

## MEMORANDUM

**TO:** Mayor Jones and Members of the Board  
**FROM:** Randi Gallivan, Town Clerk  
**DATE:** February 15, 2018  
**RE:** **2018 Contract – SAFEbuilt Studio**

Attached is the 2018 contract with SAFEbuilt Studio for planning and zoning services. It has been approved by SAFEbuilt and Corey Hoffmann.

Scott Martin from SAFEbuilt Studio will attend the meeting to answer any questions.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Town of Foxfield, a Colorado statutory municipality, (the "Town"), and SAFEbuilt, LLC doing business as SAFEbuilt Studio (the "Consultant").

### **RECITALS:**

A. The Town requires professional services as more particularly described in the Scope of Services, attached hereto as **Exhibit A** and incorporated herein by this reference (the "Project").

B. Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Consultant shall provide to the Town services for the Project.

### **I. SCOPE OF SERVICES**

Consultant shall furnish the labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project which are described or reasonably implied from **Exhibit A**.

### **II. THE TOWN'S OBLIGATIONS/CONFIDENTIALITY**

The Town shall provide Consultant with reports and such other data as may be available to the Town and reasonably required by Consultant to perform hereunder. No Project information shall be disclosed by Consultant to third parties without prior written consent of the Town or pursuant to a lawful court order directing such disclosure. All documents provided by the Town to Consultant shall be returned to the Town. Consultant is authorized by the Town to retain copies of such data and materials at Consultant's expense.

### **III. OWNERSHIP OF INSTRUMENTS OF SERVICE**

The Town acknowledges that the Consultant's documents are an instrument of the services provided pursuant to this Agreement. Nevertheless, the documents prepared under this Agreement shall become the property of the Town upon completion of the services.

### **IV. COMPENSATION**

A. In consideration for the completion of the services specific herein by Consultant, the Town shall pay Consultant in accordance with the schedule of charges in **Exhibit A**, which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges.

B. Consultant shall submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this

Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the Town.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the Town no later than the twenty-fourth (24th) day of each month for payment, pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment, pursuant to said late invoice, until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement.

C. The Town has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the Town.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the Town) required by this Agreement have been turned over to and approved by the Town and upon receipt by the Town of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

## **V. COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence upon the request of the Town, and shall terminate upon completion of the Project as described in Exhibit A, unless earlier terminated pursuant to Section XII below.

## **VI. CHANGES IN SCOPE OF SERVICES**

A change in the Scope of Services shall constitute a material change or amendment of services which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the Town. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract.

Except as expressly provided herein, no agent, employee, or representative of the Town shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

## **VII. PROFESSIONAL RESPONSIBILITY**

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The services performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of services in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the Town for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the Town of drawings, designs, specifications, reports, and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the Town's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.

## **VIII. COMPLIANCE WITH LAW**

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

## **IX. INDEMNIFICATION**

A. **INDEMNIFICATION – GENERAL:** The Town cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the Town, its Board members, officials, officers, directors, agents and employees from any and all third party claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's

compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless the Town, its Board members, its officers, agents and employees from damages resulting from the negligence of the Board members, officials, officers, directors, agents and employees.

B. **INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE:** The Consultant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Town, its Board members, and any of its officials, officers, directors, and employees from and against third party damages, liability, losses, costs and expenses, including reasonable attorneys fees, but only to the extent caused by or arising out of the negligent acts, errors or omissions of the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement, if professional services are provided. The Consultant is not obligated under this subparagraph IX.B. to indemnify the Town for the negligent acts of the Town, its Board members, or any of its officials, officers, directors, agents and employees.

C. **INDEMNIFICATION – COSTS:** Consultant shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands. In the event of litigation each Party shall pay all its own costs and attorney fees.

Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from the Town.

## **X. INSURANCE**

A. Consultant agrees to procure and maintain, during the life of this Agreement, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX. Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX. Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain, during the life of this Agreement, insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain, during the life of this Agreement, for itself and any subconsultant, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX. Indemnification, above. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers' Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability Insurance with minimum limits of Five Hundred Thousand Dollars

(\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) disease-policy limit, and Five Hundred Thousand Dollars (\$500,000) disease-each employee. If any work on the Project is sublet, the Consultant shall require each of its subconsultants to provide similar coverage for all of the subconsultant's employees to be engaged in such work. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this Paragraph.

2. Commercial General Liability Insurance to be written with a limit of liability of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, arising out of any one occurrence, and not less than Two Million Dollars (\$2,000,000) general aggregate for all damages arising out of bodily injury, including death, at any time resulting therefrom, during the policy period. This policy shall also include coverage for blanket contractual and independent contractor risks.

The limits of Commercial General Liability Insurance for broad-form property damage (including products and completed operations) shall be not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one occurrence, and not less than Two Million Dollars (\$2,000,000) for all damages arising out of injury to or destruction of property, including the Town's property during the policy period. The policy shall contain a severability of interests provision.

The policy required by this sub-paragraph 2. shall be endorsed to include the Town, its officers, employees and consultants as additional insureds. No additional insured endorsement to the policy required by this sub-paragraph 2. shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.

4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence, and One Million Dollars (\$1,000,000) aggregate with respect to each of the Consultant's owned, hired, and nonowned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

5. Every policy required above shall be primary insurance, with the exception of Professional Liability and Workers' Compensation, and any insurance carried by the Town, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy required above.

6. The certificate of insurance provided by the Consultant shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved

by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and the coverages afforded under the policies. The completed certificate of insurance shall be sent to:

Town of Foxfield  
Attn: Town Administrator  
P.O. Box 461450  
Foxfield, Colorado 80046-1450

7. It is the affirmative obligation of the Consultant to notify the Town of Foxfield's Town Administrator, as provided in this Agreement, within two (2) business days of the cancellation or substantive change to any insurance policy required under this Agreement, and failure to do so shall constitute a breach of this Agreement.

8. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the Town may immediately terminate this Agreement.

9. The parties hereto understand and agree that the Town, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Three Hundred Fifty Thousand Dollars (\$350,000) per person, and Nine Hundred Ninety Thousand Dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the Town, its officers or its employees.

#### **XI. NONASSIGNABILITY**

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

#### **XII. TERMINATION**

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the Town's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the Town's issuance of said written notice of intent to terminate, the Town shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the Town shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the Town thereafter shall be at the Town's sole risk, unless otherwise consented to by Consultant.

#### **XIII. CONFLICT OF INTEREST**

The Consultant shall disclose any personal or private interest related to property or business within the Town. Upon disclosure of any such personal or private interest, the Town shall determine

if the interest constitutes a conflict of interest. If the Town determines that a conflict of interest exists, the Town may treat such conflict of interest as a default and terminate this Agreement.

**XIV. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Arapahoe, State of Colorado.

**XV. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the Town for any purposes.

**XVI. NO WAIVER**

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

**XVII. ENTIRE AGREEMENT**

This Agreement, and the attached Exhibits A, B and C, is the entire Agreement between Consultant and the Town, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

**XVIII. NOTICE**

Any notice or communication between Consultant and the Town which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The Town: Town of Foxfield  
Attn: Town Administrator  
P.O. Box 461450  
Foxfield, Colorado 80046-1450

Consultant: Thomas P. Wilkas CFO  
SAFEbuilt  
3755 Precision Drive #140  
Loveland, CO 80538





## EXHIBIT A

### LIST OF SERVICES AND FEE SCHEDULE

Services and rates associated with this agreement are described below.

1. ADMINISTRATIVE PREPARATION

SAFEbuilt Studio will charge an hourly rate of \$115.00 for process orientation and document familiarization. Orientation is anticipated to occur via review of online documents via the Town's website as well as potential follow-up/clarification with the Town Administrator and Town Clerk. Estimated time for orientation is 4-8 hours. Not to exceed \$920.00 for this phase of work.

2. GENERAL ZONING AND DEVELOPMENT INQUIRIES

SAFEbuilt Studio will charge an appropriate hourly rate for providing day-to-day community development services (i.e. Zoning, and Land Use inquiries, Permit questions, and other general planning and development). We propose returning phone calls and emails within 24 hours from the date the inquiry is made. This initial response may generate subsequent phone calls and emails. Phone calls and emails will be answered by the appropriate staff member depending on the complexity of the inquiry.

3. PERMIT REVIEW (Building, Fence, Sign, Right-of-Way Use, and Overlot Grading permits).

SAFEbuilt Studio will charge an appropriate hourly rate for work done in association with each review. We will make all reasonable efforts to have plans reviewed in a manner and at a skill level that is cost effective to the Town of Foxfield. Permit reviews will be completed within 3-5 business days from the time the permit is received. Where staff anticipates a longer review time or review by a more experienced planner is required, we will discuss this with Town staff prior to commencing our work. Please reference 2018 price sheets.

Normal review will include:

- a. Review permits for completeness and communicate with appropriate Town staff any need for additional application materials to deem the permit submittal complete.
- b. Review permit applications for consistency with adopted land use codes, generally covered in Chapters 16 and 17 of the Town Municipal Code.

4. LAND USE APPLICATION REVIEW

SAFEbuilt Studio will charge appropriate hourly rate for work performed in association with each review. We will make all reasonable efforts to have applications reviewed in a manner and at a skill set level that is cost effective to the Town of Foxfield. Where we anticipate a complex plan set or project that will require review by a more experienced planner, we will discuss our approach with Town staff prior to commencing our work. Please reference the 2018 price sheet.

Normal review will include:

- a. Review land use application materials for conformance or compliance with standards outlined in the following policies, plans, and ordinances.
  - i. Town of Foxfield Master Plan
  - ii. Town of Foxfield Trails Plan
  - iii. Town of Foxfield Municipal Code, Chapters 16 and 17
  - iv. Town of Foxfield Street Map
- b. Compilation and communication of review results, via formal comment letter, to appropriate Town staff and applicant.

- c. Communication of final staff review, via formal letter, to appropriate Town staff and applicant.
- d. Assistance in development and review of subdivision agreements, annexation agreements, and license agreements as requested. To the extent such review requires specialized engineering expertise, staff will coordinate with the Town's engineer or other designated agent to ensure site plans and development projects comply with the Town Municipal Code prior to final approval.
- e. All application information to be emailed or transferred by other electronic means to SAFEbuilt Studio staff as an initial option. A secondary option for transfer will be via courier or mail service. All costs associated with transfer of application materials will be borne by the Town.
- f. Land Use Application Review process timeline (this is similar to many Denver Metro jurisdictions):
  - i. 3 weeks for initial review which includes planning, engineering, and external review agencies (i.e. South Metro Fire Rescue Authority) and 1 week to compile and forward comments to Town staff and the applicant.
  - ii. 2 weeks for each subsequent review and 1 week to compile and forward comments to Town staff and the applicant.
- g. SAFEbuilt Studio will create the staff report, in electronic format, for the Board of Trustees.
- h. SAFEbuilt Studio will attend Board of Trustees meetings only as requested by the Town Administrator.

## 5. ADDITIONAL SERVICES

SAFEbuilt Studio is available to provide ongoing planning assistance to Town staff based on specific written request from the Town Administrator for work provided on an as-needed, hourly basis. Based on the potential extent of the scope of such additional services, SAFEbuilt Studio will provide Town staff with a fee estimate for requested services and will only proceed to work on such services upon approval from Town staff. SAFEbuilt Studio will use hourly rates listed on the 2018 pricing sheet for additional work.

- a. SAFEbuilt Studio will develop checklists and/or development guides describing the various land use application and permitting processes. The checklists will be placed on the Town's website or a link will be created to allow applicants and developers direct access to the checklists. These documents will provide a step-by-step summary of the particular process, submittal requirements, required fees, and timeline from initial application to permit or land use application approval. This can be done independently by SAFEbuilt Studio staff or in conjunction with the appropriate Town representative.
- b. SAFEbuilt Studio will periodically review and update the current Municipal Code for compliance with local, state and federal laws and those areas of the code the Town Board would like to revise or update to address current planning and land use trends or changes to the Master Plan. This process will involve review of the current code and discussions with the Town Administrator.
- c. SAFEbuilt Studio will review the Town's website to determine if there is a need for revisions to existing permits or increased accessibility to online documents. This project will coincide with item (a) above.

- d. Research the feasibility and need to provide a link on the Town's website for residents, applicants, developers, real estate professionals, appraisers and other interested parties to access for zoning and other relevant information for individual properties. Part of the process will involve an analysis to determine if there will be a cost benefit to the Town by adding this feature.

**2018 Hourly Rate Schedule and Miscellaneous Fees.**

<b><u>Professional</u></b>	<b><u>Hourly Rates</u></b>
Senior Planner	\$115.00
Project Planner II	\$85.00
Project Planner I	\$75.00

There will be no charge for normal copies made on our copy machine. Large copies that need to be paid for by us will be billed to the Town with no up charge. There will be no travel or mileage charge for us to attend board meetings. However, hourly rates will apply for meeting attendance.

## Exhibit B

### I. Special Provisions Required by HB 1343

A. Certification. By entering into this Agreement, Contractor hereby confirms that, at the time of this certification, it does not knowingly employ or contract with an illegal alien and that Contractor has participated or attempted to participate in the basic pilot program administered by the U.S. Department of Homeland Security in order to verify that it does not employ any illegal aliens.

B. Prohibited Acts. Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor who fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Confirmation.

1. Contractor has confirmed or attempted to confirm through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

2. Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph i. hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.