AGREEMENT

THIS AGREEMENT, dated for purposes of identification only this ___ day of
___________, 2008, is made and entered into by and between the

CITY OF ANAHEIM, a municipal corporation, ("City,"

AN

SCOTT FAZEKAS & ASSOCIATES, INC., a California
corporation, ("Consultant").

WITNESSETH:

WHEREAS, from time to time, the City requires the provision of plan check
services and building inspection services (the "Services"); and

WHEREAS, City desires Consultant to provide the Services as requested by the
City.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL
PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES
HERETO AGREE AS FOLLOWS:

Section 1. Status of Parties.

1.1 City. The Consultant acknowledges that the City is a charter city and municipal
corporation, duly organized and existing under the Constitution and laws of the State of California.

1.2 Consultant. Consultant represents that Consultant is a California corporation,
formed and in good standing under all applicable laws of the State of California.

Section 2. Services of Consultant.

2.1 Scope of Services. In compliance with all of the terms and conditions of this
Agreement, Consultant shall provide City the Services as are set forth in Exhibit "A" attached
hereto and incorporated herein by this reference (the "Services"). Consultant represents and
covenants that all Services to be provided hereunder shall be performed in a competent,
professional and satisfactory manner in accordance with the standards prevalent in the industry for such Services.

2.2 Certification Licensing and Continuing Education of Inspectors and Plan Examiners. All individuals or personnel rendering services to City on Consultant’s behalf under this Agreement shall have valid certifications issued by the ICC Voluntary Certifications Programs. The minimum level of certifications shall be as follows: Combination Building Inspections; Building, Electrical, Plumbing Mechanical, or combination thereof, or Plan Examiners Certification.

Consultant shall be responsible to ensure that all individuals or personnel rendering services to City on Consultant’s behalf under this Agreement comply with all federal, state or locally mandated continuing education requirements. Evidence of compliance with mandated continuing education requirements shall be furnished by Consultant to City upon request.

2.3 Transmittal of Plans. The City’s Building Official will determine which plans will be sent to Consultant for checking. Subsequent submittal of corrected plans by permit applicants will be made directly to Consultant. Upon completion of each initial check and recheck by Consultant, plans shall be returned to the permit applicant with applicable corrections.

Deferred submittals and revisions made to plans during construction may be submitted directly to Consultant for review. When approved, such plans shall be returned to the Building Division of the City of Anaheim with a transmittal form that clearly describes the plan check services provided and the amount of time spent reviewing plans.

The procedures set forth in this Section 2.3 may be modified by the Building Official when deemed appropriate.

2.4 Additional Services. Consultant shall provide Services in addition to those specified in the Scope of Services when requested to do so in writing by the City, provided that Consultant shall not be required to provide any such additional Services without compensation, or if Consultant is unable to perform or does not agree to perform the requested additional Services. No additional Services beyond the scope of this Agreement shall be rendered by Consultant unless previously authorized in writing by the Building Official.
2.5 **Service Level Goals.** Consultant agrees to provide adequate resources to achieve the service delivery goals for performance of work over which Consultant has decision authority as set forth in Exhibit "A." In this regard, Consultant agrees to provide the initial plan review within ten (10) working days and any subsequent recheck of plans within five (5) working days. For buildings over five (5) stories in height or projects with more than one hundred (100) residential dwelling units or projects designated as major by the building division, initial plan review shall be completed within twenty (20) working days and any subsequent recheck of plans within five (5) working days. For purposes of measuring delivery goals, working days does not include the day plans were received in Consultant’s office, but does include the day a plan review has been competed by Consultant.

2.6 **Quality Control/Quality Assurance.** Consultant shall demonstrate progress in meeting stated Service Level Goals by the establishment and use of systems that regularly and accurately collect data on services provided. Consultant shall also employ a quality control program to ensure that (i) code requirements are not missed in the plan review process, (ii) adequate measures are taken to make sure that construction done in the field conforms to approved plans and all pertinent code requirements, and (iii) construction deficiencies are properly documented and compliance is obtained. Consultant shall utilize peer review by a senior level person to assure that appropriate control procedures are being followed. City reserves the right to audit and to examine Consultant’s records pertaining to its quality control processes and to confirm that appropriate supporting documentation is being kept and maintained.

2.7 **Compliance with Law.** All Services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, regulations and laws of the City and any Federal, State or local governmental agency of competent jurisdiction.

2.8 **Licenses, Permits, Fees and Assessments.** Consultant shall obtain, at Consultant’s sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and which arise from or are necessary for the performance of the Services required
by this Agreement. Notwithstanding anything provided herein to the contrary, Consultant shall not be responsible for fees or other charges to obtain approval of governmental authorities having jurisdiction over projects for which Consultant provides Services.

2.9 Familiarity with Work. By executing this Agreement, Consultant represents and covenants that Consultant (i) has thoroughly investigated and considered the Services to be performed, (ii) has carefully considered how the Services should be provided and (iii) fully understands the facilities, difficulties and restrictions attending the provision of the Services under this Agreement. Should the Consultant discover any latent or unknown conditions materially differing from those inherent in the provision of such Services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not proceed until written instructions are received from the City.

Section 3. Term.

This Agreement shall be for a term (the "Term") commencing on the Effective Date (as such term is hereinafter defined in Section 9.14) and continuing until completion of Services, subject to earlier termination as provided in Sections 6.1.4 and 7 of this Agreement.

Section 4. Compensation.

4.1 Amount of Compensation. City shall pay Consultant for Services rendered pursuant to this Agreement based on Consultant’s rates and charges as shown in Exhibit “B” attached hereto and incorporated herein by this reference.

4.1.1 Expenses. City also agrees to reimburse Consultant for the following out-of-pocket expenses only: mileage based on IRS standards; and blueprinting, reproduction and printing at cost. Reimbursable expenses must be itemized in all invoices or statements submitted by Consultant.

4.1.2 Maximum Compensation. The total compensation payable to Consultant under this Agreement shall not exceed the sum of One Hundred Fifty Thousand Dollars ($150,000) in any fiscal year (the “Maximum Compensation”). It shall be the responsibility of Consultant to monitor the hours spent and the expenses incurred to ensure that the Maximum Compensation is not exceeded. City shall not be responsible to pay Consultant for any Services or expenses in
excess of the Maximum Compensation. Consultant shall notify City in writing when seventy-five
percent (75%) of the Maximum Compensation has been reached in any fiscal year during the Term
of this Agreement.

4.1.3 The rates and charges as proposed in Exhibit “B” shall remain valid from
the Effective Date of this Agreement and continue in full force and effect through June 30, 2009.
Thereafter, any proposed adjustment to Consultant’s rates and charges shall be submitted to the
Building Official, in writing; provided, however that any such request for adjustment to rates and
charges shall be made no later than sixty (60) days prior to the end of each fiscal year during the
Term of this Agreement. Consultant shall be limited to no more than one (1) adjustment to rates
and charges during any fiscal year after June 30, 2009.

No adjustment to rates and charges during the Term of this Agreement shall become
effective without the prior written approval of the Building Official. Failure to agree upon any
proposed increase of rates and charges during the Term of this Agreement shall be cause to
terminate the Agreement.

By signing this Agreement, Consultant acknowledges that City’s obligation under
this Agreement for subsequent years is subject to the annual appropriation of funds by the City
Council of the City of Anaheim.

4.1.4 Billing and Payment. Consultant shall provide City, after the first work day
of each month during the Term of this Agreement, with a invoice or statement for all plan reviews
performed and complete during the prior month. City agrees to pay Consultant for work performed
and expenses incurred within forty-five (45) days following the receipt of an invoice or statement
from Consultant describing such work and expenses.

4.1.5 Fiscal Records and Audits. Consultant shall keep a correct and current
accounting of payroll costs, travel, subsistence, field and incidental expenses. Consultant shall use
recognized accounting methods in preparing such reports and invoices. City reserves the right to
designate its own employee representative(s) or its contracted representative(s) with a certified
public accounting firm who shall have the right to audit Consultant’s accounting procedures and
internal controls of Consultant’s financial systems and to examine any cost, revenue, payment,
claim, other records or supporting documentation resulting from any items set forth in this Agreement. If Consultant fails to provide supporting documentation satisfactory to City for costs charged, then Consultant agrees to reimburse City for those costs. Any such audit(s) shall be undertaken by City or its representative(s) at reasonable times and in conformance with generally accepted auditing standards. Consultant agrees to fully cooperate with any such audit(s). City shall keep all Consultant employee records confidential.

This right to audit shall extend during the length of this Agreement and for a period of three (3) years, or longer if required by law, following the date of final payment under this Agreement. Consultant agrees to retain all necessary records/documentation for the entire length of this audit period.

Section 5. Coordination of Services.

5.1 Representative of City. The Building Official, or such person's designee, shall represent the City in all matters pertaining to the Services to be rendered under this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the Building Official is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

5.2 Representative of Consultant. Scott Fazekas, or such person's designee, is hereby designated as being the principal and representative of Consultant authorized to act on Consultant's behalf with respect to the Services and work to be provided hereunder and make all decisions in connection therewith.

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal are a substantial inducement for the City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the Term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the provision of Services hereunder. The foregoing principal may not be changed by Consultant and no other personnel may be assigned to supervise the Services to be provided hereunder without the express written consent of the City.

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5.3 **Prohibition Against Subcontracting and Assignments.** Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assignable or transferable or encumbered in any way without the prior written consent of City. Any such purported assignment, transfer, encumbrance, pledge, subuse, or permission given without such consent shall be void as to City. This is a personal services contract and the Consultant was chosen on the basis of characteristics unique to the Consultant. City shall have the right to unreasonably or arbitrarily withhold its consent to any such assignment, transfer, encumbrance, pledge, subuse, or permission.

5.4 **Independent Contractor.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of City. City assumes no liability for Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for Consultant. Consultant shall not have authority to act as an agent on behalf of City unless specifically authorized to do so in writing. Consultant acknowledges that it is aware that because it is an independent contractor, City is making no deduction from any amount paid to Consultant and is not contributing to any fund on its behalf. Consultant disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

As respects all acts or omissions of Consultant relating to Consultant's responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for Consultant, the Consultant agrees to indemnify and hold harmless the City, its officers, agents, employees, representatives, and designated volunteers from and against any and all claims, demands, defense costs, liability, or damages of any kind or nature resulting from the Consultant's failure to satisfy its responsibilities for such taxes, bonds, payments, or other commitments.

**Section 6. Insurance and Indemnification.**

6.1 **Insurance.** Without limiting City's right to indemnification, it is agreed that Consultant shall secure prior to commencing any activities under this Agreement, and maintain during the Term of this Agreement, insurance coverage as set forth in this Section 6.1.
6.1.1 **Required Insurance Coverage.** Consultant shall secure and maintain the following insurance coverage:

(a) Workers' Compensation Insurance as required by California law and Employer's Liability Insurance in an amount of not less than One Million Dollars ($1,000,000) per occurrence;

(b) Comprehensive General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, and Independent Contractor's Liability in an amount of not less than One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, written on an occurrence for. Such insurance shall be written on a primary basis, without self-insured retention, but may include a deductible of not more than Ten Thousand Dollars ($10,000) per occurrence, provided that such deductible is disclosed to City, in writing, at the inception of this Agreement;

(c) Comprehensive Automobile Liability coverage, including, as applicable, owned, non-owned and hired autos, in an amount of not less than One Million Dollars ($1,000,000) per occurrence, combined single limit, and required by California law, written on an occurrence form; and

(d) Professional Liability Insurance coverage in an amount of not less than One Million Dollars ($1,000,000) per occurrence, and Consultant shall maintain such coverage for at least one (1) year after the termination of this Agreement. Such insurance shall be written on a primary basis, without a self-insured retention, but may include a deductible of not more than Ten Thousand Dollars ($10,000) per occurrence, provided that such deductible is disclosed to City, in writing, at the inception of this Agreement.

6.1.2 **Required Clauses in Policies.**

(a) Each insurance policy required by this Agreement shall contain the following clause or clauses or shall otherwise provide for the following condition or conditions:

"This insurance shall not be canceled, limited in scope or coverage, until after thirty (30) days' prior written notice has been given to the City Clerk of the City of Anaheim, 200 S.
Anaheim Boulevard, Anaheim, CA 92805, except in the event of cancellation for non-payment of
premium which shall provide for not less than ten (10) days notice.”

(b) Each insurance policy required by this Agreement, excepting policies for
Professional Liability and Workers’ Compensation, shall contain the following clause or clauses
or shall otherwise provide for the following condition or conditions:

“It is agreed that any insurance maintained by Consultant pursuant to this
Agreement shall be primary to, and not contribute with, any insurance or self-insurance maintained
by the City of Anaheim.”

“The City of Anaheim, its officers, agents, employees, representative, and City
designated volunteers are added as additional insureds as respects the acts, omissions, operations
and activities of, or on behalf of, the named insured, in regard to products supplied to, work or
services performed for, or related to, the City.”

6.1.3 Required Certificates and Endorsements. Prior to commencing any work
under this Agreement, Consultant shall deliver to City insurance certificates confirming the
existence of the insurance required by this Agreement, and including the applicable clauses
referenced above. Also, within thirty (30) days of the execution date of this Agreement, Consultant
shall provide City (i) endorsements to the insurance policies which add to these policies the
applicable clauses referenced above, or (ii) in lieu of said endorsements, documentation acceptable
to City evidencing that the coverage, terms, and conditions set forth in the above-referenced clauses
are otherwise included in said insurance policies. Insurance required hereunder shall be placed
with insurers (i) admitted to write insurance in California, (ii) possessing an A. M. Best’s rating of
A VII or higher, or (iii) otherwise acceptable to City, with prior written permission from City. In
the event that a claim or other legal action is filed against City, and if City, in its good faith opinion
believes it may have coverage under any of the insurance required herein, then City has the right
to demand, and to receive within a reasonable time period, copies of the insurance policies related
to such required insurance; provided, however, that this provision shall not apply if the parties
agree that Consultant shall fully defend, hold harmless, and indemnify City against any such claim
or other legal action.
6.1.4 Remedies for Defaults Re: Insurance. In addition to any other remedies City may have if the Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

(a) Order the Consultant to stop work under this Agreement and/or withhold any payment(s) which become due to the Consultant hereunder until the Consultant demonstrates compliance with the requirements hereof;

(b) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for the Consultant's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which the Consultant may be held responsible for payment of damages to persons or property resulting from the Consultant's or its subcontractor's performance of the work covered under this Agreement.

In the event Consultant hires other persons or firms to perform some of the work related to this Agreement, Consultant shall ensure (i) that the acts or omissions of such persons or firms are covered under the above-referenced liability insurance, or (ii) that such firms maintain insurance equal to or better than, and subject to the same limits, terms and conditions as, the insurance required of Consultant under this Agreement (except for firms which are not performing professional services - such firms shall not be required to carry the above-referenced professional liability insurance); and in either instance, Consultant shall provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to City.

City's Risk Manager is hereby authorized to reduce requirements set forth above in the event he determines that such reduction is in City's best interest.

6.2 Indemnification. As respects acts, errors or omissions in the performance of professional services under this Agreement, the Consultant agrees to indemnify and hold harmless the City, its officials, employees, representatives and City designated volunteers from and against any and all claims, losses, damages, defense costs, liability of any kind or nature, arising directly
out of Consultant's (or Consultant's contractors or subcontractors, if any) negligent acts, errors or
omissions in the performance of professional services under the terms of this Agreement.

As respects all acts or omissions which do not arise directly out of the performance
of professional services, including but not limited to those acts or omissions normally covered by
general and automobile liability insurance, the Consultant agrees to indemnify, defend (at City's
option), and hold harmless the City, its officials, employees, representatives and City designated
volunteers from and against any and all claims, losses, damages, defense costs, liability of any kind
or nature (collectively referred to hereinafter as "Claims"), arising out of or in connection with
Consultant's (or Consultant’s contractors or subcontractors, if any) acts, errors, omissions, or work,
relative to this Agreement; except for those claims which arise out of the sole negligence or willful
misconduct of City.

The obligations set forth in this indemnification provision (i) shall be in effect
without regard to whether or not City, Consultant, or any other person maintains, or fails to
maintain, insurance coverage, or a self-insurance program, for any such claims; and (ii) shall
survive the termination of this Agreement.

6.3 Professional Practices. All consultant and subconsultant services to be provided
by Consultant pursuant to this Agreement shall be provided by personnel experienced and/or
licensed in their respective fields and in a manner consistent with the standards of care, diligence
and skill ordinarily exercised by professional consultants in similar circumstances in accordance
with sound professional practices. Services provided by and through the consultant will be
furnished in accordance with generally accepted professional consultant practice and principles and
under the supervision of professionals licensed in the State of California.

Consultant assumes responsibility for any and all negligence, errors or omissions
that Consultant commits and any and all such negligence, errors or omissions committed by a
subcontractor of Consultant in performance of this Agreement.

Section 7. Enforcement of Agreement.

7.1 Events of Default. For purposes of this Section 7, the word "Default" shall mean
the failure of Consultant to perform any of Consultant's duties or obligations or the breach by
 Consultant of any of the terms and conditions set forth in this Agreement. In addition, Consultant shall be deemed to be in Default upon Consultant's (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets, (ii) making a general assignment for the benefit of creditors, (iii) being adjudged bankrupt, (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing), or (v) suffering or permitting to continue unstayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Consultant's assets or of Consultant's interests hereunder.

7.1.1 City shall not be deemed to be in Default in the performance of any obligation required to be performed by City hereunder unless and until City has failed to perform such obligation for a period of ten (10) days after receipt of written notice from Consultant specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of City's obligation is such that more than ten (10) days are required for its performance, then City shall not be deemed to be in Default if City shall commence to cure such performance within such ten (10) day period and thereafter diligently prosecute the same to completion.

7.2 Immediate Termination for Consultant's Default. In the event of any Default by Consultant, City may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by Consultant of written notice from City. In such event, Consultant shall have no further rights hereunder, except that Consultant shall be paid for all Services rendered in a manner satisfactory to the City prior to such termination; City shall have all other rights and remedies as provided by law.

7.3 Termination for City's Default. Failure by the City to pay Consultant in accordance with this Agreement shall be deemed a material default and cause for suspension or termination by Consultant upon seven (7) days written notice of such default and failure to cure by the City.

7.4 Termination Without Cause. Either City or Consultant may terminate this Agreement at any time without the necessity of cause or Default by the other Party by giving fifteen
(15) days notice in writing to the other Party. In such event, the Parties shall have no further rights hereunder, except that Consultant shall be paid for all services satisfactorily rendered prior to such termination.

Section 8. Use and Ownership of Documents and Data.

8.1 Data to be Furnished by City. City shall furnish to Consultant such documents and materials as may be relevant and pertinent to the provision of Services hereunder as City may possess or acquire.

8.2 Ownership of Documents. All documents and materials furnished by the City to Consultant pursuant to Section 8.1 hereof shall remain the property of the City and shall be returned to the City upon termination of this Agreement. All documents and materials prepared by Consultant hereunder shall become the property of the City at the time of payment to Consultant of all fees and expenses for their preparation, and shall be delivered to the City by Consultant at the request of the City. The documents and materials prepared by Consultant hereunder shall not be used by the City or others, except for the purpose for which they were intended. The City agrees not to associate Consultant's name with any documents or materials not prepared by Consultant.


9.1 Waiver. Inaction by City or Consultant with respect to a Default hereunder shall not be deemed to be a waiver of such Default. The waiver by either City or Consultant of any Default hereunder shall not be deemed to be a waiver of any subsequent Default.

9.2 Notices. All notices, demands or other writings to be made, given or sent hereunder, or which may be so given or made or sent by either City or Consultant to the other shall be deemed to have been given when in writing and personally delivered or if mailed on the third (3rd) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

If to City: City Clerk
City of Anaheim
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
FAX No. (714) 765-4105

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9.3 **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that Consultant is and will be at all times an independent contractor pursuant to this Agreement and shall not, in any way, be considered to be an officer, agent or employee of the City.

9.4 **No Third Party Rights.** The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

9.5 **Non-Liability of Members, Officials and Employees of the City.** No member, official or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to Consultant or Consultant's successors, or on any obligation under the terms of this Agreement. Consultant hereby waives and releases any claim Consultant may have against the members, officials or employees of the City with respect to any Default or breach by City or for any amount which may become due to Consultant or Consultant's successors, or any obligations under the terms of this Agreement. Consultant makes such release with the full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”
9.6 **Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.7 **Remedies Cumulative.** The remedies given to City and Consultant herein shall be cumulative and are given without impairing any other rights given City or Consultant by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by City or Consultant shall not exclude the exercise of any other remedy.

9.8 **Effect of Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of its terms and provisions to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.9 **Successors and Assigns.** This Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the successors and assigns of City and to the permitted successors and assigns of Consultant, and all references to "City" or "Consultant" shall be deemed to refer to and include all permitted successors and assigns of such Party.

9.10 **Entire Agreement.** This Agreement and the exhibits hereto contain the entire agreement of the City and the Consultant with respect to the matters covered hereby, and no agreement, statement or promise made by either City or Consultant which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended, modified or added except by an agreement in writing signed by City and Consultant.

9.11 **Authority.** Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants the he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms.

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Consultant shall, at City's request, deliver a certified copy of it governing board's resolution or certificate authorizing or evidencing such execution.

9.12 Conflicts of Interest.

9.12.1 Consultant represents that neither it nor any of its officers, partners or employees has a financial interest, as defined in Section 87103 of the Government Code, in the subject-matter of this Agreement, other than the right to receive payment from City for the services performed.

9.12.2 Consultant agrees that it shall not make, participate in making, nor in any way attempt to use its position as a consultant to influence any decision of City in which Consultant knows or has reason to know that Consultant or any of its officers, partners or employees have a financial interest as defined in Section 87103 of the Government Code.

9.12.3 Consultant represents that neither Consultant nor any of its officers, partners or employees have any financial interest in any real property, building or structure within 2,500 feet of the location of the project(s) to which this Agreement relates. Consultant agrees it will disclose to City any such financial interest which Consultant or any of its officers, partners or employees may acquire in any location which may be affected by the project(s) upon which Consultant is providing services to City.

9.12.4 In conformity with the conflict of interest code of City, Consultant or, if Consultant is a firm or corporation, each individual who will be performing work under this Agreement shall complete, under penalty of perjury, a Statement of Economic Interests (Form 730) and all required attachments and shall provide the originals thereof to the City Clerk of City, who will forward them to the Fair Political Practices Commission. Copies of those completed forms and attachments shall be public records of City, to be kept and disclosed at the discretion of City and according to law. Consultant and individuals who will be performing work under this Agreement shall disclose pursuant to the broadest disclosure category in the code.

9.13 Time for Acceptance of Agreement by City. This Agreement, when executed by Consultant and delivered to City, must be authorized, executed and delivered by the City on or before forty-five (45) days after the execution and delivery by Consultant or this Agreement shall
be void, except to the extent that Consultant and City shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

9.14 Effective Date. This Agreement shall be effective on the date on which this Agreement is executed by the City.

IN WITNESS WHEREOF, THE CITY AND THE CONSULTANT HAVE EXECUTED THIS AGREEMENT AS OF THE RESPECTIVE DATES SET FORTH BELOW.

"ANAHEIM"

CITY OF ANAHEIM,
a municipal corporation

DATE: _____________________ By: _____________________

MAYOR OF CITY OF ANAHEIM

ATTEST:

CITY CLERK OF THE CITY OF ANAHEIM

"CONSULTANT"

Scott Fazekas & Associates, Inc., a California corporation

DATE: _____________________

By _____________________

Printed Name _____________________

Title _____________________

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By _____________________

Mark S. Gordon
Assistant City Attorney

Date _____________________

69188.v1/MGordon
EXHIBIT “A”

PLAN CHECK SERVICES

1. Review of construction plans and calculations for their compliance with the latest or applicable editions of California Building Code, California Mechanical Code, California Plumbing Code, California Electrical Code, Anaheim Amendments to these codes, and other applicable governmental codes and regulations.

2. Write clear and concise plan check corrections, and work with property owners, designers, architects, engineers, and contractors to ensure the plan check corrections are addressed and reflected on construction documents.

3. E-mail plan check corrections to the designated Building Division staff, and provide pertinent building information required on permit to the City when plans are approved. Such information shall be provided on the transmittal form and shall include, but not limited to, work description, type of construction, occupancy, floor area, number of stories, and sprinkler requirements.

4. Review deferred submittal items and any revisions before or during construction. Notify designated Building Division staff via e-mail on the number of hours spent reviewing the deferred submittals/revisions.

5. When requested, meet with developers and design professionals to address their questions on large and/or unique projects prior to plan check submittal.

BUILDING INSPECTION SERVICES

1. Review project specifications, plans, and drawings to become familiar with projects prior to inspection, ensuring that structural, architectural changes, mechanical, electrical and plumbing have been stamped by the designed professional, when applicable and approved by the Building Division plan check staff or by the Consultant.

2. Performing combination inspections on construction projects to determine that all aspects of work such as building, electrical, plumbing, and mechanical systems conform to the applicable building codes, zoning ordinances, energy conservation and disabled access requirements including all local and state requirements.

3. Participating in reviews with technical consultants, fire, health, and other government agency inspectors, as well as owners.

4. Assisting with the coordination of job site conferences with technical consultants, engineers, architects, representatives of the owner, equipment manufacturers, and subcontractors to review project requirements, and clarifying or resolving any questions or problems prior to commencing work.

5. Recognizing and requiring soil tests where evidence indicates soil instability.

6. Preparing inspection notices of noncompliance on incorrect construction methods or materials found during inspection; conferring with contractor or representative regarding construction methods and procedures as they relate to compliance with plans and specifications.
7. Maintaining a record non-complying items and following up to resolution of such items.

8. Recording all significant construction-related activities and events such as work completed to provide a chronological and factual history of inspection on assigned construction projects.

9. Inspect buildings alleged to be substandard, unsafe, or unsightly to ensure the timely compliance with building codes and other ordinances and regulations, or the demolition of such structures.

10. In the course of activity and litigation, testify in court, if necessary.
EXHIBIT “B”

FEES

Scott Fazekas & Associates, Inc., ("SFA") proposes to charge thirty percent (30%) of the City’s Fee Schedule titled Building Permit Fees. As stated in the footnote, 62 percent (62%) of the Fee Schedule amount is dedicated to plan review so SFA’s fee would equate to 48.39 percent (48.39%) of the City’s plan check fee. This is mentioned only to clarify that SFA will reference either City fee amount in the invoicing process depending on the City of Anaheim’s preference.

The proposed percentage rate is based on the current Fee Schedule. It is proposed that the contract stipulate that the percentage of the Fee Schedule which is used to establish invoicing be subject to adjustment when mutually agreed upon by both parties to achieve a substantially equivalent rate to the initial Agreement terms.

If SFA is reviewing duplicate or identical plans on a project, the proposed fee is twenty percent (20%) of the initial plan review fee after the initial model is checked at the prescribed rate.

SFA will not charge for rechecks unless the plans are incomplete or revised for which the City would collect additional fees from the applicant as well. The City would then have the funds to reimburse SFA. Additional services outside the main scope of review would be charged at a rate of $95.00 per hour or as mutually agreed upon based on the salary rate of the employee.

Inspection Services are proposed at an hourly rate which would vary based on individual qualifications of each inspector. The anticipated hourly rate would be between $40-$60 per hour. Each inspector would be retained based on mutual agreement with the City prior to engaging services.

No charges for reimbursables would occur for expenses related to plan review services only.