



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 3, 2013

Department: Community Development / Building Division
Prepared By: Mike Jorgensen, Building Official [Signature]

Subject: **CONTRACT AMENDMENTS – ON CALL BUILDING PLAN REVIEW SERVICES**

Fiscal Impact: None – Funding for contractual building plan review services is included in the current budget (001-421-43890-000-00000)

Summary: Staff recommends that Council approve the contract amendments with Esgil Corporation and VCA Code Group extending the terms of the current agreements to December 31, 2014 and increasing the maximum compensation from \$25,000 to \$50,000. The amendments will provide for the continuation of the existing on-call building plan review services currently utilized.

Background: For many years the Building Division has used outside plan check services to supplement staff in order to deal with fluctuating peaks in workloads. Utilizing supplemental outside plan check firms allows the Building Division to maintain the desired customer service project turnaround timeframes.

Discussion: The plan review firms Esgil Corporation and VCA Code Group were selected in 2012 after evaluating proposals from plan review consulting firms. The Building Division has utilized the services of different firms over the years and Esgil and VCA have both proven themselves as extremely competent and capable. These two consulting firms have consistently satisfied our needs and have provided a high level of responsiveness and customer service.

Without the proposed contract amendments the existing agreements will expire on December 31, 2013. The Building Division has determined it is necessary to continue these services and desires to extend the existing professional services agreements.

- Recommended Action:** STAFF RECOMMENDS THAT the City Council
1. Approve and authorize the mayor to execute the First Amendment to the professional services agreement between EsGil Corporation and the City of San Clemente to provide on-call building plan check services.
 2. Approve and authorize the mayor to execute the First Amendment to the professional services agreement between VCA Code Group and the City of San Clemente to provide on-call building plan check services.

- Attachments:**
1. First Amendment to Professional Services Agreement for On-Call Building Plan Check (As-Needed) Services between EsGil Corporation and the City of San Clemente.
 2. First Amendment to Professional Services Agreement for On-Call Building Plan Check (As-Needed) Services between VCA Code Group and the City of San Clemente.
 3. Original Professional Services Agreement (dated 12/13/12) for On-Call Building Plan Check (As-Needed) Services between EsGil Corporation and the City of San Clemente. [For Reference Only]
 4. Original Professional Services Agreement (dated 12/13/12) for On-Call Building Plan Check (As-Needed) Services between VCA Code Group and the City of San Clemente. [For Reference Only]

Notification: None required

p:\mike docs\agenda reports\2014 building plan check services.docx

6/1/2

Attachment – 1

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
ON-CALL (AS-NEEDED) BUILDING PLAN CHECK SERVICES**

This First Amendment to Professional Services Agreement for on-call (as-needed) building plan check services (this "First Amendment") is made and entered into on this _____ day of _____, 2013, by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and EsGil Corporation ("Contractor").

R E C I T A L S:

- A. City and Contractor entered into that certain Professional Services Agreement for on-call (as-needed) building plan check services (the "Agreement") on December 13, 2012.
- B. City and Contractor desire to amend the Agreement in the manner provided herein.

C O V E N A N T S:

Section 1: Section 1.1 of the Agreement is hereby amended by extending the term of Agreement from December 31, 2013 to December 31, 2014. In addition to the services to be performed by Consultant as referenced in Exhibit A to the Agreement, Consultant shall also perform those services described in Exhibit "A" to this First Amendment, which exhibit is attached hereto and incorporated herein by this reference.

Section 2: Section 3.1 of the Agreement is hereby amended by increasing the maximum compensation for services provided in Section 3.1 of the Agreement from Twenty Five Thousand Dollars (\$25,000) to Fifty Thousand Dollars (\$50,000)

Section 3: Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

6H.4

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form:
RUTAN & TUCKER, LLP

City Attorney

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 20__

Finance Authorization

6H-5

EXHIBIT "A"

Scope of Services

Consultant shall perform similar services as identified in the original agreement.

The term of the agreement has been modified extending the contract to December 31, 2014.

document2

6 H-6

Attachment – 2

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
ON-CALL (AS-NEEDED) BUILDING PLAN CHECK SERVICES**

This First Amendment to Professional Services Agreement for on-call (as-needed) building plan check services (this "First Amendment") is made and entered into on this _____ day of _____, 2013, by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and VCA Code Group ("Contractor").

RECITALS:

- A. City and Contractor entered into that certain Professional Services Agreement for on-call (as-needed) building plan check services (the "Agreement") on December 13, 2012.
- B. City and Contractor desire to amend the Agreement in the manner provided herein.

COVENANTS:

Section 1: Section 1.1 of the Agreement is hereby amended by extending the term of Agreement from December 31, 2013 to December 31, 2014. In addition to the services to be performed by Consultant as referenced in Exhibit A to the Agreement, Consultant shall also perform those services described in Exhibit "A" to this First Amendment, which exhibit is attached hereto and incorporated herein by this reference.

Section 2: Section 3.1 of the Agreement is hereby amended by increasing the maximum compensation for services provided in Section 3.1 of the Agreement from Twenty Five Thousand Dollars (\$25,000) to Fifty Thousand Dollars (\$50,000)

Section 3: Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

64-8

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form:
RUTAN & TUCKER, LLP

City Attorney

Finance Authorization

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 20__

6H-9

EXHIBIT "A"

Scope of Services

Consultant shall perform similar services as identified in the original agreement.

The term of the agreement has been modified extending the contract to December 31, 2014.

document2

6A-10

Attachment – 3

PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL (AS-NEEDED) BUILDING PLAN CHECK SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 13th day of December, 2012 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Esgil Corporation of 9320 Chesapeake Drive, Suite #208, San Diego, CA 92123 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional on call (as-needed) building plan check services services to be performed at or in connection with construction projects in the City of San Clemente.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on January 1, 2013, and shall continue and remain in effect, until **December 31, 2013**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement,

CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees.

Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions 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.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy

the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). **The total**

compensation for the scope of services set forth in Exhibit "A" for work performed in any year shall not exceed the amount authorized in the budget by the City Council for those contractual services to be provided during the year and in no case shall exceed \$25,000.00, including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement. The total compensation for any work authorized by a purchase order shall not exceed the amount in the purchase order.

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent

contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

6-11-18

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 9320 Chesapeake Drive, Suite #208, San Diego, CA 92123, and to the City of San Clemente, 910 Calle Negocio, Suite #100, San Clemente, CA 92673. Attention: Mike Jorgensen, Building Official.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED

GH-33

DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

6/11/24

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: [Signature]

Its: City Manager

Dated: December 13, 2012

ATTEST:

[Signature]
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
RUTAN & TUCKER

By: [Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: [Signature]
Finance Authorization

EsGil Corporation
("CONTRACTOR")

By: [Signature]

Its: President

Dated: 12/11, 20 12

6H-28

EXHIBIT "A"

SCOPE OF SERVICES

Consultant shall perform the following tasks:

SCOPE OF WORK

The CONSULTANT shall perform building plan reviews on a variety of single family residential, multifamily residential, commercial and industrial buildings. The consultant may be requested to perform complete or partial reviews of projects for compliance with fire and life safety, structural, energy, disabled access, green code, electrical, mechanical and plumbing requirements with current applicable state and local codes including:

California Building Codes (Volume 1 & 2)
California Residential Code
California Energy Code
California Mechanical Code
California Plumbing Code
California Electrical Code
California Green Code
California Fire Code
San Clemente Municipal Code – local amendments

Plan Review shall be performed by certified plans examiners. Additionally, structural reviews shall be performed by and/or under the supervision of a licensed engineer.

DELIVERABLES

The consultant is responsible for the following deliverables:

1. Perform building plan reviews as needed.
2. Submit clear and concise correction list to the Building Division for distribution to project applicant/designer. (General format of consultant correction list shall be reviewed and approved by approved by the City).
3. Respond to telephone inquiries from City staff and permit applicants regarding review comments.
4. Perform recheck reviews on projects to ensure plan corrections have been resolved satisfactorily.
5. Stamp plans "approved" for compliance with applicable codes.
6. Return approved plans to City Building Division office.

WORK PLAN

Chuck Mendenhall will preview and log in all plans when they arrive in our office. When necessary, the designer will be contacted if anything required for a complete plan review is missing. Chuck will evaluate complexity and make assignments for each discipline required.

The best-qualified reviewers are chosen based on the requirements of the plan review, including specialists for structural, plumbing/mechanical/electrical, fire and photovoltaic. Those reviewers first perform an overview of the project; then use our copyrighted checklists to focus on the areas of concern.

We have tailored supplemental checklists for each client. As our plan review engineers follow the checklists for their reviews, they add to or modify any item on the checklist at their work station, then print out a list showing only those items where deficiencies were found to exist on the plans.

Copies of the checklists are then sent via mail, fax or e-mail to the jurisdiction for review, approval and distribution to the applicant and/or design team. Resubmitted plans may be shipped or e-mailed directly to our office or delivered to the City office, depending on the City's procedures and requirements. At completion, stamped sets of the final plans are sent to the City Building Division Office.

To assist in the security of plans, EsGil currently offers a delivery service to pick-up and deliver plans when requested by the City staff, at *no cost to the City*. Pick-ups and deliveries can be made within 24 hours of the City's request.

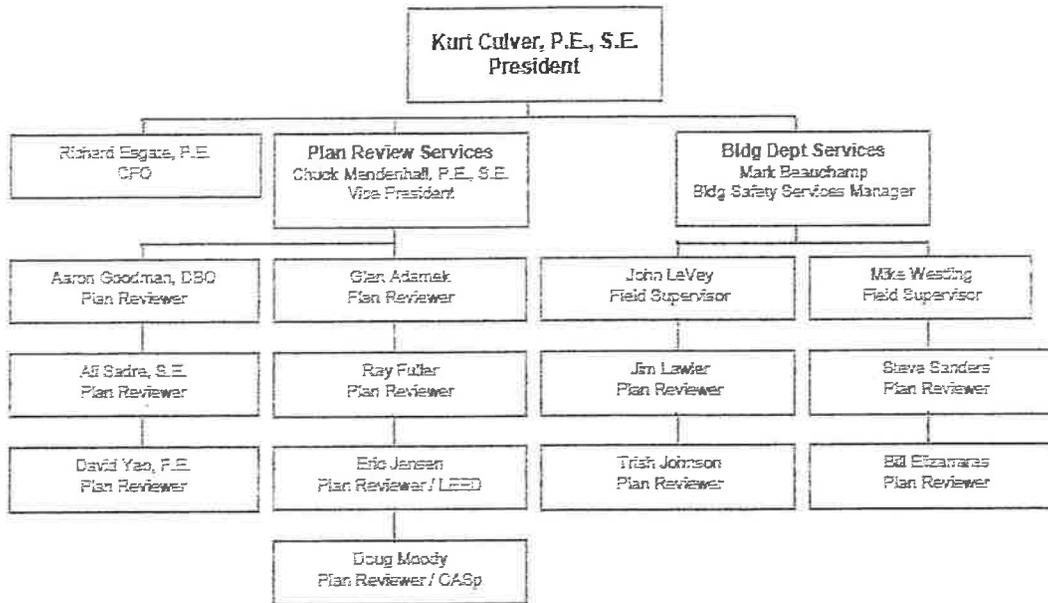


All EsGil plan reviews will be performed at our San Diego office. However, optional in-house plan review services at the city office may be provided based upon availability. With sufficient notification, our staff is available to meet with city staff, applicants and designers at the city office, based on the hourly rates included in our proposal.

6H-27

ESGIL CORPORATION ORGANIZATION CHART

TECHNICAL SERVICES



Our highly-credentialed plan check engineers can assist with reviewing all components of building plans including structural, plumbing, mechanical, electrical, disabled access, energy conservation and green regulation plan review, and other local regulations.

All disciplines work as a team on each project. A supervisor oversees all reviews, consults with requirements as needed and performs spot checks for quality control. The best-qualified reviewers are chosen based on the requirements of the plan review, including specialists for structural and plumbing/mechanical/electrical. Those reviewers first perform an overview of the project; then use our copyrighted checklists to focus on the areas of concern. Our administrative staff reviews all plans being returned to the city for completeness of forms and tracks all fees for billing per the City's contract.

Plan reviews for the City of San Clemente will be managed by Chuck Mendenhall, Vice President of EsGil Corporation. Mr. Mendenhall is a California licensed Civil and Structural Engineer, and has over thirty years of building inspection department experience. Chuck will provide all liaison with City staff and will be available to respond to any designer challenges of plan review items.

6H-28

**ESGIL CORPORATION PLAN REVIEW SERVICE FEE
TO REVIEW FOR COMPLIANCE WITH ADOPTED BUILDING,
ELECTRICAL, MECHANICAL, PLUMBING, ENERGY AND GREEN
BUILDING CODES**

EsGil Corporation Plan Review Fee is 45% of the fee calculated by the Table below.

This single fee includes all rechecks, all plan check conferences at EsGil office, reviewing plans that are initially found to be incomplete and for the transmitting of plans back to the jurisdiction and all other direct costs.

BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$25.25
\$501.00 to \$2,000.00	\$25.25 for the first \$500.00 plus \$3.30 for each additional \$100.00, or fraction thereof, to and including \$2,000.00.
\$2,001.00 to \$25,000.00	\$74.75 for the first \$2,000.00 plus \$15.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00.
\$25,001.00 to \$50,000.00	\$419.75 for the first \$25,000.00 plus \$10.85 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00.
\$50,001.00 to \$100,000.00	\$691.00 for the first \$50,000.00 plus \$7.55 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00.
\$100,001.00 to \$500,000.00	\$1,068.50 for the first \$100,000.00 plus \$6.00 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00.
\$500,001.00 to \$1,000,000.00	\$3,468.50 for the first \$500,000.00 plus \$5.10 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00.
\$1,000,001.00 and up	\$6,018.50 for the first \$1,000,000.00 plus \$3.40 for each additional \$1,000.00, or fraction thereof.

6H-59

ESGIL CORPORATION
HOURLY RATES

Supervising Structural Engineer	\$135.00
Structural Engineer	\$120.00
Civil Engineer	\$105.00
Electrical Engineer	\$105.00
Mechanical Engineer	\$105.00
I.C.C. Plans Examiner	\$90.00

Note

Labor rates are only used when requested by our clients, where a Building Plan Check Fee is not applicable.

4H-30

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

During our thirty years in business, we have always been able to meet all of our agreed-upon review times. The following is a list of our proposed turnaround time for each possible type of job assigned:

Type of Project	Initial Turnaround Time
New Commercial	(not to exceed) 10 Working days*
New Residential	(not to exceed) 7 Working days*
Tenant Improvements	(not to exceed) 7 Working days*
Revisions to Approved Plans	(not to exceed) 5 Working days*
Electrical Only	(not to exceed) 5 Working days*
Residential Improvements	(not to exceed) 5 Working days*
Rechecks	(not to exceed) 5 Working days*

* Accelerated / expedited plan reviews can be performed on overtime in half of the normal turnaround times or as requested by the Building Official.

6/11-31

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

Policy Number UB0675T169



I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: 12/11, 2012

Esgil Corporation
Contracting Firm

By: 

President
Title

9320 CHESAPEAKE DR. #208
Address

SAN DIEGO, CA 92123

Attachment – 4

PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL (AS-NEEDED) BUILDING PLAN CHECK SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 13th day of December, 2012 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and VCA Code Group of 2200 West Oranewood Avenue, Suite 155, Orange, CA 92868 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional on call (as-needed) building plan check services services to be performed at or in connection with construction projects in the City of San Clemente.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on January 1, 2013, and shall continue and remain in effect, until **December 31, 2013**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement,

11/20/12

CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees.

Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions 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.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR

represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the

services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). **The total compensation for the scope of services set forth in Exhibit "A" for work performed in any year shall not exceed the amount authorized in the budget by the City Council for those contractual services to be provided during the year and in no case shall exceed \$25,000.00, including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement. The total compensation for any work authorized by a purchase order shall not exceed the amount in the purchase order.**

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

GH 40

ARTICLE 4
INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses,

and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.
- (3) specify it acts as primary insurance and that no insurance held or owned by CITY shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

6H-43

- If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6 TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7 MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by

CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 2200 West Oranewood Avenue, Suite #155, Orange, CA 92868, and to the City of San Clemente, 910 Calle Negocio, Suite #100, San Clemente, CA 92673, Attention: Mike Jorgensen, Building Official.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES

6/1-4/15

REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if

6 H-46

the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

6H-77

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: [Signature]

Its: City Manager

Dated: December 13, 2012

ATTEST:

[Signature]
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
RUTAN & TUCKER

By: [Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: [Signature]
Finance Authorization

VCA Code Group
("CONTRACTOR")

By: Chark Russell

Its: Vice President

Dated: 12/7, 2012

11/20/12

611-49

EXHIBIT "A"

SCOPE OF SERVICES

Consultant shall perform the following tasks:

SCOPE OF WORK

The CONSULTANT shall perform building plan reviews on a variety of single family residential, multifamily residential, commercial and industrial buildings. The consultant may be requested to perform complete or partial reviews of projects for compliance with fire and life safety, structural, energy, disabled access, green code, electrical, mechanical and plumbing requirements with current applicable state and local codes including:

California Building Codes (Volume 1 & 2)
California Residential Code
California Energy Code
California Mechanical Code
California Plumbing Code
California Electrical Code
California Green Code
California Fire Code
San Clemente Municipal Code – local amendments

Plan Review shall be performed by certified plans examiners. Additionally, structural reviews shall be performed by and/or under the supervision of a licensed engineer.

DELIVERABLES

The consultant is responsible for the following deliverables:

1. Perform building plan reviews as needed.
2. Submit clear and concise correction list to the Building Division for distribution to project applicant/designer. (General format of consultant correction list shall be reviewed and approved by approved by the City).
3. Respond to telephone inquiries from City staff and permit applicants regarding review comments.
4. Perform recheck reviews on projects to ensure plan corrections have been resolved satisfactorily.
5. Stamp plans "approved" for compliance with applicable codes.
6. Return approved plans to City Building Division office.

Sequential Outline of Plan Review Activities

A. General task of plan review:

1. VCA is notified that a project has been submitted and requires plan review
2. The project plans are transferred to VCA via one of three methods:
 - a. City staff can use VCA supplied shipping materials and overnight courier service to transfer plans to VCA office.
 - b. In some cases, an expedited courier service may be employed to transfer the project plans to the VCA Office.
 - c. At the request of the City VCA can dispatch one of its staff members to pick up the plans for an expedited service. VCA's office is approximately 38 minutes from the City of San Clemente.

VCA will provide all necessary materials for shipment of plans/documents. All cost for transporting plans/documents will be at VCA's expense.

3. When plans are received, VCA's plan check coordinator conducts a general review of the project and all information and then assign the plan review to the appropriate plan reviewer(s).
4. The reviewing engineer(s) shall ensure building plans are in compliance with all City, County, State, and Federal codes. The review shall encompass:
 - a. Architectural Plan Review
 - b. Title-24 Energy Plan Review
 - c. Mechanical/Plumbing and Electrical Plan Review
 - d. Structural Engineering Plan Review
 - e. Civil Engineering Plan Review (grading, drainage, National Pollutant Discharge Elimination System (NPDES), and Standard Urban Storm Water Management Plan (SUSMP), Low Impact Development Hydro Modification
 - f. Americans with Disabilities Act (ADA) Compliance Review
 - g. Green Building Plan Review

6/11-51

5. Plans and other documents are signed and stamped by a licensed engineer as required by law
6. A cover memo is issued to the City of San Clemente with following information:
 - a. Dates the plans were received and reviewed by VCA
 - b. Date the applicant was notified the plan review was complete
 - c. Applicant/Designee contact information
7. Perform all necessary liaisons with applicants and the City
8. Perform all needed rechecks to achieve compliance
9. Plan review can be performed at VCA's office or at a designated City facility; whichever the City prefers
10. VCA shall verify and use the construction valuation of the proposed project based on the most recent "Building Valuation Guide" or valuation provided by the applicant whichever is larger
11. VCA's review shall be consistent with other regulatory agencies that are required to review each project.

B. Plan review shall be conducted by:

1. An ICC Certified Plan Reviewer
2. A registered, licensed Professional Engineer for structural analysis

C. Format and Maintenance of Records:

1. VCA shall maintain paper copies of all related plan review documents for 5 years
2. VCA shall maintain electronic copies of all related plan review documents permanently
3. The format of electronic storage of documents shall be approved by the City
4. A thorough list of corrections with the applicable code section will be provided to the applicant and the City
5. The correction list shall be stamped and signed by the reviewing engineer when required by State law

6H-52

D. VCA will:

1. Contact by phone the City's designee regarding plan review status
2. Contact by phone the applicant or applicant designee
3. Conduct meetings, as needed, to facilitate applicants achieving approval of plan review
4. Provide efficient communication regarding plan review status

E. Associated tasks:

1. Visit job sites as needed
2. Collaborate with other consultants or agencies as needed
3. Review shop drawings affiliated with the project
4. Perform all necessary tasks associated the approval of a project

F. VCA will perform the following checks for specialized plan review:

1. Verify the number of cubic yards of soil in a grading plan
2. Verify the declared number of fixtures in all electrical, plumbing and mechanical plan reviews

G. Green plan review:

1. Verify green building features against City or third party standards identified by the City
2. VCA in-house LEED certified staff will assist the applicant or his designee with achieving the level of certification for the project

H. Upon completion of plan review VCA will:

1. Provide complete review comments and specifications in both an electronic and paper format approved by the City
2. If requested, VCA will mark up the plans accordingly
3. When plan has been approved, VCA will:
 - a. Provide two sets of approved plans

6H-53

- b. Copy of plan review comments with all items appropriately signed-off by the plan reviewer
- c. Provide a letter of transmittal stating that the approval and any special conditions, such as additional fees, other necessary agency approvals, and all pertinent documents have been attached and signed

I. VCA Service Level Goal:

1. A normal review shall have the initial review completed within 7 working days. Subsequent reviews shall be completed within 5 working days
2. If a special request is received, VCA will offer to reduce the number of plan review days based on a case-by-case assignment
3. VCA will notify the City and the applicant if for any reason turnaround goals for plan review cannot be achieved

J. Final Authority:

1. The City's designee shall have final authority regarding any issues arising from the results of the plan review or any work performed in conjunction with the plan review conducted by the consultant
2. VCA shall be responsible for all work performed by its staff members and shall bear the full corporate responsibilities of the contracted work

K. VCA will provide engineering, technical support and related services as follows:

1. Building code inspection and plan review services supported by engineering and technical support staff
2. Provide the necessary field support staff to conduct a potential criminal prosecution of building code violations. The field staff includes specialized engineering review and inspection if needed
3. Issue field reports based on field engineering, inspection, and assessment
4. Prepare reports or responses for the City Council or other public inquires
5. Prepare letters, memorandums, or reports as needed

6H-54

6. Electronic conversion of all documents associated with the plan review can be provided with agreement between City and VCA
7. VCA will assist with, or provide, public information documents in any format requested by the City
8. Provide supplemental support services which may include review of technical documents, filing of technical documents, assisting at the public counter with either a plan check engineer or a permit technician, preparing engineering reports, and responding to telephone inquiries

L. Electronic Plan Review:

1. The electronic plan review is handled the same way as a paper review except the proposed project is submitted in a PDF format.
2. Plans can be transferred to VCA electronically, or can be submitted via a disc or any other City approved storage device.
3. VCA has large dual screen monitors PC's, which allow the plan review engineer to conduct a thorough examination, and allow the plan check engineers to conduct a side by side review of projects during rechecks.

This outlined plan review process is designed to be flexible so we can accommodate the City's needs and requirements. Should the City of San Clemente have special needs or emergency requests from the applicants, VCA can make arrangements to be at the City within two hours to meet with clients to help resolve last minute issues and expedite permitting process. Another service provided by VCA is the readiness to schedule meetings at the City with the applicant, who has only a few minor plan check corrections, for the purpose of reviewing and approving plans. This process helps the applicant expedite the process for receiving a building permit.

Work will be performed at VCA's office by our full-time staff or specialized consultants, except when it is necessary to provide a Plans Examiner at the City to respond to applicant questions and perform minor rechecks.

Correction Lists

The customized correction list created in the initial establishment of service provides the format for VCA to conduct the plan review. The correction list for each project is customized and concise and is returned with the plans and a transmittal form. Every correction is written in plain language stating items shown on the plan that are deficient

and the requirement that must be indicated to show compliance with the code. Preprinted correction lists are used only as required by the jurisdiction. A second copy will be provided for the Building Official.

See Appendix A for sample residential and commercial plan review correction lists.

Recheck Procedure

Plans returned for second check are logged in and immediately given to the original project plan checker for review. Any questionable or controversial items are discussed with other staff members to obtain a consensus as to the appropriate action.

Recheck reviews performed on projects are conducted to ensure plan corrections have been resolved satisfactorily. Our plan checkers have many years of experience to capably respond on-site to applicant questions and to perform minor rechecks.

If a difficult code interpretation is involved, VCA will contact the City's Building Official before giving our interpretation to the applicant. In this way, if an applicant appeals to the Building Official for an interpretation, the Building Official is already aware of the background for the code interpretation.

Approval Process

When plans are found to show compliance with applicable building codes and other pertinent laws and ordinances, they are stamped with a "reviewed by consultant" stamp stating the plans, as presented, are in conformance with the California Building Code and are then returned with a transmittal letter to the City's Building Official.

6A-56

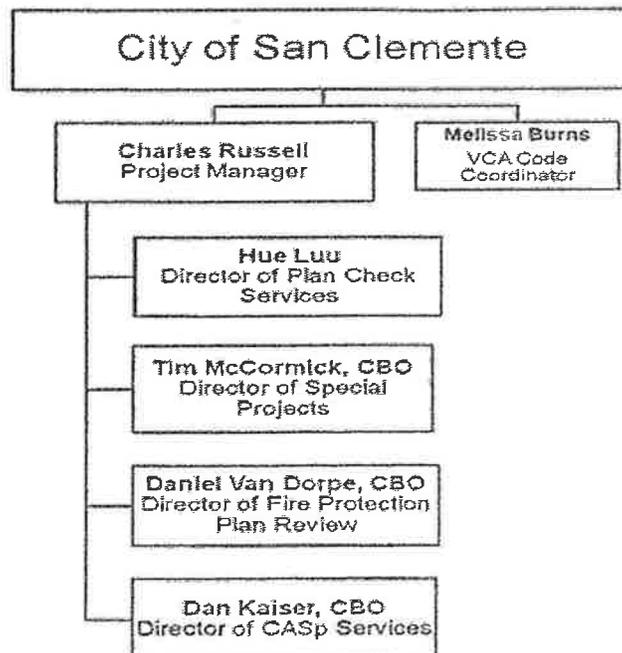
VCA has more than 30 years of experience providing code related services to municipal jurisdictions as requested by the City of San Clemente. We have provided a full range of services including plan checking, inspection and assistance with permit processing.

VCA's personnel are uniquely qualified to provide the quality plan review services that the City of San Clemente requires. Each project is assigned to a single plan check engineer until the review process is completed. Having one plan review engineer from start to finish gives the applicant continuity which results in a more efficient plan review process. The time spent in plan check varies with the complexity of each project. However, VCA will always adhere to the City's turnaround timeframes.

It is our management philosophy that regulation of building construction through effective enforcement of adopted codes is beneficial to the public interest and the building industry. We believe a total cooperative effort between the building industry and regulatory agencies is for the benefit of all parties.

Project Organization

VCA's organizational chart shows the inter-relationship of the team members, as well as the depth of talent available to our clients. This chart reveals a staff of exceptional engineers with diverse disciplines, which is a benefit to our clients. VCA is able to provide any type of plan review expertise the City may need. Additionally, VCA has support staff to assist in the overall process in order to ensure that schedules are maintained and the client's expectations are met. It is important to note that all VCA staff is in-house. This long standing policy of hiring and retaining quality staff has created a work environment of dedicated individuals.



64-57

To establish permit and plan review fees, the City of San Clemente's utilizes 1997 UBC, Table 1-A as a standard (Appendix C). The VCA proposes to provide "on-call" building plan check (as-needed) services in accordance with the following fees (subject to change in accordance to the City of San Clemente's current fee schedule):

VCA

PROPOSED FEE SCHEDULE

<i>Personnel Services</i>	<i>Hourly Rate</i>
On-line plan check status tracking	No Fee
In-house plan check tracking software	No Fee
Shipping cost and materials	No Fee
Full plan check	
Percentage of fees collected (1), (2),	43% (1)
Plan Check Engineer hourly rate	\$95.00 (2)
Partial plan check (structural, MEP) (1), (2),	
Percentage of fees collected	38% (1)
Plan Check Engineer hourly rate	\$95.00 (2)
Counter Plan Check Engineer at City Hall (3)	
Plan Check Engineer hourly rate	\$65.00 to \$85.00
Mileage charges	
Current IRS prevailing rate	\$0.605
Building Official	
Hourly rate	\$135.00
Building Inspector	
Hourly rate varies with qualifications	\$45.00 to \$75.00
Counter Permit Technician	
Hourly rate varies with qualifications	\$25.00 to \$35.00
Archive documents	
Large format	\$2.00/page
Small format	\$1.00/page

Note:

- (1) The percentage of building permit fees collected; a limit of three reviews for the process. The three reviews include the initial check and two rechecks. The forth review will be conducted at the consultant's hourly rate.
- (2) Hourly rate is assessed if outside the scope of the plan review process.

64-58

**VCA CODE GROUP
 PLAN REVIEW SERVICE FEE
 TO REVIEW FOR COMPLIANCE WITH ADOPTED BUILDING,
 ELECTRICAL, MECHANICAL, PLUMBING, ENERGY AND GREEN
 BUILDING CODES**

VCA Code Group Plan Review Fee is 43% of the permit fee calculated by the Table below.

This single fee includes all rechecks, all plan check conferences at VCA office, reviewing plans that are initially found to be incomplete and for the transmitting of plans back to the jurisdiction and all other direct costs.

BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$25.25
\$501.00 to \$2,000.00	\$25.25 for the first \$500.00 plus \$3.30 for each additional \$100.00, or fraction thereof, to and including \$2,000.00.
\$2,001.00 to \$25,000.00	\$74.75 for the first \$2,000.00 plus \$15.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00.
\$25,001.00 to \$50,000.00	\$419.75 for the first \$25,000.00 plus \$10.85 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$691.00 for the first \$50,000.00 plus \$7.55 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$1,068.50 for the first \$100,000.00 plus \$6.00 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,468.50 for the first \$500,000.00 plus \$5.10 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$6,018.50 for the first \$1,000,000.00 plus \$3.40 for each additional \$1,000.00, or fraction thereof.

64-59

COMPENSATION/FEE SCHEDULE

1. Proposed hourly rates for building inspection services may be adjusted depending on the duration of service
2. Minimum of four hours for special inspection duties performed outside of regular working hours (Monday- Friday, 8am-5pm) at a rate of 1.25 times normal hourly rates. For Sundays and holidays the hourly rate is 1.5 times normal hourly with a minimum of four hours.
3. When the City of San Clemente amends or revises the Building Permit Fee Schedule and impacts the "percent of fee collected," VCA may renegotiate the percentage of fees collected with the approval of the City.
4. For City Projects, compensation shall be per the current applicable VCA "Schedule of Hourly Rates." The maximum hourly rate is limited to that of a Plan Check Engineer.
5. The current VCA Schedule of Hourly Rates is attached for reference.

6H-60

VCA CODE GROUP
STANDARD
2012 Schedule of Fees

<i>Personnel Services</i>	<i>Hourly Rate</i>
Principal.....	\$160.00
Building Official - Project Manager.....	\$135.00
Structural Engineer	\$115.00
Plan Check Engineer P E	\$95.00
Non-Structural Plan Checker	\$75.00
Combination Building Inspector	\$75.00
Senior (Commercial) Building Inspector.....	\$75.00
Code Enforcement Officer.....	\$70.00
Permit Technician	\$58.00

Outside Services

A 10% fee for administrative coordination and handling will be added to subcontracted services such as foundation reports, photogrammetry and specialist's services.

Automobile Travel

Mileage is charged in accordance with the IRS mileage reimbursement rate in effect at the time the services is provided plus a 10% mark up.

Billing

Invoices for plan check services will be sent at the end of each month or the date as set by the City of San Clemente. Each invoice will indicate the job address, plan check number, permit fee, and the fee(s) to be paid to VCA CODE GROUP.

6H-61

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

TURN-AROUND TIME

Our average turn-around time for all projects is approximately five to ten business days. This time frame begins when we receive the plan and ends when the plan check is complete. With the approval of the City's Building Official, we will perform rechecks over the counter at our office. Other rechecks can be handled through the normal plan check process; rechecks are given first priority and are usually completed in five working days or less.

Plan Review Turn-Around Schedule

Project Type	First Check	Second Check	Third Check
New Single Family	15 working days	10 working days	5 working days
New Multi Family	15 working days	10 working days	5 working days
New Commercial/Industrial	15 working days	10 working days	5 working days
Tenant Improvements	10 working days	5 working days	5 working days
Residential Addition/Alterations	10 working days	5 working days	5 working days

GH-62

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier Hanover American Insurance Co.

Policy Number WZF919431501

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

6H-63

Dated: 12/7, 20 12

VCA Code Group
Contracting Firm

By: Chak Russell
Vice President
Title

2200 West Oranewood Avenue, Suite #155
Address

Orange, CA 92868

6H-64