requested by applicants/developers/builders/homeowners, when work has been inappropriately covered or obstructed to inhibit inspection but that a project engineer, architect, or similarly licensed professional can verify the work has been completed in compliance with applicable local, state and federal codes, including all provisions of the issued permit to ensure life safety and code compliance.

*Workload: Annualized average of 25 third-party inspections*

*Performance: Consider request for third-party inspection within 1 business day of request*

*Performance: Review materials provided for allowed third-party inspection requests within 1 business day of receipt*

*Performance: Send e-mail regarding inspection results*

(25) Certificates of Occupancy / Certificates of Completion

Issue certificates of occupancy / certificates of completion for projects having passed all requisite inspections and requirements (including those of other departments and agencies). Issuing of certificates includes coordinating between various aspects of the Community Development Department, other departments (such as Public Works and Fire), and agencies (such as Health and Water) as necessary.

*Workload: Annual average of 2,296 certificates of occupancy/certificates of completion issued.*

*Performance: Issue certificates of occupancy and/or certificates of completion for projects passing final inspections.*

(26) Temporary Certificates of Occupancy / Certificates of Completion

In situations allowable by Code, issue temporary certificates of occupancy/completion (for no more than thirty days) after coordinating between various aspects of the Community Development Department, other departments (such as Public Works and Fire), and agencies (such as Health and Water) as necessary. Temporary certificates allow a business to open before a final certificate can be issued while ensuring that all life safety and building safety issues are resolved.

*Workload: Temporary certificates of occupancy / completion issued included in the annual averages listed above for certificates of occupancy / certificates of completion.*

*Performance: Issue temporary certificates of occupancy/completion*

(27) Construction Board of Appeals

Provide staff support to the City's Construction Board of Appeals including training, scheduling meetings, recordkeeping, issuing all timely public notices, preparing packages of cases on the agenda of each board, and maintaining files.

*Workload: No historical workload (Board has not met in recent years)*



*Performance: Agenda packet completed and delivered to the board and/or commission by close of business, seven days prior to the scheduled meeting.*

(28) Assessment of City Structures

Provide assessment of existing buildings and structures for code compliance including, but not limited to, energy code, ADA regulations, and building codes.

*Workload: No significant workload history*

*Performance: Have trained inspectors available for special assessments*

(29) Emergency Management Inspections

Assist the City with its Emergency Management Plan by implementing all responsibilities assigned to building inspectors such as ensuring that construction sites are secured prior to a forecast weather event, assessing damage after a severe weather event, and taking inventory per FEMA requirements.

*Workload: No significant workload history*

*Performance: Have trained inspectors available for emergency management inspection prior to and following weather events.*

(30) Other Permitting and Inspections

Identify and perform other building permitting and inspection responsibilities where the need could be reasonably anticipated, but not specifically set forth above.

*Workload: Annualized average of 5 government and 10 school permits issued and approximately 90 inspections*

*Performance: Permit and inspect city government buildings and Fulton County schools without fees (exempt from city fee schedule).*

*[Remainder of page intentionally left blank]*

## EXHIBIT B – KEY PERFORMANCE INDICATORS

Key Performance Indicators are designed to provide a high-level executive perspective on the overall performance of the Services. The Consultant has direct influence over its performance on the indicators, each indicator is tied to a core competency of the Services, and each indicator is correlated with a specific performance target.

The indicators and/or specified performance targets may be modified by mutual consent of the Parties through written amendment to the Agreement.

Each indicator is followed by an italicized statement of how the data is anticipated to be measured. Should a more efficient, effective, or illustrative manner to measure the data be determined over the course of the Term of the Agreement, no formal amendment is necessary to modify the manner in which the data is measured.

1. **Permitting:** Issue 95% of over the counter permits (projects not requiring plan review) while the customer waits.  
*Anticipated Data Measured: Number of front counter building permits processed while the customer waits, number of customers electing not to wait for processing, and total number of front counter building permit applications received.*
  
2. **Plan Review:** Return 95% of comments to applicants within timeframes specified.
  - 2.1. Residential – 5 business days  
*Anticipated Data Measured: Number of residential building permits (including new, alternations, and resubmittals) for which comments were provided to applicant within 5 business days and total number of residential building permits.*
  
  - 2.2. Commercial (including multi-family residential) (valued under \$5M) – 10 business days  
*Number of commercial building permits valued under \$5M (including new, alternations, and resubmittals) for which comments were provided to applicant within 10 business days and total number of commercial building permits valued under \$5M.*
  
  - 2.3. Commercial (including multi-family residential) (valued \$5M and over) – 20 business days  
*Number of commercial building permits valued \$5M and over (including new, alternations, and resubmittals) for which comments were provided to applicant within 10 business days and total number of commercial building permits valued \$5M and over.*
  
3. **Inspections:** Perform 95% of requested inspections (received by 4 p.m.) on the next business day  
*Anticipated Data Measured: Number of inspection requests (received by 4 p.m.) that are inspected the next business day and total number of inspection requests (received by 4 p.m.).*
  
4. **Customer Service:** Return 95% of citizen/customer e-mails and phone calls within one business day of receipt.  
*Anticipated Data Measured: Number of citizen/customer e-mails and phone calls returned within one business day of receipt and total number of citizen/customer e-mails and phone calls received.*

## EXHIBIT C – PERFORMANCE MEASURES AND WORKLOAD MEASURES

Performance Measures are designed to provide management an in-depth perspective on the Consultant's efficiency, effectiveness, and performance of the Services. The Consultant has direct influence over its performance on Performance Measures, each measure is tied to a component of the Services, and each measure is correlated with a specific performance target.

Workload Measures track and monitor the workload of the Consultant. The Consultant has little influence over the workload, so no specific targets are assigned to workload, but the Parties see benefit in tracking workload measures as important in identifying community trends and resource allocation.

The Parties recognize that over the term of the Agreement, flexibility will be necessary in order to meet the Municipality's evolving needs and priorities. The Performance and Workload Measures may be adjusted by mutual consent of the City Manager and the Consultant. The City Manager, in his or her sole discretion, may grant relief from the performance targets associated with Performance Measures due to changes in the Municipality's needs, priorities, or reallocations as deemed merited in the City Manager's sole discretion.

### Performance Measures

1. **Pre-Application (for Construction) Meetings** – Schedule meetings with 95% of contractors and design professionals requesting meetings prior to plan submittal for 'pre-application' within one week of request for a meeting.
2. **Contractor Licensing** – Verify 95% of contractor licenses while the customer waits.
3. **Plan Review** – for all other projects (not tracked as part of Exhibit B – Key Performance Indicators) – Complete 95% of plan reviews within 10 business days of submission or resubmission of plans.
4. **Homeowner Inspections** - Upon request, for homeowner inspections of residential building projects, schedule 1-hour windows for inspector to arrive and perform 95% of such requested inspections within the scheduled window.
5. **Certificates of Occupancy** - Issue 95% of Certificates of Occupancy/Certificates of Completion within 1 business day of receiving passing results from final inspections by building and fire inspectors and any other permit requirements.

### Workload Measures

1. Total number of building permits issued
2. Total number of square footage of building permits issued
3. Total valuation of building permits issued
4. Total fees paid of building permits issued
5. Number of mechanical inspections conducted and number passed
6. Number of electrical inspections conducted and number passed
7. Number of plumbing inspections conducted and number passed
8. Number of framing/structural inspections conducted and number passed

9. Number of other building inspections conducted and number passed
10. Total number of building inspections conducted and number passed
11. Total number of active residential building sites (as of the last day of the month)
12. Total number of active commercial building sites (as of the last day of the month)
13. Number of stop work orders issued (for work done without a permit)
14. Open Records Requests – number of requests filled
15. Data Base Maintenance – number of records digitized/scanned and filed

*[Remainder of page intentionally left blank]*

## EXHIBIT D – FEE FOR SERVICES

In consideration of the Consultant providing the Services, the Municipality shall pay the Consultant for the Services. The fees shall be revenue share.

### Revenue Share

The level of work and cost of the services for building permits and inspections services is directly correlated with the volume of permits and inspections. The Parties agree the revenues received to be the best gauge of volume of permits and inspections.

The Municipality shall pay the Consultant 60% of revenues received for the following object codes: building plan review (3229005), building residential (3231001), building commercial (3231002), demolition (3231003), retaining wall (3231004), plumbing (3231008), mechanical (3231009), electrical (3231010), roofing residential (3231011), and roofing commercial (3231012).

Figure 1 – Building-Related Revenues by Object Code details the actual revenues received in FY2015 and FY2016, projected/annualized figures for FY2017, and the proposed revenues figures for FY2018.

**Figure 1 – Building-Related Revenues by Object Code**

<i>Building Related Revenues (by object code)</i>		<i>FY 2015</i>	<i>FY 2016</i>	<i>FY 2017</i>	<i>FY 2018</i>
<i>Object</i>	<i>Account</i>	<i>Actuals</i>	<i>Actuals</i>	<i>Annualized</i>	<i>Proposed</i>
3229005	Building Plan Review	\$235,253	\$215,313	\$245,345	\$220,000
3231001	Building Residential	\$646,908	\$870,695	\$655,405	\$700,000
3231002	Building Commercial	\$398,036	\$337,576	\$376,498	\$325,000
3231003	Demolition	\$4,700	\$3,700	\$3,200	\$3,000
3231004	Retaining Wall	\$6,528	\$6,847	\$5,487	\$6,000
3231008	Plumbing	\$36,997	\$21,195	\$31,332	\$20,000
3231009	Mechanical	\$91,304	\$30,262	\$40,941	\$30,000
3231010	Electrical	\$75,644	\$46,672	\$59,419	\$40,000
3231011	Roofing Residential	\$31,050	\$33,100	\$17,100	\$20,000
3231012	Roofing Commercial	\$13,958	\$7,995	\$4,592	\$5,000
<i>Total</i>		<i>\$1,540,378</i>	<i>\$1,573,354</i>	<i>\$1,439,319</i>	<i>\$1,369,000</i>

Monthly invoicing will be submitted based on a conservative revenue projection of \$1,200,000 in total revenue and be submitted as one-twelfth of the conservative revenue projection or \$100,000.

The Parties will work together to complete quarterly audits of permit revenue and provide for any adjustments that are necessary. Actual permit revenue that is less than the conservative revenue projection will result in the Consultant reimbursing the Municipality for overpayment. Actual permit revenue that is greater than the conservative revenue projection will result in the Municipality compensating the Consultant for the additional work using the same revenue share percentage stated above.

### Financial Incentives and Penalties

The Consultant's performance related to the Key Performance Indicators is directly tied to a maximum aggregate annual incentive of \$20,000 and maximum aggregate annual penalty of \$20,000. The amount reflected below in Figure 2 – Incentives and Penalties are the maximum incentives and penalties to be awarded/levied per year.

**Figure 3 – Incentives and Penalties**

Services	Y1 (FY2018)	Y2 (FY2019)	Y3 (FY2020)	Y4 (FY2021)	Y5 (FY2022)	TOTAL (5 Years)
Incentives	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$100,000
Penalties	(\$20,000)	(\$20,000)	(\$20,000)	(\$20,000)	(\$20,000)	(\$100,000)

The financial incentive and penalties will be assessed quarterly on an all or nothing basis relative to the Consultant's performance against the Key Performance Indicator targets. That is, if the Consultant meets or exceeds all the Key Performance Indicator for the quarter, then they will earn an additional \$5,000 payment (which must be billed to the Municipality and accompanied with documentation of the performance). Conversely, if the Consultant fails to meet all the Key Performance Indicators for the quarter, than they will owe the City a penalty of \$5,000 (which can be deducted from the following month's bill or in the event of the last quarter of the contract term can be deducted from the final bill).

*[Remainder of page intentionally left blank]*

**EXHIBIT E – IMMIGRATION & SECURITY FORM  
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. The [Consultant] further certifies that at the time of the execution of this contract, the [Consultant] employs \_\_\_\_\_ employees.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time the subcontractor(s) is retained to perform such service.

\_\_\_\_\_  
SAFEbuilt Identification #254821  
EEV / Basic Pilot Program\* User Identification Number

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Consultant Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_ 2017

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

\*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**EXHIBIT F – O.C.G.A. § 50-36-1(e)(2) Affidavit**  
**Verifying Lawful Presence in the United States**

By executing this affidavit under oath, as an applicant for the execution of a contract or other public benefit, as referenced in O.C.G.A. § 50-36-1, from the City of Johns Creek, a municipal corporation of the State of Georgia, the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- I am a United States citizen.
- I am a legal permanent resident of the United States.
- I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.

My alien number issued by the Department of Homeland Security or other federal immigration agency is: \_\_\_\_\_.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

\_\_\_\_\_.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in this affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed Name of Applicant and Title

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(Notary Public)

My commission expires: \_\_\_\_\_