

“RFQ/RFP”

REQUEST FOR

**QUALIFICATIONS
&
PROPOSALS**

TO PROVIDE

**CONSULTING
SUPPORT SERVICES**



**CITY OF ANAHEIM
PUBLIC WORKS DEPARTMENT
CONSTRUCTION SERVICES DIVISION**

September 22, 2008

TABLE OF CONTENTS

Introduction	3
Organization of Request for Qualifications	4
Scope of Services	5
Typical Duties & Responsibilities of Consultant Personnel	7
Knowledge & Experience	8
Provided by Consultant	9
Provided by City	9
Consultant Evaluation & Selection	10
Insurance and Indemnification	11
Contract Agreement	11
Fee Schedule	11
Solicitation Response	12
Exhibit “A”	Insurance, Indemnification & Hold Harmless Provisions
Exhibit “B”	Sample Consulting Agreement

INTRODUCTION

The Public Works Department (PWD) of the City of Anaheim (COA) desires to contract with multiple technical professional firms across a broad spectrum of specialties to establish a strong and comprehensive team of technical Consultants to support its **Construction Services Division's (CSD)** efforts in all facets of architectural facility design as well as project administration, construction inspection & management & project close-out activities. The desired support services will more specifically range from architectural drafting and design, to specification writing and constructability reviews, to contract administration, to construction management, survey and inspection, to resident engineer services and as-built/O&M review activities. **A FIRM IS NOT REQUIRED TO OFFER SUPPORT SERVICES IN ALL SUB-DISCIPLINES LISTED. CONTRACTS WILL BE OFFERED TO QUALIFIED CONSULTING FIRMS TO PROVIDE SUPPORT SERVICES IN THE AREAS OR SUB-DISCIPLINES WITHIN WHICH IT IS DEEMED COMPETENT, EXPERIENCED & COMPETITIVE.** Qualifications and experience in any of the following sub-disciplines will serve to support the current needs of the **CSD**:

Survey

- Topo
- Benchmark set/relocate
- Construction Staking

Construction Management

- Inspection
- Resident Engineer
- Owner's Representative
- Construction Site Manager

Geotechnical Inspection & Mat'l Testing

- A/C Mix Designs
- Backfill Sampling and Testing
- Compaction
- Concrete Sampling and Testing
- General Material Testing
- Deputy Inspection

Environmental:

- WPCP Review/approval/monitoring
- WQMP Review/approval/monitoring
- SWPPP Review/approval/monitoring

Constructability & Plan Check:

- Electrical Review
- Mechanical Review
- Mechanical Review
- Fire Systems Review
- Architectural – Structural Review
- Civil-Grading Landscape Street-Traffic Review

Schedule & Claims Analysis:

- Schedule Delay & Analysis
- Forensic Schedule Analysis
- Claims Prevention & Analysis

Projects may include capital improvement projects, facility & system maintenance and rehabilitation type projects or developer type projects. Individual project staffing will be comprised of a combination of City staff and Consultant staff, depending on the specific support requirements of the project.

It is the City's intent to have multiple consulting firms under contract to provide competent and experienced personnel to support a variety of activities, including but not limited to, construction inspection and management, plan check, claims prevention & analysis, geotechnical and material testing and inspection, deputy inspection, and others on an "AS-NEEDED", "ON-CALL",

“SHORT NOTICE” basis, to work under the general supervision of the Construction Services Division or other Department representative. On some occasions, time permitting, the Consultants will be required to compete via lump sum fee submittal for a specific assignment. The Consultant will always be responsible to provide fully qualified and experienced staff to efficiently perform the services and support the needs of the **CSD** in each of the areas identified in Consultant’s qualification and proposal submittal package and as generally described in this solicitation document. **CONSULTANTS SHALL CLEARLY INDICATE THE SUB-DISCIPLINES FOR WHICH IT DESIRES TO BE CONSIDERED ALONG WITH THE SUPPORTING EXPERIENCE AND QUALIFICATION DOCUMENTATION.** The personnel are to have extensive knowledge of Public Works design & construction materials, methods, equipment, and testing. The personnel shall be able to understand and interpret design plans, specifications as well as standard plans and specifications. The personnel shall also be familiar with the National Pollutant Discharge Elimination System (NPDES) requirements and best management practices for storm water pollution prevention on public works construction projects. Depending on the particular assignment, Consultant’s personnel shall also have knowledge of and successful experience in effective project management techniques and processes.

Consultants will not be assigned new projects if it currently has a maximum of 3 unfinished projects. Work performed by the Consultant that has not been specifically requested in writing, will not be compensated. All work shall be completed in a timely and expeditious manner.

This solicitation does not commit the City to pay any cost incurred in the preparation of a response. In addition, the proposal should be limited to 25 double-sided pages. The Department of Public Works reserves the right to withdraw this solicitation at any time for any reason. All firms preparing a proposal will be duly notified of any change in the status of this solicitation. The successful proposers/Consultants shall file insurance coverage and provide indemnification provisions and hold harmless clauses in favor of the City as described in Exhibit “A”.

ORGANIZATION OF REQUEST FOR QUALIFICATIONS

Responses to this solicitation shall contain the following in order to establish conformity:

- Scope of Services offered
- Project related experiences, references & personnel for each scope of service
- Organizational chart & resume of proposed key personnel to provide service
- Provide an overview of the management and supervision of the Project team
- Additional information or description of resources, supporting both the qualifications of your firm and the proposed personnel
- Fee Schedule – provide a schedule of hourly rates, including overtime rates for applicable personnel classifications as well as reimbursables
- List of billing rates for other incidental items or services not specifically defined

- Provide an outline of your Quality Assurance Program for the areas/sub-disciplines for which you desire to be considered and any other information you deem pertinent

SCOPE OF SERVICES

The Consultant shall perform professional and technical support services on an “as-needed” basis. Consultant personnel will be assigned full time, unless otherwise noted in advance, to specific tasks and/or projects and will provide assistance to and work under the direction of the department representative. The Consultant is expected to establish and maintain a close working relationship with the Department’s **CSD** staff throughout the project(s).

Construction personnel assigned by Consultant may be required to be available a minimum of two (2) weeks before the start of construction project until a maximum of six (6) weeks after acceptance of the construction project. If any Consultant personnel is on a leave of absence, the Project Manager shall provide a replacement employee, subject to **CSD** approval, as may be necessary until the assigned construction personnel returns to work. The qualifications and experience level of the replacement employee shall meet or exceed that of the previously assigned employee.

The specific scope of work for each project/task will be determined at a meeting attended by the Consultant and the City to discuss the specific needs of the assignment. Following the meeting, the Consultant will be expected to provide the City with a proposed level of support along with an estimated cost.

The typical workday for any task will be established on a case-by-case basis, however, during the construction phase of a project the contractor’s schedule will become the normal work schedule for Consultant’s personnel assigned thereto. Firms will be expected to provide staff willing and able to work overtime, weekends, and nights as may be determined necessary by **CSD** to maintain project milestones and schedules.

The Consultant shall provide an Account Manager [*single point of contact*] to coordinate with the **CSD** of the City of Anaheim. The Consultant’s Account Manager shall be accessible at all times during normal working hours. If at any time the level of performance falls below expectations, the City may release a Consultant’s employee and request another person be assigned as needed and shall be approved by the City of Anaheim prior to commencing any duties on the project. The Consultant’s Account Manager shall be responsible for all matters related to the Consultant’s personnel and operations, including but not limited to:

- a. Assigning lead and supporting personnel to projects on an as-needed basis, etc.
- b. Administering personnel actions, etc.
- c. Submitting resumes containing the qualifications and experience of Consultant’s personnel, etc.
- d. Responding to a variety of administrative requests from the **CSD**, i.e., billing questions, insurance renewals, etc.

A synopsis of support services to be provided by the Consultant is as follows:

- **General Civil Engineering Design** support duties shall include, but not be limited to, architectural drafting and designing to current City standards and applicable codes, reviewing said design at pre-defined intervals with City personnel, collaborating with internal and external entities relative to nearby and conflicting facilities, writing and preparing the project specifications, responding to pre-bid inquiries via addendum, recommending award of the contract to the preferred contractor, responding to various other issues...
- **Survey** support duties shall include but not be limited to collaborating with the design team to secure and provide all vertical, horizontal & topographical survey data of existing conditions and facilities necessary as well as coordinate any construction type requests for survey assistance with the construction contractor...
- **Construction Management** support duties shall include but not be limited to **construction inspection tasks** such as review of construction plans and specifications; develop a preliminary yet logical and efficient sequencing of the work to meet the City's milestones; maintain project related administrative requirements, (e.g. working day statements, daily reports, permits, daily traffic control plans, 3rd party materials testing, emergency contact names and phone numbers, etc.; **resident engineer tasks** such as draft letters; recommend contract change orders; recommend minor design changes; review and approve temporary systems analysis (false work, shoring, etc.); review, log and process project submittals; review and approve project schedules; analyze and claims and make recommendation; manage inspection and support staff; create daily reports and weekly summaries; review and approve contractor's pay applications; coordinate and chair project meetings, author minutes of project meetings, etc.; **owner's representative & construction site manager tasks** incorporate those of the resident engineer as well as other management type tasks specific to the assignment and required by the **CSD**...
- **Account Management** support duties will provide a single point of contact on behalf of the Consultant relative to all existing and potential future assignments, performance related issues, billing questions, personnel-related matters, etc... under this agreement...
- **Geotechnical Inspection & Material Testing** support duties shall include but not be limited to providing geotechnical investigation, analysis, recommendation and support to the design team. Also, confirm that construction processes achieve the minimum design levels and that all materials used in construction meet the minimum requirements of the design documents. Additionally, these support duties require providing reports of all findings for the record, performing deputy inspection functions [in the various inspection disciplines] as may be necessary, etc...
- **Schedule & Claims Analysis** support will include but not be limited to the analysis of project schedules to detect and identify project float, critical path delays, concurrent and non-concurrent delays, compensable and non-compensable delays, forensic as-built schedule analysis and reconstruction, etc. Support in this area will also prepare specification provisions to minimize, mitigate and prevent to the extent practical any project related claims, analyze claims upon receipt to determine the extent of the City's culpability and thus, liability. Familiarity and experience with the more common methods

of claims analysis is preferred, (e.g. Cost Plus a percentage, Quantum Meruit, Total Actual Cost, Estimates)...

- **Constructability & Plan Check** support duties shall include but not be limited to coordinating with our CSD staff to review a variety of plans from various other City Departments for conformity with applicable codes, related standards and other relevant City guidelines...This effort shall help to identify missing information necessary for construction or to complete the intent of the design concept. Additionally, this effort will include a code compliance review of the various systems within the design documents, including coordination of design disciplines with the intent of eliminating discontinuity between the various design factions. Timing in this area of support is slightly more critical and thus performance and responsiveness will be monitored more closely. ...

TYPICAL DUTIES & RESPONSIBILITIES OF CONSULTANT PERSONNEL

- Attend office and site meetings
- Prepare agenda, attend weekly or bi-weekly project progress meetings with City representatives and others, provide input on construction/project progress, prepare meeting minutes
- Preparation of weekly statement of working day
- Photograph job site
- Prepare Daily Report Project related activities and accomplishments with detailed and accurate information on construction/project progress
- Review of shop drawings for general compliance with project plans and specifications
- Review of the mix designs submitted by the contractor for compliance with project requirements
- Perform Safety and Maintenance Reviews
- Preparation of quantity estimates or assessment of design completion percentage on a monthly basis for progress payments
- Scheduling and coordination for sampling and testing of construction materials such as: concrete slump test; concrete cylinder compression test; soils and asphalt concrete compaction tests. Also making arrangements for batch plant inspections for batch inspections
- Receipt, review, and maintenance of contractor's certified payrolls
- Perform final inspection and recommend project acceptance
- Prepare and administer contract change orders
- Resolve Contract Claims
- Prepare Final Estimate

- Review & Approve As-Built Mark-ups from Contractor
- Identify problems associated with the construction/design project and recommend solutions
- Perform construction inspection, quantity calculations, checking grade and alignment, assuring compliance with project plans and specifications.
- Maintain safety awareness and assuring compliance of applicable regulations and contract provisions for the protection of the public and project personnel
- Perform a constructability review of project plans and specifications prior to start of construction
- Perform a variety of cost estimates, small studies, general project management activities, general staff support
- Perform Storm Water inspections of construction sites for pollutant discharge prevention in compliance with NPDES requirements
- Coordinate soils and asphalt concrete compaction tests with the contractor, also make arrangements for batch plant inspections
- Perform field topographical (topo) survey work as required on a needed basis to identify the existing facilities, right of way limits, etc. in a format compatible with the City's Computer Aided-Design system (ACAD 2008).
- Pro-actively support the coordination of construction activities with utility companies and other agencies
- Receive, catalogue and respond to RFI's and other project related inquiries...

RECOMMENDED KNOWLEDGE & EXPERIENCE

- Project management, construction administration and inspection experience on contracts based upon GREENBOOK & Caltrans standards, including roadway, bridge, traffic signal, etc...
- Check plans and specifications for conformance to all standards
- Familiarity with typical design standards, specific City standards and codes related to public improvement designs...
- Construction administration, documentation and inspection experience on contracts with Federal Funds &/or 3rd party billings
- Ability to assist the owner in clarifying, defining & documenting the design scope of a project
- Demonstrated ability to respond to and resolve disputes at the project level

- Complete understanding of County, State, and Federal water pollution control regulations related to runoff from... &/or de-watering of... construction sites
- Thorough knowledge of critical path scheduling, including an ability to evaluate schedules submitted by contractors and to evaluate and anticipate downstream impacts to those schedules during construction
- Demonstrated ability to react to public concerns about issues including but not limited to traffic, noise, and access to businesses during construction, etc...
- Demonstrated ability to reach a common goal by working and communicating successfully with a diverse group of stakeholders, including municipal and public agencies, private parties, private consultants, environmental groups, regulators, elected officials, and the public
- Demonstrated ability to develop creative and cost-effective solutions.
- Demonstrated ability to manage and control construction projects so that milestones are met and quality work products are produced on time and within budget

CONSULTANT SHALL PROVIDE

- All necessary architectural design & general construction related instruments, tools and safety equipment required for its personnel to perform their work safely, accurately and efficiently
- All necessary architectural design/general construction manuals, reference documents and other materials
- Hard hats, hard soled boots, eye & ear protection, and approved safety vests when necessary
- Vehicle's for the use of their personnel. The vehicle shall be insured. The hourly billing rates for the proposed personnel shall include all costs associated with the operation and maintenance of the vehicle. The Consultant's vehicles shall have flashing lights, visible from the rear when on the construction site
- Cellular phones with a local number, to facilitate contact during the working hours. The cost of cell phones and usage shall be included in the hourly billing rates for the proposed personnel
- Laptop computers with wireless internet access and all software and printing capabilities necessary to pursue the work of the project efficiently and communicate with the City and other team members efficiently...

THE CITY SHALL PROVIDE

- Project/assignment scope definition
- Review and approval of proposed personnel and "QAP"...

- Clarification of duties and procedures thru-out pursuit of assignment...
- Approved project plans and special provisions for construction projects...
- Limited office space, office equipment [except PC and accessories] and office supplies typically used by construction field personnel...
- If deemed necessary, an on-site office space at no cost to the Consultant...

CONSULTANT EVALUATION & SELECTION

- Each SOQ/RFP submitted will be evaluated and scored through a process. The Consultant's submittal must fully address the requirements listed in this solicitation. The Consultant's degree of experience, knowledge, and ability to provide experienced & qualified support staff as well as the reasonableness of the hourly fee will form the primary basis for evaluation.
- The proposal submitted by the Consultant is not to have any exclusions, conditions or provisions applied to the aforementioned request.
- If either of the above two items is not abided by, the City may deem the proposal as non-responsive.

A Review Board, selected by the **CSD-Manager**, will review the proposals received. Upon the conclusion of the review, and interviews if required, the Review Board shall rank the Consultants based on the following criteria for the various sub-disciplines:

- A. Ability of the Consultants to perform competently and proficiently in the sub-disciplines for which it is being considered as outlined in the solicitation.
- B. Qualifications of the specific individuals to actually perform the work or lead the Team and supervise the work product in a particular sub-discipline
- C. Amount and quality of time the key personnel will be actively involved or supervising the Team and approving the work product
- D. Whether the fee structure is reasonable & competitive
- E. Experience---Demonstrated record of success by the Consultant on work in the various sub-disciplines previously performed for Anaheim &/or other municipalities
- F. Simplicity of administrative and managerial procedures and methodologies to be employed in the various assignments under this contract
- G. An outline of your "Quality Assurance Program" that ensures a quality work product for any assignment under this contract

INSURANCE AND INDEMNIFICATION

In the Agreement, the City of Anaheim will require the successful Consultant to execute an indemnification and hold harmless clause in favor of the City per Exhibit "A". **Any exceptions to the insurance and indemnification requirements shall be conspicuously hi-lited in Consultant's solicitation response/submittal.**

The successful Consultant shall secure insurance coverages per Exhibit "A" prior to commencing any activities under this Agreement, and maintain said coverages throughout the term of the Agreement.

CONTRACT AGREEMENT

The City of Anaheim Department of Public Works anticipates that the term of the Agreement will be two (2) years. The Agreement may be renewed for two (2) additional terms at the sole discretion of the City of Anaheim. The City of Anaheim does not guaranty, either expressly or by implication, that any work or services will be required under this Agreement. An annual escalation provision is included in the agreement and is based on the *CPI* for this market area. The duration of services is anticipated between November 2008 and November 2010 with the City's option to renew the agreement two (2) additional terms, thru 2014.

Any increase in the scope of an assignment shall be approved [in advance] by the **CSD-Manager** or his representative, in writing. No fee adjustment will be allowed unless said prior written approval is has been issued.

This solicitation, the consulting firm's response to this solicitation, and the agreed upon negotiated fee schedule will be incorporated into and become a part of the contract agreement. A copy of the City's standard Agreement for Consulting Services is enclosed as Exhibit "B".

FEE SCHEDULE

The Consultant's Support Services will be compensated on an hourly basis or a percentage of completeness if task is based on a lump sum fee. The Consultant's required to provide a copy of their weekly/bi-weekly time sheet to the Construction Services Division. Invoices shall be submitted monthly to the City of Anaheim Public Works Department, Construction Services Division. Payment will follow within 30 days from the date received. Invoices are to be project specific and detailed, for services rendered. Only one payment will be made per month per project.

Please provide a schedule of hourly billing rates for the proposed personnel, including overtime rates for weekdays, Saturdays, Holidays and Sundays. Please indicate the billing rates for swing-shifts, night-shifts or other non-standard work shifts as well as all other incidental items or services which may not have been specifically addressed in this solicitation.

SOLICITATION RESPONSE

The solicitation responses are to be prepared in the prescribed format and submitted no later than 5:00 p.m. on October 15, 2008 to:

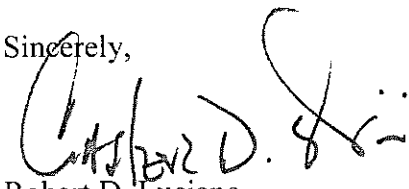
City of Anaheim
Public Works Department
200 South Anaheim Boulevard
Anaheim, CA 92805
Attention: Mr. Robert D. Luciano

The original and five copies of the proposal will be required for review by City staff. An electronic version, on "CD" media in "pdf" format, is also required...

The City reserves the right to reject any or all submitted proposals, and no representation is made that any contract will be awarded pursuant to this Request for Proposal. All costs incurred in the preparation of the Proposal, in the submission of additional information, and/or in any other aspect of a Proposal prior to the award of a written contract will be born by the respondent. The City will provide only the staff assistance and documentation specifically referred to herein, and will not be responsible for any other cost or obligation that may be incurred by the respondent. All proposals submitted to the City shall become the property of the City.

Should you require clarification on matters regarding this request for proposal, please contact Caster D. Williams at (714) 765-5176.

Sincerely,


for Robert D. Luciano

Construction Services Division, Manager

CDW: as
Enclosures

C: File

EXHIBIT "A"

EXHIBIT "A"

INSURANCE

Without limiting ANAHEIM'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 follows:

Workers' Compensation Insurance as required by California law and Employers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

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 not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, written on an occurrence form. 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 ANAHEIM, in writing, at the inception of this Agreement.

Comprehensive Automobile Liability coverage; including, as applicable, owned, non-owned and hired autos, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, and required by California law, written on an occurrence form.

Professional Liability Insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, and CONSULTANT shall maintain such coverage for at least one (1) year from 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 ANAHEIM, in writing, at the inception of this Agreement.

Each insurance policy required by this Agreement shall contain the following clauses or shall otherwise provide for the following conditions:

"This insurance shall not be cancelled, or limited in scope or coverage, until after thirty (30) days prior written notice has been given to the City

Clerk, City of Anaheim, 200 S. Anaheim Blvd., 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."

Each insurance policy required by this Agreement, excepting policies for Professional Liability and Workers' Compensation, shall contain the following clauses or shall otherwise provide for the following 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, representatives and ANAHEIM 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, or work or services performed for, or related to, the City of Anaheim."

Prior to commencing any work under this Agreement, CONSULTANT shall deliver to ANAHEIM 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 ANAHEIM (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 ANAHEIM 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 ANAHEIM, with prior written permission from ANAHEIM. In the event that a claim or other legal action is filed against ANAHEIM, and if ANAHEIM, in its good faith opinion believes it may have coverage under any of the insurance required herein, then ANAHEIM 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 ANAHEIM against any such claim or other legal action.

In addition to any other remedies ANAHEIM may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, ANAHEIM may, at its sole option:

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

Exercise of any of the above remedies, however, is an alternative to other remedies ANAHEIM may have and is not the exclusive remedy for 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 CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's (or CONSULTANT's contractors or subcontractors, if any) 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 ANAHEIM.

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

INDEMNITY

As respects acts, errors or omissions in the performance of professional services, CONSULTANT agrees to indemnify and hold harmless ANAHEIM, its officers, agents, employees, representatives and ANAHEIM 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, CONSULTANT agrees to indemnify, defend (at ANAHEIM's option), and hold harmless ANAHEIM, its officers, agents, employees, representatives, and ANAHEIM designated volunteers from and against any and all claims, losses, damages, defense costs, or 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 ANAHEIM.

The obligations set forth in this indemnification provision (i) shall be in effect without regard to whether or not ANAHEIM, 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.

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.

EXHIBIT "B"

A G R E E M E N T

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, hereinafter referred to as "ANAHEIM,"

A
N
D

_____ A _____, hereinafter referred to as "CONSULTANT."

W I T N E S S E T H

WHEREAS, ANAHEIM desires to obtain the services of multiple consulting firms to provide on call professional services in all facets of architectural facility design as well as project administration (collectively, the "Services") solely on an as-needed basis to support ANAHEIM'S Public Works Department's (the "Department") Construction Services Division's projects and programs; and

WHEREAS, ANAHEIM issued a Request for Qualifications & Proposals ("RFQ/RFP") dated September 22, 2008, a copy of which is available for inspection in the Public Works Department; and

WHEREAS, CONSULTANT represents that it is qualified and has submitted a proposal dated October 15, 2008 to provide some of the Services specifically identified in Consultant's proposal, a copy of which is attached hereto and incorporated herein as Exhibit "A", the terms of which are acceptable to ANAHEIM as modified by this Agreement (the "Proposal"); and

WHEREAS, the public interest, economy, and general welfare will be served by this Agreement.

///

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

4 PART I - SERVICES TO BE FURNISHED BY CONSULTANT

5 A. Scope of Work. CONSULTANT shall provide the Services to support the
6 Construction Services Division's projects including, but not limited to, architectural drafting
7 and design, specification writing, constructability reviews, contract administration,
8 construction management, survey and inspection, resident engineer services and as
9 built/O&M review activities. The Services shall include the services described in the
10 RFQ/RFP. ANAHEIM specifically reserves the right to modify the Scope of Work in its sole
11 discretion if any of the services can be provided by ANAHEIM staff.

12 The Services shall include those generally described in Exhibit "A", General
13 Scope of Work, and as may be more specifically described in a Request for Work Order
14 Proposal (RFWOP) (as further described below) or in a unilateral project assignment. The
15 Scope of Work of all RFWOPs and unilateral project assignments shall be in accordance
16 with the Billing Schedule (attached hereto and incorporated herein by this reference) or the
17 Lump Sum Fee offered by Consultant and accepted by ANAHEIM.

18 Nothing in this Agreement shall be construed or intended as a promise or
19 guarantee that CONSULTANT will be assigned or awarded any amount of work or shall
20 receive any minimum compensation except as such work or services may be requested
21 from CONSULTANT in the sole discretion of ANAHEIM.

22 When the Services are required, ANAHEIM may choose to unilaterally assign
23 the project to a qualified Consultant or issue a RFWOP for the project, including a specific
24 scope of work, a schedule for completion of the Project, ANAHEIM's Project Manager's
25 name, and other data specific to that assignment or RFWOP. However, if a RFWOP is
26 issued, CONSULTANT shall submit, within the time stated in the RFWOP, a sealed Work
27 Order Proposal indicating the cost, completion schedule, and other information requested
28 in that RFWOP. If CONSULTANT elects not to submit a Work Order Proposal in response

1 to the RFWOP, it shall so indicate in writing to ANAHEIM within the time stated in the
2 RFWOP for response. ANAHEIM will open the proposal(s) at the time and place stated in
3 the RFWOP. Selection of the firm to complete the specific project requested in the
4 RFWOP shall be based on the criteria set forth herein. Failure to promptly commence
5 work and/or diligently pursue such work to completion may be grounds for termination of
6 the assignment and/or this Agreement, in the sole discretion of ANAHEIM.

7 In the event of conflicting provisions, the provisions shall govern in the
8 following order: (1) this Agreement; (2) the RFQ/RFP; (3) CONSULTANT's Proposal;
9 (4) the RFWOP; (5) CONSULTANT's Work Order proposal; and (6) the Notice to Proceed.

10 B. Non-Exclusive Agreement. It is understood and agreed that Anaheim
11 has entered into agreements with multiple Consultants capable of providing the same type,
12 quality and quantity of Services at very competitive rates and that projects or work orders
13 will be unilaterally assigned or awarded to one of the qualified consultants by Anaheim.
14 Consultants will not be considered for any new assignments or project awards if Consultant
15 has three (3) ongoing awards and/or assignments which are unfinished or has a milestone
16 and/or deliverable that is behind schedule [except for suspension or delay of an
17 assignment by ANAHEIM] until the manpower from the other qualified Consultants in the
18 same sub-discipline is equally utilized.

19 Awards/assignments will be made based on the completion schedule and the
20 following criteria:

- 21 1. Ability to perform the Services for a project and/or assignment
- 22 2. Qualifications of the specific individuals who will provide the Services
23 for a project and/ or assignment.
- 24 3. Availability and quantity of time of key personnel involved in &/or
25 overseeing the Services for a project and/or assignment.
- 26 4. Reasonableness of the fee requested to provide the Services for a
27 project and/or assignment
- 28 5. Demonstrated record of success by the CONSULTANT on work

1 previously performed for ANAHEIM or for other municipalities or
2 enterprises.

3 6. The specific methods and techniques to be employed by
4 CONSULTANT in providing the Services for a project/assignment.

5 C. Representatives of CONSULTANT. CONSULTANT shall assign a
6 Registered Professional Engineer licensed by the State of California Department of
7 Consumer Affairs to supervise all engineering work by CONSULTANT pursuant to this
8 Agreement.

9 CONSULTANT shall give a minimum of thirty (30) days' advance written
10 notice and receive ANAHEIM'S written approval prior to substitution of the
11 representative(s) designated in this section during the performance of the Services under
12 this Agreement.

13 PART II - SERVICES TO BE FURNISHED BY ANAHEIM

14 A. Documents. ANAHEIM will, upon request, provide CONSULTANT with
15 copies of existing drawings, maps, and other existing information relevant to the Services
16 to be performed as may be readily available to ANAHEIM.

17 B. Project Manager. The Department will assign a Project Manager to
18 coordinate, oversee and approve the Services provided by the CONSULTANT.

19 C. Research of ANAHEIM Records. The Department will assist CONSULTANT
20 in researching the Department's record data pertaining to ANAHEIM's facilities.

21 D. Review of CONSULTANT's Work Product. The Department will review the
22 Services provided by CONSULTANT and comment as appropriate, in ANAHEIM's opinion;
23 provided, however, that (1) any review or comment by ANAHEIM, or failure of ANAHEIM to
24 review or comment, shall in no way relieve CONSULTANT of any obligations set forth in
25 this Agreement and (2) CONSULTANT shall use its own professional judgment in
26 determining whether or not to incorporate all or part of any comments made by ANAHEIM
27 and, if CONSULTANT decides not to incorporate all or part of any such comments,
28 CONSULTANT shall communicate its decision and the reasons for the decision, in writing

1 to ANAHEIM.

2 E. Representative of ANAHEIM. The Director of Public Works of ANAHEIM
3 ("Director") or his or her designee shall represent ANAHEIM in all matters pertaining to the
4 services to be rendered under this Agreement, including giving any required notices.
5 CONSULTANT shall, in the performance of this Agreement, consult with the Director or his
6 or her designee(s) and other ANAHEIM employees as the Director may require.

7 PART III - TERMS OF AGREEMENT

8 A. Term of Agreement. The term of this Agreement shall commence in
9 November 2008 and terminate two (2) years thereafter, unless sooner terminated as
10 provided herein. The Director of Public Works is hereby authorized to renew this
11 Agreement upon the same terms and conditions for no more than two (2) additional terms
12 after the initial term, unless CONSULTANT provides written notice of termination no less
13 than thirty (30) days prior to completion of the term in progress; provided however, that
14 compensation rates may be adjusted during the renewal of each subsequent term.

15 All parties recognize that the continuation of this Agreement after the close of
16 any fiscal year of ANAHEIM, which fiscal year ends on June 30 of each year, shall be
17 subject to budget approval providing for or covering such contract items as an expenditure
18 in said budget. ANAHEIM does not represent that said budget item will be actually
19 adopted, said determination being the determination of the City Council at the time of the
20 adoption of the budget herein. No penalty shall accrue to ANAHEIM in the event this
21 provision shall be exercised. Should termination be accomplished in accordance with this
22 Section, a settlement shall be negotiated by the parties based on items delivered, services
23 provided, monies paid and monies due.

24 B. Compensation. ANAHEIM shall pay CONSULTANT for services
25 rendered pursuant to this Agreement in accordance with the lump sum fee offered in
26 response to a RFWOP or the CONSULTANT's hourly rate schedule, a copy of which is
27 attached and incorporated as part of Exhibit "A".

28 The Director of Public Works is hereby authorized to exercise the options on behalf

1 of ANAHEIM if budget appropriations are made therefor. Notwithstanding the foregoing,
2 and consistent with the debt limitation provisions of the California Constitution, ANAHEIM
3 may terminate this Agreement after its initial year if the ANAHEIM City Council fails or
4 refuses to appropriate moneys therefor.

5 C. Extra Services. Except as specifically provided herein, no additional
6 services beyond the scope of this Agreement shall be rendered by CONSULTANT unless
7 previously authorized in writing by ANAHEIM.

8 D. Accounting Procedures. CONSULTANT shall submit to ANAHEIM on a
9 monthly basis an accurate accounting of the Services performed by CONSULTANT and a
10 progress report showing the status of each task of the project (percent complete) and the
11 remaining budget, including a spreadsheet showing the costs and hourly expenditure per
12 task to be presented in the same format as the Work Order proposal submitted for the
13 project.

14 1. For time and materials work orders, the charge for consulting services
15 rendered pursuant to this Agreement will be computed by utilizing CONSULTANT'S
16 billing rates for salary and non-salary expenses directly attributable to the project, in
17 accordance with Exhibit A. Lump sum work order will be based on the percent
18 complete and in accordance with the agreed upon payment schedule.

19 2. CONSULTANT agrees to submit to ANAHEIM on a monthly basis a
20 listing of the actual expenses incurred in each item of work for time and materials
21 work. Said submittal will also include a monthly progress report and the forecasted
22 cost for each item for the upcoming month.

23 3. ANAHEIM agrees to pay CONSULTANT for work satisfactorily
24 performed and for approved reasonable expenses incurred during the preceding
25 month within thirty (30) days after receipt of the monthly submittal, as described in
26 the preceding paragraph.

27 ///

28 E. Fiscal Records and Audits. CONSULTANT shall keep a correct and current

1 accounting of payroll costs, travel, subsistence, field and incidental expenses.

2 CONSULTANT shall use recognized accounting methods in preparing such
3 invoices and reports. ANAHEIM reserves the right to designate its own employee
4 representative(s) or its contracted representative(s) with a certified public accounting firm
5 who shall have the right to audit CONSULTANT's accounting procedures and internal
6 controls of CONSULTANT's financial systems and to examine any cost, revenue, payment,
7 claim, other records or supporting documentation resulting from any items set forth in this
8 Agreement. If CONSULTANT fails to provide supporting documentation satisfactory to
9 ANAHEIM for costs charged, then CONSULTANT agrees to reimburse ANAHEIM for those
10 costs. Any such audit(s) shall be undertaken by ANAHEIM or its representative(s) at
11 reasonable times during normal working hours and in conformance with generally accepted
12 auditing standards. CONSULTANT agrees to fully cooperate with any such audit(s).

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

17 CONSULTANT will be notified in writing of any exception taken as a result of
18 an audit. Any adjustments and/or payments which must be made as a result of any such
19 audit or inspection of CONSULTANT's invoices and/or records shall be made within thirty
20 (30) days from presentation of ANAHEIM's findings to CONSULTANT. If CONSULTANT
21 fails to make such payment, CONSULTANT agrees to pay interest, accruing monthly, at a
22 rate of ten percent (10%) per annum unless another section of this Agreement specifies a
23 higher rate of interest, then the higher rate will prevail. Interest will be computed from the
24 date of written notification of exception(s) to the date CONSULTANT reimburses
25 ANAHEIM for any exception(s). If an audit inspection or examination in accordance with
26 this article discloses overcharges (of any nature) by CONSULTANT to ANAHEIM in excess
27 of one percent (1%) of the value of that portion of the contract that was audited, the actual
28 cost of ANAHEIM's audit shall be reimbursed to ANAHEIM by CONSULTANT.

1 CONSULTANT reserves the right to contest any exception.

2 F. Indemnity Provisions. As respects acts, errors or omissions in the
3 performance of professional services, CONSULTANT agrees to indemnify and hold
4 harmless ANAHEIM, its officers, agents, employees, representatives and volunteers from
5 and against any and all claims, demands, defense costs, liability or consequential
6 damages of any kind or nature arising directly out of CONSULTANT's negligent acts, errors
7 or omissions in the performance of his professional services under the terms of this
8 contract.

9 As respects all acts or omissions which do not arise directly out of the
10 performance of professional services, including but not limited to those acts or omissions
11 normally covered by general and automobile liability insurance, CONSULTANT agrees to
12 indemnify, defend (at ANAHEIM's option), and hold harmless ANAHEIM, its officers,
13 agents, employees, representatives, and volunteers from and against any and all claims,
14 demands, defense costs, liability, or consequential damages of any kind or nature arising
15 out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any)
16 performance or failure to perform, under the terms of this contract; excepting those which
17 arise out of the sole negligence of ANAHEIM.

18 G. Insurance Provisions. Without limiting ANAHEIM's right to indemnification,
19 it is agreed that CONSULTANT shall secure, prior to commencing any activities under this
20 Agreement, and maintain during the term of this Agreement and maintain for one (1) year
21 after completion of the Services specified herein, insurance coverage as follows:

22 Workers' Compensation Insurance as required by California law and
23 Employers Liability Insurance in an amount not less than \$1,000,000.00 per occurrence.

24 Commercial General Liability Insurance, including coverage for Premises and
25 Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations
26 Liability, and Independent Consultants' Liability (if applicable), in an amount of not less
27 than One Million Dollars (\$1,000,000.00) per occurrence, \$2,000,000.00 annual aggregate,
28 written on an occurrence form. Such insurance shall be written on a primary basis, without

1 a self-insured retention, but may include a deductible of not more than \$10,000.00 per
2 occurrence, provided that such deductible is disclosed to ANAHEIM, in writing, at the
3 inception of this Agreement.

4 Comprehensive Automobile Liability coverage; including, as applicable,
5 owned, non-owned and hired autos, in an amount of not less than \$1,000,000.00 per
6 occurrence, combined single limit, as required by California Law.

7 Professional Liability Insurance coverage in an amount not less than One
8 million Dollars (\$1,000,000.00), and CONSULTANT shall maintain such coverage for at
9 least four (4) years from the termination of this Agreement. Such insurance shall be
10 written on a primary basis, without a self-insured retention, but may include a deductible of
11 not more than \$10,000.00 per occurrence, provided that such deductible is disclosed to
12 ANAHEIM, in writing, at the inception of this Agreement.

13 Each insurance policy required by this Agreement shall contain the following
14 clause or shall otherwise provide for the following conditions:

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

20 Each insurance policy required by this Agreement, excepting policies for workers'
21 compensation and professional liability, shall contain the following clauses:

22 "It is agreed that any insurance maintained by CONSULTANT pursuant to
23 this Agreement shall be primary to, and not contribute with, any insurance or self-insurance
24 maintained by the City of Anaheim."

25 "The City of Anaheim, its officers, agents, employees, representatives and
26 volunteers are added as additional insureds as respects operations or activities of, or on
27 behalf of the named insured, performed under contract with the City of Anaheim.

28 ANAHEIM'S Risk Manager is hereby authorized to reduce requirements set

1 forth above in the event he determines that such reduction is in ANAHEIM'S best interest.

2 Prior to commencing any work under this Agreement, CONSULTANT shall
3 deliver to ANAHEIM insurance certificates confirming the existence of the insurance
4 required by this Agreement, and including the applicable clauses referenced above. Also,
5 within thirty (30) days of the execution date of this Agreement, CONSULTANT shall
6 provide to ANAHEIM (i) endorsements to the insurance policies which add to these policies
7 the applicable clauses referenced above, or (ii) in lieu of said endorsements,
8 documentation acceptable ANAHEIM evidencing that the coverage, terms, and conditions
9 set forth in the above-referenced clauses are otherwise included in said insurance policies.

10 Insurance required hereunder shall be placed with insurers (i) admitted to write insurance
11 in California, (ii) possessing A.M. Best's rating of A VII or higher, or (iii) otherwise
12 acceptable to ANAHEIM, with prior written permission from ANAHEIM. In the event that a
13 claim or other legal action is filed against ANAHEIM, and if ANAHEIM, in its good faith
14 opinion, believes it may have coverage under any of the insurance required herein then
15 ANAHEIM has the right to demand, and to receive within a reasonable time period, copies
16 of the insurance policies related to such required insurance; provided, however, that this
17 provision shall not apply if the parties agree that CONSULTANT shall fully defend, hold
18 harmless, and indemnify ANAHEIM against any such claim or other legal action.

19 In addition to any other remedies ANAHEIM may have if CONSULTANT fails
20 to provide or maintain any insurance policies or policy endorsements to the extent and
21 within the time herein required, ANAHEIM may, at its sole option:

22 1. Order CONSULTANT to stop work under this Agreement and/or withhold any
23 payment(s) which become due to CONSULTANT hereunder until CONSULTANT
24 demonstrates compliance with the requirements hereof;

25 2. Terminate this Agreement.

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

1 Nothing herein contained shall be construed as limiting in any way the extent
2 to which CONSULTANT may be held responsible for payments of damages to persons or
3 property resulting from CONSULTANT's, or CONSULTANT's contractors/subcontractor's, if
4 any, performance of the work covered under this Agreement.

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

14 ANAHEIM's Risk Manager is hereby authorized to reduce the requirements
15 set forth herein in the event he determines that such reduction is in ANAHEIM's best
16 interest.

17 H. Professional Practices. All consulting services to be provided pursuant to this
18 Agreement shall be provided by personnel experienced in their respective fields and in a
19 manner consistent with the standards of care, diligence and skill ordinarily exercised by
20 professional consultants in similar circumstances in accordance with sound professional
21 practices. CONSULTANT'S engineering services will be furnished in accordance with
22 generally accepted professional engineering practices and principles and under the
23 supervision of professional engineers and/or land surveyors licensed in the State of
24 California.

25 CONSULTANT assumes responsibility for any and all negligence, errors or
26 omissions that CONSULTANT commits and any and all such negligence, errors or
27 omissions committed by a sub-contractor of CONSULTANT in performance of this
28 Agreement.

1 I. Termination. ANAHEIM may terminate this Agreement with or without cause
2 upon giving CONSULTANT at least thirty (30) days prior written notice. Other than as
3 specifically provided herein, if this Agreement is terminated without cause, CONSULTANT
4 will be paid for costs incurred and actual services satisfactorily performed for ANAHEIM up
5 to and including the date of termination. The Director or his designee is authorized to
6 terminate the Agreement as stated herein.

7 In the event of termination, all finished or unfinished documents prepared by
8 CONSULTANT shall become ANAHEIM's property and be promptly submitted to
9 ANAHEIM upon request.

10 J. Suspension, Postponement or Abandonment of Project

11 If any part of the project for which the Services have been authorized is
12 postponed, suspended or abandoned for any reason, ANAHEIM shall have the right to
13 suspend or terminate the affected portions(s) of this Agreement. In the event of such
14 suspension or termination, CONSULTANT shall only expend such additional time as is
15 necessary to assemble the work in progress for the purpose of properly filing and closing
16 the job and as is previously approved by ANAHEIM's Project Manager. In no event shall
17 additional time exceed ten percent (10%) of the total time expended on the suspended,
18 postponed or abandoned portion of the Project prior to the date of notice of suspension or
19 termination.

20 In the event the Services are suspended for longer than six (6) months,
21 CONSULTANT may terminate or renegotiate the Work Order proposal as it applies to the
22 suspended portion of the Project, by giving ANAHEIM at least thirty (30) days' written
23 notice.

24 K. Breach of Agreement. CONSULTANT shall not be relieved of liability to
25 ANAHEIM for damages sustained by ANAHEIM by virtue of any breach of Agreement by
26 CONSULTANT, and ANAHEIM may withhold any payments to CONSULTANT for the
27 purpose of set-off until such time as the exact amount of damages due ANAHEIM from
28 CONSULTANT is determined. In addition, ANAHEIM may pursue all remedies available

1 under law for breach of this Agreement. The waiver by either party of any breach to this
2 Agreement shall not constitute a waiver as to any succeeding breach.

3 L. Ownership of Documents. All sketches, documents, drawings, tracing, field
4 survey notes, computations, detail, data diskettes, computer software developed or
5 modified specifically pursuant to the Agreement and other materials prepared by
6 CONSULTANT, in both electronic and hard copy format, are recognized by ANAHEIM to
7 be instruments of CONSULTANT's Services and shall become the property of ANAHEIM
8 at the time of payment to CONSULTANT for such Services, and CONSULTANT shall
9 promptly deliver them to ANAHEIM at the request of ANAHEIM. CONSULTANT agrees
10 not to use said documents and other materials for any purpose other than the performance
11 of Services required by this Agreement without the prior written authorization of ANAHEIM.

12 M. Compliance with Laws. In the performance of this Agreement,
13 CONSULTANT shall abide by and conform to (and shall ensure that CONSULTANT's
14 subconsultants, if any, shall abide by and conform to) any and all applicable laws, statutes,
15 safety rules, and practices of the United States, the State of California, the Charter and
16 Ordinances of the City of Anaheim, and any other local laws (hereinafter referred to as
17 "Laws and Practices"). Further, CONSULTANT warrants that all work done under this
18 Agreement shall be in strict compliance with such Laws and Practices, including, but not
19 limited to, Cal/OSHA regulations.

20 The CONSULTANT shall dispose of all materials used in conjunction with the
21 performance of this Agreement in strict compliance with all local, state and federal
22 environmental and/or waste management rules, regulations, laws, statutes and practices.

23 N. Conflict of Interest

24 1. CONSULTANT represents that neither it nor any of its officers,
25 partners or employees has a financial interest, as defined in Section 87103 of the
26 Government Code, in the subject matter of this Agreement, other than the right to receive
27 payment from ANAHEIM for the services performed.

28 2. CONSULTANT agrees that it shall not make, participate in making, nor

1 in any way attempt to use its position as a consultant to influence any decision of
2 ANAHEIM in which CONSULTANT knows or has reason to know that CONSULTANT or
3 any of its officers, partners or employees have a financial interest as defined in Section
4 87103 of the Government Code.

5 3. In conformity with the conflict of interest code of ANAHEIM,
6 CONSULTANT or, if CONSULTANT is a firm or corporation, each individual who will be
7 performing work under this Agreement who is otherwise required to do so shall complete,
8 under penalty of perjury, a Statement of Economic Interests (Form 700) and all required
9 attachments and shall provide the originals thereof to the City Clerk of ANAHEIM. Copies
10 of those completed forms and attachments shall be public records of ANAHEIM, to be kept
11 and disclosed at the discretion of ANAHEIM and according to law. CONSULTANT and
12 individuals who will be performing work under this Agreement shall disclose pursuant to the
13 broadest disclosure category in the code except that, in the light of the limited scope of
14 duties provided for in this Agreement, certain disclosure categories shall not be required,
15 as set forth in Determination of Executive Director or Executive Officer that the Range of
16 Duties of a Particular Consultant is Limited in Scope and that Full Compliance with the
17 Disclosure Requirements of the Conflict of Interest Code is not Required.

18 PART IV - GENERAL PROVISIONS

19 A. Notification. Any notice may be served upon ANAHEIM by personal delivery
20 in writing, or by facsimile, confirmed by mail, or by telegram, or by depositing it in a United
21 States mail deposit box with the postage thereon, fully prepaid and addressed to
22 ANAHEIM at the address hereinafter set forth; and in the case of CONSULTANT, may be
23 served upon CONSULTANT by personal delivery in writing, or by facsimile, or by telegram,
24 or by depositing it in a United States mail deposit box with the postage thereon fully
25 prepaid, and addressed to CONSULTANT at the address hereinafter set forth:

26 ///

27 ///

28 ANAHEIM: City of Anaheim
Attention: City Clerk, 2nd Floor

200 S. Anaheim Boulevard
Anaheim, CA 92805
Facsimile: (714) 765-4105

WITH A COPY TO:

City of Anaheim
Attention: Director of Public Works
200 South Anaheim Boulevard, Suite 276
Anaheim, CA 92805
Facsimile: (714) 765-5225

CONSULTANT:

Name:
Address:
Telephone:
Email:
Facsimile:

Upon written notice to each party concerned, served by means provided in the above paragraph, either party may change the above addresses.

B. Independent Contractor. The performance of CONSULTANT's services hereunder shall be in the capacity of an independent contractor and not as an officer, agent, or employee of ANAHEIM. In consideration for the compensation paid to CONSULTANT by ANAHEIM, CONSULTANT agrees that ANAHEIM shall not be liable or responsible for any benefits, including, but not limited to, worker's compensation, disability, retirement, life, unemployment, health or any other benefits and CONSULTANT agrees that he shall not sue or file a claim, petition or application therefor against ANAHEIM or any of its officers, employees, agents, representatives or sureties.

C. Successors and Assigns. All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided, however, that no assignment of the Agreement shall be made without the prior written consent of the parties to the Agreement, which consent shall not be unreasonably withheld.

D. Laws Governing Construction of Terms. This Agreement shall be governed by the laws of the State of California. Any legal action concerning or arising out of this Agreement shall be filed in a court of the State of California having jurisdiction of the subject matter.

1 E. Service of Process. CONSULTANT hereby designates the City Clerk of the
2 City of Anaheim as its local agent for service of process in any legal action or proceeding
3 that may arise out of or in connection with this Agreement. ANAHEIM shall transmit to
4 CONSULTANT a copy of any legal process served on said City Clerk on the same date as
5 such service is made, in the manner and to the address set forth above, in Part IV(A),
6 "Notification."

7 F. The Entire Agreement. This writing constitutes the entire agreement between
8 the parties with respect to the subject matter hereof, and supersedes all oral or written
9 representations or written agreements which may have been entered into between the
10 parties. No modification or revision shall be of any force or effect, unless the same is in
11 writing and executed by the parties hereto.

12 If any provision of this Agreement shall be held invalid, such invalidity shall
13 not affect the other provisions hereof, and to this extent, the provisions of this Agreement
14 are intended to be and shall be deemed severable.

15 G. Counterparts. This Agreement may be executed in any number of
16 counterparts, each of which shall be deemed an original, but all of which shall constitute
17 one and the same instrument.

18 H. Headings. The headings herein set out are for convenience of reference
19 only and shall not be deemed a part of this Agreement.

20 I. No Third Party Interest. Nothing in this Agreement is intended to nor shall
21 be construed as to confer any right or interest in this Agreement upon any person or entity
22 not a party signatory to this Agreement.

23 J. Effective Date and Authority. The effective date of this Agreement shall be
24 the latest date of execution hereinafter set forth opposite the names of the signators
25 hereto. In the event CONSULTANT fails to set forth a date of execution opposite the
26 name(s) of CONSULTANT's signator(s), CONSULTANT hereby authorizes ANAHEIM, by
27 and through its representative, to insert the date of execution by CONSULTANT's
28 signator(s) as the date said Agreement, as executed by CONSULTANT, is received by

1 ANAHEIM.

2 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
3 executed on the dates hereinafter respectively set forth.

4 DATE OF EXECUTION:

CITY OF ANAHEIM,
a municipal corporation

5

6

By _____
Mayor of the City of Anaheim

7

8

"ANAHEIM"

9

10

11

12

13

DATE OF EXECUTION:

By _____

14

15

Printed Name: _____

16

17

Title: _____

18

"CONSULTANT"

19

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

20

By _____

21

Bryn M. Morley
Deputy City Attorney

22

Dated _____

23

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70517.1

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