

A G R E E M E N T

THIS AGREEMENT, dated for purposes of identification only this _____ day of _____, 2014, is made and entered into by and between the

CITY OF ANAHEIM, a municipal corporation,
hereinafter referred to as "ANAHEIM,"

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KPMG LLP, a Limited Liability Partnership organized under the laws of the State of Delaware and qualified to do business in the State of California, hereinafter referred to as "ACCOUNTANTS".

W I T N E S S E T H

WHEREAS, ANAHEIM is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City of Anaheim; and

WHEREAS, ANAHEIM desires to retain ACCOUNTANTS to provide financial and compliance auditing services; and

WHEREAS, the work required to perform said financial and compliance auditing services is of a type and complexity requiring the services of a professional auditing firm; and

WHEREAS, ACCOUNTANTS represent that they are qualified and certified to perform the auditing services as described in this Agreement.

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

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1. SERVICES TO BE PERFORMED BY ACCOUNTANTS

1.1 ANAHEIM does hereby retain ACCOUNTANTS to do and perform services necessary to perform a Financial Audit of financial statements, including a compliance audit of ANAHEIM (including all ANAHEIM departments, Electric Utility, Water Utility, the Successor Agency to the former Redevelopment Agency and Expenditures of Federal Awards; and also including, if requested, the Metro Cities Fire Authority, Community Center Authority and North Net Joint Training) for the three fiscal years ending June 30, 2014, June 30, 2015 and June 30, 2016, as more fully set forth in the "Proposal for Services to Conduct Annual Audits of the Financial Statements and Perform Related Services" attached hereto as Exhibit A. ACCOUNTANTS hereby accept said assignment and agree to perform said work and services in accordance with the terms and conditions of this Agreement. Said services to be performed include, but are not limited to, the following tasks:

.01 Audit ANAHEIM'S financial statements for each fiscal year ending June 30, 2014, June 30, 2015 and June 30, 2016, in accordance with generally accepted auditing standards;

.02 Prepare a report on ACCOUNTANTS' audit of ANAHEIM's financial statement for each fiscal year ending June 30, 2014, June 30, 2015 and June 30, 2016 which expresses an opinion as to the fairness of their presentation in conformity with generally accepted accounting principles, applicable to the various fund types of ANAHEIM, or state the reasons for any exceptions to said principles;

.03 Issue appropriate reports, in accordance with government auditing standards, the Single Audit Act Amendments of 1996 and OMB Circular A-133, as well as issue reports for inclusion in the separate annual reports for the Electric Utility, Water Utility, Successor Agency to the former Redevelopment Agency and Expenditures of Federal Awards (and, if requested by ANAHEIM, the Community Center Authority, Metro Cities Fire Authority and/or North Net Joint Training), provide all required single audit reports, a review of Federal Asset Forfeiture Program compliance, GANN Appropriations Limit Agreed-Upon Procedures, and Department of Housing and Urban Development ("HUD") Directive 2000-02 Agreed-Upon Procedures;

.04 Meet twice with ANAHEIM's Audit Committee each fiscal year to develop a work plan for the normal audit procedures to be performed by ACCOUNTANTS as well as monitor the financial progress of ANAHEIM through the year;

.05 Prepare a list of schedules to be prepared by ANAHEIM personnel and a list of underlying supporting documents to be made available by ANAHEIM, for each entity being audited;

.06 Review interim ANAHEIM financial statements and major related accounting issues to identify matters requiring timely attention or those which could jeopardize ACCOUNTANTS' ability to issue an unqualified audit opinion at each fiscal year end;

.07 Submit, by the first day of December of each year or the date identified in the Audit and Annual Report Process Schedule published by the City's Finance Department, fifteen (15) copies of ACCOUNTANTS' management letter setting forth findings and/or recommendations on those matters noted and observed during the conduct of the audit of the financial statements and developed within the scope usually associated with such an audit relating to, but not limited to, the following: (i) improvement in systems of internal control and any other material matters coming to the attention of the firm during the conduct of the audit; (ii) improvement in accounting system and procedures; and (iii) apparent non-compliance with laws, rules and regulations;

1.2 The Financial Audit to be performed by ACCOUNTANTS shall cover ANAHEIM'S financial statements as of June 30, 2014, June 30, 2015 and June 30, 2016, which will be prepared by ANAHEIM'S Finance Department in accordance with generally accepted accounting principles; provided however, that ANAHEIM may at its sole option terminate this Agreement for any reason after ACCOUNTANTS' completion of either the June 30, 2014 audit or the June 30, 2015 audit, by giving ACCOUNTANTS written notice prior to December 31, 2014 or December 31, 2015, respectively.

1.3 ANAHEIM personnel shall provide timely cooperation and provide assistance to ACCOUNTANTS including, without limitation, providing ACCOUNTANTS with adequate working space, reasonable access to City books, records, files, and personnel and the

preparation of necessary schedules and the production of underlying supporting documents for ACCOUNTANTS' inspection and auditing.

1.4 ACCOUNTANTS shall keep their work papers and other data collected during the conduct of the audits on file in legible form for a period not less than five (5) years while ACCOUNTANTS serve as ANAHEIM auditors and not less than three (3) years thereafter. In any event, the required retention period for any audit year shall not exceed six years. ACCOUNTANTS shall make their work papers available to ANAHEIM'S authorized representatives, if requested, subject to ACCOUNTANTS' firm policy relating to audit work papers, the terms of which policy shall be described in writing to ANAHEIM if ANAHEIM so requests. ACCOUNTANTS shall provide ANAHEIM with adequate support, including copies of selected work papers for any proposed journal entries and relevant information.

1.5 All services to be performed by ACCOUNTANTS shall be directed by professional accountants certified by the California State Board of Accountancy, and all personnel engaged in the work shall be qualified for their respective roles. Unless a change is approved by the Finance Director, the Engagement Partner on this engagement shall be Chris Ray and the Senior Manager shall be Brianne Pierce.

1.6 The financial audit requirements shall cover all funds of ANAHEIM. A compliance audit will be required under the provisions of the Single Audit Act Amendments of 1996 as outlined in OMB Circular A-133. That financial audit also shall be in accordance with all applicable generally accepted auditing standards.

1.7 If requested, provide "consent" in connection with any security offerings in which ANAHEIM may be engaging, enabling ANAHEIM to reprint the most recent audit opinion and related financial statements in the official statement;

1.8 If requested, conduct a performance/ administrative review of a specific operational area to be determined by ANAHEIM;

1.9 Provide an annual governmental accounting training seminar for ANAHEIM employees, which training seminar shall be primarily geared for accountant, senior accountant and fiscal officer level employees and shall include all education materials;

- 1.10 Provide training to key ANAHEIM staff to aid in auditing;
- 1.11 Provide access for key ANAHEIM staff, on a space-available basis, to any ACCOUNTANTS-sponsored education courses, at a fee to be negotiated depending upon the course requested;
- 1.12 Provide training in auditing techniques;
- 1.13 Provide access to ACCOUNTANTS' various research results performed for ANAHEIM;
- 1.14 Provide ongoing continuity throughout this engagement term to ensure effective and efficient audits, particularly at partner, manager and senior levels;
- 1.15 Provide full report production responsibility for the Single Audit, Electric Utility, Water Utility, Successor Agency to the former Redevelopment Agency and Expenditures of Federal Awards financial reports, GANN Appropriations Limit Agreed-Upon Procedures, and HUD Directive 2000-02 Agreed-Upon Procedures;
- 1.16 If requested by ANAHEIM, provide full report production responsibility for the Community Center Authority, Metro Cities Fire Authority and North Net Joint Training;
- 1.17 Provide partner and manager time commitments in accordance with the hours reflected in Exhibit A hereto. ACCOUNTANTS shall identify those employees who will provide services to ANAHEIM, and they shall adjust their current client load to provide all necessary attention to performance of the services provided in this Agreement. Any change in audit partner or manager shall require the approval of ANAHEIM'S Finance Director;
- 1.18 Provide staffing with sufficient municipal accounting expertise and technical knowledge to minimize the burden on ANAHEIM staff;
- 1.19 Provide assistance as necessary with GFOA, GASB and CSMFO to help ANAHEIM maintain its State and National award recognition.

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2. TERM

2.1 This Agreement shall encompass auditing services performed for the three (3) fiscal years ending June 30, 2014, June 30, 2015 and June 30, 2016. ANAHEIM may, in its sole discretion, extend this Agreement for up to three additional one year terms as provided in Section 3.4 below.

2.2 The several phases of the work undertaken pursuant to this Agreement shall commence, respectively, on the Effective Date of this Agreement and on January 1, 2015 and January 1, 2016, respectively.

3. COMPENSATION

3.1 ANAHEIM shall pay ACCOUNTANTS for services rendered pursuant to this Agreement at ACCOUNTANTS' rates set forth in Exhibit A. ACCOUNTANTS and ANAHEIM agree that no changes to the rates set forth in Exhibit A shall be made during the term of this Agreement.

3.2 The Parties agree that the contract amount includes all out-of-pocket expenses of ACCOUNTANTS and that ACCOUNTANTS shall not be reimbursed for any expenses.

3.3 It is understood by and agreed between the Parties to this Agreement that full and complete payment to ACCOUNTANTS for services rendered and expenses incurred in performing the annual audits required by this Agreement shall not exceed the following amounts set forth in the "Fee Structure" attached as Exhibit B hereto: Five Hundred Twenty Five Thousand Dollars (\$525,000.00) for the fiscal year ending June 30, 2014; Five Hundred Fifty One Thousand Dollars (\$551,000.00) for the fiscal year ending June 30, 2015; and Five Hundred Seventy Seven Thousand Dollars (\$577,500.00) for the fiscal year ending June 30, 2016.

3.4 The term of this Agreement may be extended by ANAHEIM, acting through the Finance Director, in its sole discretion for up to three (3) additional terms of one (1) year each. ANAHEIM shall give notice of its intent to extend this Agreement for such additional one-year term to ACCOUNTANTS in writing no less than one hundred twenty (120) days prior

to end of the applicable fiscal year. In the event of such extension, ACCOUNTANTS' annual audit fees for any extension period shall not exceed the following amounts set forth in Exhibit B hereto: Six Hundred Two Thousand Dollars (\$602,000.00) for the fiscal year ending June 30, 2017; Six Hundred Twenty Seven Thousand Dollars (\$627,000.00) for the fiscal year ending June 30, 2018; and Six Hundred Fifty Two Thousand Dollars (\$652,000.00) for the fiscal year ending June 30, 2019.

3.5 Any special projects performed pursuant to Section 1.8 above shall be billed at the rates set forth in Exhibit A. In addition, fees for the following services shall be negotiated at the time the service is requested: (1) mathematical verifications in connection with future bond refundings or escrow restructuring and/or (2) providing consents on security offerings pursuant to Section 1.7 above.

3.6 Payment for audit services rendered hereunder shall be made based on invoices submitted by ACCOUNTANTS during the field work period for each annual audit. Payment for other services rendered hereunder shall be made based on invoice submitted by ACCOUNTANTS for actual time expended, or other arrangements agreed to by ANAHEIM's Finance Director. It is understood and agreed that said invoices shall not be submitted to ANAHEIM more than once a month. ANAHEIM shall pay ACCOUNTANTS within thirty (30) days after approval of an invoice by ANAHEIM staff.

3.7 In agreeing to the maximum limitations on fees to be paid to ACCOUNTANTS as set forth in in Sections 3.3 and 3.4 of this Agreement, the Parties contemplate that conditions shall be satisfactory to the normal progress and completion of the services to be rendered by ACCOUNTANTS. However, if unusual circumstances are encountered which make it necessary for ACCOUNTANTS to do additional work ACCOUNTANTS shall report such conditions immediately to the Finance Director of ANAHEIM and the Parties may negotiate such additional compensation as is warranted.

4. ADMINISTRATION

This Agreement will be administered by the ANAHEIM Finance Department. The Finance Director is authorized to take any and all actions on behalf of ANAHEIM as set

forth herein, including extending or terminating this Agreement and/or negotiating fees or additional compensation pursuant to Sections 3.5 and 3.7 above.

5. STANDARD OF CARE

5.1 ACCOUNTANTS shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. ACCOUNTANTS represent and maintain that they are skilled in the professional calling necessary to perform the Services. ACCOUNTANTS warrant that all employees and subconsultants, if any, shall have sufficient skill and experience to perform the Services assigned to them. By delivery of completed work, ACCOUNTANTS certify that the work conforms to the requirements of this Agreement; all applicable federal, state and local laws; and the professional standard of care.

5.2 ACCOUNTANTS represent and warrant to ANAHEIM that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of ACCOUNTANTS to practice its profession. ACCOUNTANTS shall maintain a City of Anaheim business license during the term of this Agreement.

6. INDEPENDENT CONTRACTOR

6.1 Neither ANAHEIM nor any of its employees shall have any control over the manner, mode or means by which ACCOUNTANTS, its agents or employees, perform the services required herein, except as otherwise set forth herein. Except as expressly provided herein, ANAHEIM shall have no voice in the selection, discharge, supervision or control of ACCOUNTANTS' employees, servants, representatives, contractors, or agents, or in fixing their number, compensation or hours of service. ACCOUNTANTS shall perform all services required herein as an independent contractor of ANAHEIM and shall remain at all times, as to ANAHEIM, a wholly independent contractor with only such obligations as are consistent with that role. ACCOUNTANTS shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of ANAHEIM. ANAHEIM shall not in any way or

for any purpose become or be deemed to be a partner of ACCOUNTANTS in its business or otherwise or a joint venture or a member of any joint enterprise with ACCOUNTANTS.

6.2 In consideration for the compensation paid to ACCOUNTANTS by ANAHEIM, ACCOUNTANTS agree 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 ACCOUNTANTS agree that it shall not sue or file a claim, petition or application therefor against ANAHEIM or any of its officers, employees, agents, representatives or sureties.

7. INSURANCE

7.1 Without limiting ANAHEIM's right to indemnification, it is agreed that ACCOUNTANTS shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

.01 Workers' Compensation Insurance as required by California statutes;

.02 Comprehensive General Liability Insurance, or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, and Independent Contractors' Liability (if applicable), in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and

.03 Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million dollars (\$1,000,000.00).

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

7.3 Each insurance policy required by this Agreement shall contain the following clause (or a clause of similar effect):

"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."

7.4 Each insurance policy required by this Agreement, excepting policies for workers' compensation and professional liability, shall contain the following clauses (or clauses of similar effect):

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

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

7.5 Prior to commencing any work under this Agreement, ACCOUNTANTS 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, ACCOUNTANTS shall provide to ANAHEIM endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by ANAHEIM, it shall be ACCOUNTANTS' responsibility to see that ANAHEIM receives documentation acceptable to ANAHEIM which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Insurance required hereunder shall be placed with insurers reasonably acceptable to ANAHEIM. Also, ANAHEIM has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

In addition to any other remedies ANAHEIM may have if ACCOUNTANTS fail 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:

.01 Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

.02 Instruct ACCOUNTANTS to stop work under this Agreement and/or withhold any payment(s) which become due to ACCOUNTANTS hereunder until ACCOUNTANTS demonstrate compliance with the requirements hereof;

.03 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 ACCOUNTANTS' failure to maintain insurance or secure appropriate endorsements.

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

8. INDEMNIFICATION

8.1 As respects acts, errors or omissions in the performance of professional services, ACCOUNTANTS agree to indemnify and hold harmless ANAHEIM, its officials, officers, and employees from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature, arising directly out of ACCOUNTANTS' (or ACCOUNTANTS' contractors' or subcontractors', if any) negligent acts, errors or omissions in the performance of professional services under this Agreement.

8.2 As respects all acts, errors or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts, errors or omissions typically covered by ISO-based general and automobile liability insurance coverage,

ACCOUNTANTS agree to indemnify, defend (at ANAHEIM's option), and hold harmless ANAHEIM, its officials, officers, employees, agents, and representatives 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 ACCOUNTANTS' (or ACCOUNTANTS' 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.

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

9. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

The Parties recognize that a substantial inducement to ANAHEIM for entering into this Agreement is the professional reputation, experience and competence of ACCOUNTANTS. Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assigned, transferred or encumbered in any way without the prior written consent of ANAHEIM. Any such purported assignment, transfer, encumbrance, pledge, subuse, or permission given without such consent shall be void as to ANAHEIM. If ANAHEIM approves an assignment or transfer, this Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the permitted successors and assigns of ACCOUNTANTS.

10. SUBCONTRACTING

ACCOUNTANTS shall be fully responsible to ANAHEIM for all acts and omissions of any subcontractor that ACCOUNTANTS retain to furnish services that ANAHEIM has engaged ACCOUNTANTS to provide. Nothing in this Agreement shall create any contractual relationship between ANAHEIM and subcontractor nor shall it create any obligation on the part of ANAHEIM to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. ANAHEIM is an intended beneficiary of

any work performed by any subcontractor for purposes of establishing a duty of care between the subcontractor and ANAHEIM pursuant to this Agreement.

11. USE AND OWNERSHIP OF DOCUMENTS AND DATA

ANAHEIM shall furnish to ACCOUNTANTS such documents and materials as may be relevant and pertinent to the provision of services hereunder as ANAHEIM may possess or acquire.

All documents and materials furnished by ANAHEIM to ACCOUNTANTS, pursuant to Section 11.1, shall remain the property of ANAHEIM and shall be returned to ANAHEIM upon termination of this Agreement, for any reason. All documents or material prepared or caused to be prepared by ACCOUNTANTS, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of ANAHEIM, and ANAHEIM shall have the sole right to use such materials in its discretion without further compensation to ACCOUNTANTS or any other party. ACCOUNTANTS shall, at ACCOUNTANTS' sole cost and expense, provide such documents and material to ANAHEIM upon prior written request.

12. CONFIDENTIALITY

All documents, including drafts, preliminary drawings or plans, notes, ideas and communications that result from the Services provided under this Agreement, shall be kept confidential by ACCOUNTANTS unless ANAHEIM authorizes, in writing, the release of said information.

13. INTELLECTUAL PROPERTY INDEMNITY

ACCOUNTANTS shall defend and indemnify ANAHEIM, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by ACCOUNTANTS to ANAHEIM pursuant to this Agreement.

14. RECORDS

ACCOUNTANTS shall keep records and invoices in connection with the work to be performed under this Agreement. ACCOUNTANTS shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures and disbursements charged to ANAHEIM, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to ACCOUNTANTS under this Agreement. All such records and invoices shall be clearly identifiable. ACCOUNTANTS shall allow a representative of ANAHEIM to examine, audit and make transcripts or copies of such records and any other documents created, pursuant to this Agreement, during regular business hours. ACCOUNTANTS shall allow inspection of all work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to ACCOUNTANTS under this Agreement.

15. WITHHOLDINGS

ANAHEIM may withhold payment to ACCOUNTANTS of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. ACCOUNTANTS shall not discontinue work as a result of such withholding. ACCOUNTANTS shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums and his/her decision shall be final. ACCOUNTANTS shall be entitled to receive interest on any withheld sums at the rate of return that ANAHEIM earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

16. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of ACCOUNTANTS which result in expense to ANAHEIM greater than what would have resulted if there were not errors or omissions in the work accomplished by ACCOUNTANTS, the additional cost and expense shall be borne by ACCOUNTANTS.

Nothing in this paragraph is intended to limit ANAHEIM's rights under the law or any other sections of this Agreement.

17. ANAHEIM'S RIGHT TO EMPLOY OTHER ACCOUNTANTS

ACCOUNTANTS acknowledge and agree that this Agreement and the provision of services hereunder are nonexclusive and that ANAHEIM may enter into similar agreements with other entities for the provision of similar services.

18. CONFLICTS OF INTEREST

18.1 ACCOUNTANTS represent that neither it nor any of its officers, partners or employees has a financial interest, as defined in Section 87103 of the Government Code, in the subject matter of this Agreement other than the right to receive payment from ANAHEIM for services rendered.

18.2 ACCOUNTANTS agree that it shall not make, participate in making, nor in any way attempt to use its position as auditors to influence any decision of ANAHEIM in which ACCOUNTANTS know, or has reason to know, that any of its officers, partners or employees has a financial interest as defined in Section 87103 of the Government Code.

18.3 ACCOUNTANTS warrant that neither ACCOUNTANTS nor any of its officers, partners or employees, has any financial interest in any real property, building or structure within 2,500 feet of the location of any project or assignment to which this Agreement may apply in the City of Anaheim. ACCOUNTANTS agree to disclose to ANAHEIM any financial interest in such property as may be acquired by its officers, partners or employees during the term of this Agreement.

18.4 ACCOUNTANTS and its principals and employees agree to comply with any applicable provisions of ANAHEIM'S Conflict of Interest Code and/or any obligations they may have under California Government Code Section 87100 *et seq.*

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19. NOTICES

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

ANAHEIM

City of Anaheim
Attn: City Clerk
200 S. Anaheim Blvd.
Anaheim, CA 92805

ACCOUNTANTS

KPMG LLP
Attn: Chris Ray, Partner
600 Anton Blvd., Suite 700
Costa Mesa, CA 92626

with a copy to:

Finance Director
City of Anaheim
200 S. Anaheim Blvd., Suite 643
Anaheim, CA 92805

20. DEFAULT

20.1 Events of Default.

.01 For purposes of this Section 20, the word "Default" shall mean the failure of ACCOUNTANTS to perform any of ACCOUNTANTS' duties or obligations or the breach by ACCOUNTANTS of any of the terms and conditions set forth in this Agreement. In addition, ACCOUNTANTS shall be deemed to be in Default upon ACCOUNTANTS' (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) being adjudged bankrupt; (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); or (v) suffering or permitting to continue unstayed and in effect for fifteen (15)

consecutive days any attachment, levy, execution or seizure of all or a substantial portion of ACCOUNTANTS' assets or of ACCOUNTANTS' interests hereunder.

.02 ANAHEIM shall not be deemed to be in Default in the performance of any obligation required to be performed by ANAHEIM hereunder unless and until ANAHEIM has failed to perform such obligation for a period of thirty (30) days after receipt of written notice from ACCOUNTANTS specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of ANAHEIM's obligation is such that more than thirty (30) days are required for its performance, then ANAHEIM shall not be deemed to be in Default if ANAHEIM shall commence to cure such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

20.2 Immediate Termination for ACCOUNTANTS' Default. In the event of any Default by ACCOUNTANTS, ANAHEIM may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by ACCOUNTANTS of written notice from ANAHEIM. In such event, ACCOUNTANTS shall have no further rights hereunder, and ANAHEIM shall have all other rights and remedies as provided by law.

21. COMPLIANCE WITH ALL LAWS

ACCOUNTANTS shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted, and including, but not limited to, the laws and regulations that prohibit the use of public funds for campaign activities or personal use. In addition, all work prepared by ACCOUNTANTS shall conform to applicable local, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the City Manager.

22. WAIVER

A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

23. INTEGRATED CONTRACT

This Agreement and Exhibits A and B hereto contain the entire agreement of ANAHEIM and ACCOUNTANTS with respect to the matters covered hereby, and no agreement, statement or promise made by either ANAHEIM or ACCOUNTANTS which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose.

24. CONFLICTS OR INCONSISTENCIES

In the event there are any conflicts or inconsistencies between this Agreement and Exhibits A or B hereto, the terms of this Agreement shall govern.

25. INTERPRETATION

Each Party acknowledges that he/she/it has had the benefit of advice of competent legal counsel with respect to its decision to enter this Agreement. The provisions of this Agreement shall be interpreted to give effect to their fair meaning and shall be construed as prepared by both Parties.

26. AMENDMENTS

This Agreement may be modified or amended only by a written document executed by both ACCOUNTANTS and ANAHEIM and approved as to form by the City Attorney.

27. SEVERABILITY

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

28. REMEDIES CUMULATIVE

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

29. NO THIRD PARTY BENEFICIARIES

The Parties intend that neither rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

30. CONTROLLING LAW AND VENUE

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

31. DISCRIMINATION

ACCOUNTANTS agree not to discriminate against any person or class of persons by reason of sex, color, race, creed, religion, marital status, handicap, ancestry, national origin or other prohibited basis in its provision of Services or hiring of subcontractors or employees. To the extent this Agreement provides that ACCOUNTANTS offer accommodations or services to the public, such accommodations or services shall be offered by ACCOUNTANTS to the public on fair and reasonable terms.

32. AUTHORITY

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

ACCOUNTANTS shall, at ANAHEIM's request, deliver a certified copy of its governing board's resolution or certificate authorizing or evidencing such execution.

33. EFFECTIVE DATE

This Agreement shall be effective on the date on which this Agreement is executed by ANAHEIM ("Effective Date").

[SIGNATURES ON FOLLOWING PAGE]

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

DATE OF EXECUTION:

CITY OF ANAHEIM
a Municipal Corporation

By: _____
Deborah A. Moreno
Finance Director

“ANAHEIM”

ATTEST:

By: _____
City Clerk of Anaheim

DATE OF EXECUTION:

KPMG LLP
a Limited Liability Partnership

By: _____

“ACCOUNTANTS”

APPROVED AS TO FORM:
MICHAEL R.W. HOUSTON, CITY ATTORNEY

By: _____
Kristin Pelletier
Sr. Assistant City Attorney

Dated: _____