

A G R E E M E N T

THIS AGREEMENT, dated for purposes of identification only this \_\_\_\_\_ day of \_\_\_\_\_, 2024, 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."

ANAHEIM and CONSULTANT are sometimes individually referred to herein as "Party and collectively as "Parties."

**WITNESSETH**

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 obtain the services of consulting firm to provide grant research, writing, submittal and management services and media/public relations firms or other consultants with the necessary expertise to plan and execute a comprehensive media and public outreach campaign to promote awareness and build support for capital improvement projects on an as-needed basis to support ANAHEIM'S Public Works Department ("Department") (collectively, the "Services"); and

WHEREAS, ANAHEIM issued a Request for Qualifications on \_\_\_\_\_ ("Request for Qualifications") to obtain the Services of prequalified consultants; and

WHEREAS, in response to the Request for Qualifications, CONSULTANT submitted qualifications dated \_\_\_\_\_ ("Qualifications") to provide the Services; and

WHEREAS, ANAHEIM has reviewed the Qualifications from CONSULTANT and has evaluated the previous experience and the expertise of CONSULTANT, and desires to prequalify CONSULTANT to render professional services under the terms and conditions set forth in this Agreement.

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

**1. SERVICES TO BE PROVIDED BY CONSULTANT**

1.1 In compliance with all of the terms and conditions of this Agreement, CONSULTANT shall provide to ANAHEIM all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Services when required by ANAHEIM. The Services are more particularly described in the General Scope of Work attached hereto as Exhibit A and incorporated herein by this reference (“General Scope of Work”). In addition to the General Scope of Work, the Services will also be described in a Request for Work Order Proposal (“RFWOP”) and in a Notice to Proceed, as described in Section 1.4. ANAHEIM may elect to delete certain tasks of the General Scope of Work or the RFWOP at its sole discretion. The Services will not be performed by the CONSULTANT until ANAHEIM selects CONSULTANT in accordance with this Section 1. If selected, CONSULTANT shall perform the Services as directed by ANAHEIM and in accordance with the RFWOP, the Notice to Proceed, and this Agreement. By entering into this Agreement, ANAHEIM does not guarantee CONSULTANT that ANAHEIM will select CONSULTANT to provide any Services under this Agreement.

1.2 When the Services are required, ANAHEIM will issue an RFWOP in writing or electronically for the project-specific Services, including a specific scope of work, schedule for completion of the Services, task specifications, name of the Project Administrator, and other data specific to that RFWOP. CONSULTANT shall submit, within the time stated in the RFWOP, a sealed Work Order Proposal (“Work Order Proposal”) indicating the cost, task completion schedule, and other information requested in that RFWOP. CONSULTANT shall

submit an electronic sealed Work Order Proposal when it is required by the RFWOP, and CONSULTANT shall abide by all RFWOP electronic proposal requirements.

1.3 For any RFWOP with an anticipated fee : (i) under \$50,000, ANAHEIM will send, in writing or electronically, the RFWOP to one (1) pre-qualified consultant, which may or may not include CONSULTANT; (ii) of \$50,000 to \$150,000, ANAHEIM will send, in writing or electronically, the RFWOP to up to three (3) pre-qualified consultants, which may or may not include CONSULTANT; (iii) of \$150,000 and up to \$250,00, ANAHEIM will send, in writing or electronically, the RFWOP to up to five (5) pre-qualified consultants, which may or may not include CONSULTANT. ANAHEIM does not give any guarantee to CONSULTANT that ANAHEIM will send such an RFWOP to CONSULTANT at any point during the term of this Agreement. If (a) ANAHEIM sends CONSULTANT an RFWOP and (b) CONSULTANT desires to be considered for the RFWOP, CONSULTANT shall submit, within the time stated in the RFWOP, a sealed Work Order Proposal indicating the cost, task completion schedule, and other information requested in that RFWOP. CONSULTANT shall submit an electronic sealed Work Order Proposal when it is required by the RFWOP, and CONSULTANT shall abide by all RFWOP electronic proposal requirements.

1.4 Selection of a prequalified consultant to complete the Services requested in any RFWOP shall be based on the criteria set forth herein. ANAHEIM will issue a Notice to Proceed (“Notice”) to the successful consultant who has submitted a Work Order Proposal. The Notice and the RFWOP shall constitute the “Work Order”. If CONSULTANT fails to promptly commence work and/or diligently pursue a Work Order as set forth therein, ANAHEIM may elect to terminate the Work Order or this Agreement.

1.5 CONSULTANT acknowledges that ANAHEIM may enter into agreements similar to this Agreement with other consultants. It is understood and agreed that a Work Order will be awarded to the prequalified consultant most qualified in ANAHEIM's opinion to provide services set forth in the RFWOP within the scheduled completion date based upon the following criteria:

- .01 Ability of the consultant to perform the specific tasks outlined in the RFWOP;
- .02 Qualifications of the specific individuals to perform the specific tasks outlined in the RFWOP;
- .03 Amount and quality of time key personnel will be involved in their respective portions of the Services outlined in the RFWOP;
- .04 Reasonableness of the fee requested to provide the Services outlined in the RFWOP;
- .05 Demonstrated record of success by the consultant on work previously performed for ANAHEIM or for other municipalities or enterprises and
- .06 The specific methods and techniques to be employed by the consultant in providing the Services outlined in the RFWOP.

1.6 In the event of conflicting provisions, the provisions shall govern in the following order: (1) the Notice to Proceed; (2) the RFWOP; (3) CONSULTANT's Work Order; (4) this Agreement; (5) the Request for Qualifications; and (6) CONSULTANT's Qualifications.

## **2. TERM**

The term of this Agreement shall commence on the date this Agreement is executed by ANAHEIM, and shall terminate three (3) years from the Effective Date, unless terminated earlier as set forth in Section 24 herein ("Term").

The Public Works Director is hereby authorized to extend the term of this Agreement upon the same terms and conditions for no more than two (2) one-year terms after the initial term; provided a determination is made in the sole discretion of the Public Works Director that such extension is necessary for the successful completion of the Services.

## **3. TIME OF PERFORMANCE**

3.1 Time is of the essence in the performance of a Work Order and CONSULTANT shall perform and complete those Services in accordance with the schedule included therein. The failure of CONSULTANT to strictly adhere to the schedule may result in termination of this Agreement by ANAHEIM, or, at ANAHEIM'S option, the termination of the

Work Order.

3.2 The time period(s) specified for performance of the Work Order, shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of CONSULTANT, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, pestilence, and other natural catastrophes, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, government priorities, restraint by court order or public authority and action or non-action by or inability to obtain the necessary authorization or approvals from any governmental agency or authority, and/or acts of any governmental agency, including ANAHEIM, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome, if CONSULTANT shall within ten (10) days of the commencement of such delay notify the Project Administrator in writing of the causes of the delay. The Project Administrator shall ascertain the facts and the extent of delay, and may extend the time for performing the Work Order for the period of the enforced delay if, in the judgment of the Project Administrator, such delay is justified. The Project Administrator's determination shall be final and conclusive upon the Parties to this Agreement. In the event of delay, however caused, CONSULTANT's sole remedy shall be an extension of the time of performance of the Work Order, pursuant to this Section, and CONSULTANT shall not be entitled to recover damages against ANAHEIM.

#### **4. COMPENSATION**

4.1 It is understood and agreed between the parties to this Agreement that full and complete payment for all Services provided in accordance with this Agreement shall not exceed the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) per Work Order ("Total Compensation") for the Services described in a single RFWOP. The Parties understand and agree that the combined cumulative value of all Work Order Packages and Requests awarded to CONSULTANT during the initial twelve (12) months following the Effective Date, as defined herein, and each twelve (12) month period thereafter during the Term of the Agreement shall not

exceed the sum of Five Hundred Thousand Dollars (\$500,000.00), excluding change orders. Any unused portion of this annual limit shall expire and not carry over to increase the dollar limit of Work that may be awarded in the subsequent twelve-month period. The total compensation payable to CONSULTANT for the entire Term of this Agreement shall not exceed Two Million, Five Hundred Thousand Dollars (\$2,500,000.00). ANAHEIM shall pay the Total Compensation in the manner set forth in the Work Order.

4.2 The Parties understand and agree that each RFWOP will request, and each Work Order Proposal will provide, the CONSULTANT rate sheet and a total not-to-exceed amount for the Services described in the RFWOP. CONSULTANT shall invoice ANAHEIM for the Services rendered pursuant to this Agreement in accordance with the hourly rates and other costs set forth in CONSULTANT's rate sheet, up to the not-to-exceed amount provided in the Notice to Proceed. CONSULTANT and ANAHEIM agree that no changes to the rates set forth in CONSULTANT's rate sheet shall be made without the prior written approval of ANAHEIM.

4.3 If a Work Order provides for the reimbursement of expenses, ANAHEIM shall reimburse CONSULTANT for only those out-of-pocket expenses set forth in the Work Order. Reimbursable expenses invoiced to ANAHEIM shall not exceed any cap on reimbursable expenses set forth in the Work Order unless the additional reimbursable expenses are first approved in writing by ANAHEIM. The Total Compensation dollar amount established in Section 4.1 shall be inclusive of all reimbursable expenses and subconsultant fees.

4.4. The Public Works Director, defined in Section 6 below, or his designee, is authorized to approve additional expenditures not to exceed fifteen percent (15%) of the Total Compensation, for Extra Work not included in an RFWOP, if the Public Works Director or her designee determines, in her sole discretion, that these additional Extra Work is necessary for the successful completion of a Work Order.

.01 In no event shall CONSULTANT render Extra Work beyond the scope of a Work Order without the written authorization of the Public Works Director or her designee.

.02 All Extra Work approved in writing by the Public Works Director

or designee shall be billed at either the rates set forth in the Work Order, or at a fixed price, at ANAHEIM's sole discretion. If billed at a fixed price, CONSULTANT shall provide ANAHEIM with general description of the Extra Work to be performed with a proposed price. At such time as the Public Works Director or her designee has approved the Extra Work, has agreed to a fixed price for the services, and has notified CONSULTANT of such approval and agreement in writing, CONSULTANT shall perform the Extra Work.

.03 As used herein, "Extra Work" means any work that is determined by ANAHEIM to be necessary for the proper completion of the Services contained in the Work Order, but which is not included therein and which the Parties did not reasonably anticipate would be necessary at the time of the issuance of the Work Order.

4.5. Except as indicated in a Work Order, after the issuance of a Work Order, CONSULTANT shall submit monthly invoices to ANAHEIM describing the work performed the preceding month. CONSULTANT's bills shall include the name of the person who performed the work, a brief description of the Services performed and/or the specific task in the Work Order to which it relates, the date the Services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. ANAHEIM shall pay CONSULTANT no later than thirty (30) days after approval of the monthly invoice by ANAHEIM staff. In no event shall the sum of all invoices submitted exceed the Total Compensation; that is, unless, the Public Works Director has approved Extra Services.

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

## **5. PROJECT MANAGER**

5.1 Within the Work Order Proposal, CONSULTANT shall designate a Project Manager, who shall coordinate the Services. This Project Manager shall be available to ANAHEIM at all reasonable times during the performance period of the Work Order. The foregoing Project Manager shall be responsible for directing all activities of CONSULTANT and devoting sufficient time to personally supervise the provision of Services. The Project Manager may not be changed by CONSULTANT and no other personnel may be assigned to supervise the Services to be provided hereunder without the express written consent of ANAHEIM.

5.2 Any personnel or subconsultant, if any, who fail or refuse to perform the Services in a manner acceptable to ANAHEIM, or who are determined by ANAHEIM, in its sole discretion, to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services set forth in a Work Order, or a threat to the safety of persons or property, shall be promptly removed from those Services by CONSULTANT at the request of ANAHEIM. CONSULTANT warrants that it will continuously furnish the necessary personnel to complete the Work Order on a timely basis.

5.3 The Project Manager and any of CONSULTANT's employees shall be fully qualified and licensed for the Services set forth in the Work Order.

## **6. ADMINISTRATION**

This Agreement will be administered by the Department. ANAHEIM Public Works Director ("Director") is authorized to take any action granted the Project Administrator, replace the Project Administrator by notifying CONSULTANT in writing, approve Extra Work, if any, in accordance with Section 4 of this Agreement, and terminate this Agreement or the Work Order in accordance with Section 24 of this Agreement. The Department shall assign a project administrator at the time of its issuance of an RFWOP ("Project Administrator"). The Project Administrator shall have the power to act on behalf of ANAHEIM for review and approval of all Services performed by CONSULTANT. The Project Administrator shall not be authorized to terminate the Services performed pursuant to this Agreement.

## **7. STANDARD OF CARE**

7.1 CONSULTANT shall perform all Services under this Agreement in a skilful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONSULTANT represents and maintains that it and its employees are skilled in the professional calling necessary to perform the Services. CONSULTANT warrants 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 performed pursuant to a Work Order, CONSULTANT certifies that the work conforms to the requirements of this Agreement; the Work Order; all applicable federal, state and local laws; and the professional standard of care.

7.2 CONSULTANT represents and warrants to ANAHEIM that it and its employees have, 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 CONSULTANT and its employees to practice its profession. CONSULTANT shall maintain a City of Anaheim business license during the term of this Agreement.

## **8. INDEPENDENT CONTRACTOR**

8.1 Neither ANAHEIM nor any of its employees shall have any control over the manner, mode or means by which CONSULTANT, its agents or employees, perform the Services, except as otherwise set forth herein. Except as expressly provided herein, ANAHEIM shall have no voice in the selection, discharge, supervision or control of CONSULTANT's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. CONSULTANT shall perform the Services 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. CONSULTANT 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 CONSULTANT in its business or otherwise or a joint venturer or a member of any

joint enterprise with CONSULTANT.

8.2 In consideration for the compensation to be 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 it shall not sue or file a claim, petition or application therefor against ANAHEIM or any of its officers, employees, agents, representatives or sureties.

## **9. 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 \$1,000,000 per occurrence/accident/illness/injury.

Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, as well as Independent CONSULTANT'S Liability where appropriate, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 annual aggregate, written on an occurrence form. Such insurance shall be written on a primary basis but may include a deductible or self-insured retention of more than \$10,000 per occurrence, provided that such deductible or self-insured retention is disclosed to ANAHEIM, in writing, at the inception of this Agreement.

Commercial Automobile Liability Coverage including—as applicable—owned, non-owned, and hired autos, in an amount not less than \$2,000,000 per occurrence, combined single limit, as required by California law.

Professional Liability Insurance, inclusive of Cyber Liability Insurance where required, in an amount not less than \$2,000,000 per occurrence or per claim. Such insurance shall be written on a primary basis, but may include a deductible or self-insured

retention of more than \$10,000 per occurrence, provided that such deductible or self-insured retention is disclosed to ANAHEIM, in writing, at the inception of this Agreement.

Any required coverage written with primary and excess layers to satisfy the minimum requirements of this Agreement must be submitted for approval by ANAHEIM's Risk Manager prior to the inception of the final Agreement.

CONSULTANT agrees that this insurance shall not be voluntarily cancelled by CONSULTANT or limited in scope or coverage by CONSULTANT 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. This does not apply to cancellation for non-payment of premium, which requires notice of not less than ten (10) days.

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

Each insurance policy required by this Agreement, except 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 insured 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 under 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 that 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 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:

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

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 in any way as limiting the extent that an CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S, (or CONSULTANT'S AGENT or SUB-AGENT, 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 that 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 amend the requirements set forth herein in the event that such reduction is in ANAHEIM'S best interest.

#### **10. INDEMNIFICATION**

As respects acts, errors or omissions in the performance of professional services, CONSULTANT agrees 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, to the extent directly arising out of the negligent acts, errors or omissions of the CONSULTANT or any SUB-AGENT in the performance of professional services under this Agreement.

As respects all acts, errors or omissions that do not arise directly out of the performance of professional services, including but not limited to those acts, errors or omissions typically covered by general and automobile liability insurance, CONSULTANT agrees 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 CONSULTANT'S (or CONSULTANT'S AGENT or SUB-AGENT, if any) acts, errors, omissions, or work, relative to this Agreement; except for those Claims that 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.

## **11. PREVAILING WAGES**

11.1 By execution of this Agreement, CONSULTANT certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., the California Code of Regulations, Title 8, Section 16000 et seq and the Davis-Bacon Act ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" "maintenance" projects. It shall be CONSULTANT's sole obligation to determine whether, and to what extent if any, the Prevailing Wage Laws apply to the Services. If CONSULTANT determines the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation for the Services is \$1,000 or more, CONSULTANT shall fully comply with the Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the City of Anaheim, Office of the City Clerk, 200 South Anaheim Boulevard, Anaheim, California 92805, and are available to any interested party on request. If the Prevailing Wage Laws apply to the Services, CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the CONSULTANT's principal place of business and at the project site. CONSULTANT shall defend, indemnify and hold ANAHEIM, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

11.2 The Parties understand and agree that if, and when, the Prevailing Wage Laws apply to the Services, CONSULTANT shall comply with the express requirements of Labor Code Sections 1725.5, 1771.1, 1771.4 and 1776, including but not limited to the contractor and subcontractor registration and requirements related to certified payroll records.

## **12. PROGRESS**

CONSULTANT is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Services, activities performed and planned, and any meetings that have been scheduled or are

desired.

**13. 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 CONSULTANT. 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 CONSULTANT.

**14. SUBCONTRACTING**

Except for those subcontractors set forth in CONSULTANT's Work Order Proposal, if any, CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the Director or Project Administrator. CONSULTANT shall be fully responsible to ANAHEIM for all acts and omissions of any approved subcontractor. 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.

**15. USE AND OWNERSHIP OF DOCUMENTS AND DATA**

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

15.2 All documents and materials furnished by ANAHEIM to CONSULTANT, Section 15.1, shall remain the property of ANAHEIM and shall be returned to ANAHEIM upon

the earlier of the termination of this Agreement, for any reason, or the completion of a Work Order. All documents or material prepared or caused to be prepared by CONSULTANT, 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 CONSULTANT or any other party. CONSULTANT shall, at CONSULTANT's sole cost and expense, provide such documents and material to ANAHEIM upon prior written request.

15.3 Documents and material prepared by CONSULTANT, pursuant to this Agreement, are not intended or represented to be suitable for reuse by ANAHEIM or others on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from CONSULTANT will be at ANAHEIM's sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to CONSULTANT's deliverables under this Agreement by ANAHEIM or persons other than CONSULTANT, is waived against CONSULTANT and ANAHEIM assumes full responsibility for such changes unless ANAHEIM has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

## **16. 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 CONSULTANT unless ANAHEIM authorizes, in writing, the release of said information.

## **17. INTELLECTUAL PROPERTY INDEMNITY**

CONSULTANT 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 CONSULTANT to ANAHEIM pursuant to this Agreement.

## **18. FISCAL RECORDS AND AUDIT**

CONSULTANT shall keep records and invoices in connection with the work to be performed under this Agreement.

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

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

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

the value of that portion of the Agreement that was audited, the actual cost of ANAHEIM's audit shall be reimbursed to ANAHEIM by CONSULTANT. CONSULTANT reserves the right to contest any exception.

**19. WITHHOLDINGS**

ANAHEIM may withhold payment to CONSULTANT 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. CONSULTANT shall not discontinue work as a result of such withholding. CONSULTANT shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. CONSULTANT 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 of the dispute, starting on the earliest date of ANAHEIM's withholding of any amounts later found, by the City Manager or a court of competent jurisdiction, to have been improperly withheld.

**20. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of CONSULTANT which result in expense to ANAHEIM greater than what would have resulted if there were not errors or omissions in the work accomplished by CONSULTANT, the additional cost and expense shall be borne by CONSULTANT. Nothing in this paragraph is intended to limit ANAHEIM's rights under the law or any other sections of this Agreement.

**21. ANAHEIM'S RIGHT TO EMPLOY OTHER CONSULTANTS**

CONSULTANT acknowledges and agrees 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.

**22. CONFLICTS OF INTEREST**

CONSULTANT or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which: (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under

this Agreement; and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, CONSULTANT shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by ANAHEIM. CONSULTANT shall indemnify and hold harmless ANAHEIM for any and all claims for damages resulting from CONSULTANT's violation of this Section.

If CONSULTANT's Services under this Agreement produce design work that is subsequently used, in whole or part, in an ANAHEIM construction bid package, CONSULTANT is prohibited from bidding on such package.

### **23. 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 CONSULTANT to the other shall be deemed to have been given when in writing and personally delivered or if mailed on the third (3rd) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

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

With copies to: Public Works Director  
City of Anaheim  
200 S. Anaheim Blvd., Suite 276  
Anaheim, CA 92805  
FAX No. (714) 765-5225

To CONSULTANT: Name  
Address  
Telephone:

### **24. ENFORCEMENT OF AGREEMENT**

#### **24.1 Events of Default.**

.01 For purposes of this Section 24, the word "Default" shall mean the failure of CONSULTANT to perform any of CONSULTANT's duties or obligations or the

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

.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 CONSULTANT 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.

24.2 Immediate Termination for CONSULTANT's Default. In the event of any Default by CONSULTANT, ANAHEIM may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by CONSULTANT of written notice from ANAHEIM. In such event, CONSULTANT shall have no further rights hereunder, including the performance of the Services set forth in a Work Order, and ANAHEIM shall have all other rights and remedies as provided by law. For any Default involving a breach of the requirements of a Work Order, ANAHEIM, at its sole discretion, may instead immediately terminate that Work Order. In such event, CONSULTANT shall have no further rights hereunder, including the performance of the Services set forth in the Work Order, and ANAHEIM shall have all other rights and remedies as provided by law.

24.3 Termination Without Cause. ANAHEIM may terminate this Agreement at any time without the necessity of cause or Default by giving seven (7) days notice in writing to CONSULTANT. In such event, the Parties shall have no further rights hereunder, except that CONSULTANT shall be paid for all services adequately rendered prior to such termination. CONSULTANT may not terminate this Agreement except for cause.

24.4 Suspension, Postponement or Abandonment of a Work Order. A Work Order may be suspended or abandoned for any reason with or without notice. If any part of the Services of a Work Order is suspended or abandoned for any reason, ANAHEIM shall have the right to suspend or terminate the affected portions(s) of the Work Order, including the entire Work Order. In the event of such suspension or termination, CONSULTANT shall only expend such additional time as is necessary to assemble the work in progress for the purpose of properly filing and closing the job and as is previously approved by Project Administrator. In no event shall additional time exceed ten percent (10%) of the total time expended on the suspended or abandoned portion of the Work Order prior to the date of notice of suspension or termination.

In the event the Services of an RFWOP are suspended for longer than six (6) months, CONSULTANT may cancel the Work Order, by giving ANAHEIM at least thirty (30) days' written notice.

## **25. COMPLIANCE WITH ALL LAWS**

CONSULTANT 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. In addition, all work prepared by CONSULTANT shall conform to applicable local, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.

## **26. 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.

**27. INTEGRATED CONTRACT**

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

**28. CONFLICTS OR INCONSISTENCIES**

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

**29. 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.

**30. AMENDMENTS**

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

**31. 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.

**32. REMEDIES CUMULATIVE**

The remedies given to ANAHEIM and CONSULTANT herein shall be cumulative and are given without impairing any other rights given ANAHEIM or

CONSULTANT by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by ANAHEIM or CONSULTANT shall not exclude the exercise of any other remedy.

**33. 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.

**34. 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.

**35. DISCRIMINATION**

CONSULTANT agrees 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 CONSULTANT offer accommodations or services to the public, such accommodations or services shall be offered by CONSULTANT to the public on fair and reasonable terms.

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

**37. EFFECTIVE DATE**

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

*(Remainder of page intentionally left blank; signatures on next page)*

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

DATE: \_\_\_\_\_

CITY OF ANAHEIM,  
a municipal corporation

By: \_\_\_\_\_  
Rudy Emami, Director of Public Works

DATE: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Theresa Bass, City Clerk

\_\_\_\_\_, a \_\_\_\_\_,

DATE: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:  
ROBERT FABELA, CITY ATTORNEY

By: \_\_\_\_\_  
Bryn M. Morley  
Deputy City Attorney

151134

EXHIBIT A

STARTS AFTER THIS PAGE