This PROFESSIONAL SERVICES CONTRACT (“Contract”), made this \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, is entered by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a professional home or building inspector (referred to herein as the “Inspector”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a professional consultant licensed or certified in the field of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”), for the solicitation and delivery of professional consulting services as more specifically set forth in the following terms and conditions of this Contract.

RECITALS

WHEREAS, this Contract relates to the inspection of a structure (referred to herein as the “Property”) located at the following address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and

WHEREAS, this Contract is made in conjunction with the Inspector’s separate contract with a third-party client (“Client”) for a general inspection of a residential or commercial building, and

WHEREAS, the Inspector requires the professional services (referred to herein as “Services”) of the Consultant as described in the “Statement of Work,” attached hereto and incorporated into this Contract as “Exhibit A,” in the performance of the general inspection for the Client, and

WHEREAS, the Inspector intends to utilize the work product produced in the course of the Services as described herein to assist in the general inspection of the Property and the preparation of a written inspection report for the Client, and

WHEREAS, the Inspector is a member of the International Association of Certified Home Inspectors (InterNACHI) and the Certified Commercial Property Inspectors Association (CCPIA), but neither InterNACHI nor CCPIA is a party to this Contract, and the Consultant acknowledges that InterNACHI-CCPIA is not a party to this Contract, and that InterNACHI-CCPIA has no control over the Inspector or representations made by the Inspector, and does not supervise the Inspector, and

WHEREAS, the Inspector seeks to hire an outside Consultant to perform these Services, and the Consultant is available and prepared to provide the required Services, and

WHEREAS, both parties agree to the rendering of such Services on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1.  PURPOSE AND SCOPE.  The Inspector engages the Consultant to perform the Services herein described in this Contract to assist the Inspector in the inspection of the Property, and to supplement the Inspector’s written inspection report to his third-party Client.  The Consultant agrees to faithfully and diligently perform the Services consistent with the standards of practice in the Consultant’s professional community and, in return, the Inspector covenants to use best efforts to cooperate with the Consultant in the completion of such Services, and to honor the compensation provisions outlined herein.  The Consultant shall proceed with the Services upon execution of this Contract by both parties.

2.  PERFORMANCE OF SERVICES.

A. Independent Contractor.  The Consultant is an independent contractor and shall not be considered an employee of the Inspector.  Accordingly, the Consultant is not subject to the direct control of the Inspector.  In the performance of the Services, the Consultant retains the right to control the methods and means of performance.  Consultant understands that Inspector does not carry any insurance that would cover any injury suffered by Consultant while performing his duties as required by this Contract.

B. Consultant’s Personnel.  The Inspector acknowledges and authorizes the Consultant to engage the assistance of persons either under the Consultant’s employ or acting as independent contractors to complete certain components of the Services contemplated by this Contract.

C. Hiring of Sub-Contractors.  The Inspector authorizes the Consultant to hire other professionals or experts, as may be required from time to time, to complete the Services contemplated under this Contract.  Should additional expenses or fees apply beyond the fees contemplated herein, the Consultant agrees to seek prior approval from the Inspector, and the parties shall execute a written agreement to reflect such new payment or fee requirements.

3.  PAYMENTS AND EXPENSES.

A. Flat-Fee Contract.  For professional services rendered by the Consultant, the Inspector agrees to pay the Consultant a flat fee of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

B. Expenses.  In addition to payments described in this paragraph, the Inspector agrees to reimburse the Consultant for actual expenses agreed to by the parties in writing and in advance of incurring such expenses.

C. Method of Payment.  The Consultant shall submit a written request for payment upon completion of the Services.  Upon receipt of such payment request, the Inspector will then cause payment to be made to the Consultant not later than ten days after receipt of such request.

4.  RESPONSIBILITIES OF THE PARTIES.

A. Inspector**.**  The Inspector agrees to cooperate with the Consultant and grant access to the property, information and documentation controlled by the Inspector with the Client’s authorization.  The Inspector hereby agrees that it will make available to the Consultant, in the performance of Services herein, whether public or private, all reports, references, documentation or other information held by the Inspector on behalf of the Client that is necessary for the Consultant to complete the Services contemplated herein.

B. Consultant.The Consultant agrees to diligently and professionally perform the Services herein.  The Consultant agrees not to communicate directly with the Client, and all such information, documentation or communication resulting from the performance of the Services herein shall be directed only to the Inspector.  The Consultant acknowledges that the relationship between the Inspector and the Client is private and confidential, and agrees not to interfere in any way with such relationship.  Further, the Consultant grants the Inspector all rights to the work product resulting from the performance of Services under this Contract, and acknowledges that the Inspector may elect to deliver all, part or none of said work product to the Client, and the Consultant expressly grants the Inspector permission to discuss the work product of the Consultant’s Services hereunder with the Inspector’s Client and other real estate agents, owners, repair-persons, and other interested parties.  The Inspector accepts no responsibility for use or misinterpretation by third parties of the Consultant’s work product hereunder. 

5.  TERM.  Upon execution by the undersigned parties, this Contract shall become effective and enforceable by both parties upon the latest date signed by either party, and shall continue in full force and effect through the completion of all Services, unless terminated earlier by operation of and in accordance with this Contract.  This Contract may only be extended thereafter by mutual written agreement of the parties.

6.  TERMINATION.  This Contract may not be canceled or terminated except for cause upon the default or material breach by the other party.  Written notice of termination or cancellation shall be delivered immediately upon determination of default, and shall be made to the other party according to the notice provisions established herein.  Upon termination, this Contract shall become of no further force or effect whatsoever, and each of the parties hereto shall be relieved and discharged here from, subject to payment for Services rendered prior to such termination.  Notwithstanding the foregoing, the provisions of this Contract concerning confidentiality, indemnification, jurisdiction and severability shall survive termination of this Contract.

7.  DEFAULT AND REMEDIES.

A. Default.  The failure to perform any obligation required under this Contract shall constitute default.

B. Remedies.  Upon said breach or default and notice of termination, the party in default must immediately commence to cure such breach to avoid termination or cancellation of this Contract.  Failure to cure said default within seven (7) days of notice of termination will result in cancellation of this Contract.

8.  WORK PRODUCT.  All documents, reports, records, notes, data, samples, information, processes and materials of any kind resulting from the performance of Services under this Contract shall jointly become the property of both the Consultant and the Inspector.  Such parties may use such information, etc., as necessary under this Contract, so long as none of its provisions is violated by such use.

9.  FORCE MAJEURE.  Neither party shall be liable to the other for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party.  Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather.

10.  INDEMNIFICATION.  The Consultant shall indemnify, defend and hold harmless the Inspector and its officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of failure to perform any of the Consultant’s duties and obligations hereunder, or in connection with the negligent performance of the Consultant’s duties or obligations, including, but not limited to, any claims, lawsuits, losses or liability arising out of the Consultant’s malfeasance.  Concurrently, the Inspector shall indemnify, defend and hold harmless the Consultant and its officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of failure to perform any of the Inspector’s duties and obligations hereunder, or in connection with the negligent performance of the Inspector’s duties or obligations, including, but not limited to, any claims, lawsuits, losses or liability arising out of the Inspector’s malfeasance.

11.  CONFIDENTIALITY.  Both parties agree to keep confidential all documents, data compilations, reports, computer programs, and any other information provided under this Contract from one party to the other party.  Neither party shall reveal such confidential information to any person or entity, either during the term of this Contract or at any time thereafter.  Upon expiration of this Contract, or termination as provided herein, each party will return materials which contain any confidential information to the other party.  Each party may keep one copy for its confidential file.  For purposes of this paragraph, confidential information is defined as all information disclosed to the Consultant that relates to the Inspector’s past, present and future activities, as well as activities under this Contract, which information is not otherwise of public record.  Concurrently, the Inspector acknowledges that the work product of the Consultant is a valuable asset, and agrees to keep confidential all such information relating to the Consultant.

12.  WARRANTIES.  Performance of the mutual promises and covenants herein creates no express or implied warranties, and each party shall in no way be responsible or otherwise liable for any consequential damages that may arise under this Contract.

13.  DISPUTES.  The parties shall make a good-faith effort to settle any dispute or claim arising under this Contract prior to engaging in litigation.  If the parties fail to resolve such disputes or claims, each party hereby consents to enter non-binding mediation, to be held in the jurisdiction in which the Inspector keeps its primary place of business, the cost of which is to be shared equally by the parties.  If a satisfactory result is not obtained in mediation, litigation may then be pursued.  In the event of a claim against either party, the claimant agrees to supply the other party with written notification of the nature of the claim within 14 days of discovery of the alleged basis for the claim.

Failure to comply with the above conditions will release the non-claiming party and its agents from any and all obligations or liability of any kind.  Neither party shall have a cause of action against the other if more than one year passes from the date of the completion of Services hereunder, or termination of this Contract by its terms, before such claim is made.  If litigation ensues under this Contract, the party that fails to prevail in such action shall be liable to pay the prevailing party’s legal fees and costs, including attorney’s fees, if any.

14.  NOTICE.  All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and mailed by first-class mail to the last address given by one party to the other.

15.  APPLICABLE LAW AND VENUE.  The parties agree that any litigation arising out of this Contract shall be filed only in the Court having jurisdiction in the County in which the Inspector has its principal place of business.  In the event that the Consultant fails to prove any adverse claims against the Inspector in a court of law, the Consultant agrees to pay all legal costs, expenses and fees of the Inspector in defending said claims.  The Consultant further understands that any legal action against InterNACHI-CCPIA itself, allegedly arising out of this Contract, or the Inspector’s relationship with InterNACHI-CCPIA, must be brought only in the District Court of Boulder County, Colorado.

16.  ASSIGNMENT.  Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party, which shall not be unreasonably withheld.

17.  INSURANCE.  The Consultant shall carry those insurance policies for errors and omissions as customarily held in the Consultant’s profession or field of expertise.  The Inspector carries those certain insurance policies as described as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

18.  SUCCESSORS AND ASSIGNS.  This Contract shall inure to the benefit of and be binding upon the legal representatives and successors of both parties, to the extent allowed by law.

19.  PAYMENT OF TAXES.  The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including, but not limited to, federal and Social Security taxes, workers' compensation, unemployment insurance, and sales taxes.

20.  NON-EXCLUSIVITY.  Nothing in this Contract shall be construed to prevent either party from performing the same or similar services contemplated herein for and on behalf of additional clients, whether or not said third parties are in direct competition with either party’s business operations.

21.  AMENDMENT.  All Services shall be completed during the term of the Contract.  This Contract may be amended or extended only by written agreement of both parties.  Any changes, change orders, modifications, revisions, or other amendment to this Contract shall be mutually agreed upon by the parties, and shall be incorporated by written instrument, executed and signed by all parties to this Contract.

22.  ENTIRETY OF CONTRACT.  This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations and agreements, whether written or oral.

23.  SEVERABILTY.  If any part of this Contract is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Contract shall be in full force and effect.

24.  TIME IS OF THE ESSENCE.  Time is of the essence in all provisions of this Contract.

25.  TITLES AND HEADINGS.  Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

26.  WAIVER.  The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

27.  EXECUTION.  Execution of this Contract by signature of the party or its authorized representative certifies that each has read and understood the contents of this document, that each agrees to be bound by the terms of this Contract, that each has had opportunity to review it with a legal representative of their choosing, and that each has the authority to execute this Contract.  If the party executing this Contract is a corporation, LLC, or similar entity, the person signing this Contract on behalf of such entity does personally guarantee payment of the fee by the entity.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

The INSPECTOR,                                                 The CONSULTANT,

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     DATE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

STATEMENT OF WORK

Under this Contract, and as part of this Professional Services Contract, the Inspector and the Consultant agree that the following elements shall be included under this Statement of Work and shall constitute the Services to be performed hereunder:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_