



## City of Pekin

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**SPECIAL CITY COUNCIL MEETING  
TUESDAY, APRIL 19, 2022  
5:30 PM**

|                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Pledge of Allegiance</b>                                                                                                                                  |
| <b>2. Call to Order</b>                                                                                                                                         |
| <b>3. Approve Agenda</b>                                                                                                                                        |
| <b>4. Public Input</b>                                                                                                                                          |
| <b>5. Public Hearings</b>                                                                                                                                       |
| 5.1. Notice of Public Hearing For Proposed Increase To Sewer Rates for the City Of Pekin Starting May 1, 2022                                                   |
| <b>6. Consent Agenda</b>                                                                                                                                        |
| <b>7. Unfinished Business</b>                                                                                                                                   |
| 7.1. Ordinance No. 3069-21/22 Amending Wastewater Charges in Section 3-2-4-2 of the City Code<br><b>ACTION REQUESTED:</b> Approve and Adopt the Ordinance.      |
| <b>8. New Business</b>                                                                                                                                          |
| 8.1. Resolution No. 408-21/22 Professional Services Agreement with SAFEbuilt Illinois LLC<br><b>ACTION REQUESTED:</b> Approve and Adopt the Resolution.         |
| 8.2. Resolution No. 409-21/22 1-Month Extension of Professional Services Agreement with SAFEbuilt<br><b>ACTION REQUESTED:</b> Approve and Adopt the Resolution. |
| 8.3. Resolution No. 410-21/22 Authorization to Purchase New Falcon 4 Hot Box from CMW Equipment<br><b>ACTION REQUESTED:</b> Approve and Adopt the Resolution.   |
| <b>9. City Council or Staff Reports</b>                                                                                                                         |
| <b>10. EXECUTIVE SESSION 5 ILCS 120/2 (c)</b>                                                                                                                   |
| <b>11. Adjourn</b>                                                                                                                                              |



## REQUEST FOR COUNCIL ACTION

**Agenda Date:** April 19, 2022  
**To:** Council Members  
**From:** Justin Reeise, Public Works Director

**AGENDA ITEM:** Ordinance No. 3069-21/22 Amending Wastewater Charges in Section 3-2-4-2 of the City Code

**ACTION REQUESTED:** Approve and Adopt the Ordinance.

**DESCRIPTION:**

Currently Section 3-2-4-2(e) of the City Code establishes a volumetric wastewater rate of \$7.66 per 1,000 gallons of metered water consumption for the use of and for service supplied by the wastewater facilities of the City of Pekin. This volumetric rate has remained unchanged since 2018 and with pending capital improvement project needing funding, a rate increase is being recommended. The attached ordinance amends the volumetric rate to \$9.90 per 1,000 gallons of metered water consumption.

The ordinance also establishes an annual rate adjustment based on the Consumer Price Index-All Urban Areas (CPI-U). This annual adjustment will be calculated based on the percentage change when comparing the February CPI-U for the current year to the February CPI-U for the previous year. The maximum annual adjustment will be limited to the calculated CPI rate change or 3%, whichever is lowest, with the minimum increase being set at 0% in instances of negative CPI changes.

The attached ordinance amends the Code with this new volumetric rate, starting May 1, 2022 with the annual adjustment to be effective annually each May 1<sup>st</sup> after.

Staff recommends approval.

**FINANCIAL IMPACT:** A rate increase is projected to produce approximately \$1.9 million in additional revenue that will be utilized to address capital improvement and maintenance needs of the sewer and storm sewer systems of the City.

Requested Amount:  
Line Item:  
Budgeted Amount:  
Remaining Funds:

**IMPACT IF APPROVED:** Volumetric rate is increased

**IMPACT IF DENIED:** Volumetric rate is not increased

**ALTERNATIVES:** N/A

**RELATED TO THE 2019-2021 CITY COUNCIL GOALS:**

**5 Year CIP.** The Five-Year Capital Improvement Plan reflects all current and future capital improvement needs of the City of Pekin. The Plan is designed to be updated annually by staff and submitted to the Council for review and approval prior to the annual budget process.

**Enhance Code Enforcement Services.** The Council understands the importance of a strong Code Enforcement Program in that it has an impact on many facets of living and doing business inside the City of Pekin.

**Business Friendly Community.** The Council strives to bring new businesses to Pekin while helping to maintain and expand all existing businesses. It is therefore essential to work cooperatively to make Pekin a "Business-Friendly" Community.

|  |                                                                                                                                                                                                                                                                                                   |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>Efficient and Effective Municipal Operations.</b> A fundamental responsibility of elected officials, City Staff and Employees is the exercise of good stewardship over public funds. Therefore, it is important that municipal services be delivered with maximum efficiency and effectiveness |
|  | <b>Police &amp; Fire Pension Obligation.</b> To meet the 90% funding level by the year 2040 it is essential the City plan carefully and maintain financial discipline to meet its \$63 million dollar obligation.                                                                                 |
|  | <b>Employee Residency.</b> It is the goal of the Council to develop a policy that encourages more full-time non-union employees who participate in a City funded pension program to reside within the city limits of Pekin.                                                                       |

**REQUIRED SIGNATURES**

**Finance Department** (Certification of Availability of Funds):

Date:

**City Manager:**

**Mark A. Rothert**

Mark A. Rothert, City Manager

4/7/2022

Date:

## Ordinance No. 3069-21/22 Amending Wastewater Charges in Section 3-2-4-2 of the City Code

**WHEREAS**, Section 3-2-4-1(e) of the Pekin City Code establishes the volumetric rate for the use of and the for service supplied by the wastewater facilities; and

**WHEREAS**, the volumetric rate is currently established at \$7.66 per 1,000 gallons of metered water consumption; and

**WHEREAS**, due to the ongoing need for capital improvements in both sewer and storm sewer systems of the City, the City Council finds it necessary and appropriate to amend the volumetric rate to \$9.90 per 1,000 gallons of metered water consumption; and

**WHEREAS**, the City Council finds it is also necessary and appropriate to include an annual rate adjustment based on the Consumer Price Index-All Urban Areas (CPI-U). This annual adjustment will be calculated based on the percentage change when comparing the February CPI-U for the current year to the February CPI-U for the previous year.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS:**

**Section 1.** The recitals set forth above are found to be true and correct and are adopted herein.

**Section 2.** Chapter 3, Article II, Division 4, Section 2(e) of the City of Pekin, Illinois, Municipal Code is hereby amended as follows (additions indicated by underline, deletions by ~~strike through~~):

(e) *Volumetric rate.* There shall be and there is hereby established a volumetric rate for the use of and for service supplied by the wastewater facilities of the City. A volumetric rate of ~~\$7.66 for~~\$9.90 per 1,000 gallons of metered water consumption shall be applied to all users of the wastewater facilities of the City ~~May 1, 2018.~~ On May 1st of each year, commencing May 1, 2023, the volumetric rate shall be adjusted by the lower of (i) the percentage change between the February CPI-U for the current year and the February CPI-U for the previous year or (ii) 3%; provided, however, that in the event of a negative CPI-U change, the rate adjustment shall be 0%.

**Section 3.** This Ordinance is hereby ordered to be published in pamphlet form by the City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

**Section 4.** This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

**Section 5.** This Ordinance shall be in full force and effect on May 1, 2022.

**ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of Pekin this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY CLERK



## Sewer Rate Increase FAQ April 2022

**Q. Why do we pay sewer fees?**

- A.** Sewer fees pay for the collection, transport, and treatment of both wastewater and storm water. Collect and transport occurs through the sanitary sewer, storm sewer and combined sewer piping throughout the city. Treatment of wastewater occurs at the City's wastewater treatment plant located on Front Street.

This system, collectively, is operated as a utility of the City of Pekin, charging a rate against the monthly amount of water utilized per house or account. The City also charges a flat capital improvement charge to each account monthly as well.

These funds are collected by the City to operate the wastewater treatment plant, repair and maintain the systems of piping throughout the city, and mitigate storm water flooding or drainage issues throughout the city.

**Q. How are sewer rates calculated in Pekin?**

- A.** The sewer rate is made up of a volumetric charge and a capital improvement charge. The volumetric charge is variable dependent on the amount of water usage billed. The capital improvement charge is a monthly fee charged to each sewer service.

**Q. When were sewer service fees last adjusted?**

- A.** The volumetric rate has remained at \$7.66 per 1,000 gallons since May 1, 2018. The capital improvement fee was reduced in May 2021 from \$4.90 to \$0.69, with a five year schedule to return to the base \$4.90 monthly rate.

**Q. What is the proposed volumetric fee increase?**

- A.** The proposed volumetric rate for waste water is to increase from \$7.66 per 1,000 gallons used to \$9.90 per 1,000 gallons used.

**Q. Why do rates need to increase?**

- A.** Fees are increased to keep up with the costs of operating, repairing, and replacing the sanitary and storm water collection systems and treatment plant infrastructure, as well as to maintain compliance with State and Federal regulations.

Specifically, the following factors contribute to the need to increase sewer fees:

1. Unfunded mandates with required combined sewer system improvements.
2. Aging sanitary infrastructure that requires improvements including replacement and installation of cured in place pipe (CIPP) liners.

3. Capital project needs related to storm water improvements. The current rate structure does not consider the costs for storm sewer capital improvements into the sewer rate.
4. Increased costs to the City for the maintenance and operation of the sewer collection system, treatment plant, and storm sewer system.

In summary, in order to be good stewards of the City of Pekin's Sewer Utility, the City needs to assess the operational costs, revenues, and capital needs of the sewer utility to ensure it maintains a healthy operation.

**Q. What happens if sewer rates DON'T increase?**

**A.** The city's ability will be limited to undertake projects to effectively run and operate the community's sewer and storm water systems. Projects that would help alleviate storm water flooding in homes and neighborhoods would not be able to be addressed until an annual funding stream has been established.

Lack of funding will prevent the City from being able to complete proactive maintenance projects such as televising and lining. This will put the city at greater risk for needing to complete emergency repairs to sewers.

The city is also under mandate to complete a final phase to the combined sewer project. Current project estimates project a funding shortfall without a rate increase.

**Q. Does the City of Pekin have a Storm Water Fee?**

**A.** No. Unlike other similar communities, the City of Pekin has not adopted a storm water fee for businesses and residents in Pekin.

**Q. What measures has the City taken to control operational costs of the sewer utility?**

**A.** The City has taken several steps to help manage the rising costs of operating a sewer utility. Some of these measures have included:

1. Implementing enhanced preventive maintenance operations at the treatment plant.
2. In 2022-2023 the City will look to bring a laboratory back to the treatment plant, this is expected to have long term savings from 3<sup>rd</sup> party testing fees as well as operational advantages.
3. Several years ago the City implemented a more widespread use of CIPP liners which provide significant savings to the replacement of aged pipes.
4. Enhanced cross-divisional utilization of staff and equipment to increase operational efficiency and reduce contractor costs.
5. Ongoing evaluation of opportunities for energy efficiency improvements.

These strategies have allowed the Sewer Fund to operate without a rate increase since 2018.

**Q. Can the City use monies in the sewer fund for unrelated expenses?**

**A.** No. The City of Pekin operates the sewer fund as an enterprise fund. Enterprise fund money can only be spent on a specific purpose such as sewer. The funding comes from fees related to the fund's mission. An enterprise fund is a separate accounting and financial reporting mechanism for which revenues and expenditures are segregated into a fund with financial statements separate from all other City activities.

**Q. When will the proposed volumetric rate increase go into effect?**

**A.** A proposed sewer fee increase is proposed to go into effect on May 1, 2022 aligning with the start of the City's new fiscal year.

**Q. Does my property tax revenue go toward the sewer fund?**

**A.** No. The City of Pekin operates the sewer fund as an enterprise fund. The revenue comes from fees related to the fund's mission. For a resident of Pekin less than 12% of the property tax bill comes to the City. Property tax money along with other City revenues are used to support other city services.

**Q. Will I be charged for water used to irrigate my yard or fill my pool?**

**A.** No. Currently the City utilizes a winter averaging method for billing which averages the usage from the months of October through April. The lesser of the average and the actual usage is billed to residents during the summer months.

**Q. How much will my bill increase?**

**A.** The increase in a sewer customer's bill will be dependent on the monthly volume of water used by a customer. The table below outlines the current charges as of May 1, 2022 versus the proposed charges. Approximately 90% of sewer customers in Pekin use less than 7,000 gallons of water in a month.

| Monthly Volume Used  | Current Cost as of May 1, 2022 | Proposed Cost as of May 1, 2022 |
|----------------------|--------------------------------|---------------------------------|
| Up to 1,000 gallons  | \$9.86                         | \$12.10                         |
| Up to 2,000 gallons  | \$17.52                        | \$22.00                         |
| Up to 3,000 gallons  | \$25.18                        | \$31.90                         |
| Up to 4,000 gallons  | \$32.84                        | \$41.80                         |
| Up to 5,000 gallons  | \$40.50                        | \$51.70                         |
| Up to 6,000 gallons  | \$48.16                        | \$61.60                         |
| Up to 7,000 gallons  | \$55.82                        | \$71.50                         |
| Up to 8,000 gallons  | \$63.48                        | \$81.40                         |
| Up to 9,000 gallons  | \$71.14                        | \$91.30                         |
| Up to 10,000 gallons | \$78.80                        | \$101.20                        |

**Q. When will sewer rates increase again?**

**A.** The City is proposing to include an annual rate adjustment based on the Consumer Price Index-All Urban Areas (CPI-U). This annual adjustment will be calculated based on the percentage change when comparing the February CPI-U for the current year to the February CPI-U for the previous year.

The CPI-U is a common measure of inflation and is based the changes in the price of a basket of goods and services purchased by consumers.

The maximum annual adjustment will be limited to the calculated CPI rate change or 3%, whichever is lowest, with the minimum increase being set at 0% in instances of negative CPI changes.

This annual adjustment will help to reduce the future need for larger percentage rate increases in the future.

**Q. Will the water rates increase with the sewer rates too?**

**A.** No. The Water Utility in Pekin is owned and operated by Illinois American Water which is private utility company. The water rates are established by Illinois American Water through a process with the Illinois Commerce Commission. While a water rate increase could happen in the future, this would be completely independent of the City of Pekin sewer rates.

**Q. Who can I contact if I have questions that are not answered on this sheet?**

**A.** The City of Pekin will be holding a Public Hearing regarding the proposed rate increase on Tuesday April 19, 2022 during a special City Council meeting.

You can also contact the Public Works Director at 309-478-5365 or [jfreeise@ci.pekin.il.us](mailto:jfreeise@ci.pekin.il.us).



## REQUEST FOR COUNCIL ACTION

**Agenda Date:** April 19, 2022  
**To:** Council Members  
**From:** Mark Rothert, City Manager

**AGENDA ITEM:** Resolution No. 408-21/22 Professional Services Agreement with SAFEbuilt

**ACTION REQUESTED:** Approve and Adopt the Resolution.

**DESCRIPTION:** In 2020 and 2021, the City outsourced its building inspection operations and entered into a 1-year professional services agreements with SAFEbuilt Illinois LLC. The company was formed in 1992 to provide high quality professional inspection services to communities across Illinois and the United States. The company brings a high level of customer service, technical tools, and a professional culture in providing building inspections and plan review services.

The FY23 fiscal year budget anticipates the hiring of a full time Chief Building Official instead of relying on inspection services by SAFEbuilt. However, there is still a need to contract with SAFEbuilt for permit technician support services. Therefore, the proposed resolution seeks to continue with SAFEbuilt through this capacity that includes the following services:

- Contracting for Permit Technician services;
- Use of the Community Core software used to manage building inspection services;
- Providing building inspection consultation services, if needed;

SAFEbuilt's permit technician would work up to 40 hours per week for the City under this arrangement

SAFEbuilt has requested that a new professional services agreement for these services start on June 1, 2022 and end April 30, 2023. For the month of May 2022, SAFEbuilt and the City would work under a 1-month extension of the current contract in place. This will therefore be an 11-month agreement.

**FINANCIAL IMPACT:** The contracted costs for a permit technician at 40 hours per week was negotiated at a flat monthly rate of \$8,500 or \$102,000 annually. The annual cost for use of SAFEbuilt's proprietary permitting software, Community Core, is \$7,500 per year. The total cost is therefore \$109,500.

|                   |                |   |                |   |                              |
|-------------------|----------------|---|----------------|---|------------------------------|
| Requested Amount: | \$102,000      | + | \$7,500        | = | \$109,500                    |
| Line Item:        | 100-793-569000 |   | 100-793-599801 |   |                              |
| Budgeted Amount:  | \$102,000      |   | \$7,500        |   | FY23 Budget, not yet adopted |
| Remaining Funds:  | \$102,000      |   | \$7,500        |   | FY23 Budget, not yet adopted |

**IMPACT IF APPROVED:** SAFEbuilt will continue to provide permit technician and other building inspection support services

**IMPACT IF DENIED:** SAFEbuilt will continue to provide permit technician and other building inspection support services

**ALTERNATIVES:** N/A

### RELATED TO THE 2019-2021 CITY COUNCIL GOALS:

**5 Year CIP.** The Five-Year Capital Improvement Plan reflects all current and future capital improvement needs of the City of Pekin. The Plan is designed to be updated annually by staff and submitted to the Council for review and approval prior to the annual budget process.

**Enhance Code Enforcement Services.** The Council understands the importance of a strong Code Enforcement Program in that it has an impact on many facets of living and doing business inside the City of Pekin.

|  |                                                                                                                                                                                                                                                                                                    |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>Business Friendly Community.</b> The Council strives to bring new businesses to Pekin while helping to maintain and expand all existing businesses. It is therefore essential to work cooperatively to make Pekin a “Business-Friendly” Community.                                              |
|  | <b>Efficient and Effective Municipal Operations.</b> A fundamental responsibility of elected officials, City Staff and Employees is the exercise of good stewardship over public funds. Therefore, it is important that municipal services be delivered with maximum efficiency and effectiveness. |
|  | <b>Employee Residency.</b> It is the goal of the Council to develop a policy that encourages more full-time non-union employees who participate in a City funded pension program to reside within the city limits of Pekin.                                                                        |

**REQUIRED SIGNATURES**

**Finance Department** (Certification of Availability of Funds):

Date:

**City Manager:**

**Mark A. Rothert**  
 Mark A. Rothert, City Manager

4/13/2022

**Mark A. Rothert**  
 Mark A. Rothert, City Manager

4/13/2022

Date:

**Resolution No. 408-21/22 Professional Services Agreement with SAFEbuilt Illinois LLC**

**WHEREAS**, the City of Pekin is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

**WHEREAS**, the City of Pekin, as a home rule municipality, may exercise power and perform any function pertaining to its government and affairs, including, but not limited to, the power to legislate for the protection of the public health, safety, and welfare; and

**WHEREAS**, the City desires to enter into a Professional Services Agreement, as substantially set forth in the Exhibit A attached hereto, with SAFEbuilt Illinois, LLC, for the provision of professional building inspection support services ("Agreement"); and

**WHEREAS**, the City Council of the City of Pekin finds it is in the best interest of the City and its residents to enter in the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The findings and recitations set forth above are adopted and found to be true and correct.

**Section 2.** The Mayor or the City Manager is authorized and directed to negotiate and enter into the Professional Services Agreement, in substantially the form attached hereto as Exhibit A, with such revisions and modifications as the Mayor or City Manager deems appropriate.

**Section 3.** The City Clerk is directed to attest to the execution of the Agreement as negotiated and approved by the Mayor or City Manager.

**ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of Pekin this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

# PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PEKIN, ILLINOIS AND SAFEbuilt ILLINOIS, LLC

This Professional Services Agreement ("Agreement") is made and entered into by and between City of Pekin, Illinois, ("Municipality") and SAFEbuilt Illinois, LLC, a wholly owned subsidiary of SAFEbuilt, LLC, ("Consultant"). Municipality and Consultant shall be jointly referred to as "Parties".

## RECITALS

WHEREAS, 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 Services.

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

### 1. SCOPE OF SERVICES

Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality, state laws and regulations. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality. Consultant is not obligated to perform services beyond what is contemplated by this Agreement.

Consultant shall provide the Services using Community Core Solutions hardware and software package in accordance with the provisions of Exhibit B.

### 2. CHANGES TO SCOPE OF SERVICES

Any changes to Services between Municipality and Consultant shall be made in writing that shall specifically designate changes in Service levels and compensation for Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Amendment executed by both Parties.

### 3. FEE STRUCTURE

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

### 4. INVOICE & PAYMENT STRUCTURE

Consultant will invoice 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. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. Municipality may request, and Consultant shall provide, additional information before approving the invoice. When additional information is requested Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, 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 June 01, 2022 following full execution by both Parties. The initial term of this Agreement shall be eleven (11) months. Agreement shall automatically renew for subsequent twelve (12) month terms 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.

7. FISCAL NON-APPROPRIATION CLAUSE

Financial obligations of 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

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services (Materials). Municipality has the right to grant and hereby grants Consultant a fully paid up, non-exclusive, non-transferable license to use the Materials in accordance with the terms of this Agreement.

9. PERFORMANCE STANDARDS

Consultant shall perform the Services using 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 to Municipality that Consultant retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform Services in accordance with this Agreement.

10. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and, except as provided otherwise in this section, neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. 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 Municipality under this Agreement. 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 Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or when requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology

equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

It is the intention of the Parties that, to the greatest extent permitted by applicable law, Consultant shall be entitled to protection under the doctrines of governmental immunity and governmental contractor immunity, including limitations of liability, to the same extent as Municipality would be in the event that the services provided by Consultant were being provided by Municipality. Nothing in this Agreement shall be deemed a waiver of such protections.

11. ASSIGNMENT AND SUBCONTRACT

Neither party shall assign all or part of its rights or obligations under this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement in connection with the sale of all or substantially all of its assets or ownership interest, effective upon notice to Municipality, and may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performance clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, 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 negligence of Consultant or any officer, employee, representative, or agent of Consultant. 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 Municipality.

To the fullest extent permitted by law and without waiver of governmental immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) the negligence of, or material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from Municipality. 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.

13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR NON-INFRINGEMENT. EXCEPT TO THE EXTENT ARISING FROM MUNICIPALITY'S PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMAINING REMEDY. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENTIONAL CONDUCT, OR OTHERWISE) EXCEED THE GREATER OF THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT OR THE AVAILABLE LIMITS OF CONSULTANTS INSURANCE (SUCH LIMITS DEFINE MUNICIPAL MAXIMUM LIABILITY TO THE SAME EXTENT AS IF MUNICIPALITY HAD BEEN OBLIGATED TO PURCHASE THE POLICIES).

14. INSURANCE

- A. Consultant shall procure and maintain and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to 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.
- B. 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.
- C. 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 Municipality and Municipality's officers, employees, and consultants as additional insureds.
- D. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- E. 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.
- F. Municipality shall be named as an additional insured on Consultant's insurance coverage.
- G. Prior to commencement of Services, Consultant shall submit certificates of insurance acceptable to Municipality.

15. THIRD PARTY RELIANCE

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

16. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all Materials and of all work product and deliverables created by Consultant pursuant to this Agreement. The Materials, work product and deliverables shall be used by Consultant solely as provided in this Agreement and for no other purposes without the express prior written consent of Municipality. As between Municipality and Consultant, all work product and deliverables shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and 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. Notwithstanding the preceding, Consultant may use the Materials, work product, deliverables, applications, records, documents and other materials provided to perform the Services or resulting from the Services, for purposes of (i) benchmarking of Municipality's and other client's performance relative to that of other groups of customers served by Consultant; (ii) improvement, development marketing and sales of existing and future Consultant services, tools and products; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties, other than hosting providers, development consultants and other third parties providing services for Consultant, only on an anonymized basis and only as part of a larger body of anonymized data. 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 Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

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

17. CONSULTANT ACCESS TO RECORDS

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

18. CONFIDENTIALITY

Consultant shall not disclose, directly or indirectly, any confidential information or trade secrets of Municipality without the prior written consent of Municipality or pursuant to a lawful court order directing such disclosure.

19. CONSULTANT PERSONNEL

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

20. 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. 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 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 Municipality at any time during the term of this Agreement.

21. E-VERIFY/VERIFICATION OF EMPLOYMENT STATUS

Pursuant to FS 448.095, Consultant certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Consultant during the term of the Agreement. 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. If Consultant enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Consultant shall likewise require the subcontractor to comply with the requirements of FS 448.095, and the subcontractor shall provide to Consultant an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Consultant will maintain a copy of such affidavit for the duration of its contract with owner. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

22. 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). 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, Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee's annual salary including bonus.

23. NOTICES

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

| If to Municipality:                                                                                                                                                               | If to Consultant:                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mark Rothert, City Manager<br>City of Pekin<br>111 South Capitol Street<br>Pekin, Illinois 61554<br>Email: <a href="mailto:marothert@ci.pekin.il.us">marothert@ci.pekin.il.us</a> | Joe DeRosa, CRO<br>SAFEbuilt, LLC<br>444 N. Cleveland, Suite 444<br>Loveland, CO 80537<br>Email: <a href="mailto:jderosa@safebuilt.com">jderosa@safebuilt.com</a> |

24. 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.

25. 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, 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. The cost thereof shall be borne equally by each Party.

26. 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.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective entities to the performance of its obligations hereunder.

28. CONFLICT OF INTEREST

Consultant shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Consultant with regard to providing the Services pursuant to this Agreement. Consultant shall not offer or provide anything of benefit to any Municipal official or employee that would place the official or employee in a position of violating the public trust as provided under Municipality's charter and code of ordinances, state or federal statute, case law or ethical principles.

29. GOVERNING LAW AND VENUE

The negotiation and interpretation of this Agreement shall be construed under and governed by the laws of the State of Illinois, without regards to its choice of laws provisions. Exclusive venue for any action under this Agreement, other than an action solely for equitable relief, shall be in the state and federal courts serving Municipality and each party waives any and all jurisdictional and other objections to such exclusive venue.

30. COUNTERPARTS

This Agreement and any amendments or task orders 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.

31. ELECTRONIC REPRESENTATIONS AND RECORDS

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

32. 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.

33. 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 agreements, 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.

\_\_\_\_\_  
Avner Alkhas, Chief Financial Officer  
SAFEbuilt Illinois, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
City of Pekin, Illinois

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title  
City of Pekin, Illinois

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## EXHIBIT A – LIST OF SERVICES AND FEE SCHEDULE

### 1. LIST OF SERVICES

#### As-Requested Building Official Services

- ✓ 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
- ✓ Provide Building Code interpretations for final approval
- ✓ 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
- ✓ 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 Municipality – frequency and content to be mutually agreed upon
- ✓ Responsible for client and applicant satisfaction
- ✓ Issue stop-work notices for non-conforming activities related to provided services – as needed

#### As-Requested Building, Electrical, Plumbing, Mechanical Inspection Services

- ✓ Consultant utilizes an educational, informative approach to improve the customer's experience.
- ✓ Perform code compliance inspections to determine that construction complies with approved plans
- ✓ 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 or provide an electronic version of the inspection results and discuss inspection results with site personnel

#### As-Requested Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Be available for pre-submittal meetings by appointment
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ 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

#### Permit Technician Services

- ✓ Facilitate the permitting process from initial permit intake to final issuance of permit
- ✓ Review submittal documents and request missing information to ensure packets are complete
- ✓ Provide front counter customer service as necessary
- ✓ Answer questions concerning the building process and requirements at the counter or over the phone
- ✓ Form and maintain positive relationships with Municipal staff and maintain a professional image
- ✓ Determine permit fees based on Municipal fee schedule as established by ordinance, if requested
- ✓ Work with Municipal Clerk to facilitate Freedom of Information Act (FOIA) requests, if requested
- ✓ Provide inspection scheduling and tracking to ensure code compliance
- ✓ Act as an office resource to inspectors in the field
- ✓ Process applications for Municipal Boards and Commissions – if requested
- ✓ Provide input, tracking and reporting to help increase efficiencies

2. COMMUNITY CORE SOLUTIONS TERMS AND CONDITIONS

- ✓ Provide Community Core in accordance with the terms and conditions of Exhibit B.

3. MUNICIPAL OBLIGATIONS

- ✓ Municipality will intake plans and related documents for pick up by Consultant or submit electronically
- ✓ Municipality will provide office space, desk, desk chairs, file cabinets, local phone service, internet, use of copier and fax

4. TIME OF PERFORMANCE

- ✓ Consultant will perform Services during normal business hours excluding Municipal holidays
- ✓ Services will be performed on an as-requested basis, except Permit Technician Services
- ✓ Permit Technician will be available to the Municipality for up to forty (40) hours weekly
  - Remotely or on-site at Municipal request
- ✓ Consultant representative(s) will be available by phone and email

| Deliverables                            |                                                                                                                                          |                       |                          |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------|
| <b>INSPECTION SERVICES</b>              | Perform inspections received from the Municipality prior to 4:00 pm next business day                                                    |                       |                          |
| <b>PRE-SUBMITTAL MEETINGS</b>           | Provide pre-submittal meetings to applicants by appointment                                                                              |                       |                          |
| <b>PLAN REVIEW<br/>TURNAROUND TIMES</b> | Provide comments within the following timeframes:<br>Day 1 = first full business day after receipt of plans and all supporting documents |                       |                          |
|                                         | <u>Project Type:</u>                                                                                                                     | <u>First Comments</u> | <u>Second Comments</u>   |
|                                         | ✓ 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<br>(under \$2M in valuation)                                                                                   | 10 business days      | 5 business days or less  |
|                                         | ✓ Large commercial within                                                                                                                | 20 business days      | 10 business days or less |

5. FEE SCHEDULE

- ✓ Beginning January 01, 2023 and annually thereafter, the hourly and flat rates listed shall be increased based upon the annual increase in the Department of Labor, Bureau of Labor Statistics or successor thereof, Consumer Price Index (United States City Average, All Items (CPI-U), Not Seasonally adjusted, All Urban Consumers, referred to herein as the "CPI") for the Municipality or, if not reported for the Municipality the CPI for cities of a similar size within the applicable region from the previous calendar year, such increase, however, not to exceed 4% per annum. The increase will become effective upon publication of the applicable CPI data. If the index decreases, the rates listed shall remain unchanged.

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

| SERVICE FEE SCHEDULE                                                                                                                                                             |                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Permit Technician Services                                                                                                                                                       | \$8,500.00 flat monthly rate                                            |
| As-Requested Building Official Services                                                                                                                                          | \$125.00 per hour – one (1) hour minimum                                |
| As-Requested Inspection Services                                                                                                                                                 | \$125.00 per hour – one (1) hour minimum                                |
| As-Requested Plan Review Services                                                                                                                                                | \$125.00 per hour – one (1) hour minimum                                |
| As-Requested Remote Code Support Service                                                                                                                                         | \$125.00 per hour – one (1) hour minimum                                |
| Community Core Solutions                                                                                                                                                         | \$7,500.00 annually                                                     |
| As-Requested Services Travel Time/Lodging <ul style="list-style-type: none"> <li>• Time tracked includes roundtrip travel time between Consultant's location and City</li> </ul> | \$125.00 per hour plus lodging costs will be passed through to the City |

## EXHIBIT B – COMMUNITY CORE SOLUTIONS TERMS AND CONDITIONS

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# EXHIBIT B-TERMS & CONDITIONS

## Meritage Systems CommunityCore: Description of Services

This order form is subject to the [terms of service](#) and [privacy policy](#).

Meritage reserves the right to amend the terms of service and privacy policy at any time and without prior notice.

| Applications and Services                                                                                                                                                |  | One-Time Set-Up Fee                                                                   | Annual Support and Licensing Fee | Number of Users |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------|----------------------------------|-----------------|
| <b>CommunityCore</b><br>Including InspectorConnect iOS mobile app for building and code inspections                                                                      |  |                                                                                       |                                  |                 |
| <b>Legacy Data Import: Permitting</b><br>Transfer of historical permit data from legacy system, assumes availability of readable data file or CSV                        |  |                                                                                       |                                  |                 |
| <b>GIS Integration: Permitting</b>                                                                                                                                       |  |                                                                                       |                                  |                 |
| <b>Contractor &amp; Business Licensing</b>                                                                                                                               |  |                                                                                       | Included                         |                 |
| <b>CommunityConnect Online Permitting</b><br>Anywhere, anytime access for contractors to apply for permits, pay fees, check status, request inspections and upload plans |  | Includes Setup of CommunityCore Preferred Merchant Account for Credit Card Processing |                                  |                 |
| <b>Online Payments</b><br>Non-Preferred Merchant Account: additional fee if Meritage Systems is not a preferred provider                                                 |  |                                                                                       | NA                               |                 |
| <b>System Training</b>                                                                                                                                                   |  |                                                                                       | NA                               |                 |
| <b>Total:</b>                                                                                                                                                            |  |                                                                                       |                                  |                 |

### CommunityCore Permit Management Features:

### PAYMENT SHALL BE PURSUANT TO SECTION

- Permitting and Inspection Management
- Address Import Setup
- Inspections (including mobile access & when available, InspecotrConnect app for iOS tablets)
- Contractor and Business Registration
- Plan Review Tracking and simple Planning/Zoning permits and workflow
- Reporting and Data Import/Export
- Complete configuration of permit type, terminology, fee structures, documents and user roles and permissions
- Permit Documents: Standard set of Permits, CO, TCO configured with your jurisdiction logo and information
- Customs Documents: Available for an additional charge
- Reports: Library of standard reports
- Custom Reports: Available for an additional charge
- Online Training for startup and post startup, ongoing and customer support
- Personalized support, including configuration updates
- Automatic updates of new features

These Service Terms of Use ("Agreement") constitute a contract between Meritage Systems, Inc., with offices at 3755 Precision Drive, Suite 140, Loveland, CO 80538 ("Meritage"), and you ("Customer"). This Agreement includes and incorporates the Order Form with which Customer purchased the Services and any subsequent Order Forms (submitted in written or electronic form), our Privacy Policy and our Copyright Policy. By accessing or using the Services, you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or other entity, you represent that you have such authority to bind such entity and are agreeing to this Agreement on behalf of such entity. If you do not have such authority to enter into this Agreement or do not agree with these terms and conditions, you may not use the Services. Meritage reserves the right to revise this Agreement from time to time, at our sole discretion. By accessing or using the Services after such revisions, you agree to be bound by the revised Agreement.

**1. Definitions. For purposes of this Agreement the following terms have the following meanings:**

- a. "Account" means an account allowing access to the Services created in Customer's name.
- b. "Fees" means the fees for the Services.
- c. "Confidential Information" means (a) all nonpublic information disclosed or made available under this Agreement that relates to the provision or receipt of the Services or either party's financial condition, operations or business, and which is clearly identified as confidential at the time of disclosure, (b) the Technology, (c) the Documentation, (d) the Customer Information that is not publicly available, and (e) the User IDs.
- d. "Customer Information" means all data, information or other content entered by or collected from Customer or any User that is entered into the Services by Customer or any User while accessing the Services. Customer Information includes any third-party information collected by Customer or any User and entered into the Services.
- e. "Documentation" means the online help files and instruction manuals (whether in print or electronic form) that relate to the use of the Services that have been provided or made available by Meritage to Customer.
- f. "Go-Live Date" means the date on which the Services, hosted on a Production Server, become active.
- g. "Intellectual Property Rights" means any and all intellectual property rights throughout the world, including, without limitation, any and all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information.
- h. "Order Form" means the form executed by the parties that describes the Services and any setup fees associated with the Services.
- i. "On-boarding" means the Set-Up and the Training, as specified in the Order Form.
- j. "Production Server" means the server on which the Services will be hosted.
- k. "Start of Service Date" is the date of commencement of operation of the services by Customer or 120 days following the Effective Date, whichever is first.
- l. "Services" means the publicly-available, online building department services provided by Meritage through its CommunityCore application, which can be accessed through the web site located at [www.app.communitycore.com](http://www.app.communitycore.com) and such other sites as may be designated by Meritage (each, the "Site" or collectively, the "Sites").
- m. "Set-Up" means defining workflows and permit types, entering fee schedules and setting up Users. The purpose of Set-Up is to configure the Production Server on which the Services for Customer will be hosted.
- n. "Set-Up Fees" means the fees for Set-Up specified in the Order Form.
- o. "Subscription Fees" means the annual subscription fee specified in the Order Form.
- p. "Technology" means the software, hardware and other technology used by or on behalf of Meritage to provide the Services, and all data, information and other content included on or accessible through the Services, except for any Customer Information.
- q. "Training" means the services intended to familiarize Users on the use of the Services, as described in Section 4, and to verify configuration of the Production Server.
- r. "User ID" means each unique User identification name and password used for access to and use of the Services through the Account.
- s. "User" means anyone accessing the Services through Customer's Account.

**2. Customer's Access To And Use Of The Services.**

- a. Customer's Right to Access the Services. Subject to the terms of this Agreement Meritage grants to Customer a limited, non-exclusive, non-transferrable license to access and use the Sites and Services as specified in the Order Form during the term of this Agreement, solely for Customer's own internal business purposes. Except as set forth in this Agreement, Customer is not receiving any right or license to use, or any ownership interest with respect to, the Sites, Services or any Technology or Intellectual Property related to the Sites or Services. Customer acknowledges that the Services are hosted by third-party hosting providers contracted by Meritage. Meritage reserves the right to change hosting provider from time to time and without notice to Customer.

- b. Certain Restrictions on Customer's Access. Customer will not, and will not permit any Users or any other party to: a) download or otherwise obtain a copy of the Technology in any form; (b) reverse engineer or otherwise derive the source code of the Service, Sites or Technology or otherwise modify, reverse compile, disassemble, or translate the Service, Sites or Technology or create any derivative works thereof; or (c) use the Service on behalf of any third party or for any purpose other than as described in this Agreement; (d) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Service or use it as a service bureau; (e) post, send, process or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material violating of third party rights; (f) post, send, process or store material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (g) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or related systems or networks; (h) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the IP Rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the software or on any copies made in accordance with this Agreement; (i) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Service, or Documentation, or on any copies made in accordance with this Agreement; (j) use, or authorize or permit the use of, the Service except as expressly permitted herein; (k) use the Service to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party.
- c. Customer's Use of the Services. (1.a) Accounts/User IDs. Customer will be provided with one or more User IDs to access the Services through the Account. Your Order Form specifies the number of user IDs and Read-Only IDs provided by Meritage to Customer under this agreement ("Subscription Cap"). Each User ID shall be linked to a single User and Customer agrees to limit usage of a User ID to the individual to which the User ID is assigned. Customer may request to increase the number of Users and the parties shall establish the terms under which such additional Users will be added. Customer shall use, and shall ensure that Users use, commercially reasonable efforts to ensure the security and confidentiality of all User IDs. In the event that the confidentiality of a User ID is or may be compromised, Customer shall promptly advise Meritage of the potential or actual compromise. Customer shall be responsible for the use of a User ID by unauthorized users. (1.b) Customer Information. Customer represents and warrants that it has all necessary intellectual and proprietary rights and licenses in and to any Customer Information to permit (i) it and its Users to enter Customer Information into the Services and (ii) to permit Meritage to perform the Services. Customer hereby grants to Meritage a fully paid-up, non-exclusive license to use, reproduce and create derivative works of the Customer Information as reasonably required to perform the Services. (1.c) Necessary Equipment. The Services are provided through the internet and Users must have an internet connection in order to access the Services. Meritage does not provide internet connectivity. Customer will be solely responsible, at Customer's own expense, for acquiring, installing and maintaining all telecommunication services, hardware, software and other equipment as may be necessary for Customer and Customer's Users to connect to, access, and use the Services. Currently, the services may be accessed through the Chrome browser or the iOS mobile app provided they have been maintained to versions supported during the three-year period prior to the date on which access is sought. (1.d) Customer will not use and will not authorize any User to use any open source software in connection with the Services in any manner that requires, pursuant to the license applicable to such open source software, that any Meritage Confidential Information or the Services be (A) disclosed or distributed in source code form, (B) made available free of charge to recipients, or (C) modifiable without restriction by recipients. (1.e) By using the Services, Customer agrees to be bound by the terms of [Meritage's Copyright Policy](#), which terms may be revised by Meritage at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Copyright Policy.
- d. Meritage will use reasonable commercial efforts to ensure that the Services perform substantially in accordance with the description of the services found at [www.app.communitycore.com](http://www.app.communitycore.com). The Services are subject to modification from time to time at Meritage's sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Meritage.
- e. Meritage will use reasonable commercial efforts to make the Services available to Customer and its Users. Notwithstanding the foregoing, Meritage reserves the right to suspend Customer's (or any of its Users') access to the Services: (i) for scheduled or emergency maintenance, (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Meritage, and fails to correct that breach within the applicable cure period; (iii) in the event that Customer breaches Section 2.2 or Section 7.2 of this Agreement or (iv) as it deems reasonably necessary to respond to any actual or potential security concerns.

- f. Customer acknowledges that the Services will require the Users and third parties for whom the Services are being performed by Customer to share with Meritage certain information for the purposes of providing the Services. This information may include personal information (such as email address, and/or phone number) regarding the Users or such third parties which Meritage will use for the purposes of providing the Services. Customer is fully responsible for obtaining the consent of each User and any third party to the use of his/her information by Meritage for purposes of providing the Services. Such use will be subject to and governed by the terms of Meritage's Privacy Policy, the current version of Meritage's privacy policy is available [here](#). Meritage reserves the right to revise the Privacy Policy at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Privacy Policy.
- g. Customer will be fully responsible for Users' compliance with this Agreement. Any breach of this Agreement by a User shall be deemed to be a breach by Customer. Customer will promptly advise Meritage in the event that any User or third party revokes such consent or ceases to be a User. Customer is solely responsible for determining whether the Services are sufficient for Customer's purposes.

### 3. Set-Up.

- a. Set-Up Services. Subject to the terms of this Agreement Meritage will provide Customer with the Set-Up services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided. Customer Responsibilities and Certain Restrictions on Set-Up. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Set-Up and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Set-Up, along with all Users, have adequate computer skills to perform their tasks. Set up support required beyond the specified Set-Up shall be arranged upon the agreement of the parties and will incur an additional fee. Acceptance. The purpose of Set-Up is to configure the Services for availability on the Go-Live Date. During the Training, Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes. Upon completion of Training and prior to the Go-Live Date, Customer shall review and accept the Services by executing a form of acceptance provided by Meritage. Customer acknowledges and accepts that configuration of the Services is limited to the extent accommodated by the current capabilities and limitations of the Services.

### 4. Training.

- a. Training Services. Subject to the terms of this Agreement, Meritage will provide Customer with the Training services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided.
- b. Delivery. All Training will be provided by Meritage using WebEx or an equivalent service agreed by the parties. Meritage will create a Training site for Customer and its Users to use for Training. In addition to WebEx training, the Training website will provide access to online documentation and training videos that may be accessed by Customer and its Users. Customer and its Users may access the Training web site on an unlimited basis through the Go-Live Date. Customer acknowledges that the Training website may not be available at all times and that Meritage shall have no liability as a result of the unavailability of the Training website.
- c. Customer Responsibilities and Certain Restrictions. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Training and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Training, along with all Users, have adequate computer skills to perform their tasks.
- d. Verification of Set-Up. Customer acknowledges that a primary purpose of the Training website is to verify functionality of the Services prior to the Go-Live Date. Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes to the Training website.

### 5. Fees And Payment.

- a. . Fees. On the Effective Date, Customer will pay Meritage the Set-Up Fee as specified in the Order Form for Set-Up. In addition, on the Start of Service Date and ending upon the termination of this Agreement, Customer will pay to Meritage the Subscription Fees as specified in Order Form, plus all applicable sales, use and other purchase related taxes (Customer shall be responsible for timely providing Meritage with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes). Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. In the case of any withholding requirements, Customer will pay any required withholding itself and will

not reduce the amount paid to Meritage on account thereof. In the event that Customer elects to increase the number of Users, the parties shall meet to discuss the impact on Set-Up and Subscription Fees. The Subscription Fees may be increased on an annual basis, as determined by Meritage, provided that any pricing increase will not exceed seven percent (7%) of the Subscription Fees per User for the immediately prior Term, unless the pricing was designated in the applicable Order Form as promotional or one-time. Meritage will provide 30 days advance notice of any increase in the Subscription Fees. By using the Services after the increase in the Subscription Fees becomes effective, Customer agrees to be bound by such new Subscription Fees. FEES AND FEE RATES ARE TO BE CONSIDERED CONFIDENTIAL BY BOTH PARTIES AND NOT TO BE SHARED WITH ANY THIRD PARTY WITHOUT WRITTEN PERMISSION OR AS REQUIRED BY LAW.

- b. Payment. All Set-Up Fees, Subscription Fees and other fees due under this Agreement (collectively, "Fees") are payable in U.S. dollars, unless otherwise specified in writing. Except for the Set-Up Fee, which shall be paid prior to the performance of Set-Up, Customer shall pay all Fees and any other amounts set forth on each such invoice issued by Meritage under this Agreement within 30 days of the date of invoice. Fees are payable in advance and are non-refundable. In the event that Customer disputes the amount of any Fees, it shall so notify Meritage within the 30-day payment period. The failure to provide such notice shall be deemed agreement that the Fees are undisputed.

## 6. Confidentiality.

- a. Obligations. Each party acknowledges that by reason of the relationship created between the parties by this Agreement, it may have access to certain non-public information of substantial value concerning the other party's business, operations, strategic plans, customers, suppliers, technology, competition and employees. Accordingly, each party as the recipient of Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") will not use any Confidential Information of the Disclosing Party for any purpose other than the providing and receipt of Services under this Agreement. The parties agree the use of the Confidential Information will be in accordance with all terms and conditions of this Agreement. The Receiving Party will not disclose the Confidential Information of the Disclosing Party to any third party except as expressly provided herein and will protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Either party may disclose the Confidential Information of the other party to the Receiving Party's employees, subcontractors and advisors who require access to such information for the performance of their obligations, all provided that the employees, subcontractors and/or agents have entered into confidentiality agreements with the Receiving Party that are at least as protective of the Disclosing Party's Confidential Information as are the terms of this Agreement. The Receiving Party shall be responsible for any disclosure or use of the Disclosing Party's Confidential Information by or through any employee, subcontractor or agent of the Receiving Party. For the avoidance of doubt, Customer acknowledges that Meritage utilizes the services of certain third parties in connection with the provision of the Services (such as data hosting) and such third parties will have access to Customer's Confidential Information, subject to compliance with this Section 6. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that, to the extent permitted by law, the Receiving Party notifies the Disclosing Party of such required disclosure in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- b. Termination of Obligations. The Receiving Party's obligations under this Section 6 with respect to maintaining the confidentiality of any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party and is not subject to restrictions on disclosure and/or use; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. The restrictions on use of the Disclosing Party's Confidential Information shall remain in effect for five years subsequent to the earlier of the termination of this Agreement or the date on which the obligation to maintain the Confidentiality of the Disclosing Party's Confidential Information terminates.
- c. Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination of this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing

that it has fully complied with its obligations under this Section 6.3. For the purposes of this Section 6, Data, as defined in Section 7 below, shall not be considered Customer's Confidential Information.

- d. Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event, the aggrieved party shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available to the aggrieved party under law or in equity.
- e. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, provided that the terms and conditions may be disclosed if such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis to potential investors or acquirers in Meritage or any entity directly or indirectly controlling the majority voting interest in Meritage.

## **7. Ownership.**

- a. Customer's Ownership. Customer retains all right, title and interest in and to the Customer Information Customer or its Users provide to Meritage, other than such information that is subject to disclosure under applicable freedom of information laws and regulations. During the termination notice period specified in Section 9, Meritage will provide Customer Information in the form of Meritage native format files containing permit data to Customer within 10 business days of receipt of a written request for that Customer Information, all at no additional charge.
- b. Meritage's Ownership. Meritage retains all right, title and interest in and to, and all Intellectual Property Rights embodied in or related to the Sites, Services, Technology, and any other information or technology used or made available in connection with the Sites or Services, including without limitation any and all improvements, updates, and modifications thereto, whether or not made in conjunction with this Agreement. Meritage's name, logo, and the product and service names associated with the Services are trademarks of Meritage or third parties, and no right or license is granted to Customer to use them separate from Customer's right to access the Services. In the event that Customer or any End User makes any suggestions for the addition of features to, or the improvement of the Services ("Feedback"), Meritage shall, to the maximum extent permitted by law, own all such Feedback, including any Intellectual Property Rights therein, and shall have the right to use such Feedback for any purpose without payment or accounting to Customer or any End User. Customer and/or End User agree to execute any and all materials reasonably required by Customer to perfect Customer's ownership in such Feedback and Intellectual Property Rights, all at Meritage's expense.

## **8. Data.**

- a. Meritage will have the right to collect non-personally identifiable data and anonymized information resulting from Customer Information and Customer's use of the Services ("Customer Data") for purposes of (i) benchmarking of Customer's and others performance relative to that of other groups of customers served by Meritage (for the avoidance of doubt, Customer Data will be provided to third parties only as part of a larger body of anonymized data); (ii) sales and marketing of existing and future Meritage services; (iii) monitoring Service performance and making improvements to the Services and Sites.
- b. Backup and Recovery. Meritage shall provide, either directly or through its hosting partner, the following recovery services: 7.2.1 Hosting infrastructure recovery processes 7.2.2 Application recovery processes 7.2.3 Data backup with rotation and retention. Backups are done daily, the prior month of daily data is retained, each month is retained for a year, and each year retained until termination of the agreement.

## **9. Term and Termination.**

- a. This Agreement will begin on the Effective Date and will continue in perpetuity until terminated in accordance with the terms of this Agreement or the applicable Order Form. Upon the expiration of the initial term, if any, specified in the Order Form, Customer may terminate this Agreement upon not less than 90 days advanced written notice to Meritage. Except with respect to a failure to timely make any payments required under this Agreement, either party may terminate this Agreement if the other party breaches this Agreement and does not cure such breach within 60 days after being provided with written notice thereof, provided that in the case of Customer such time period will be extended beyond 60 days if Customer is exercising reasonable efforts to cure such breach during such 60-day period. With respect to the failure to timely make any payments, Meritage shall have the right to suspend access to the Services and Sites or, at its option, to terminate this Agreement, in the event that Customer fails to make any required payment

within five (5) business days after receipt of notice that the payment is past due. Upon any termination of this Agreement: (a) all rights and licenses granted to Customer in this Agreement will immediately terminate and Customer shall immediately cease to use the Services and Sites; (b) Meritage will cease performing all Services; (c) all access by Customer and any Users to the Sites and the Services (including all Customer Information) will be suspended; (d) Meritage will discontinue all use of the Customer Information; and (e) all Fees and other amounts incurred under this Agreement prior to such termination or expiration will become immediately due and payable by Customer. Upon the request of Customer following any termination or expiration, Meritage will transfer all Customer Information collected by Meritage either directly to Customer or to Customer's identified third-party partner. Customer shall compensate Meritage for the transfer on a time and materials basis at Meritage's then-current rates and will reimburse all reasonable expenses and costs associated with the transfer. Such expenses and costs shall include, without limitation, travel, consultant costs, hardware expenses, and software costs associated with efforts involved in preparing Customer Information for transfer as well as any costs incurred as part of the physical transfer of Customer Information. Meritage will not be required to issue any refunds for any unearned Fees paid in advance. The provisions of Sections 2.2, 2.3 (section 2.3(b) and as necessary to complete the return of Customer Information), 2.6, 2.7, 5, 6, 7, 8, 9, 10, 11 and 12 of this Agreement will survive termination of the Agreement for any reason.

#### **10. Warranties and Disclaimers.**

- a. Warranties. Each party represents and warrants to the other party that: (a) such party has all requisite corporate or other applicable power and authority to execute, deliver and perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by such party has been duly authorized; and will not conflict with, result in a breach of, or constitute a default under any other agreement to which such party is a party or by which such party is bound;.
- b. Disclaimers. EXCEPT AS STATED UNDER THIS AGREEMENT, MERITAGE PROVIDES THE SERVICES "AS IS" AND "AS AVAILABLE" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS RELIED ON NO SUCH WARRANTIES IN ENTERING INTO THIS AGREEMENT. MERITAGE DOES NOT WARRANT THAT THE SERVICES WILL BE FREE FROM LOSS OR LIABILITY INCLUDING THAT ARISING OUT OF ANY THIRD-PARTY TECHNOLOGY, THIRD PARTY ACTION, SUCH AS UNAUTHORIZED ACCESS BY ANY THIRD PARTY, OR ANY ACT OR OMISSION OF CUSTOMER. MERITAGE EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO COMPLIANCE WITH LAWS, RULES OR REGULATIONS APPLICABLE TO CUSTOMER, WHICH SHALL BE THE SOLE RESPONSIBILITY OF CUSTOMER. MERITAGE DOES NOT WARRANT THE ACCURACY, RELIABILITY OR COMPLETENESS OF customer materials or ANY ADVICE, REPORT, DATA OR DELIVERABLES OBTAINED BY CUSTOMER FROM THE CUSTOMER MATERIALS SUBMITTED TO THE SERVICES, SUCH ADVICE, REPORTS, DATA OR DELIVERABLES ARE PROVIDED "AS IS" AND MERITAGE SHALL NOT BE LIABLE FOR ANY INACCURACY THEREOF. MERITAGE SHALL NOT BE RESPONSIBLE OR LIABLE FOR: (A) ANY DAMAGES IF, AND TO THE EXTENT, CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS, AS SET FORTH IN THIS AGREEMENT OR AN ORDER FORM; (B) ANY CORRUPTION, DAMAGE, LOSS OR MIS-TRANSMISSION OF CUSTOMER MATERIALS, UNLESS SUCH TRANSMISSION IS THE RESPONSIBILITY OF MERITAGE; OR (C) THE SECURITY OF CUSTOMER MATERIALS DURING TRANSMISSION FROM CUSTOMER'S FACILITIES TO THE CLOUD PLATFORM. Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Meritage is not responsible for any delays, failures, or other damage resulting from such problems.
- c. Customer represents and warrants that it: (A) owns or has the right to use all Customer Information and to submit and store such Customer Information on the Site and the infrastructure supporting the Site and Services; and (B) has all necessary licenses and permissions for usage of any third-party software or other information or material supplied or provided by Customer to Meritage in an Order Form or otherwise used in connection with the Services. Customer hereby grants to Meritage the right to use all Customer Information, including any third-party software solely for the purposes of this Agreement, including any Order Form, and the performance of Meritage's obligations hereunder and any Order Form.

#### **11. Certain Liabilities, Limitation of Liability.**

- a. Customer will, at Customer's own expense, indemnify, defend, hold harmless against, and pay all costs, damages and expenses (including reasonable attorneys' fees) awarded against or incurred by Meritage based on, any claims, allegations or lawsuits that may be made or filed against Meritage by any person to the extent arising from or relating to any breach by Customer of any representation and warranty under this Agreement; or (b) alleging that use by

Meritage in accordance with this Agreement of Customer Information, Customer Data or Customer Confidential Information infringes or misappropriates the Intellectual Property Rights of, or has caused harm or damage to, a third party.

- b. Limitation of Liability. EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION, IN NO EVENT WILL EITHER PARTY, INCLUDING ITS VENDORS, HOSTING SERVICE PROVIDERS, OR ITS LICENSORS, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA, OR PROFITS, OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THE USE OF THE SITES OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION OR CUSTOMER'S OBLIGATION TO MAKE PAYMENTS, EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SITES OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO MERITAGE HEREUNDER AS OF THE DATE OF THE ACT OR OMISSION GIVING RISE TO THE LIABILITY. EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, EACH PARTY'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## 12. General Provisions.

- a. Notwithstanding anything else, Customer may not provide to any person an export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- b. This Agreement will be binding upon the parties to this Agreement and their permitted successors and assigns. Neither party may assign, delegate or transfer this Agreement or any of its rights or obligations (in whole or in part) under this Agreement (whether by operation of law or otherwise) to any third party without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this agreement to any successor in interest to such party's stock, assets or business, whether by way of sale, merger, reorganization or other form of transaction, provided that such party provides the other party with notice of such assignment and that the successor in interest agreed in advance to assume all right, obligations, liabilities, and responsibilities of the assigning party under this Agreement. Any assignment or transfer in violation of the foregoing shall be null and void.
- c. Nothing in this Agreement confers or is intended to confer, expressly or by implication, any rights or remedies upon any person or entity not a party to this Agreement.
- d. This Agreement shall be governed by and construed in accordance with the laws of Colorado without regard to conflicts of law principles. Customer agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in the District of Colorado or in state court in Larimer County, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by Meritage.
- e. The parties hereto are independent parties, not agents, employees or employers of the other or joint ventures, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other.
- f. Any notice to the other party required or allowed under this Agreement must be delivered in writing by express courier, personal delivery, or by certified mail, postage pre-paid to the address for the party listed in the first paragraph of this Agreement.
- g. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.
- h. Meritage may use Customer's name as a reference and publicize Customer as a customer of Meritage.
- i. Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Services and the Sites and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties, regarding Customer's access to and use of the Services and the Sites. This Agreement may be amended or modified only by a writing signed by both parties.
- j. All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.



## REQUEST FOR COUNCIL ACTION

**Agenda Date:** April 19, 2022  
**To:** Council Members  
**From:** Mark Rothert, City Manager

**AGENDA ITEM:** Resolution No. 409--21/22 1-Month Extension of Professional Services Agreement with SAFEbuilt

**ACTION REQUESTED:** Approve and Adopt the Resolution.

**DESCRIPTION:** The FY23 fiscal year budget anticipates the hiring of a full time Chief Building Official in the instead of relying on inspection services by SAFEbuilt. However, there is still a need to contract with SAFEbuilt for permit technician support services. To allow for appropriate notice and a transition period, SAFEbuilt has requested a 1-month extension of their current contract, ending it on May 31, 2022. On June 1, 2022, the City and SAFEbuilt would switch to their new professional services agreement to contract only for permit technician services and use of the Community Core software program.

**FINANCIAL IMPACT:** A 1-month extension would still have the current fee structure in place which includes a flat monthly fee of \$8,145 and 100% of all permit fees collected.

Requested Amount: \$8,145 + reimbursement of permit fees collected  
Line Item: 100-793-569000  
Budgeted Amount: \$116,645  
Remaining Funds: \$116,645 FY23 Budget, not yet adopted

**IMPACT IF APPROVED:** SAFEbuilt extension approved

**IMPACT IF DENIED:** SAFEbuilt extension not approved

**ALTERNATIVES:** N/A

### RELATED TO THE 2019-2021 CITY COUNCIL GOALS:

**5 Year CIP.** The Five-Year Capital Improvement Plan reflects all current and future capital improvement needs of the City of Pekin. The Plan is designed to be updated annually by staff and submitted to the Council for review and approval prior to the annual budget process.

**Enhance Code Enforcement Services.** The Council understands the importance of a strong Code Enforcement Program in that it has an impact on many facets of living and doing business inside the City of Pekin.

**Business Friendly Community.** The Council strives to bring new businesses to Pekin while helping to maintain and expand all existing businesses. It is therefore essential to work cooperatively to make Pekin a "Business-Friendly" Community.

**Efficient and Effective Municipal Operations.** A fundamental responsibility of elected officials, City Staff and Employees is the exercise of good stewardship over public funds. Therefore, it is important that municipal services be delivered with maximum efficiency and effectiveness.

**Employee Residency.** It is the goal of the Council to develop a policy that encourages more full-time non-union employees who participate in a City funded pension program to reside within the city limits of Pekin.

### REQUIRED SIGNATURES

**Finance Department** (Certification of Availability of Funds):

Date:

**City Manager:**

**Mark A. Rothert**

Mark A. Rothert, City Manager

4/13/2022

**Mark A. Rothert**

Mark A. Rothert, City Manager

4/13/2022

Date:

**Resolution No. 409-21/22 1-Month Extension of Professional Services Agreement with  
SAFEbuilt**

**WHEREAS**, the City of Pekin is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

**WHEREAS**, the City of Pekin, as a home rule municipality, may exercise power and perform any function pertaining to its government and affairs, including, but not limited to, the power to legislate for the protection of the public health, safety, and welfare; and

**WHEREAS**, the City desires to extend the term of the Professional Services Agreement, as substantially set forth in the Exhibit A attached hereto, with SAFEbuilt Illinois, LLC, for the provision of professional building inspection services ("Amendment"); and

**WHEREAS**, the City Council of the City of Pekin finds it is in the best interest of the City and its residents to enter in the Amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The findings and recitations set forth above are adopted and found to be true and correct.

**Section 2.** The Mayor or the City Manager is authorized and directed to negotiate and enter into the extension of the Professional Services Agreement, in substantially the form attached hereto as Exhibit A, with such revisions and modifications as the Mayor or City Manager deems appropriate.

**Section 3.** The City Clerk is directed to attest to the execution of the Agreement as negotiated and approved by the Mayor or City Manager.

**ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of Pekin this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

# AMENDMENT THREE PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PEKIN, ILLINOIS AND SAFEbuilt ILLINOIS, LLC

**This Amendment is entered into to amend the Professional Services Agreement** previously entered into on April 14, 2020, by and between City of Pekin, Illinois, (Municipality) and SAFEbuilt Illinois, LLC, a wholly owned subsidiary of SAFEbuilt, LLC, (Consultant). Municipality and Consultant shall be jointly referred to as the “Parties”.

**Amendment Effective Date:** This Amendment shall be effective on the latest date fully executed by both Parties.

## RECITALS AND REPRESENTATIONS

Parties entered into a Professional Services Agreement (Agreement), by which both Parties established the terms and conditions for service delivery on April 14, 2020; and

On April 26, 2021, Parties instituted Amendment One to the Agreement to extend the term of the Agreement through April 30, 2022 and add services and fees; and

On December 9<sup>th</sup> 2021 Parties Instituted Amendment Two and Memorandum of Understanding to revise services fee schedule; and

Parties hereto now desire to amend the Agreement as set forth herein; and

## NOW, THEREFORE

Agreement is hereby amended as set forth below:

- A. Agreement, Section 5. Term shall be extended through June 30, 2022.
- B. Agreement, Exhibit A, 4. Fee Schedule shall be revised as follows in accordance with the Consumer Price Index (CPI) provisions of the original Agreement. THIS FEE SCHEDULE SHALL BE IN EFFECT THROUGH JUNE 30, 2022.

### Section 1.

| Service Fee Schedule: (Permits issued after service start date)                                        |                                                                            |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Building Department Service Fee                                                                        | \$8,145.00 per month                                                       |
| Inspection Services                                                                                    | 100% of Municipal Permit Fee as established by ordinance or resolution     |
| • Building, Mechanical, Electrical and Plumbing                                                        |                                                                            |
| Plan Review Services                                                                                   | 100% of Municipal Plan Check Fee as established by ordinance or resolution |
| • Excludes engineer review fees                                                                        |                                                                            |
| Building Official Services                                                                             | Included in above fees                                                     |
| Permit Technician Service                                                                              | Included in above fees                                                     |
| Structural Engineering Plan Review                                                                     | \$160.05 per hour - one (1) hour minimum                                   |
| Service Fee Schedule: (Permits issued prior to service start date)                                     |                                                                            |
| Inspection Services                                                                                    | \$96.03 per hour - one (1) hour minimum                                    |
| • Building, Mechanical, Electrical                                                                     |                                                                            |
| Plan Review Services                                                                                   | \$133.38 per hour - one (1) hour minimum                                   |
| • Excludes engineer review fees                                                                        |                                                                            |
| Building Official Services                                                                             | \$112.03 per hour - one (1) hour minimum                                   |
| Structural Engineering Plan Review                                                                     | \$160.05 per hour - one (1) hour minimum                                   |
| Inspection time tracked will start when Consultant checks in at Municipality or first inspection site. |                                                                            |

| <b>Additional Fees:</b>                                                                                                              |                                          |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| After Hours/Emergency Inspection Services                                                                                            | \$106.70 per hour - two (2) hour minimum |
| Non-Permitted Activity (by request only)                                                                                             | \$106.70 per hour - one (1) hour minimum |
| When travel time is needed for short term staff, applicable travel time and per diem will be charged and agreed to prior to service. |                                          |

Section 2.

| <b>Additional Fees:</b>                                                                              |                                                                         |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| As directed by the City, any substantial work performed to process contractor licensing and renewals | 100% of related Municipal Fee as established by ordinance or resolution |

**All other provisions of the original Agreement shall remain in effect, to the extent not modified by Amendment.**

IN WITNESS HEREOF, the undersigned have caused this Amendment to be executed in their respective names on the dates hereinafter enumerated.

\_\_\_\_\_  
Avner Alkhas, Chief Financial Officer  
SAFEbuilt Illinois, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert Rothert, City Manager  
City of Pekin, Illinois

\_\_\_\_\_  
Date



## REQUEST FOR COUNCIL ACTION

**Agenda Date:**  
**To:**  
**From:**

**April 19, 2022**  
**Council Members**  
**Justin Reeise, Public Works Director**

**AGENDA ITEM:** Resolution No. 410-21/22 Authorization to Purchase New Falcon 4 Hot Box from CMW Equipment

**ACTION REQUESTED:** Approve and Adopt the Resolution.

**DESCRIPTION:** The Streets Division of Public Works has an operational need to purchase a new Hot Box trailer. The City's current Hot Box is 12 years old and is reaching the end of its dependable life. This is a vital piece of equipment for the Streets Division, where it is utilized for operations such as HMA repairs and patching.

The City will be using the joint purchasing organization Sourcewell to purchase this truck through CMW Equipment (Sourcewell NJPA Contract #052417-FRM). The price of the new Falcon 4 Hot Box is \$35,968.00 CMW has offered the City \$3,500 trade-in value on our current hot box, making our purchase price \$32,468 + Shipping. The shipping costs are estimated to be approximately \$1,000.

This equipment is budgeted for in the proposed FY23 budget, however staff is bringing this to Council for approval now to reduce lead time and help ensure timely receipt of this equipment for ongoing maintenance operations.

Staff recommends approval.

### FINANCIAL IMPACT:

Requested Amount: \$33,468.00

Line Item:

Budgeted Amount: \$38,000

Remaining Funds: From FY23 Budget

**IMPACT IF APPROVED:** Hot Box will be purchased

**IMPACT IF DENIED:** Hot Box will not be purchased

### ALTERNATIVES:

### RELATED TO THE 2019-2021 CITY COUNCIL GOALS:

**5 Year CIP.** The Five-Year Capital Improvement Plan reflects all current and future capital improvement needs of the City of Pekin. The Plan is designed to be updated annually by staff and submitted to the Council for review and approval prior to the annual budget process.

**Enhance Code Enforcement Services.** The Council understands the importance of a strong Code Enforcement Program in that it has an impact on many facets of living and doing business inside the City of Pekin.

**Business Friendly Community.** The Council strives to bring new businesses to Pekin while helping to maintain and expand all existing businesses. It is therefore essential to work cooperatively to make Pekin a "Business-Friendly" Community.

**Efficient and Effective Municipal Operations.** A fundamental responsibility of elected officials, City Staff and Employees is the exercise of good stewardship over public funds. Therefore, it is important that municipal services be delivered with maximum efficiency and effectiveness.

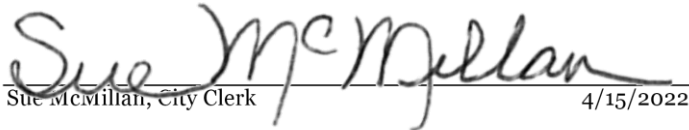
|  |                                                                                                                                                                                                                             |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>Employee Residency.</b> It is the goal of the Council to develop a policy that encourages more full-time non-union employees who participate in a City funded pension program to reside within the city limits of Pekin. |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                            |
|----------------------------|
| <b>REQUIRED SIGNATURES</b> |
|----------------------------|

|                                                                     |
|---------------------------------------------------------------------|
| <b>Finance Department</b> (Certification of Availability of Funds): |
|---------------------------------------------------------------------|

|       |
|-------|
| Date: |
|-------|

|                      |
|----------------------|
| <b>City Manager:</b> |
|----------------------|

|                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|
| <br>Sue McMillan, City Clerk 4/15/2022 |
|-------------------------------------------------------------------------------------------------------------------------|

|       |
|-------|
| Date: |
|-------|

**Resolution No. 410-21/22 Authorization to Purchase New Falcon 4 Hot Box from CMW Equipment**

**WHEREAS**, the Streets Division of Public Works has an operational need to purchase a new Hot Box trailer for use in street repairs and patching; and

**WHEREAS**, the City's current Hot Box is 12 years old and is reaching the end of its dependable life; and

**WHEREAS**, the City has obtained a quote for the purchase of a new Hot Box trailer from CMW Equipment through joint purchasing organization Sourcewell; and

**WHEREAS**, CMW has offered the City a trade-in value on the City's current hot box; and

**WHEREAS**, the City Council finds it is in the best interests of the City to purchase a new Hot Box trailer from CMW Equipment at the terms set forth on the proposal attached hereto as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS:**

**Section 1.** The above recitals are found to be true and correct and are incorporated herein.

**Section 2.** The purchase of a new hot box trailer from CMW Equipment is approved under the terms set forth on Exhibit A attached hereto, which shall include the trade-in of the City's current hot box trailer to CMW Equipment.

**Section 3.** The Mayor or City Manager is authorized to execute such documents necessary to effectuate the purchase and trade-in approved herein.

**ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of Pekin this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



8668 OLIVE BLVD.  
ST. LOUIS, MO 63132  
(314) 993-1336  
FAX (314) 993-1467  
www.cmw-equip.com

DATE April 8, 2022

SOLD TO: City of Pekin  
1208 Koch Street  
Pekin, IL 61554

SHIP TO:

| QTY | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | <b>New Falcon 4 Ton Transporter Hot Box</b> with hydraulic dump (12-Volt Electric Over Hydraulic On Board Pump) One piece, seamless, ceramic combustion chamber for 105,000 BTU diesel burner with VIP burner protection system and automatic temperature control, fully insulated, triple wall hopper construction on single frame extension tandem slipper spring axle trailer with 8-bolt wheels, 16" tires and electric brakes, rectangular tubing frame sandblasted with two coats of epoxy primer and urethane finish. Equipped with metered unloading door, shoveling platform, 15-gallon fuel tank, manual insulated funneling loading doors, battery charger, 24-Hour timer, release agent sprayer bracket, 3\ position tool holder, sidestep to hopper, sight glass for fuel level, LED indication lights, LED night work lights, and LED warning light, with Hi-Visibility safety tape, Two-Year full machine warranty and lifetime frame warranty.<br><i>Price:</i> <i>job: Freeland, MI</i> <i>\$35,968.00\</i><br><i>Trade-In</i> <i>1F9P4142XAM339060</i> <i>2010 4Ton dual burner w/ dump</i> <i>&lt;\$3,500.00&gt;</i><br><i>Total</i> <i>32,468.00</i><br><i>Shipping</i> <i>\$2.00 per mile</i> |

SHIPMENT TO BE MADE:

DATE OR AS SOON THEREAFTER AS POSSIBLE:

VIA: Truck Freight

FOB Freeland, MI

PRICES DO NOT INCLUDE ANY APPLICABLE TAXES

TERMS: Per Sourcwell (NJPA Contract #052417-FRM). Net due 10 day from invoice date.

Thirty-Two Thousand, Four Hundred Sixty-Eight and 00/100

DOLLARS (\$ 32,468.00)  
\$

NON-REFUNDABLE DEPOSIT

This order shall not be binding upon Cummings, McGowan & West Inc., DBA CMW Equipment ("Seller") until accepted by it and approved by an executive officer of the seller at St. Louis, Missouri. When so accepted and approved, it shall constitute a binding agreement upon the parties hereto and shall be a Missouri contract and all rights of the parties hereto shall be governed by the Laws of the State of Missouri. Notice of acceptance by seller to buyer is waived by buyer. This order and contract are not subject to cancellation by buyer.

ORDER TAKEN SUBJECT TO APPROVAL OF AN OFFICER OF CUMMINGS, MCGOWAN & WEST, INC. DBA CMW EQUIPMENT

Scott Beck

BY SALESMAN

ACCEPTED AT ST. LOUIS, MO.  
CUMMINGS, MCGOWAN & WEST INC.  
DBA CMW EQUIPMENT, 20

BY

City of Pekin

PURCHASER SIGN HERE

STATE WHETHER CORP. PARTNERSHIP OR INDIVIDUAL

BY

TITLE

THE PROVISIONS, TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF ARE EXPRESSLY MADE A PART OF

Packet Pg. 40

Attachment: Hot Box Quote (3038 : Resolution No. 410-21/22 Authorization to Purchase New Falcon 4 Hot Box from CMW Equipment)

CLIMMINGS, MCGOWAN & WEST, INC. DBA CMW EQUIPMENT

1. **DESCRIPTION** - The goods, services or work which Seller shall deliver to Buyer and for which Buyer shall pay Seller shall be those goods, services or work specifically listed and described on the front of this Sale Contract ("Products"). This Sale Contract is subject to the correction of stenographical errors. Unless changed by Seller at any time and in its sole discretion, the standard terms and conditions of this Sale Contract shall apply to any future sale from Seller to Buyer, if such sale is not represented by a separate quotation or invoice from Seller. Buyer is hereby given notice of, and deemed to agree to such standard terms and conditions. Any specific terms or conditions written on the front of this Sale Contract by Seller shall control over these standard terms and conditions.

2. **PRICES; ACCEPTANCE** - Prices are set forth on the front of this Sale Contract ("Sale Price") and adjusted as provided for herein. Unless expressly stated otherwise in this Sale Contract, all prices are FOB Seller's location. When prices include freight to destination, Buyer agrees that any increase or reduction in freight rates at time of shipment shall be added to or deducted from the Sale Price. This Sale Contract shall constitute the entire contract between Buyer and Seller. All contracts shall be deemed offered, accepted and made in St. Louis, Missouri. SELLER EXPRESSLY OBJECTS TO AND SHALL NOT BE BOUND BY ANY TERMS WHICH ARE ADDITIONAL TO OR AT VARIANCE WITH THE TERMS OF THIS SALE CONTRACT WHICH MAY APPEAR IN BUYER'S PURCHASE ORDER, BUYER'S ACCEPTANCE OR OTHER PRIOR OR LATER COMMUNICATION FROM BUYER TO SELLER UNLESS SUCH TERMS ARE EXPRESSLY AGREED TO IN A WRITING SIGNED BY SELLER.

3. **TERMS OF SALE: FINANCE CHARGES** - The applicable terms of sale are set forth on the front of this Sale Contract. All purchase orders placed with Seller are subject to credit approval and acceptance by Seller. Seller reserves the right, in its sole discretion, to deny open account terms to Buyer. All accounts are due and payable within the timeframe specified on the front of this Sale Contract. Interest will be assessed on all past due balances at an annual percentage rate of 10%, compounded monthly on the total past due balance. Collection expenses incurred on any delinquent account will be reflected in a Statement of Account for that account and added to the balance due. Seller may defer shipments, alter payment terms, require satisfactory security, or terminate any contract resulting from this Sale Contract, if Buyer fails to pay this or any other invoice (whether under this or any other contract with Seller) when due or otherwise fails to pay this or any other invoice (whether under this or any other contract with Seller) in accordance with its terms or if, at any time, Buyer's financial responsibility or condition becomes unsatisfactory to Seller, in Seller's sole discretion.

4. **SHIPMENTS; DELIVERY** - Shipments are F.O.B. Seller's location. All shipment dates are subject to availability of Product from the applicable manufacturer, and Seller shall have no liability of any type to Buyer if shipment or delivery of any Product to Buyer does not occur or is delayed because the manufacturer or transportation provider has failed or delayed in shipment or delivery of the Product to Seller. Title and risk of loss in the Products shall pass to Buyer upon delivery of the Products to the carrier at the shipping point. Seller is not responsible for selecting the least expensive or the fastest routing for the delivery of the Products to Buyer. Transportation damage must be claimed against the carrier by Buyer. If a representative of Seller is provided to service or demonstrate Products, Buyer agrees to sign a letter of acceptance on completion of work by such representative of Seller.

5. **TAXES** - All applicable sales, use, real property and other taxes, fees, assessments and public charges which may be due or payable as a result of the transactions contemplated hereby or in connection with the use or operation of Products ("Taxes"), whether levied on Seller or Buyer, shall be borne by Buyer to the extent required or permitted by applicable law. Buyer hereby agrees to reimburse Seller for any Taxes that Seller pays within 30 days of Seller's request for reimbursement. Any unpaid Taxes may be added to the total balance due from Buyer to Seller.

6. **WARRANTY** - Seller hereby assigns any manufacturer's warranties for the Products to Buyer, to the extent such warranties are assignable. NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, OR OTHERWISE (WHETHER ORAL, WRITTEN, IMPLIED, EXPRESSED, STATUTORY, ARISING BY LAW OR CUSTOM OR OTHERWISE) ARE MADE BY SELLER OR SHALL APPLY TO PRODUCTS SOLD OR WORK PERFORMED OR OTHER SERVICES PROVIDED BY SELLER AND NO WAIVER, ALTERATION OR MODIFICATION OF THE FOREGOING CONDITIONS SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF SELLER. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY BY SELLER OR A SUBCONTRACTOR OR SUPPLIER DELAY IN DELIVERY OR SHIPMENT, OR OTHERWISE, SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGE, PERSONAL INJURY, REVENUE LOSS OR LOSS OF PROFITS OR CLAIMS OF CUSTOMERS OF BUYER FOR ANY SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE PROVISIONS OF ANY APPLICABLE STATUTE OR LAW, THE FOREGOING SHALL CONSTITUTE THE EXCLUSIVE REMEDIES OF BUYER AND THE EXCLUSIVE LIABILITY OF SELLER WHETHER IN CONTRACT, INTORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, THE PRICE STATED BY SELLER IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.

7. **COMMERCIAL IMPRACTICALITY** - Seller shall not be liable to Buyer should performance hereunder become commercially impracticable or delay in performance result due to any contingency beyond Seller's reasonable control, including, without limitation, acts of God, fires, floods, wars, sabotage, civil unrest, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including, without limitation, priorities, requisitions, allocation and price adjustment restrictions), inability to obtain material equipment or transportation, failure or delay in shipment or delivery to Seller of Product from the manufacturer or transportation provider, incorrect, delayed or incomplete specifications, drawings or data supplied by Buyer or others, or any similar or different contingency. In the case of delay or commercial impracticability of performance caused by any of the foregoing, Buyer shall remain obligated to purchase Products in accordance with the Sale Contract. Buyer shall not have the right to cancel any order contained in this Sale Contract, under any circumstances, without written consent of Seller. Acceptance of the Products, by Buyer shall constitute a waiver of any and all claim for damages by reason of any delay or failure to perform due to any of the foregoing circumstances.

8. **SECURITY AGREEMENT**

(a) Buyer agrees to secure payment of the said Sale Price and performance of all other obligations of the Buyer hereunder, Buyer hereby grants to Seller a security interest in the Products and in all substitutions thereof or therefor or any part thereof, and in all equipment, accessories, parts, repairs and replacements (hereinafter called "accessions") at any time installed in or added or affixed to the Products, and all proceeds (including Insurance proceeds) and products of any of the foregoing. This security agreement shall terminate automatically when all debts due and owing and all obligations of Buyer to Seller have been satisfied.

(b) Buyer agrees to notify Seller prior to removing Products from the location, if any, specified in this Sale Contract. The Products will not be attached to, installed in or located on real estate in such a manner as to become fixtures without the prior written consent of Seller, and notwithstanding any such attachment, installation or location the Products shall retain their character as personal property.

(c) Buyer agrees that upon the occurrence of any of the events of default set forth in paragraph 12 the full amount remaining unpaid hereunder shall at the option of Seller and without notice or demand be and become due and payable forthwith, and Seller shall have the rights, options, duties and remedies of a secured party under, and the Buyer shall have the rights and duties of a debtor under, the Uniform Commercial Code of Missouri (regardless of whether such Code or a law similar thereto has been enacted in the jurisdiction where the rights or remedies are asserted), including without limitation the right of the Seller to take possession of the Products and the right for that purpose without legal process to enter any premises where the Products may be found, provided such entry may be done lawfully, and Buyer further agrees in any such case to deliver the Products to the Seller at a place to be designated by the Seller. Any requirement of said Code of reasonable notification of the time and place of any public sale, or of the time after which any private sale or other intended disposition is to be made, shall be met by giving the Buyer at least five days prior written notice of the time and place of any public sale, or of the time after which any private sale or any other intended disposition is to be made.

Seller shall not be liable in any action for such repossession nor for the payment of any money that has been paid in part payment for the Product, the sum so paid to be deemed compensation for the use, wear and tear of the Products. Buyer shall be and remain liable for any deficiency remaining after applying the proceeds of disposition of the Products, first to reasonable expenses of retaining, holding, preparing for sale, selling and the like, including reasonable attorney's fees and legal expenses, incurred by Seller in connection therewith, and then to the satisfaction of the indebtedness secured hereunder. If an Event of Default occurs, the Buyer agrees to pay interest at the rate of 10% on the unpaid balance from the date of delivery of the Products.

(d) Buyer agrees that Buyer will not sell or dispose of or offer or attempt to sell or dispose of the Products or any accessions or any interest therein, and will not create or permit to exist any security interest in or other encumbrance upon the Products or any other collateral hereunder other than the security interest provided for and agreed to herein.

9. **OBLIGATIONS OF BUYER** - Buyer agrees (a) not to use the Products for hire or in violation of any statute or ordinance; (b) that the Products shall at all times be at the Buyer's risk and the loss and injury or destruction of the Products shall not release the Buyer's obligations hereunder; and (c) to keep the Products fully insured against loss, damage, theft and other hazards and risks, in such amounts, with such companies and under policies in such form as shall be satisfactory to Seller. Upon Seller's request, such policies shall contain an endorsement naming Seller as loss payee as its interest may appear. Such endorsement, or an independent certificate furnished to Seller, shall require that the insurer give Seller 30 days advance notice in writing prior to any policy change or cancellation and that no act or omission of Buyer or any other person shall affect the right of Seller to recover under the policy. Upon Seller's request Buyer shall provide Seller with such certificate or endorsement and a copy of such policy. The proceeds of any insurance, whether paid by reason of loss, injury, return premiums or otherwise, shall at the option of Seller be applied toward the replacement of the Products or applied to the payment of the Sale Price and Buyer hereby names and appoints Seller as agent under attorney in fact to make any adjustments for any loss or losses occurring under the policy of insurance covering the products and to sign or endorse in the name of Buyer, as agent and attorney, in fact, for Buyer, any checks, drafts, applications, receipt, releases and such other papers as may be necessary in placing and canceling said insurance, including refunds of insurance premiums, executing proofs of losses, making and accepting settlements or claims and said agent and/or attorney in fact is hereby authorized to collect any amount due thereby and to apply proceeds (regardless how realized) of any insurance to the payment of the Sale Price, whether past due or not.

10. **LIABILITY** - Buyer agrees that Seller is not liable for any damage or injury or any other risk connected with erection, installation or operation of Products, and Buyer assumes all of the same and agrees to indemnify Seller for any claims from any party for damage to person or property resulting from the same.

11. **SELLER RIGHT TO PROTECT PRODUCTS** - If Buyer fails to maintain insurance, to keep the Products in repair, to pay taxes, fees, assessments or public charges, or to keep the Products free from other liens or encumbrances, Seller may at its option obtain such insurance, pay such taxes, fees, assessments or public charges, liens or encumbrances or order and pay for such repairs and the amount or amounts so expended by Seller shall, with interest thereon at 18% per annum, constitute indebtedness of the Buyer secured hereby and be payable forthwith; but no such act or expenditure by Seller shall relieve the Buyer from any default hereunder or its consequences.

12. **EVENTS OF DEFAULT** - Any one of the following shall constitute an event of default for the purposes of paragraph numbered 8(c) hereof: (i) default in the due and punctual payment in full of any portion of the Sale Price or interest hereunder; or (ii) default by Buyer in the performance or observance of any covenant or agreement required to be, performed or observed by Buyer hereunder; or (iii) any warranty, representation or statement made or furnished to Seller by or on behalf of Buyer in connection with this contract proves to have been false in any material respect when made or furnished; or (iv) loss, theft, substantial damage or destruction of the Products or the making of any levy, seizure or attachment thereof or thereon; or (v) death, insolvency, dissolution or termination of existence of Buyer; or (vi) the commencement of any bankruptcy or insolvency proceedings by or against, or the making of, an assignment for the benefit of creditors or the appointment of a receiver for, Buyer or any guarantor or surety for Buyer; or (vii) if Seller shall for reasonable cause fear the diminution, waste or removal of the Products for for reasonable cause deem itself insecure.

13. **OTHER DOCUMENTATION** - Buyer agrees to execute any additional documents as Seller may reasonably require, including Uniform Commercial Code financing statements, in order to better establish, perfect or enforce the obligations or security interest herein.

14. **ELECTRONIC SIGNATURES** - Buyer and Seller agree that the electronic signatures, whether digital or encrypted, of Buyer and Seller included in this Contract are intended to authenticate this Contract and to have the same force and effect as manual signatures. "Electronic Signature" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including, but not limited to, facsimile or e-mail electronic signatures.