

**CODE ENFORCEMENT AND ZONING ADMINISTRATION SERVICES CONTRACT  
BETWEEN THE CITY OF WHITEWATER AND MUNICIPAL CODE ENFORCEMENT,  
LLC**

**THIS AGREEMENT** is between the **City of Whitewater, 312 W Whitewater Street, Whitewater, WI, 53190** (hereinafter "**City**") and **Municipal Code Enforcement, LLC, PO Box 62, Delavan, Wisconsin, 53115**, (hereinafter "**MCE**") as of this **1st** day of **January, 2024**.

**RECITALS:**

**WHEREAS**, the City requires code enforcement and zoning administration services;  
and

**WHEREAS**, MCE maintains an agency that regularly enforces and administers municipal and zoning codes for various municipalities, providing services that include, but are not limited to, review of the municipal code, response to property complaints, completion of code inspections, preparation of written orders for repair, preparation and issuance of citations, administration of landlord licensing and vacant building programs, review of zoning applications, and other miscellaneous code enforcement and zoning administration activities; and

**WHEREAS**, the City and MCE desire to contract with each other for such code enforcement and zoning administration services as set forth herein, to be provided by MCE to the City; and

**WHEREAS**, the City agrees to compensate MCE at the rate set forth herein for performing these services.

**NOW THEREFORE**, for valuable consideration, and with the express intention on the part of both parties that this contract is legally binding, the parties do agree to the following:

**1.) SCOPE OF SERVICES** – MCE agrees to provide the City with the following code enforcement and zoning administration services:

● **Violation Monitoring**

- Property Maintenance
- Unsightly Debris
- Weeds, Grass, Trees, or Other Vegetation
- Junked, Unlicensed, or Abandoned Vehicles/Boats
- Snow Removal
  - When a violation is present pertaining to any of the items above, orders will be sent to the property owner with details of the violation and a deadline to come into compliance. After the compliance deadline has passed, a re-inspection of the property will take place

to determine the status of the violation and further action will be taken, as necessary, which may include any of the following:

- Direct communications with property owners
  - Phone call or email
- Final notice
- Granting of extensions if warranted based on the judgment of MCE after consultation with the City
- Issuing municipal citations through the City police department
- Nuisance abatement pursuant to City Code
  - Costs billed to property owner, according to fee schedule set forth in the Whitewater Municipal Code (hereinafter "Code") as updated from time to time with guidance of MCE, possibly resulting in possible special charges against property owner.
- **Zoning Administration, Violation Monitoring, and Enforcement**
  - Applications for Zoning Permits
  - Planning Requests
    - Site Plan and Architectural Review
    - Conditional Use Permit
    - Rezoning
    - Land Use Amendment
    - Planned Unit Development
    - Preliminary Plan
    - Final Plat
    - Certified Survey Map
    - Project Concept Review
    - Conceptual Land Division
    - Joint Conditional Use & Rezoning
    - Joint Rezoning and Certified Survey Map
    - Extraterritorial Zoning Board
    - Subdivision advisory assistance
    - Zoning Board of Appeals/Adjustment
  - Recommendations to Plan Commission
  - Other miscellaneous reviews as requested by City staff.
  - Office Hours on a schedule to be agreed and amended as needed from time to time by mutual agreement of the City and MCE.
- **Municipal Programs:**
  - Vacant Building Program
  - Landlord Licensing Rental Inspection Program
  - Short-Term Rental Inspection Licensing Program
  - Tree Removal Permitting Program
  - Liquor Licensing Program

- Restaurant Grease Trap Compliance Program
- **Additional Tasks:**
  - Building Condemnation
  - Court Attendance and Evidence Preparation
  - Review and Recommendations for Improvement to Municipal Code of Ordinances
  - Collaboration with Building Inspector
  - Continuous Improvement of Municipal Codes and Ordinances
  - Other Issues/Complaints/Nuisances
    - Landlord/Tenant/Neighbor Dispute Mediation
    - Safety Hazard Elimination

**2.) DUTIES** – MCE shall perform the code enforcement and zoning administration services set out in the Scope of Services above for the City. MCE's jurisdiction shall be concurrent with the City's boundaries including extraterritorial boundaries. Within said jurisdiction, and in the performance of those duties, MCE shall have the full lawful authority and responsibility to enforce the Code and issue citations, specific Chapters and Sections of the Code, including ordinances for which a statutory counterpart exists. MCE's agents and employees shall not have the authority to make arrests for violations of the Code. It is specifically the intent of the parties that MCE is not a law enforcement officer within the meaning of Wis. Stat. § 165.85(2)(c). MCE shall cooperate with the City's Police Department in investigating and issuing citations and other pursuing other enforcement activity as needed by the City's Police Department to complete matters originating with MCE's investigative and Code enforcement duties.

**3.) HOURS AND COMPENSATION** – Unless otherwise agreed upon by both parties, MCE shall provide no more than **40 hours per week** in code enforcement services and shall be compensated at the rate of **\$49.00 per hour**. MCE shall send the City an invoice every month detailing the number of hours provided and the amount owed. If an automatic renewal of this contract is enacted, as detailed below, this hourly rate shall increase by 3%, rounded to the nearest dollar, for each year that the automatic renewal takes place.

**4.) TERMS OF CONTRACT** – This contract shall begin **JANUARY 1, 2024** and end on **DECEMBER 31, 2024**. This contract shall automatically renew, unless an amendment or a subsequent contract is executed by both parties, no less than 60 days before the contract end date. The term of the renewal contract shall be one year.

**5.) DOCUMENTS AND OPEN RECORDS REQUESTS** – All documents produced by MCE in the course of its performance under this contract shall be deemed to be records of the City and shall be turned over to the City upon request or upon termination of this contract for any reason. In the event of an open records request that implicates records that MCE possesses or has access to, MCE shall provide the requested records to the City of Whitewater within five (5) business days of written request to MCE.

**6.) MONTHLY REPORT** – MCE shall provide the City Administrator with a monthly report containing a summary of its work on City matters for each month of the Contract term for the prior month's work. The report shall be delivered to the City Administrator by the tenth (10<sup>th</sup>) day of each month.

**7.) TERMINATION WITHOUT CAUSE** – Notwithstanding the contract term specified in this contract, both the City and MCE shall have the right to terminate this contract, without cause, by giving 90 days' written notice to the other party.

**8.) TERMINATION WITH CAUSE** – Notwithstanding the contract term specified in this contract, the City of Whitewater shall have the right to terminate the contract with cause, in whole or in part, if it determines that MCE has failed to perform satisfactory work. In the event the City decides to terminate the contract for failure to perform satisfactorily, the City shall provide MCE at least thirty (30) days' written notice prior to the date of termination.

If the contract is terminated with cause, MCE shall be entitled to receive compensation for all reasonable, allocable and allowable contract services satisfactorily performed by MCE up to the date of termination that were accepted by the City.

**9.) ASSIGNMENT** – MCE shall not assign, transfer, or convey any rights under this contract without the prior written consent of the City.

**10.) INSURANCE** – MCE shall at its own expense, procure and maintain the following insurance coverage and shall provide a certificate of insurance to the City Clerk verifying these coverages, including any required endorsements or riders, during the term of this contract:

- General Liability – One Million Dollars (\$1,000,000.00) combined single limit and Two Million Dollars (\$2,000,000.00) aggregate for bodily injury, personal injury, and property damage.
- Automobile Liability Insurance
- The City of Whitewater shall be named as an additional insured on MCE's insurance policies, on a primary and non-contributory basis, with subrogation rights against the City waived.

**11.) INDEPENDENT CONTRACTOR** – It is agreed and understood between the parties that MCE is an independent contractor. MCE is not an employee of the City of Whitewater and shall not be entitled to any benefits enjoyed by employees of the City. MCE remains in control of all of its employees, including but not limited to hiring, firing, discipline, evaluation, and establishment of standards for performance thereof. All MCE personnel rendering services hereunder shall be, for all purposes, employees of MCE, although they may act as officers or agents of the City while acting within the scope of the services performed under this contract.

**12.) INDEMNIFICATION** – To the fullest extent permitted by law, MCE shall defend, indemnify, and hold harmless the City, its elected and appointed officials, employees, consultants, and volunteers and others working on behalf of the City, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities (“Claims”) alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the mistake, error, omission or negligence of MCE, or by any officer, employee, representative, or agent of MCE or the material breach of any obligation under this contract by MCE, or by any officer, employee, representative, or agent of MCE. MCE shall have no obligations under this section to the extent that any Claim arises as a result of MCE’s compliance with specific municipal laws, ordinances, rules, regulations, resolutions, executive orders, or other instructions received from the City and lawfully and properly carried out by MCE. If either party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both parties shall cooperate fully in investigating the incident. Nothing herein shall be construed to be a waiver of statutory liability immunity provided by Wisconsin Statutes and caselaw. This indemnification is further limited by the amounts of statutory limits of municipal liability provided by Wisconsin Statutes and caselaw.

**13.) APPLICABLE LAW** – This contract shall be governed in all respects by the law of the State of Wisconsin, and any litigation with respect thereto shall be brought in the courts of the State of Wisconsin.

**14.) SEVERABILITY** – If any term or provision in this contract is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provision or part thereof shall be stricken from this contract, and such provision shall not affect the legality, enforceability, or validity of the remainder of this contract. If any provision or part thereof of this contract is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as legally possible.

**15.) ENTIRE AGREEMENT** – This contract and all other agreements, exhibits, attachments, and schedules referred to in this contract constitute the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this contract and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this contract by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed and intend for the agreement to be effective as of the date and year first specified above.

*Allison Schwark*

12/18/2023

Allison Schwark, Municipal Code Enforcement, LLC

**John Weidl**  
CITY MANAGER

Date

*John Weidl*

DEC 14 2023

John Weidl, City Manager

Jweidl@whitewater-wi.gov

Date

ATTEST:

*Lindenberg*

City Clerk

12/14/2023

Date