

## **CITY OF OBERLIN, OHIO**

### **ORDINANCE No. 17 - 42 AC CMS**

**AN ORDINANCE APPROVING AN AGREEMENT WITH SAFEUILT OHIO, LLC OF BAY VILLAGE, OHIO, FOR BUILDING OFFICIAL, BUILDING INSPECTION AND PLANS EXAMINATION SERVICES FOR THE CITY OF OBERLIN AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Oberlin, Ohio has a State-certified Division of Building which must have certain licensed professionals on staff to conduct Residential and Chief Building Official duties, residential and commercial inspection activities and plans examination services; and

WHEREAS, the City of Oberlin, Ohio also has to provide for back-up Building Official, building inspection and plans examination services in the event the Chief Building Official, Residential Building Official, building inspectors or the plans examiner cannot perform their duties; and

WHEREAS, Safebuilt Ohio, LLC is a company with a local office in Bay Village, Ohio which can provide the building services needed by the City of Oberlin on a contract basis and has the necessary licensed personnel to do so; and

WHEREAS, Safebuilt has provided a proposal to the City for building services which provides for contract building personnel to be available as needed on a per hour charge basis; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the proposal of Safebuilt Ohio, LLC of Bay Village, Ohio for the provision of building official, building inspection and plans examination services for the City of Oberlin is hereby accepted and the City Manager is hereby authorized and directed to enter into an agreement accordingly.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to accept a proposal and enter into an agreement for the immediate provision of services for the City of Oberlin Division of Building.

PASSED: 1<sup>st</sup> Reading: August 21, 2017 (E)  
2<sup>nd</sup> Reading: \_\_\_\_\_  
3<sup>rd</sup> Reading: \_\_\_\_\_

ATTEST:



BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL



RONNIE J. RIMBERT  
PRESIDENT OF COUNCIL

POSTED: 08/22/2017

EFFECTIVE DATE: 08/21/2017

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF OBERLIN, OHIO  
AND SAFEbuilt OHIO, LLC**

---

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

**RECITALS**

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

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

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

**1. SCOPE OF SERVICES**

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

**2. CHANGES TO SCOPE OF SERVICES**

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

**3. FEE STRUCTURE**

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

**4. INVOICE & PAYMENT STRUCTURE**

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

**5. TERM**

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

**6. TERMINATION**

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

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

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

**7. FISCAL NON-APPROPRIATION CLAUSE**

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

**8. MUNICIPALITY OBLIGATIONS**

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

**9. PERFORMANCE STANDARDS**

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

**10. INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall be liable for and shall defend, save, indemnify, and hold harmless the Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of the Municipality, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities, by reason of personal injury, including bodily injury or death and/or property damage with respect to any third party claim ("Claim(s)") to the extent that any such injury, loss or damage is caused by the negligence of or material breach of any obligation under this Agreement by Consultant or any officer, employee, representative, or agent of Consultant. If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

## **11. ASSIGNMENT**

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

## **12. INSURANCE**

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

## **13. INDEPENDENT CONTRACTOR**

The Consultant is an independent contractor, and neither the Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of the Municipality. As the Consultant is an independent contractor, the Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for the Municipality under this Agreement. The Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present,

with the Consultant, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

**14. THIRD PARTY RELIANCE**

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

**15. OWNERSHIP OF DOCUMENTS**

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

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

**16. CONSULTANT PERSONNEL**

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

**17. DISCRIMINATION & ADA COMPLIANCE**

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity laws. Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by the Municipality at any time during the term of this Agreement.

**18. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS:**

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. Consultant's federal work authorization user identification number is 254821; authorization date of September 23, 2009. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment eligibility. Consultant shall not enter into an agreement with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

**19. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES**

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

**20. NOTICES**

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

<b>If to the Municipality:</b>	<b>If to the Consultant:</b>
Carrie Handy City of Oberlin 85 South Main Street Oberlin, OH 44074	Gregory Toth, CRO SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538

**21. FORCE MAJEURE**

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

**22. DISPUTE RESOLUTION**

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

**23. ATTORNEY'S FEES**

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

**24. 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.

**25. GOVERNING LAW AND VENUE**

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

**26. COUNTERPARTS**

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

27. WAIVER

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

28. 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.

City of Oberlin, Ohio

  
Signature

Name: Robert H. Harad

Title: City Manager

Date: 8 / 23 / 2017

SAFEbullt Oberlin, LLC

  
Signature

Name: Matthew Royer

Title: COO

Date: 08 / 17 / 17



## EXHIBIT A – LIST OF SERVICES AND FEE SCHEDULE

### 1. LIST OF SERVICES

#### Unsafe Residential Structure Analysis

- ✓ Proactively work with the Municipality and its citizens to maintain a safe and desirable community
- ✓ Provide review of structure to determine whether or not structure meets Municipal requirements to be condemned - as request by the Municipality
- ✓ Provide individual analysis report for each structure

#### Building Official Services

- ✓ Manage and help administer the department and report to the Municipalities designated official
- ✓ Be a resource for Consultant team members, Municipal staff, and applicants
- ✓ Help guide citizens through the complexities of the codes in order to obtain compliance
- ✓ Monitor changes to the codes including state or local requirements and determine how they may impact projects in the area and make recommendations regarding local amendments
- ✓ Oversee our quality assurance program and will make sure that we are meeting our agreed upon performance measurements and your expectations
- ✓ Provide training for our inspectors on Municipality adopted codes and local amendments as needed
- ✓ Main point of contact from Consultant for the Municipality and coordinate with other departments
- ✓ Oversee certificate of occupancy issuance to prevent issuance without compliance of all departments
- ✓ Attend staff and council meetings as mutually agreed upon
- ✓ Responsible for reporting for the Municipality – frequency and content to be mutually agreed upon
- ✓ Responsible for required reporting to the State of Ohio
- ✓ Responsible for client and applicant satisfaction
- ✓ Work with Municipal staff to establish and/or refine building department processes
- ✓ Provide Building Code interpretations for final approval
- ✓ Issue stop-work notices for non-conforming activities – as needed

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

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

#### Plan Review Services

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

**Reporting Services**

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

**2. MUNICIPAL OBLIGATIONS**

- ✓ Municipality shall provide Consultant with a list of Unsafe Residential Structures that require analysis and supporting documentation
- ✓ All fees will be collected by the Municipality
- ✓ Municipality shall provide Consultant with a list of requested inspections and supporting documents
- ✓ Municipality will intake permits, plans and related documents
- ✓ Municipality will provide zoning administration for projects assigned to Consultant
- ✓ Office space, desk, desk chairs, file cabinets, local phone service, internet, use of copier and fax

**3. TIME OF PERFORMANCE**

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

- ✓ Unsafe Residential Structure Analysis
  - Consultant will coordinate analysis assessments with the Municipality at the time of request
  - Consultant will provide individual analysis reports to the Municipality within ten (10) working days of analysis
- ✓ Building Official will be on-site four (4) hours per day; four (4) days per week or as mutually agreed upon based on activity related to Building Official duties
- ✓ Inspectors will be dispatched on an as-needed basis
- ✓ Consultants representatives are available by cell phone, and will meet with the public by appointment

Deliverables			
<b>INSPECTION SERVICES</b>	Perform inspections called in by 4:00 pm the next business day		
<b>TWO HOUR INSPECTION WINDOW</b>	Provide a two-hour window of time that the permit holder can expect to have their inspection performed – Upon request only		
<b>MOBILE RESULTING</b>	Provide our inspectors with field devices to enter results immediately		
<b>PRE-SUBMITTAL MEETINGS</b>	Provide pre-submittal meetings to applicants		
<b>PLAN REVIEW TURNAROUND TIMES</b>	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<b>Project Type:</b>	<b>First Comments</b>	<b>Second Comments</b>
	✓ Single-family within	5 business days	5 business days or less
	✓ Multi-family within	10 business days	5 business days or less
✓ Small commercial within (under \$2M in valuation)	10 business days	5 business days or less	
✓ Large commercial within	15 business days	10 business days or less	

**4. FEE SCHEDULE**

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

Service Fee Schedule:	
Unsafe Residential Structure Analysis	\$250.00 per structure
Court Testimony/Witness	\$100.00 per hour – two (2) hour minimum
Building Official Services	\$105.00 per hour – one (1) hour minimum
Inspection Services (Commercial & Residential)	\$ 85.00 per hour – one (1) hour minimum
Plan Review Services - excludes engineer review fees	\$ 95.00 per hour – one (1) hour minimum
Structural Engineering Plan Review	\$150.00 per hour – one (1) hour minimum – requires prior approval from both Parties
After Hours/Emergency Inspection Services	\$100.00 per hour – two (2) hour minimum
Time tracked will start when Consultant checks in at the Municipality to receive inspections.	

