



City of Anaheim  
**DEPARTMENT OF PUBLIC WORKS**

September 13, 2021

**NOTICE TO ALL PROSPECTIVE CONTRACTORS**

**RE: Request for Qualifications for On-call Demolition, Disposal/Debris Removal, Erosion and Sediment Control, and Immediate Response for As-Needed Services**

**ADDENDUM NO. 1**

The following are changes to the RFQ for the above mentioned project:

A. APPENDIX 2 – Standard Agreement:

1. Replace Sample Master Agreement with revised version attached.

**PROPOSAL DUE DATE REMAINS 4:00 P.M. FRIDAY, SEPTEMBER 24, 2021.**

Sincerely,

Cesar Carrillo, P.E.  
Principal Civil Engineer

The Contractor shall acknowledge receipt of this addendum by signing and enclosing this form in his/her bid package submittal. Failure to do so may result in a disqualification of this bid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

**MASTER AGREEMENT**

THIS AGREEMENT, dated for purposes of identification only this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 "CONTRACTOR."

**WITNESSETH:**

WHEREAS, ANAHEIM desires to obtain Demolition, Disposal/Debris Removal, Erosion and Sediment Control, and Immediate Response Services (collectively, the "Work") on an as-needed basis to support ANAHEIM's Public Works Department; and

WHEREAS, ANAHEIM has issued a request for qualifications dated August 31, 2021 and to perform the Work ("Request for Qualifications"); and

WHEREAS, CONTRACTOR submitted a Proposal for Qualifications dated \_\_\_\_\_, 2021 ("Proposal"), which is incorporated herein by this reference, to perform the Work, the terms and conditions of which are governed by the terms of the Request for Bid and are acceptable to ANAHEIM; and

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

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

## PART I - WORK TO BE PERFORMED BY CONTRACTOR

A. References. ANAHEIM and CONTRACTOR are sometimes individually referred to as a “Party” and collectively as the “Parties.” Except as indicated otherwise, all references to ANAHEIM include its elected officials, officers, directors, employees, agents, and volunteers. Except as indicated otherwise, all references to CONTRACTOR include its personnel, employees, agents, and subcontractors.

B. Scope of Work. CONTRACTOR agrees to perform the Work and supply all materials in connection with this Master Agreement for Demolition, Disposal/Debris Removal, Erosion and Sediment Control, and Immediate Response Services from time to time on an as-needed basis as requested by ANAHEIM as provided herein from time to time on an as-needed basis as requested by ANAHEIM as provided herein. The Work is generally described in Exhibit A attached hereto and incorporated herein by reference. The specific Work to be provided by CONTRACTOR shall be specified in individual work order packages (“Work Order Packages”) to be prepared by ANAHEIM as the Work are requested from CONTRACTOR or, in the case of immediate response services, the Request for Immediate Response Services (“Request”) or On-Call Tasks, which will be assigned to CONTRACTOR as noted below. The Work shall be provided in accordance with the applicable Work Order Package or Request received from ANAHEIM’s Representative and Appendices A through C hereto, attached hereto and incorporated herein by this reference. By entering into this Master Agreement, ANAHEIM does not give any guarantee to CONTRACTOR that ANAHEIM will select CONTRACTOR for any Work Order Package or Request.

Notwithstanding the above, the number of Work Order Packages, Requests, or combination thereof, that CONTRACTOR may have open at any one time shall be limited to three. If CONTRACTOR has three (3) Work Order Packages, Requests, or combination thereof, open at one time, then CONTRACTOR shall be prohibited from submitting a bid on a subsequent Work Order Package or responding to subsequent Requests until CONTRACTOR closes a Work Order Package or Request to ANAHEIM’s satisfaction. The Work Order Package or Request shall contain a specific Work description, plans, bid list, scheduled start and Work completion date, and bond requirements.

These Terms and Conditions in this Master Agreement shall govern performance under and shall apply to all Work Order Packages or Requests received from ANAHEIM by inclusion therein of the following clause:

“For purposes of this Work Order Package/Request, the general terms and conditions applicable hereto shall be the Master Agreement between ANAHEIM and , which by this reference is incorporated herein and made a part hereof.”

Any preprinted or other CONTRACTOR inserted provisions on CONTRACTOR’s acknowledgment or other submittal that purport to set forth general terms and conditions shall not govern or have any application to transactions involving any Work Order Package or Request which references this Master Agreement.

CONTRACTOR shall provide the Work in accordance with this Master Agreement, the applicable Work Order Package or Request received from ANAHEIM’s Representative, as defined herein, Appendices A through C hereto (“Appendices”), the 2012 Standard Specifications for Public Works Construction (“Standard Specifications”), the Standard Specifications Supplement (“Standard Specifications Supplement”).

In the event of conflicting provisions among the contract document, including a Change Order, the terms of these documents shall control in the following order of priority:

- 1) Change Order
- 2) Work Order Package or Request;
- 3) Master Agreement;
- 4) Special Provisions, when applicable;
- 5) the Appendices to this Master Agreement
- 6) the Standard Specifications Supplement;
- 7) the Standard Specifications;
- 8) General Scope of Work in the RFWOP, Exhibit A of the Master Agreement;
- 9) Proposal.

In entering into this Master Agreement, CONTRACTOR offers and agrees to assign to ANAHEIM all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Cal. Bus & Prof. Code, Sec. 16700-16728), arising from purchases of goods, services, or materials pursuant to this Master Agreement. This assignment shall be made and become effective at the time the ANAHEIM tenders final payment to CONTRACTOR on a Work Order Package or Request, without further acknowledgment by the Parties.

C. Representatives of CONTRACTOR. Prior to commencing the Work under any Work Order Package or Request, CONTRACTOR shall designate for each Work Order Package or Request a representative (“Representative” or “CONTRACTOR’s Representative”) with whom all contacts concerning that Work Order Package or Request shall be made. CONTRACTOR’s Representative or designee shall be on the job site at all times during performance of the Work.

ANAHEIM shall have the right but not the obligation to approve CONTRACTOR’s designation of a Representative for each Work Order Package or Request. If ANAHEIM disapproves CONTRACTOR’s Representative for a Work Order Package or Request, CONTRACTOR shall promptly designate another Representative acceptable to ANAHEIM in its sole discretion. Failure by ANAHEIM to object to CONTRACTOR’s designation of a Representative at any time before or during performance of the Work shall not be a waiver of ANAHEIM’s right to require CONTRACTOR to replace Representative at any time during performance of the Work.

Other than as set forth above, CONTRACTOR shall give a minimum of thirty (30) days advance notice and receive ANAHEIM’s written approval prior to substitution of any Representative(s) designated for Work Order Packages or Requests pursuant to this section, prior to assignment to the project or during the performance of the Work.

CONTRACTOR shall assign additional staff as needed to perform the Work in a timely and expeditious manner.

## PART II - ANAHEIM

A. Documents. ANAHEIM will, upon request, make available to CONTRACTOR original or copies of existing drawings, maps, and other existing information relevant to the Work to be performed as may be readily available to ANAHEIM.

B. The Director of Public Works of ANAHEIM or designee shall represent ANAHEIM in all matters pertaining to such Work to be performed under this Master Agreement. CONTRACTOR shall, in the performance of this Master Agreement for such Work, consult with the Director of Public Works or designee and other ANAHEIM employees as the Director of Public Works or his designee may direct.

For the Work defined as Demolition, Disposal/Debris Removal, Erosion and Sediment Control, and Immediate Response Services as defined herein and so identified in the applicable Work Order Package or Request, the Director of Public Works of ANAHEIM or designee shall represent ANAHEIM in all matters pertaining to such Work to be rendered under this Master Agreement, including without limitation, termination of this Master Agreement and giving any notices required under this Master Agreement on behalf of ANAHEIM. CONTRACTOR shall, in the performance of this Master Agreement for such Work, consult with the Director of Public Works or designee and other ANAHEIM employees as the Director of Public Works or designee may direct.

C. Research of ANAHEIM Records. ANAHEIM's Engineering Division will assist CONTRACTOR in researching ANAHEIM's record data pertaining to ANAHEIM's facilities.

D. Inspection. ANAHEIM may, at any time and from time to time, inspect the Work prior to its completion to see that the Work is or has been performed in accordance with the Work Order Package or Request. Such inspections will be conducted at reasonable times. Notwithstanding the above, ANAHEIM may inspect the Work at any time if the Director of Public Works, as applicable, or designee, determines, in his/her sole discretion, that it is necessary for health and safety reasons. Inspections conducted by ANAHEIM, irrespective of outcome, shall not waive ANAHEIM's right to inspect and/or reject the Work at a later time, and shall not relieve

CONTRACTOR from its obligation to complete the Work in accordance with the applicable Work Order Package or Request.

PART III - TERMS OF AGREEMENT

A. Term of Agreement.

1. The term of this Master Agreement shall commence on the date this Agreement is executed by ANAHEIM and shall terminate two (2) years thereafter, unless sooner terminated as provided herein ("Initial Term"). The Director of Public Works is hereby authorized to renew this Agreement upon the same terms and conditions for no more than two (2) additional two year terms after the Initial Term ("Renewal Term"), unless CONTRACTOR provides written notice of termination no less than thirty (30) days prior to completion of the term in progress; provided however, that compensation rates may be adjusted during the renewal of each subsequent term (hereinafter the phrases "Initial Term" and "Renewal Term," if any, shall be collectively referred to as the "Term"). The Director of Public Works is authorized to extend the term of the Master Agreement for such time as is necessary for completion of outstanding Work Order Packages or Requests in progress at that time. In no event, however, shall such extension exceed six (6) months.

2. All Parties recognize that the continuation of this Master Agreement 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 or any particular budget item will be actually adopted, since budget determinations are made by the ANAHEIM City Council at the time of the consideration of each budget. 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, Work provided, monies paid and monies due.

B. Commencement and Completion of Performance.

1. When Work under this Master Agreement other than Immediate Response Services, ANAHEIM will send a written or electronic Work Order Package to one (1) prequalified

Contractor for work worth under \$50,000.00, at least three (3) prequalified Contractor for work worth between \$50,000.00 to \$150,000.00, at least five (5) prequalified Contractor for work worth between \$150,000.00 to \$250,000.00 and all the pre-qualified contractors for work worth between \$250,000.00 to \$500,000.00.. If interested in performing the Work, CONTRACTOR shall submit a sealed bid indicating cost and other information requested. In the alternative, CONTRACTOR shall submit an electronic sealed bid when it is required by a Work Order Package, and CONTRACTOR shall abide by all Work Order Package's electronic proposal requirements. ANAHEIM will be open either written or electronic bids at the pre- established time and place as set forth in the Work Order Package.

The Public Works Department will administer the bidding process and bid opening. The Public Works Department will select the most qualified contractor based on the lowest total price to complete the Work within the time frame established in the Work Order Package.

When Immediate Response Services are required, ANAHEIM will contact via telephone, pre-qualified contractors until the Immediate Response Service requirements have been satisfied. Under this Immediate Response Service process, ANAHEIM may or may not contact CONTRACTOR. The Public Works Department, Engineering Services Division, will administer the Immediate Response Service process. If selected, CONTRACTOR shall, as soon as reasonably possible, sign and return the Notice to Proceed by facsimile or email and shall commence performance of the Work as may be requested in a timely and expeditious manner until either (1) final completion and acceptance by ANAHEIM of the Work or (2) earlier suspension or termination of the Work in accordance with the provisions of this Master Agreement.

2. If CONTRACTOR receives a Work Order Package or Request from ANAHEIM but is unable or unwilling to provide the Work, Contractor shall promptly notify ANAHEIM of this fact.

3. The nature of the Work makes timely performance critical to the orderly progress of related work and to the operating schedule of ANAHEIM. CONTRACTOR shall, if required under the applicable Work Order Package or Request, provide a proposed construction schedule in its sealed bid that sets forth at a minimum each phase of the Work, the number of



personnel to be utilized for each phase, and the specific time required to complete each phase. CONTRACTOR shall revise the construction schedule as requested by ANAHEIM, which has final approval.

4. If performance of the Work falls behind the schedule agreed upon by the Parties, CONTRACTOR shall, upon request by the ANAHEIM Representative, make reasonable efforts to accelerate its performance of the Work at no additional cost to ANAHEIM until performance of the Work conforms to the agreed upon schedule.

5. For both Work Order Packages and Requests, CONTRACTOR shall obtain approval from the ANAHEIM's Representative prior to expenditure of any overtime which would result in extra cost to ANAHEIM. ANAHEIM reserves the right to refuse to pay overtime premiums when CONTRACTOR has the option to provide the Work at straight-time by utilizing additional personnel, consecutive shifts or other methods approved by ANAHEIM.

6. The time period(s) specified for performance of the Work Order Package or Request, may be extended for force majeure events. This Part III.B.6 is applicable to a Request only when ANAHEIM has specified a time period for completion of Work within the Request. Force majeure events include unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not limited 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 CONTRACTOR could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome, if CONTRACTOR immediately notifies the ANAHEIM'S Representative in writing of the causes of the delay and the anticipated length of the delay. ANAHEIM's Representative shall ascertain the facts and the extent of delay, and may extend the time for performing the Work Order Package or Request for the period of the enforced delay if, in

the judgment of ANAHEIM Representative, the delay is justified. The determination of ANAHEIM's Representative shall be final and conclusive upon the Parties to this Master Agreement. In the event of delay, however caused, CONTRACTOR's sole remedy shall be an extension of the time of performance of the Work Order Package or Request, pursuant to this Section, and CONTRACTOR shall not be entitled to recover damages against ANAHEIM. Any change to the Work completion date shall be documented by a written Change Order to the Work Order Package or Request.

7. The Parties agree that time is of the essence in obtaining the Work and that it is essential that CONTRACTOR provide the Work by the date specified in each Work Order Package or Request. The Parties agree that in the event that the Work is not provided by this date, actual damages to ANAHEIM as a result of that failure would be impractical or extremely difficult to ascertain. In the event of CONTRACTOR's failure to complete the Work by the date specified in the Work Order Package or Request, CONTRACTOR agrees to pay ANAHEIM liquidated damages for every calendar day's delay beyond the completion date specified in the Work Order Package or Request an amount equal to either (a) Five Hundred Dollars (\$500.00) per calendar day; or (b) the liquidated damages amount, if any, specified in an applicable Work Order Package or Request. The foregoing sentence shall be subject to Part III.B.6 above.

8. A written statement requesting acceptance of the Work shall be submitted to the ANAHEIM's Representative by CONTRACTOR, with a request for acknowledgment. The acknowledgment shall be executed by ANAHEIM within thirty (30) days after (1) ANAHEIM determines after final inspection that the Work has been satisfactorily completed, and (2) ANAHEIM has accepted the Work. Execution of the acknowledgment shall constitute final acceptance by ANAHEIM.

C. Compensation and Payment.

1. Limits.

(a) Per Project. It is understood by and agreed between the Parties to this Master Agreement that full and complete payment for Work performed for a single Work Order Package or Request in accordance with this Master Agreement shall not exceed the sum of

Five Hundred Thousand Dollars (\$500,000.00), excluding change orders. CONTRACTOR's performance of the Work shall be compensated either on a lump sum basis in an amount not to exceed the amount set forth in the applicable Work Order Package or Request or on a Unit Price, Crew Hour Rate or Time and Equipment basis as set forth in the Proposal, at ANAHEIM's election.

(b) Per Fiscal Year. The Parties understand and agree that the combined cumulative value of all Work Order Packages and Requests awarded to Contractor during each fiscal year (July 1 through June 30) during the Term of the Agreement shall not exceed the sum of One Million Dollars (\$1,000,000.00), 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 fiscal year.

2. Contractor's Labor Rates. Unless otherwise stated in the applicable Work Order Package or Request, CONTRACTOR's performance of the Work on a Time, Material and Equipment basis shall be paid at the hourly rates for the respective classifications as set forth in the Proposal. CONTRACTOR's performance of the Work on a Crew Hour Rate basis shall be paid at the hourly rate for the respective crew composition as set forth in the Proposal. Billing rates shall include (a) all labor-related costs including, but not limited to, payroll costs, benefits, payroll taxes, Workers Compensation Insurance, Liability Insurance, (b) small tools and consumable supplies, (c) home office and field overhead and (d) profit. All a shift differentials shall be paid as direct reimbursables.

3. Contractor Furnished Material Costs. All material costs as invoiced to CONTRACTOR by its suppliers (including freight charges and all applicable discounts and taxes) plus a fixed percentage as specified in the Proposal for all applicable overhead and handling costs. Charges for materials shall be separately stated on all invoices. No profit shall be paid by ANAHEIM to CONTRACTOR for material costs.

4. Subcontractors. Costs for subcontracted Work shall be paid as invoiced by subcontractors plus five percent (5%) markup for administrative costs.

5. Rental Costs.

a. Contractor Owned Equipment. Costs for CONTRACTOR's own equipment at rates as set forth in the Proposal or CONTRACTOR's bid, as applicable.

b. Third Party Rentals. Reasonable costs for rental of equipment including insurance, as invoiced by its suppliers to CONTRACTOR as specified in the Standard Specifications Supplement.

c. Rental Period. Rental period shall begin when equipment is received at jobsite or the Work is initiated, whichever occurs later. Rental period shall end when equipment leaves the jobsite or Work is essentially completed, whichever occurs first. Rental period shall not include time for which equipment is unusable due to unsafe conditions, is inoperative or is in transit.

d. Rental Rates. The lowest combination of monthly, weekly, daily and hourly rates shall apply. Rates shall include (1) any routine maintenance, parts and supplies, (2) all applicable insurance, and (3) fuel and transportation costs, as specified in the Proposal or CONTRACTOR's bid, as applicable.

6. Other Costs. Costs for other items as set forth in the Work Order Package or Request.

7. Pricing Basis. The Pricing Basis for Work performed on Work Order Packages or Requests which reference this Master Agreement, shall be Lump-sum, Unit Price, Crew Hour Rate, or Time, Material and Equipment as set forth in the bid applicable to a specific Work Order Package or Request.

8. Taxes. CONTRACTOR assumes exclusive liability for, and shall pay before delinquency, all Federal, State or Local sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on, or with respect to, or measured by, the equipment, materials, supplies or labor furnished hereunder or the wages, salaries, or other remunerations paid to individuals employed in connection with the performance of the Work.

9. Method of Payment.

a. No payment shall be made under any Work Order Package or

Request until ANAHEIM has received the executed acknowledgment of the Work Order Package or Request, any current required certificate(s) of insurance, and bond(s) from CONTRACTOR.

b. For Time, Material and Equipment Work, CONTRACTOR shall submit a copy of time sheets daily, for approval and retention by the ANAHEIM's Representative, listing: employee name, classification, hours worked straight time and overtime, and identification of equipment and materials utilization and materials used. Each monthly invoice shall be supported with sufficient detail to allow ANAHEIM to evaluate the invoiced costs, including hours for each classification, with approved time sheets and applicable rates, invoiced costs from suppliers and subcontractors, and equipment rental charges.

c. For Crew Hour Rate Work, CONTRACTOR shall submit a copy of the time sheets daily, for approval and retention by the ANAHEIM's Representative listing: crew composition, hours worked straight time and overtime, and additional equipment not covered by the crew hour rate (if applicable). Each monthly invoice shall be supported with sufficient detail data to allow ANAHEIM to evaluate the invoiced costs, including crew hours for each crew composition, with approved time sheets and applicable rates, invoiced costs from suppliers and subcontractors, and equipment rental charges. CONTRACTOR shall submit a separate invoice for each ANAHEIM Work Order Package.

d. For Lump sum or Unit Price Work, CONTRACTOR shall submit invoices in accordance with the progress payment schedule outlined in the applicable Work Order Package, Request, or as approved by the ANAHEIM's Representative in accordance with the Work completion schedule.

e. As part of CONTRACTOR's application for payment CONTRACTOR shall (1) certify that the portion of the Work for which compensation is claimed has been completed in accordance with the terms and conditions and specifications of this Master Agreement, (2) state CONTRACTOR's estimate of the percentage of construction completed to date and the actual construction costs incurred to date, (3) state that the amount claimed has not been the subject of a prior application for payment, and (4) provide an estimate of the time required for completion of the Work. Each application for payment shall be accompanied by an executed

Estoppel Certificate in the form set forth in Appendix A hereto. Each Estoppel Certificate shall identify the Work Order Package or Request to which it applies and shall be signed by an authorized officer of CONTRACTOR and must be attached to the application for payment.

f. CONTRACTOR shall submit invoices in a format approved by ANAHEIM and as set forth in this Article to:

City of Anaheim  
Attention: Public Works  
Engineering (Mail Stop 276)  
200S. Anaheim Boulevard  
Anaheim, California 92805

g. When requesting final payment following final acceptance of all Work by ANAHEIM, CONTRACTOR shall execute a “Conditional Waiver and Release Upon Final Payment” pursuant to California Civil Code Section 8136 or successor statute in a form approved by ANAHEIM. If requested, CONTRACTOR shall provide further assurances reasonably required by ANAHEIM that all subcontractors, suppliers and employees have been paid. No final payment shall be made to CONTRACTOR without full compliance with this requirement.

h. ANAHEIM may withhold payment of the whole or part of any amount due or claimed by CONTRACTOR to the extent necessary to protect ANAHEIM from losses, including, but not limited to, the following: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims; (3) failure of CONTRACTOR to make payment promptly to its employees, suppliers or subcontractors; (4) damage caused by CONTRACTOR to another contractor to ANAHEIM; (5) failure of CONTRACTOR to diligently prosecute the Work and maintain satisfactory progress required to meet the Work completion schedule; or (6) any other material breach by CONTRACTOR of its obligations under the Work Order Package, Request, or Master Agreement.

i. Subject to the above, ANAHEIM shall make payment within thirty (30) days after receipt and approval of invoice.

D. Warranty.

1. CONTRACTOR expressly warrants that all the Work performed by it and

any subcontractors shall be in conformance with this Master Agreement and the Work Order Package or Request, and shall be free from defects in workmanship. CONTRACTOR further warrants that the Work shall be performed in a manner consistent with prudent engineering and facility maintenance and construction industry practices.

CONTRACTOR represents to ANAHEIM that it and its subcontractors are properly licensed, fully experienced and properly qualified to perform the class and type of the Work outlined in the Work Order Package or Request, in addition to being properly equipped, organized, staffed and financed to handle such Work. CONTRACTOR shall perform the Work in an orderly and workmanlike manner, and shall not employ on the Work any individuals unskilled in the duties they are assigned.

CONTRACTOR agrees that upon receipt of written notice from ANAHEIM's Representative that any Work performed is not in conformance with the Work Order Package or Request, CONTRACTOR shall forthwith correct all nonconforming Work at CONTRACTOR's sole expense. If CONTRACTOR refuses or neglects to comply promptly with the provisions of this subparagraph, ANAHEIM may, at its option, take all steps necessary to carry out the corrective actions and charge all costs to CONTRACTOR. CONTRACTOR hereby agrees it will promptly pay all costs or ANAHEIM may deduct the cost amounts from future monies owed or becoming due to CONTRACTOR.

2. CONTRACTOR further agrees that if any fault, break or defect due to workmanship, fabrication or installation occurs in any of the Work performed under this Master Agreement within one (1) year from the final acceptance date as set forth in Section III, B., CONTRACTOR shall repair the same promptly, as requested by the ANAHEIM's Representative, without cost to ANAHEIM, so as to fully comply with the Work Order Package or Request.

3. In the event any Work performed by CONTRACTOR does not comply with the terms of this Master Agreement or the Work Order Package or Request, and ANAHEIM's Representative deems it necessary that this non-conforming Work shall be temporarily utilized, CONTRACTOR agrees that such Work may be utilized by ANAHEIM until the Work is corrected

in accordance with this Master Agreement. CONTRACTOR shall not claim any compensation from ANAHEIM for such temporary utilization.

4. If ANAHEIM's Representative deems it inexpedient to correct any instance of nonconforming Work, ANAHEIM shall have the right to deduct from any amounts then due or which shall thereafter become due to CONTRACTOR under this Master Agreement, or CONTRACTOR shall refund to ANAHEIM, a sum of money determined by ANAHEIM's Representative to represent the difference in value between the Work as performed and that specified in the Work Order Package or Request, as well as damages resulting from the nonconforming Work. CONTRACTOR may appeal the determination by Anaheim's Representative to either the Director of Public Works, and may recover sums that are determined to have been improperly deducted. Decisions of the Director of Public Works in these matters shall be final.

5. All Work performed, and any and all measurements of the Work performed, under the Work Order Package or Request shall be made to the satisfaction of the Director of Public Works, or their respective designees, whose sole judgment shall determine whether the quality of the Work shall satisfy the requirements of the Work Order Package or Request.

6. This Article shall not be construed as a limitation of CONTRACTOR's liability. The remedies provided for herein are supplemental and in addition to all other remedies ANAHEIM may have for CONTRACTOR's negligence, breach of contract, or defective performance.

E. Title.

1. Title to materials furnished by ANAHEIM for the performance of the Work shall remain with ANAHEIM at all times.

2. Title to the Work as passed through to ANAHEIM from CONTRACTOR shall be free and clear of all liens and encumbrances.

3. All sketches, documents, drawings, tracing, field survey notes, computations, detail, data diskettes, photographs, and/or computer software developed specifically pursuant to the Master Agreement and other materials prepared by CONTRACTOR are recognized



by ANAHEIM to be instruments of CONTRACTOR's Work and shall become the property of ANAHEIM at the time of payment to CONTRACTOR for such Work, and CONTRACTOR shall promptly deliver them to ANAHEIM at the request of ANAHEIM. CONTRACTOR agrees not to use said documents and other materials for any purpose other than the performance of Work required by this Master Agreement without the prior written authorization of ANAHEIM.

F. Changes and Extra Work.

1. CONTRACTOR may request a change in scope of a Work Order Package or Request by advising ANAHEIM in writing of the change believed to be necessary. ANAHEIM may initiate a request for extra Work by written notification to CONTRACTOR. As soon as practicable after written notice, CONTRACTOR shall prepare and forward to ANAHEIM the price for the change or extra Work in accordance with the Proposal and any required adjustment to the schedule. The price shall include all costs associated with performing the additional or changed Work, including the impact on original contract Work, inefficiencies created by the additional or changed Work, and overhead associated with the additional or changed Work. All extra Work shall be billed at the rates shown in the Proposal or at a lump sum price approved by ANAHEIM's Representative.

2. If CONTRACTOR's price is not accepted, CONTRACTOR shall provide ANAHEIM's Representative with the details of its price estimate. If the Parties fail to agree on the price, ANAHEIM's Representative may authorize the changes or extra Work to be performed on a Time, Equipment and Material or Crew Hour Rate basis, while reserving the option to obtain the services of other contractors, or ANAHEIM's own employees, to perform the Work in dispute.

3. Should changes or extra Work be authorized by ANAHEIM, CONTRACTOR shall furnish the necessary labor with requisite small tools and/or materials required for performing such additional Work. All authorized changes and extra Work and the agreed to price shall be confirmed and directed through a Change Order to the Work Order Package or Request.

4. CONTRACTOR shall implement a change or extra Work only after it has received a written copy of an authorized Change Order. All changes or extra Work shall be

performed under the terms and conditions of this Master Agreement, except as specified in the Change Order. All Change Orders shall be signed by Representatives of both Parties, prior to commencing the specified Work.

5. CONTRACTOR hereby expressly waives any compensation for any change or extra Work not authorized by an executed Change Order to the Work Order Package or Request. No compensation for labor or schedule impacts from changes or extra Work shall be considered, except as specified in the Change Order.

6. In no event shall the dollar amount of an individual Change Order exceed the sum of Fifteen Thousand Dollars (\$15,000.00) or ten percent (10%) of the original cost specified in the Work Order Package or Request, whichever is greater. In no event shall the combination of Change Orders for a single Work Order Package or Request exceed the sum of One Hundred Thousand Dollars (\$100,000.00).

G. Other Work.

1. CONTRACTOR acknowledges that this Master Agreement is not exclusive, and that ANAHEIM reserves the right to employ or contract with other entities for the performance of the Work outlined in the General Scope of Work (Exhibit A hereto). CONTRACTOR further acknowledges that its Work will be requested on an as-needed basis, and that no promises or guarantees have been made that a particular amount of Work will be requested by ANAHEIM or that any level of compensation may be earned by CONTRACTOR hereunder.

2. If any part of CONTRACTOR's Work depends upon the work of another contractor or of the employees of ANAHEIM, CONTRACTOR shall inspect the other contractor's work and promptly report to ANAHEIM's Representative any defects that render it unsuitable for its intended role in the proper execution and results of CONTRACTOR's Work. Failure to so inspect and report any defective Work shall constitute an acceptance of the same by CONTRACTOR as being fit and suitable for the proper execution and results of the Work.

3. CONTRACTOR further agrees that during the performance of the Work, CONTRACTOR shall not hinder or interfere with any individual or business entity ANAHEIM may employ to do any Work. CONTRACTOR shall suspend any part of the Work, or shall carry

on the same, as directed by ANAHEIM's Representative, so as to afford all reasonable facilities for the performance of the other Work. CONTRACTOR shall not claim any extra compensation for delays in the Work. CONTRACTOR's sole recourse shall be an extension of time for performance as ANAHEIM may grant in accordance with the provisions hereof.

H. Reports. CONTRACTOR shall provide status reports as requested by ANAHEIM's Representative. Reports shall compare expended labor hours, recorded costs and actual performance to estimated labor hours, estimated costs and scheduled performance for the Work. Reports shall also include projections of estimated Work completion date, explanation of any significant variations, and identification of any potential or known developments which may affect the cost to ANAHEIM or the Work completion date.

I. Protective Measures. CONTRACTOR shall be responsible for the proper care and protection of all equipment and materials delivered and the Work performed until final acceptance of the Work and issuance of a notice of completion for that Work Order Package or Request by ANAHEIM. CONTRACTOR shall also adequately protect adjacent property as provided by law and by this Master Agreement, including, but not limited to, protection of any Work existing in public property. CONTRACTOR shall take all necessary precautions for the safety of its employees and the employees of its contractors, subcontractors, or others working on its behalf on the Work and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed. In addition, CONTRACTOR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards and warnings for the protection of its employees and the employees of its contractors, subcontractors, and others working on its behalf, as well as the public, including, but not limited to, temporary covering on all equipment pads.

J. Risk of Loss and Damage. CONTRACTOR shall be responsible for any loss or damage to the Work, or material furnished by ANAHEIM for the Work, until final acceptance of the Work and issuance of a notice of completion by ANAHEIM for a specific Work Order Package or Request. In the event of loss or damage, if it should become necessary to replace materials furnished by ANAHEIM, the cost of replacement shall be paid by CONTRACTOR to

ANAHEIM. ANAHEIM may deduct replacement costs from any amounts due or to become due CONTRACTOR.

1. ANAHEIM Furnished Tools and Equipment. Should ANAHEIM furnish any tools or equipment to CONTRACTOR to perform any Work, any tools or equipment shall be provided solely as a convenience to CONTRACTOR, and only under the following conditions: CONTRACTOR shall ensure that any employee using any loaned tool or equipment is adequately and properly trained in its correct, intended, and safe use, and shall actively supervise, with trained personnel, all employees using any ANAHEIM loaned tool or equipment in order to ensure that, at all times, the use of the tool or equipment is correct, safe, in accordance with the intended use, and creates no risk of injury or damage to individuals and/or property.

2. The Comprehensive General Liability Insurance required by this Master Agreement shall include coverage for liability assumed by CONTRACTOR associated with the use of, supervision of, and training of any employee using any ANAHEIM loaned equipment or tools.

3. CONTRACTOR shall be responsible for thoroughly inspecting all ANAHEIM loaned tools and equipment for defects. Any loaned tools or equipment found by CONTRACTOR to be defective in any way shall immediately be returned to ANAHEIM and not utilized by CONTRACTOR.

4. Any tools or equipment loaned to CONTRACTOR by ANAHEIM shall be promptly returned to ANAHEIM's upon request by ANAHEIM's Representative. If CONTRACTOR fails to promptly return any tools or equipment, ANAHEIM may at its option replace them at CONTRACTOR's expense.

K. Suspension of Work.

1. ANAHEIM may at any time suspend the entire Work, or any portion thereof, upon written notice to CONTRACTOR, who shall thereupon discontinue and suspend the Work except for operations that may be necessary to prevent damage to property or to the Work already accomplished. CONTRACTOR shall resume the Work after ANAHEIM gives written notice lifting the suspension.

2. For all Work satisfactorily performed by CONTRACTOR prior to suspension of Work, CONTRACTOR shall be paid in accordance with the Work Order Package or Request, as applicable. If the Work shall be delayed due to any suspension of Work, CONTRACTOR shall also be entitled to an equitable extension of time within which to complete the Work. ANAHEIM shall pay additional reasonable costs actually incurred by CONTRACTOR in deactivating and reactivating the Work caused by an ANAHEIM-ordered suspension. This shall be CONTRACTOR's sole compensation for suspension of the Work by ANAHEIM.

3. This Subpart L shall be construed as applying only to suspension of Work Order Package or Request by ANAHEIM and caused by conditions that cannot be reasonably anticipated. The provisions of this Subpart L shall not apply to any conditions or suspension of the Work cited in the Work Order Package or Request or suspension because of inclement weather, or nature of the Work, or operating requirements of ANAHEIM, or termination as defined herein.

L. Termination. ANAHEIM may terminate this Master Agreement with or without cause upon giving CONTRACTOR fifteen (15) days prior written notice. ANAHEIM may terminate any specific Work order issued pursuant to a Work Order Package or Request with or without cause upon giving CONTRACTOR five (5) days prior notice. If this Master Agreement or any Work order is terminated without cause, CONTRACTOR will be paid for costs incurred and actual Work satisfactorily performed for ANAHEIM up to and including the date of termination. Termination of this Master Agreement, with or without cause, shall result in (1) immediate suspension of the CONTRACTOR's pre-qualified status, (2) immediate prohibition of further bids and proposals by CONTRACTOR under this Master Agreement, and (3) immediate termination of all pending Work Order Packages and Requests awarded to CONTRACTOR under this Master Agreement, except such operations as may be necessary to prevent damage to property or to the Work already accomplished, and those operations shall be terminated as soon as practicable. Such termination shall be duly noticed and provide the CONTRACTOR an opportunity for appeal and a hearing consistent with ANAHEIM's pre-qualification procedures.

The Public Works Director or designee is authorized to terminate the Master Agreement or any Work Order Package or Request as stated herein.

M. Disputes. Any dispute that cannot be resolved between the Representatives of the Parties shall be referred to the Director of Public Works, or their respective designee, whose decision shall be final. CONTRACTOR shall have no cause of action for any alleged breach of this Master Agreement by ANAHEIM until after ANAHEIM has made final payment for all Work provided hereunder.

N. Liens. CONTRACTOR shall hold harmless, indemnify and defend ANAHEIM from any mechanic's liens or stop notice claims against ANAHEIM by CONTRACTOR, subcontractors, employees or agents pertaining to the Work specified in any Work Order Package or Request referencing this Master Agreement.

O. Fiscal Records and Audits. CONTRACTOR shall keep a correct and current accounting of payroll costs, travel, subsistence, field and incidental expenses. CONTRACTOR shall use recognized accounting methods in preparing invoices and reports. 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 CONTRACTOR's accounting procedures and internal controls of CONTRACTOR's financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Master Agreement. If CONTRACTOR fails to provide supporting documentation satisfactory to ANAHEIM for any costs charged ANAHEIM, then CONTRACTOR agrees that ANAHEIM may delete such items from the invoice or CONTRACTOR shall reimburse ANAHEIM for those costs. Any audit(s) shall be undertaken by ANAHEIM or its representative(s) at reasonable times and in conformance with generally accepted auditing standards. CONTRACTOR agrees to fully cooperate with all audit(s).

This right to audit shall extend during the length of this Master Agreement and for a period of four (4) years, or longer if required by law, following the date of final payment of the last Work Order Package or Request performed by CONTRACTOR. CONTRACTOR agrees to retain all necessary records/documentation for the entire length of this audit period.

CONTRACTOR will be notified in writing of any exception taken as a result of an audit or pre-payment review of an invoice. Any adjustments and/or payments which must be made

as a result of any such audit or inspection of CONTRACTOR's invoices and/or records shall be made within thirty (30) days from presentation of ANAHEIM's findings to CONTRACTOR. If CONTRACTOR fails to make a required adjustment or payment, CONTRACTOR agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another part of this Master 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 CONTRACTOR reimburses ANAHEIM for any exception(s). If an audit inspection or examination in accordance with this article discloses overcharges (of any nature) by CONTRACTOR to ANAHEIM in excess of one percent (1%) of the value of that portion of the contract that was audited, the actual cost of ANAHEIM's audit shall be reimbursed to ANAHEIM by CONTRACTOR. CONTRACTOR reserves the right to contest any exception.

CONTRACTOR shall include a similar clause in its agreements with subcontractors reserving the right to designate its own employee representatives from a certified public accounting firm, and/or representative(s) from ANAHEIM, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item set forth in its agreements.

P. Indemnity and Insurance.

1. Indemnity. Contractor hereby releases and agrees to indemnify and hold harmless CITY, its officers, agents, employees, and representatives for damage to property or for injury to or death of any persons and from all claims, demands, actions, of any kind whatsoever, arising out of or encountered in connection with this Agreement or the prosecution of work under it, whether such claims, demands, actions, or liability are caused by CONTRACTOR, CONTRACTOR's agents or employees or products installed on the Project by CONTRACTOR or subcontractors, excepting only such injury, death, or damages as may be caused solely and exclusively by CITY. Such indemnification shall extend to all claims, demands, actions, or liability for injuries, death or damages, occurring after completion of the Project as well as during the work's progress. CONTRACTOR agrees that it shall at its own cost, expense and risk, defend CITY, its officers, agents, employees, and representatives in any and all claims, demands, actions,

suits or other legal proceedings which may be brought or instituted against CITY, its officers, agents, employees, or representatives.

2     Insurance. Without limiting ANAHEIM's right to indemnification, the Parties agree that CONTRACTOR shall secure, prior to commencing any activities under this Master Agreement, and maintain, during the Term of this Master 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 (\$1,000,000.00) per occurrence/accident. 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 Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000.00) annual aggregate, written on an occurrence form.

Comprehensive Automobile Liability coverage; including, as applicable, owned, non-owned and hired autos, in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit, written on an occurrence form.

The General Liability and Auto Liability Insurance required herein shall include coverage insuring against CONTRACTOR's indemnification obligations set forth herein, provided that this provision shall not diminish any rights ANAHEIM may have as an additional insured under this insurance.

Professional Liability Insurance in an amount not less than \$2,000,000 per occurrence, and CONTRACTOR 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, any deductible or self-insured retention in excess of \$10,000 must be disclosed to ANAHEIM, in writing, at the inception of this Agreement to be reviewed and approved by ANAHEIM'S Risk Manager.

If CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, ANAHEIM requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of



the specified minimum limits of insurance and coverage shall be available to ANAHEIM.

The Worker's Compensation and Liability Insurance policies required herein shall each provide for a waiver of subrogation in favor of ANAHEIM.

ANAHEIM'S Risk Manager is hereby authorized to amend or reduce the requirements set forth herein in the event that such amendment is in ANAHEIM'S best interest based on the scope of services and nature of the project.

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

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed 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 Master Agreement, except policies for Workers' Compensation, shall contain the following clauses or shall otherwise provide for the following conditions:

"It is agreed that any insurance maintained by CONTRACTOR pursuant to this Master 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 volunteers are added as additional insureds as respects acts, omissions, operations, goods or work provided, or activities of, or on behalf of, the named insured under an agreement or contract with the City of Anaheim."

Prior to commencing any Work under this Master Agreement, CONTRACTOR shall deliver to ANAHEIM insurance certificates confirming the existence of the insurance required by this Master Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of the execution date of this Master Agreement, CONTRACTOR shall provide to 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

ANAHEIM evidencing that the coverage, terms, and conditions set forth in the above-referenced clauses are otherwise included in said insurance policies. Should it be deemed necessary by ANAHEIM, it shall be CONTRACTOR's 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 (i) admitted to write insurance in California, (ii) possessing 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 (i) 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, and (ii) if the issuer of any such insurance has failed to fully accept, without reservation, ANAHEIM's submission of said claim or legal action, 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 CONTRACTOR shall fully defend, hold harmless, and indemnify ANAHEIM against any such claim or other legal action.

3. Remedies. In addition to any other remedies ANAHEIM may have if CONTRACTOR 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:

- a. Order CONTRACTOR to stop Work under this Master Agreement and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof;
- b. Terminate this Master 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 CONTRACTOR's failure to maintain insurance or secure appropriate endorsements.

4. Subcontractors. Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payment of

damages to persons or property resulting from CONTRACTOR's, or CONTRACTOR's contractors/subcontractor's, if any, performance of the Work covered under this Master Agreement.

In the event CONTRACTOR hires other persons or firms to perform some of the Work related to this Master Agreement, CONTRACTOR 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 CONTRACTOR under this Master Agreement; and in either instance, CONTRACTOR shall provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to ANAHEIM.

Q. Required Bonds. At the execution of this Master Agreement, CONTRACTOR shall provide both a performance bond and a bond for payment for labor and material to secure its performance of Work under this Master Agreement. CONTRACTOR shall maintain these bonds for the entire Term of this Master Agreement. Each bond shall be written in the principal amount of not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) and in the form set forth in the Sample Faithful Performance Bond attached hereto as Appendix B and Sample Labor and Material Bond attached hereto as Appendix C. However, should the total value of all Work awarded to CONTRACTOR but not yet completed by CONTRACTOR and accepted by ANAHEIM exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) at any time, CONTRACTOR agrees to increase the principal amount of its bonds to an amount not less than the total value of CONTRACTOR's outstanding Work Order Packages and/or Requests. CONTRACTOR shall not commence any Work unless and until CONTRACTOR has complied with the foregoing. This higher bond amount shall be maintained until one or more outstanding Work Order Packages or Requests have been completed and a corresponding portion of the bond has been released by ANAHEIM. At that time the total principal amount of the bonds may be reduced to the new total amount of all Work Orders or Requests then awarded but not yet completed and accepted by ANAHEIM. Notwithstanding the above, in no event shall the principal amount of each of the bonds be less than Two Hundred and Fifty Thousand Dollars (\$250,000.00)

at any time during the entire Term of this Master Agreement, including any extensions thereto. All bonds shall be written with surety (i) authorized to do business in the State of California by the California Department of Insurance, and (ii) listed on the most current version of the Department of Treasury's Circular 570. Bonds shall be in the form set forth in Appendices B and C, attached hereto, and any bond riders issued to increase or decrease the principal amount shall be on forms acceptable to ANAHEIM. All signatures by principals and sureties on bonds and any bond riders shall be notarized. ANAHEIM will not reimburse CONTRACTOR for the premium of the initial principal bond amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00); however, CONTRACTOR will be allowed to include a bond fee in the cost of each Work Order Package or Request, corresponding to the value of the awarded Work Order or Request.

R. Breach of Agreement. CONTRACTOR shall not be relieved of liability to ANAHEIM for damages sustained by ANAHEIM by virtue of any breach of this Master Agreement by CONTRACTOR, and ANAHEIM may withhold any payments to CONTRACTOR for the purpose of set-off until the exact amount of damages due ANAHEIM from CONTRACTOR is determined. In addition, ANAHEIM may pursue all remedies available under law for breach of this Master Agreement. The waiver by either Party of any breach to this Master Agreement shall not constitute a waiver as to any succeeding breach.

S. Compliance with Laws. In the performance of this Master Agreement, CONTRACTOR shall abide by and conform to (and shall ensure that CONTRACTOR's contractors and/or subcontractors, if any, shall abide by and conform to) any and all applicable laws, statutes, safety rules, and practices of the United States, the State of California, the Charter, Ordinances, and Operating Orders of the City of Anaheim, and any other applicable local laws (collectively, Laws and Practices). Further, CONTRACTOR warrants that all Work done under this Master Agreement shall be in strict compliance with all Laws and Practices, including, but not limited to, Cal/OSHA, AQMD and EPA regulations.

ANAHEIM's Representative may enter the jobsite to make reasonable inspections to monitor compliance with the Laws and Practices and with the terms of this Master Agreement. CONTRACTOR shall at all times maintain proper facilities and provide safe access for inspection

by ANAHEIM's Representative to all parts of the jobsite. When specifications in a Work Order Package or Request require Work to be specially tested or approved, it shall not be tested or approved without timely advance notice to ANAHEIM's Representative of its readiness for testing and approval without prior written consent by ANAHEIM's Representative.

If ANAHEIM's Representative identifies an occurrence of noncompliance with Laws and Practices, ANAHEIM's Representative may inform CONTRACTOR's Representative of the occurrence and require that CONTRACTOR's Representative promptly bring the jobsite into compliance with Laws and Practices.

If ANAHEIM's Representative identifies a situation which, in the opinion of the Representative, constitutes an immediate potential for bodily harm or significant property damage, ANAHEIM's Representative may contact CONTRACTOR's Representative and recommend that Work be stopped until the situation is rectified to the satisfaction of ANAHEIM's Representative.

If ANAHEIM's Representative identifies a noncompliance situation which, in the opinion of ANAHEIM's Representative, constitutes an imminent danger of serious bodily harm or death, ANAHEIM's Representative may contact CONTRACTOR's Representative and request that the situation be rectified to the satisfaction of ANAHEIM's Representative.

The election of ANAHEIM to exercise or not exercise its rights under these provisions shall impose no liability on ANAHEIM nor shall it relieve CONTRACTOR of any duties or obligations under the terms of this Master Agreement, provided that ANAHEIM's Representative acted in good faith in the exercise or non-exercise of such rights.

CONTRACTOR shall dispose of all materials used in conjunction with the performance of this Master Agreement in strict compliance with all Laws and Practices.

CONTRACTOR shall not discriminate against handicapped persons in the provision of services and shall provide accessibility for handicapped persons to the services provided under this Master Agreement. CONTRACTOR shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 and implementing regulations (28 CFR Parts 35-36), in order to provide handicapped accessibility to the extent readily achievable.\

CONTRACTOR certifies and agrees that all persons employed or applying for

employment by it, its affiliates, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, sex, marital status, national origin or ancestry, pregnancy, childbirth or related medical condition, medical condition (cancer related) in compliance with all anti-discrimination laws and regulations of the United States, the State of California and ANAHEIM as they now exist or may hereafter be amended.

CONTRACTOR shall allow representatives of ANAHEIM access to CONTRACTOR's employment records related to this Master Agreement during regular business hours to verify compliance with these provisions when so requested by ANAHEIM.

T. Labor Code

ANAHEIM and CONTRACTOR acknowledge that this Master Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and public agencies and agree to be bound by all the provisions thereof as though set forth fully herein. Full compensation for conforming to the requirements of the Labor Code and with other Federal, State and local laws related to labor, and rules, regulations and ordinances which apply to any Work performed pursuant to this Master Agreement shall be considered as included in the price for all contract items of Work involved.

This Master Agreement is further subject to prevailing wage law, including, but not limited to, the following:

1. The CONTRACTOR shall pay the prevailing wage rates for all Work performed under the Master Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the CONTRACTOR shall pay the wage rate of the craft or classification most closely related to the omitted classification. The CONTRACTOR shall forfeit as a penalty to ANAHEIM the amount of \$50.00 or any greater penalty as provided in the Labor Code for each Calendar Day, or portion thereof, for each worker paid less than the prevailing wage rates for any Work done under the Master Agreement employed in the execution of the Work by CONTRACTOR or by any subcontractor under CONTRACTOR in violation of the provisions of the Labor Code. In addition, the difference between applicable prevailing wage rates and the

amount paid to each worker for each Calendar Day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR.

2. CONTRACTOR shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that CONTRACTOR is responsible for compliance with Section 1777.5 by all of its subcontractors.

3. Pursuant to Labor Code Section 1776, CONTRACTOR and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR or any subcontractor in connection with this Master Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) the information contained in the payroll record is true and correct; and (2) the employer has complied with the requirements of Labor Code Sections 1811 and 1815 for any work performed by its employees on any portion of the Work. The payroll records enumerated under this Subpart shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code Section 1776.

4. This Master Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows: CONTRACTOR shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by CONTRACTOR's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay.

CONTRACTOR shall forfeit as a penalty to ANAHEIM an amount of \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the Work by CONTRACTOR or by any subcontractor of CONTRACTOR, for each Calendar Day during which such worker is required or permitted to Work more than eight (8) hours in one Calendar Day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

5. CONTRACTOR shall at all times 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.

6. This Master Agreement is subject to Public Contract Code Section 6109: CONTRACTOR shall be prohibited from performing Work subject to this Master Agreement with a subcontractor who is ineligible to perform the Work pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

U. Conflict of Interest

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

If subject to the Act, CONTRACTOR 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. CONTRACTOR shall indemnify and hold harmless ANAHEIM for any and all claims for damages resulting from CONTRACTOR's violation of this Section.

PART IV - GENERAL PROVISIONS

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



CONTRACTOR by personal delivery in writing, or by facsimile, or by telegram, or by depositing it in a United States mail deposit box with the postage thereon fully prepaid, and addressed to CONTRACTOR at the address hereinafter set forth:

ANAHEIM: City of Anaheim  
Attention: City Clerk  
200 S. Anaheim Boulevard, Suite 217  
Anaheim, CA 92805  
Telephone: (714) 765-5166  
Facsimile: (714) 765-4105

WITH COPIES TO: City of Anaheim  
Attention: Director of Public Works  
200 S. Anaheim Boulevard, Suite 276  
Anaheim, CA 92805  
Telephone: (714) 765-5700  
Facsimile: (714) 765-5225

CONTRACTOR: Name  
Address  
Telephone

Upon written notice to each Party concerned, served by means provided in the above paragraph, either Party may change the above addresses. The Director of Public Works is authorized to give the notices required herein to be given on behalf of ANAHEIM.

B. Independent Contractor. The performance of CONTRACTOR's Work 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 CONTRACTOR by ANAHEIM, CONTRACTOR 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 CONTRACTOR 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.

CONTRACTOR shall at all times be responsible for the acts and omissions of subcontractors and individuals directly or indirectly employed by them. CONTRACTOR is responsible for performance of all the Work, whether performed by CONTRACTOR or its subcontractors. The Work Order Package and/or Request shall not give rise to any contractual relationship between ANAHEIM and a subcontractor. ANAHEIM shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor.

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 this Master Agreement shall be made without the prior written consent of the Parties to this Master Agreement, which consent shall not be unreasonably withheld.

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

E. Service of Process. CONTRACTOR hereby designates the City Clerk of the City of Anaheim as its local agent for service of process in any legal action or proceeding that may arise out of or in connection with this Master Agreement. ANAHEIM shall transmit to CONTRACTOR a copy of any legal process served on said City Clerk on the same date as such service is made, in the manner and to the address set forth above.

F. Complete Agreement. This Master Agreement constitutes the complete and entire agreement between the Parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein, unless stated below. No modification or revision shall be of any force or effect, unless the same is in writing and executed by the Parties hereto. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF

PERFORMANCE UNDER THIS MASTER AGREEMENT SHALL BE A PART OF THIS MASTER AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS MASTER AGREEMENT.

ANAHEIM has provided the following Appendices to CONTRACOTR, which are incorporated herein by this reference:

Appendix A - Estoppel Certificate

Appendix B - Sample Faithful Performance Bond

Appendix C - Sample Labor and Material Bond

CONTRACTOR acknowledges receipt of these Appendices. In addition to the Appendices, the following contract documents are incorporated into this Master Agreement by reference as if fully set forth herein: the Non-collusion Affidavit, Equal Employment Opportunity Certificates of Compliance, Special Provisions, the Standard Specifications Supplement, the Standard Specifications, the Proposal, and the General Scope of Work (Exhibit A hereto). ANAHEIM has provided the foregoing documents to CONTRACTOR, and CONTRACTOR acknowledges receipt of these incorporated documents. If any provision of this Master Agreement shall be held invalid, the invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Master Agreement are intended to be and shall be deemed severable.

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

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

I. Time of Essence. Time is expressly agreed to be of the essence of this Master Agreement, a Work Order Package and/or Request, and each, every and all of the terms, conditions and provisions herein.

J. Effective Date and Authority. The effective date of this Master Agreement shall be the date of ANAHEIM's execution herein. In the event CONTRACTOR fails to set forth a date of execution opposite the name(s) of CONTRACTOR's signator(s), CONTRACTOR hereby authorizes ANAHEIM, by and through its representative, to insert the date of execution by CONTRACTOR's signator(s) as the date said Master Agreement, as executed by CONTRACTOR, is received by ANAHEIM.

CONTRACTOR and CONTRACTOR's signators represent that the signators hold the positions set forth below their signatures and that the signators are authorized to execute this Master Agreement on behalf of CONTRACTOR and to bind CONTRACTOR hereto.

**[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: \_\_\_\_\_  
Rudy Emami  
Director of Public Works

ATTEST:

By: \_\_\_\_\_  
City Clerk  
"ANAHEIM"

Date of Execution

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

\_\_\_\_\_

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

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

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

"CONTRACTOR"

APPROVED AS TO FORM:  
ROBERT FABELA, CITY ATTORNEY

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

Dated: \_\_\_\_\_  
143439

**EXHIBIT A**

**GENERAL SCOPE OF WORK**

**(ATTACHED AFTER THIS PAGE)**