

**AGREEMENT TO PROVIDE
BUILDING DEPARTMENT SERVICES**

THIS AGREEMENT TO PROVIDE BUILDING DEPARTMENT SERVICES ("Agreement") made this 5 day of December, 2022, by and between the TOWN OF JOHNSTOWN, COLORADO, a home-rule municipal corporation of the State of Colorado ("Town"), and SAFEbuilt Colorado, LLC, a Colorado limited liability company and wholly owned subsidiary of SAFEbuilt, LLC, a Delaware limited liability company ("Building Official"). The Town and Building Official may be collectively referred to herein as the "Parties."

WHEREAS, the Town does not have a building department and does not employ a building official; and

WHEREAS, to obtain building department services, on or about October 18, 2021, the Town and ProCode, Inc., a Colorado corporation ("ProCode"), entered that certain Agreement to Provide Building Department Services ("ProCode Agreement"); and

WHEREAS, since execution of the ProCode Agreement, ProCode was acquired by SAFEbuilt, LLC; and

WHEREAS, the Town desires to terminate the ProCode Agreement and to utilize the services of Building Official to perform building department services for the Town; and

WHEREAS, in order to set forth the responsibilities, obligations, powers and rights of the Parties, the Town and Building Official hereby enter into this Agreement.

NOW, THEREFORE, in consideration of recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the parties agree as follows:

1. **SERVICES** – The Town and Building Official agree that Building Official shall perform the following services for the Town: review plans, process permits, conduct inspections, prepare certificates of occupancy, respond to phone referrals, attend conferences with building permit applicants and any and all other reasonable activities requested by the Town. Building Official shall also inspect and investigate complaints of violations of the Johnstown Municipal Code ("Code") when so directed by an administrative officer of the Town, and be available for testimony in any proceeding regarding such violations. (Collectively, the foregoing shall be referred to as the "Services.") The Services shall be performed for residential, commercial and industrial properties within the boundaries of the Town and be based upon the Town's adopted uniform codes, including the Building Code, Mechanical Code, Plumbing Code, Electrical Code and all other uniform codes adopted in Chapter 18 of the Municipal Code. Building Official agrees to designate Jonathan Gesick to be primarily responsible for providing, and/or coordinating for the provision of, the Services hereunder.

Building Official further agrees to:

- a. Inspect properties, residential, commercial and industrial, within twenty-four (24) hours of a request by the Town, except that weekends and holidays shall not be included in the twenty-four (24) hour time period;
 - b. Review development plans, in whatever form, within ten (10) business days of a request by the Town;
 - c. Provide regular reports as may be required by the Town Manager concerning building activity within the Town;
 - d. During each calendar year that this Agreement is in effect, conduct a two-hour program annually to educate members of the public regarding building guidelines and best practices and provide the Town Manager with documentation that may be posted on the Town of Johnstown's website to further community education;
 - e. Provide other building inspection related services as requested and necessary to assist with ensuring the health, safety and wellness of the Town and its residents..
2. HOURS – The parties expect and agree that Building Official shall work as many hours as required per week for the Town. The Town does not dictate Building Official's hours, but expects and requires that Building Official perform the Services in a timely manner and that such Services will be generally performed during regular business hours. If Building Official is unavailable during any particular week, Building Official shall provide notice to the Town Manager.
3. CERTIFICATION – Building Official represents and agrees that Jonathan Gesick and, if applicable, all other persons providing Services pursuant to this Agreement are certified building official(s), and or inspector(s), with certifications in building, plumbing, mechanical and electrical disciplines for commercial, industrial and residential properties. Building Official and persons providing Services shall maintain the appropriate certifications during the term of this Agreement according to the discipline in which they are involved and performing Services.
4. COMPENSATION – In consideration of Building Official's high-level credentials and ability and agreement to deliver the Services, the Town agrees to pay Building Official at the monthly rates shown below, which is based on the expectation that Building Official will provide the required Services for the Town. The compensation will be paid to Building Official within five (5) working days following the first regular Town business meeting of the month for all invoices submitted at least ten (10) days prior to such meeting.

Building Official's compensation shall be as follows:

- a. 2023 calendar year - \$25,000 monthly
- b. 2024 calendar year - \$25,000 monthly
- c. 2025 calendar year and subsequent years - the lesser of: (a) \$26,000 (representing a four percent (4%) increase); or (b) \$25,000 multiplied by the number equivalent to the Consumer Price Index ("CPI") during the prior

calendar year, using the most recently published CPI for the Denver-Boulder Metropolitan Area published by the Bureau of Labor Statistics of the United States Department of Labor.

5. **INDEPENDENT CONTRACTOR** – Building Official understands and agrees that Building Official is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Building Official. The Town shall not be responsible for withholding any portion of Building Official's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation or other taxes or benefits. **THE BUILDING OFFICIAL IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. THE BUILDING OFFICIAL IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** The Town does not require that Building Official work exclusively for the Town. As long as there is not a conflict of interest with the Town, Building Official may engage in any other lawful business activities during the term of this Agreement.
6. **LIABILITIES** –
 - (a) The Town shall not be liable for the direct payment of any salaries, wages or other compensation to any personnel, including but not limited to subcontractors, performing services herein for Building Official or for the Town at the request of Building Official.
 - (b) Building Official shall not be deemed to assume liability for negligent acts of the Town, its officers, agent, or employees.
 - (c) Building Official assumes full responsibility for any and all damages caused by Building Official's negligent or willful exercise of its activities under by this Agreement. Building Official agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), to the extent arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from negligent or intentionally wrongful (willful misconduct) act or omission of Building Official or any invitees, guests, agents, employees or subcontractors of Building Official, whether brought by any of such persons or any other person .
7. **TERM AND RENEWAL** – The term of this Agreement shall be one year from its anniversary date. The Agreement shall be automatically renewed annually on its anniversary date unless either Party provides written notice of termination at least one hundred twenty (120) days prior to the termination.
8. **TERMINATION** – Either Party may terminate this Agreement with or without cause by providing one hundred (120) days advanced written notice. In such case, Building Official

shall complete all outstanding obligations to the Town within thirty (30) days. After providing a reasonable opportunity to cure, either Party may terminate this Agreement based on a breach of the Agreement without providing written notice. Upon termination, the remainder of Building Official's responsibilities shall be transferred to the Town.

9. NOTICES –

- (a) All notices to Building Official shall be sent certified or registered mail, return receipt requested, and first-class mail, postage prepaid, to SAFEbuilt, LLC, Attention Joe DeRosa, CRO, 444 North Cleveland, Suite 444, Loveland, Colorado 80537.
- (b) All notices to the Town shall be sent certified or registered mail, return receipt requested, and first-class mail, postage prepaid, to Town Manager, 450 South Parish, P.O. Box 609, Johnstown, CO 80534.
- (c) In the alternative, either Party may provide notice via electronic mail ("e-mail") delivery on the condition that the other party acknowledges receipt of the e-mail. Joe DeRosa email jderosa@safebuilt.com.

10. INSURANCE – Building Official shall maintain the following insurance coverage during the term of this Agreement and any subsequent renewals:

- (a) Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.
- (b) Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.
- (c) Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Building Official's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Building Official's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Building Official who utilizes an automobile in providing services to Town under this Agreement.
- (d) Worker's compensation insurance in accordance with lawful requirements of the State of Colorado. Any notice of cancellation or non-renewal shall be provided to the Town.

Building Official shall procure and maintain the minimum insurance coverages listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Building Official pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Building Official's insurance policies.

A certificate of insurance shall be completed by Building Official's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, the policies shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

11. **CODE MODIFICATIONS AND UPDATES** – In addition to the Services set forth herein, Building Official shall make periodic recommendations to the Town for modifying, improving or updating the uniform codes in effect pursuant to Chapter 18 of the Johnstown Municipal Code. At a minimum, Building Official shall make recommendations to the Town Manager regarding the adoption of, along with appropriate modifications to, the uniform codes revised and adopted by the International Code Council in 2018 as necessary. Such recommendations shall be made in writing to the Town Manager and may thereafter be presented to the Town Council of the Town of Johnstown ("Town Council"). Building Official shall facilitate public input prior to providing recommendations to the Town Council.
12. **LAWS** – The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Colorado, and venue for any claims, proceedings or actions shall be in Weld County, Colorado.
13. **DISPUTE RESOLUTION** – In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally between the Parties. The mediation shall be conducted at an agreed-upon location. If the Parties are unable to agree upon the location, the medication shall be conducted at the Judicial Arbiter Group (JAG) in Denver, Colorado.
14. **SEVERABILITY** – If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court

of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

15. GOVERNMENTAL IMMUNITY -- The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.
16. NON-APPROPRIATION OF FUNDS -- Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.
17. RETURN OF RECORDS -- Upon termination of this Agreement, Building Official shall return to Town all records, notes, documents and other items that were used, created or controlled by Building Official during the term of this Agreement.
18. ASSIGNMENT AND BINDING EFFECT -- Neither party shall transfer or assign its interest in this Agreement without the written approval of the other Party; consent shall not be unreasonably withheld. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the Town and the Building Official.
19. NO PUBLIC OFFICIAL PERSONAL LIABILITY -- Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town or Building Official.
20. NO PRESUMPTION -- Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is its own free and voluntary act and deed, without compulsion. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
21. AMENDMENT -- This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

