

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is made effective as of February 15, 2019 (Effective Date), by and between California Code Check, Inc., a California corporation (Consultant), and the City of Lompoc, a municipal corporation (City). Consultant and City are referred to herein individually as a "party" and collectively as the "parties."

RECITALS

WHEREAS, City has need for consultant services to provide inspection service and on-call plan check and in relating to City's Building, Plumbing, Electrical, Mechanical, Historical, Energy, Green Building Standards, Residential and other related codes (the "Building and Housing Codes") (Consultant Services); and

WHEREAS, Consultant engages in the business of Consultant Services; and

WHEREAS, City seeks the services of Consultant to assist with Consultant Services; and

WHEREAS, Consultant and City desire to enter into this Agreement to memorialize their agreements regarding the Consultant Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and City agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement: City hereby engages Consultant to provide the Consultant Services described herein, and City hereby accepts such engagement, all on the terms and conditions set forth herein. Consultant will determine the method, detail and means of performing the services detailed below.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Consultant: Consultant hereby represents and warrants to City, at all times during the term of this Agreement, Consultant is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City: City hereby represents and warrants to Consultant, at all times during the term of this Agreement, City is organized and established pursuant to the laws and ordinances of the State of California.

ARTICLE 3 CONSULTANT STATUS AND QUALIFICATIONS

3.1. Independent Consultant: Consultant enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Consultant agrees that it will not become an employee, partner, agent or principal of City while this Agreement is in effect.

3.2. Payment of Income Taxes: Consultant is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Consultant for services satisfactorily rendered under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify, defend and hold harmless City for any and all claims, costs, losses, fees, penalties, interest, or damages, including court costs and reasonable attorney's fees, resulting from Consultant's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Consultant may, at Consultant's own expense, use any employees or subcontractors as Consultant deems necessary to satisfactorily perform the services required of Consultant by this Agreement. City may not control, direct, or supervise Consultant's employees or subcontractors in the performance of those services.

3.4. Qualifications: Consultant represents it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. No Benefit Contributions: Consultant shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by City.

ARTICLE 4 GENERAL RESPONSIBILITIES OF CONSULTANT

4.1. Minimum Amount of Service: Consultant agrees to devote as much time and attention to the performance of the Consultant Services under this Agreement as may be, in Consultant's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Consultant is responsible under this Agreement.

4.2. Consultant Scope of Services: Consultant agrees to provide Consultant Services in accordance with Exhibit A, attached hereto and incorporated herein by reference, including those additional services requested by City and accepted in writing by Consultant during the term of this Agreement.

4.3. Nondiscrimination: There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

4.4. Non-Exclusive Relationship: Consultant may represent, perform services for, and contract with as many additional clients, persons, or companies as Consultant, in Consultant's sole discretion, sees fit.

4.5. Time and Place of Performing Work: Consultant may perform the services under this Agreement at any suitable time and location Consultant chooses.

4.6. Materials and Equipment: Consultant will supply all materials and equipment required to perform the services under this Agreement.

4.7. Professional Skill: It is further understood and agreed by and between the parties hereto Consultant is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement, and City, not being skilled in such matters, relies upon the skillful manner in accordance with generally-accepted professional practice and the Consultant

agrees to thus perform its work, and the acceptance of its work by City shall not operate as a release of Consultant from said Agreement.

4.8. Insurance: Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry adequate insurance including a commercial general liability policy and an Errors and Omissions policy, both in the amount of not less than \$1,000,000. Consultant shall also, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry automobile liability insurance with liability limits of not less than \$500,000 for the injury or death of a person or persons and property damage in any accident. City, its elective officials, officers and employees shall be named as an additional insured on the commercial general liability and automobile liability policies. Each type of insurance mentioned herein shall be written by a financially responsible company or companies authorized to do business in the State of California. Consultant shall provide City with certificates of insurance on forms acceptable to the City of all policies written and each shall contain an endorsement that they are not subject to cancellation without 30 days written notice being given to City by the insurance company or companies writing such insurance.

4.9. Workers' Compensation: Consultant agrees to provide workers' compensation insurance for Consultant and Consultant's employees and agents and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Consultant's employees or agents.

4.10. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

4.11. Business Tax Receipt: Consultant shall maintain a valid Business Tax Receipt with the City of Lompoc during the term of the Agreement.

4.12. Ownership of Documents: All reports and documents prepared by Contractor under this Agreement are the property of City and shall be turned over to the City upon completion of this Agreement. Contractor shall not release any data, information, and/or materials resulting from the project without prior written consent from City.

4.13. Personnel: City shall have final approval of Contractor staff assigned to work under this Agreement. Contractor shall identify in writing the staff assigned to work under this Agreement and shall give City no less than ten-days' written notice prior to any change in the staff assigned to work under this Agreement.

ARTICLE 5 COMPENSATION OF CONSULTANT

5.1. Compensation for Consultant Services: All Consultant Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in Exhibit B, which is incorporated by this reference as though set forth in full; provided, that the parties understand and agree the fee schedule is not an estimate but the complete costs for the Consultant to provide Consultant Services. Total compensation shall not exceed Forty-One Thousand Dollars (\$41,000.00) for fiscal year ending June 30, 2019, and One Hundred Twenty-Five Thousand Dollars (\$125,000.00) for fiscal year ending June 30, 2020.

5.2. Payment will be in accordance with City's standard accounts payable process. Term no longer than 45 days after presentation of a valid monthly invoice for disbursement of the payment. Payment to be made by accounts payable check processed and available as part of the weekly disbursement cycle, available each Friday for pickup or mailed delivery.

5.3. Contractor shall provide itemized billing to the Building Division identifying the project by City Project Number and listing the completed task, and listing the City Purchase Order Number on each invoice.

5.4. The provisions of Article 9 of this Agreement will govern any dispute associated with compensation.

ARTICLE 6 OBLIGATIONS OF CITY

6.1. Cooperation of City: City agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement. To the extent determined in the best public interest, in the sole discretion of City's City Council, City shall be responsible for initially insuring, and continuing to review, local and state laws in City's jurisdiction to assure adequate legal authority for Consultant to engage in the Services described herein on behalf of City.

6.2. Conflict of Interest: No officer, employee, director or agent of CITY shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

6.3. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Consultant, which consent shall not be unreasonably withheld.

ARTICLE 7 TERMINATION OF AGREEMENT

7.1. Termination: Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue after execution of this Agreement by City and Consultant until June 30, 2020. Consultant shall satisfactorily complete Consultant Services pursuant to this Agreement within that term, unless the term is modified as permitted for modifications of this Agreement. At City's option, City may grant up to two two-year extensions with 60-days' written notice.

7.2. Termination on Notice: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving ten-days' written notice to the other party.

7.3. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party;

- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

7.4. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, then the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Consultant's failure to satisfactorily complete the Consultant Services;
- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Consultant's material breach of any representation, warranty or agreement contained in this Agreement;

ARTICLE 8 INDEMNIFICATION

8.1. Indemnification: To the extent permitted by applicable law, Consultant will indemnify, defend and hold harmless City and each of its officers, employees and agents from and against any and all losses, damages, liabilities, claims, death, injuries or costs, including court costs and reasonable attorney's fees, (collectively, Damages) resulting from any act or omission of Consultant or any of its officers, employees, agents or subcontractors related to this Agreement; provided, that the obligation to indemnify and hold harmless is only to the extent Consultant or any of its officers, employees, agents or subcontractors caused the Damages.

ARTICLE 9 GENERAL PROVISIONS

9.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Venue for any matter related to this Agreement shall be the Superior Court of the County of Santa Barbara.

9.2. Attorney Fees: In the event of any litigation to enforce, or construe the terms of this Agreement, the prevailing party herein shall be entitled to recover reasonable attorney's fees and costs.

9.3. Section Headings: The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

9.4. Interpretation: The terms and conditions of this Agreement shall be construed pursuant to their plain and ordinary meaning and shall not be interpreted against the maker by virtue of that party having drafted this Agreement.

9.5. Inconsistency: In the event any provision of this Agreement and the documents incorporated herein by reference are deemed to be in conflict, the provision in this Agreement shall prevail.

9.6. Entire Agreement: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the Parties. No amendment or modification of the amendment shall be valid unless evidenced in writing and executed by the parties thereto.

9.7. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

9.8. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Consultant to:

Bryan Spain, P.E.
Vice President
California Code Check
5905 Capistrano Ave., Suite F
Atascadero, CA 93422

If to City to:

City of Lompoc
Attn: City Manager
100 Civic Center Plaza
Lompoc CA 93436

And a copy to:

Aleshire & Wynder, LLP
Attn: Jeff Malawy
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612

With a copy to:

City of Lompoc
Attn: Accounts Payable
100 Civic Center Plaza
Lompoc, CA 93436

Or, if delivered by telecopy, on a Business Day before 4:00 p.m. local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to

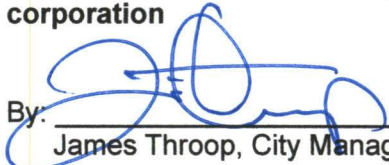
such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday Federal Holiday or other day City's city hall is closed to the public.

9.9. Counterparts: This Agreement may be signed in several counterparts.

9.10. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY OF LOMPOC, a municipal corporation

By: 
James Throop, City Manager


Attest:

By: 
Stacey Haddon, City Clerk

Approved as to form:

By: 
Jeff Malawey, City Attorney

CALIFORNIA CODE CHECK, INC.

By: 
TOM HARRIS
Its PRESIDENT


By: 
BRYAN SPAIN
Its VICE PRESIDENT

EXHIBIT A

LIST OF CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit A and the other terms of the Agreement, the other terms of this Agreement shall govern.

(Immediately behind this page)



City of Lompoc

STATEMENT OF WORK

BUILDING & SAFETY SERVICES

California Code Check, Inc., a Bureau Veritas Company will provide **Plan Check and Inspection Services** to the City of Lompoc, on an as-needed basis.

Scope of Work

Services performed will include the review of construction drawings and calculations to assure compliance with City adopted building codes and related Municipal Code requirements. Any single job may require as few as one review of submitted plans or as many as three reviews of submitted plans. Specific jobs may include residential or nonresidential projects. Type of proposed work may include new construction, remodel, or additions. Services may also include building/fire inspection and other services for the department on an as-needed basis.

Disciplines:	Plan Check & Inspection:	Fire Plan Check & Inspection:
<ul style="list-style-type: none"> ➤ Complete Building Code – Architectural & Structural ➤ Mechanical, Electrical, Plumbing (MEP) ➤ Disabled Access (CASp) ➤ Building Energy Conservation ➤ Fire Prevention & Life Safety ➤ Grading/Drainage (Stormwater & LID) ➤ Green Building Code ➤ Geotechnical ➤ City Ordinance ➤ Planning ➤ Public Works 	<ul style="list-style-type: none"> ➤ New Commercial and Residential ➤ Tenant Improvements, Mixed Use ➤ Grading / Civil & Site Plan Checks ➤ Structural Reviews ➤ Pre-submittal Reviews ➤ Geotechnical Report Reviews ➤ OSHPD Review (Clinics) ➤ Essential Service Facilities (Fire & Police Stations) ➤ Disabled Accessibility / CASp ➤ Hazardous Materials Management Reviews ➤ On-site & Right-of-way Improvements ➤ Planning ➤ Public Works 	<ul style="list-style-type: none"> ➤ Fire Alarm/Sprinkler Plan Check ➤ Cooking Facilities & Comm. Hoods ➤ Fire Suppression Systems ➤ High Pile Storage ➤ Fire Department Access Compliance ➤ Related Inspections ➤ Special Projects ➤ Environmental

PLAN CHECK TURN-AROUND TIMEFRAMES, (“Off-Site” Plan Checks)	INITIAL CHECK*	RECHECK*
RESIDENTIAL		
NEW CONSTRUCTION: SFD /TRACTS	12 working days	7 working days
NEW CONSTRUCTION: MULTI-FAMILY /APARTMENTS /CONDOMINIUMS (AND MOST MAJOR PROJECTS)	12 working days	7 working days
ADDITIONS INCLUDING 2-STORY ADDITIONS / REMODELS / POOLS-SPAS (AND MINOR PROJECTS)	12 working days	7 working days
FIRE SPRINKLERS & FIRE ALARMS	12 working days	7 working days
NON-RESIDENTIAL		
NEW CONSTRUCTION / LARGE TENANT IMPROVEMENT (AND MOST COMPLEX / MAJOR PROJECTS)	12 working days	7 working days
ADDITIONS / REMODEL / MINOR TENANT IMPROVEMENTS (AND MINOR PROJECTS)	12 working days	7 working days
MEP ONLY: MECHANICAL, ELECTRICAL, PLUMBING	12 working days	7 working days
COMMERCIAL FIRE SPRINKLERS, ALARM, DETECTION & SUPPRESSION	15 working days	10 working days

*Assumes that all required documents are included and does not include the pick-up / delivery time, usually 1-2 days each way.

EXHIBIT B

COMPENSATION FOR CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit B and the other terms of the Agreement, the other terms of this Agreement shall govern.

(Immediately behind this page)

City of Lompoc

RATE SCHEDULE

BUILDING & SAFETY SERVICES

FEES FOR PLAN CHECK SERVICES – OFF SITE

BASED ON FEES COLLECTED BY THE CITY PER MASTER FEE SCHEDULE (9-1-18)

	PERCENTAGE*
Building Plan Review Fee (min. 2% annual increase)	
valuation < 1 mil	30% of City's Bldg. Plan Review Fees
valuation => 1 mil	27% of City's Bldg. Plan Review Fees
Tract Homes – Initial Review per Model/Floor Plan "Master Plan"	30% of City's Bldg. Plan Review Fees
Repetitive Plan Review (Not previously reviewed "options" or revisions to approved plans – see hourly rates below)	\$ 250.00 / each
* Plan Check Percentage Fees – ludes initial review and two rechecks, hourly thereafter. (\$400 min. fee for initial review)	

	HOURLY**
Building Plan Review Fee	\$ 130.00 / hour
Structural Only / MEP Only/Fire Only	\$ 135.00 / hour
Grading / CASp Only Plan Reviews	\$ 120.00 / hour
Planning / Public Works	Negotiable on specialization

ACCELERATED PLAN REVIEW	PERCENTAGE*	HOURLY**
Time - Must be pre-negotiated	Min.: 150% of Regular Plan Review Fee	Min.: 1.5X Our Regular Plan Review Fee

FEES FOR ONSITE STAFFING (4 hour min. / day / individual – Non Prevailing wages)

	HOURLY***
Plan Check Engineer	\$ 150.00 / hour
Plans Examiner	\$ 135.00 / hour
Sr. Building Inspector	\$ 95.00 / hour
Building Inspector	\$ 75.00 / hour
Inspection Mileage current IRS rate: \$ 0.54 /mile	IRS RATE <i>Unless City vehicle is provided</i>
Specialty Inspectors and other positions	Negotiable on specialization

***Hourly rates are billed in quarter-hour (0.25) increments. A 4 hour/day minimum per individual will be assessed. Overtime (OT) will be charged at 1.5 times the standard hourly rate and double-time (DT) will be charged at 2.0 times the standard rate. (If working a 4/10 schedule, OT is over 10 hours on any day and/or over 40 hours per week and weekends. Same principle applies to 9/80 schedules. DT is charged according to the state and federal laws. Hours worked on a designated holiday will be charged at the appropriate OT and DT rates). When our professional(s) provide(s) more than one service (i.e. plan checks and inspections), each service will be billed according to the contracted rate for each service type.

Remittance:

California Code Check, Inc. will submit monthly invoices for work. All invoices shall be broken down by assignment person performing the task, time in hours worked when applicable, hourly rate, and expenses. Plan review fees will be billed after initial check. The City shall pay invoices within (30) days after receipt, if the work specified in the invoice has been completed to the satisfaction of the City.

Remit Payment to: California Code Check

250 N. Westlake Blvd., Suite 150
 Westlake Village, CA 91362
 805.230.2888 - 805.230.8228 Fax
www.californiacodecheck.com