

AGREEMENT

THIS AGREEMENT ("Agreement"), dated for purposes of identification only
this ____ day of _____, 20____, is made and entered into by and between the

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

A
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KANA SUBSURFACE ENGINEERING,
a California Corporation, hereinafter referred to as "CONTRACTOR".

ANAHEIM and CONTRACTOR 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 a contractor for
underground locating services ("Project"); and

WHEREAS, CONTRACTOR possesses the skill, experience, ability, background,
certification and knowledge to provide the services for the Project as described in this
Agreement; and

WHEREAS, ANAHEIM has solicited and received a proposal from
CONTRACTOR, has reviewed the previous experience and evaluated the expertise of
CONTRACTOR, and ANAHEIM desires to retain CONTRACTOR 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 **1. SERVICES TO BE PROVIDED BY CONTRACTOR**

2 In compliance with all of the terms and conditions of this Agreement,
3 CONTRACTOR shall provide to ANAHEIM all labor, materials, tools, equipment, services, and
4 incidental and customary work necessary to fully and adequately supply the professional
5 consulting services necessary for the Project ("Services"). The Services are more particularly
6 described in the Scope of Services attached hereto as Exhibit A and incorporated herein by this
7 reference ("Scope of Services"). The ANAHEIM Public Utilities General Manager ("General
8 Manager") may elect to delete certain tasks from the Scope of Services in his sole discretion.

9 **2. TERM**

10 This Agreement shall have an initial term of two (2) years from the Effective Date, unless
11 terminated earlier as set forth in Section 25 herein ("Initial Term"). This Agreement shall
12 automatically extend for three (3) successive one (1) year periods (each a "Subsequent Term")
13 on the same terms and conditions as set forth in this Agreement unless the General Manager
14 notifies the other party in writing of ANAHEIM's intention not to extend this Agreement prior to
15 the expiration of the Initial Term or any Subsequent Term, as applicable. Unless otherwise
16 indicated herein, the Initial Term and the Subsequent Term are collectively referred herein as the
17 "Term".

18 **3. TIME OF PERFORMANCE**

19 3.1 Time is of the essence in the performance of this Agreement and
20 CONTRACTOR shall perform and complete the Services in accordance with the schedule
21 included in Exhibit A. The failure of CONTRACTOR to strictly adhere to the schedule may
22 result in termination of this Agreement by ANAHEIM.

23 3.2 The time period(s) specified for performance of the Services rendered,
24 pursuant to this Agreement, shall be extended because of any delays due to unforeseeable causes
25 beyond the control and without the fault or negligence of CONTRACTOR, including, but not
26 restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes,
27 floods, pestilence, and other natural catastrophes, epidemics, quarantine restrictions, riots,
28 strikes, freight embargoes, wars, litigation, civil disturbance or disobedience, labor dispute, labor

1 or material shortage, sabotage, government priorities, restraint by court order or public authority
2 and action or non-action by or inability to obtain the necessary authorization or approvals from
3 any governmental agency or authority, and/or acts of any governmental agency, including
4 ANAHEIM, which by the exercise of due diligence such Party could not reasonably have been
5 expected to avoid and which by exercise of due diligence has been unable to overcome, if
6 CONTRACTOR shall within ten (10) days of the commencement of such delay notify the
7 ANAHEIM's project administrator ("Project Administrator") in writing of the causes of the
8 delay. The Project Administrator shall ascertain the facts and the extent of delay, and may
9 extend the time for performing the Services for the period of the enforced delay if, in the
10 judgment of the Project Administrator, such delay is justified. The Project Administrator's
11 determination shall be final and conclusive upon the Parties to this Agreement. In the event of
12 delay, however caused, CONTRACTOR's sole remedy shall be an extension of the Agreement,
13 pursuant to this Section, and CONTRACTOR shall not be entitled to recover damages against
14 ANAHEIM.

15 4. COMPENSATION

16 4.1 ANAHEIM shall pay CONTRACTOR based on the Services
17 satisfactorily completed pursuant to the schedule of payment set forth in the Schedule of
18 Compensation attached hereto as Exhibit B and incorporated herein by reference ("Schedule of
19 Compensation").

20 4.2 CONTRACTOR and ANAHEIM agree that CONTRACTOR shall not be
21 reimbursed for any out-of-pocket expenses incurred by CONTRACTOR pursuant to this
22 Agreement.

23 4.3 It is understood by and agreed between the Parties to this Agreement that
24 full and complete payment for all Services provided in accordance with this Agreement,
25 including, but not limited to, all reimbursable expenses and subcontractor fees, if any, shall not
26 exceed **ONE MILLION AND SEVENTY-FOUR THOUSAND AND TWO HUNDRED**
27 **DOLLARS AND NO CENTS (\$1,074,200.00)** ("Initial Term Contract Amount"). For the first
28 Subsequent Term, if any, it is understood by and agreed between the

1 Parties that full and complete payment for all Services provided in accordance with this
2 Agreement, including, but not limited to, all reimbursable expenses and subcontractor fees, if
3 any, shall not exceed an amount equal to half of Initial Term Contract Amount adjusted in
4 proportion to changes in the Consumer Price Index, All Urban Consumers (All Items), in Los
5 Angeles-Riverside- Orange County, CA, published by the United States Department of Labor,
6 Bureau of Labor Statistics (1982-84 = 100) from the Effective Date to two (2) months prior to
7 the Second Anniversary of the Effective Date ("First Subsequent Term Contract Amount"). For
8 the second Subsequent Term, if any, it is understood by and agreed between the Parties that full
9 and complete payment for all Services provided in accordance with this Agreement, including,
10 but not limited to, all reimbursable expenses and subcontractor fees, if any, shall not exceed an
11 amount equal to the First Subsequent Term Contract Amount adjusted in proportion to changes
12 in the Consumer Price Index, All Urban Consumers (All Items), in Los Angeles-Riverside-
13 Orange County, CA, published by the United States Department of Labor, Bureau of Labor
14 Statistics (1982-84 = 100) from two months prior to the Second Anniversary of the Effective
15 Date to two months prior to the Third Anniversary of the Effective Date ("Second Subsequent
16 Term Contract Amount"). For the third Subsequent Term, if any, it is understood by and agreed
17 between the Parties that full and complete payment for all Services provided in accordance with
18 this Agreement, including, but not limited to, all reimbursable expenses and subcontractor fees,
19 if any, shall not exceed an amount equal to the Second Subsequent Term Contract Amount
20 adjusted in proportion to changes in the Consumer Price Index, All Urban Consumers (All
21 Items), in Los Angeles-Riverside- Orange County, CA, published by the United States
22 Department of Labor, Bureau of Labor Statistics (1982-84 = 100) from two months prior to the
23 Third Anniversary of the Effective Date to two months prior to the Fourth Anniversary of the
24 Effective Date ("Third Subsequent Term Contract Amount"). If the above Consumer Price Index
25 is no longer published at the adjustment date, it shall be constructed by conversion tables
26 included in such new index.

27 4.4 Subject to the limitations set forth in this Section 4.4, the General Manager
28 is authorized to approve additional expenditures for extra services not included in the Scope of

1 Services ("Extra Services"); provided, the General Manager determines, in his sole discretion,
2 that (a) the Extra Services are necessary for the successful completion of the Services; (b) the
3 proposed Extra Services are of a like nature that were not foreseen by ANAHEIM at the time of
4 the award of the Agreement; (c) budget appropriations are available; and (d) in the professional
5 opinion of the General Manager, it is in the City's best interest to do so. The General Manager is
6 authorized to approve Extra Services in a cumulative amount not to exceed fifteen percent (15%)
7 of the Initial Contract Amount during the Initial Term ("Initial Term Extra Services Amount").
8 For the first Subsequent Term, if any, the General Manager is authorized to approve Extra
9 Services in a cumulative amount not to exceed (a) any unused Initial Term Extra Services
10 Amount and (b) fifteen percent (15%) of the First Subsequent Term Contract Amount (together,
11 "First Subsequent Term Extra Services Amount"). For the second Subsequent Term, if any, the
12 General Manager is authorized to approve Extra Services in a cumulative amount not to exceed
13 (a) any unused First Subsequent Term Extra Services Amount and (b) fifteen percent (15%) of
14 the Second Subsequent Term Contract Amount (together, the "Second Subsequent Term Extra
15 Services Amount"). For the third Subsequent Term, if any, the General Manager is authorized to
16 approve Extra Services in a cumulative amount not to exceed (a) any unused Second Subsequent
17 Term Extra Services Amount and (b) fifteen percent (15%) of the Third Subsequent Term
18 Contract Amount.

19 .01 In no event shall CONTRACTOR render Extra Services beyond
20 the scope of this Agreement without the written authorization of the General Manager.

21 .02 All Extra Services approved in writing by the General Manager
22 shall be billed at either the rates set forth in the Schedule of Compensation or at a fixed price, at
23 ANAHEIM's sole discretion. If billed at a fixed price, CONTRACTOR shall provide
24 ANAHEIM with a general description of the Extra Services to be performed with a proposed
25 price. The Extra Services will be incorporated into the Services and the Agreement upon the
26 execution of an Extra Services letter by both Parties which contains (a) the agreed price for the
27 Extra Services; and a description of the Extra Services. CONTRACTOR shall commence
28 performance of the Extra Services either upon the execution of the Extra Services letter by the

1 Parties or such other time expressly indicated therein.

2 .03 Except for the authority granted the General Manager in this
3 Section 4.4, no additional Services or Extra Services beyond the scope of this Agreement shall
4 be rendered by CONTRACTOR unless such Extra Services is first approved by written
5 amendment to this Agreement.

6 4.5. CONTRACTOR shall submit monthly invoices to ANAHEIM describing
7 the work performed the preceding month. CONTRACTOR's invoices shall be based on the line
8 items contained in Exhibit B and the quantities completed during the billing period. For items
9 authorized in advance by ANAHEIM for which, in ANAHEIM's sole opinion, a line item
10 equivalent is not listed, CONTRACTOR's invoice shall include the name of the person who
11 performed the work, a brief description of the Services performed and/or the specific task in the
12 Scope of Services to which it relates, the date the Services were performed, the number of hours
13 spent on all work billed on an hourly basis, and a description of any reimbursable expenditures.
14 ANAHEIM shall pay CONTRACTOR no later than thirty (30) days after approval of the
15 monthly invoice by ANAHEIM staff.

16 4.6 All Parties recognize that the continuation of this Agreement after the
17 close of any fiscal year of ANAHEIM, which fiscal year ends on June 30 of each year, shall be
18 subject to budget approval providing for or covering such contract items as an expenditure in
19 said budget. ANAHEIM does not represent that said budget item will be actually adopted, said
20 determination being the determination of the City Council at the time of the adoption of the
21 budget herein. No penalty shall accrue to ANAHEIM in the event this provision shall be
22 exercised. Should termination be accomplished in accordance with this Section, a settlement
23 shall be negotiated by the Parties based on monies paid and due for actual items delivered and
24 Services provided.

25 **5. PROJECT MANAGER**

26 5.1 CONTRACTOR shall designate a Project Manager, who shall coordinate
27 the Services. This Project Manager shall be available to ANAHEIM at all reasonable times
28 during the Term of this Agreement. CONTRACTOR has designated **Malouamaua Tauaese** to

1 be its Project Manager. It is expressly understood that the experience, knowledge, capability and
2 reputation of the foregoing Project Manager is a substantial inducement for ANAHEIM to enter
3 into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the
4 Term of this Agreement for directing all activities of CONTRACTOR and devoting sufficient
5 time to personally supervise the provision of Services hereunder. The foregoing Project
6 Manager may not be changed by CONTRACTOR and no other personnel may be assigned to
7 supervise the Services to be provided hereunder without the express written authorization of the
8 General Manager.

9 5.2 Any personnel or subcontractor, if any, who fail or refuse to perform the
10 Services in a manner acceptable to ANAHEIM, or who are determined by ANAHEIM, in its sole
11 discretion, to be uncooperative, incompetent, a threat to the adequate or timely completion of the
12 Project, or a threat to the safety of persons or property, shall be promptly removed from the
13 Project by CONTRACTOR at the request of ANAHEIM. CONTRACTOR warrants that it will
14 continuously furnish the necessary personnel to complete the Services on a timely basis as
15 contemplated by this Agreement.

16 6. ADMINISTRATION

17 This Agreement will be administered by the ANAHEIM Public Utilities
18 Department. The following employees of the ANAHEIM Public Utilities Department shall be
19 authorized to take the following actions pursuant to this Agreement:

20 (i) The General Manager is authorized to take any action on behalf of
21 ANAHEIM as set forth herein in this Agreement, including, but not limited to termination of the
22 Services in accordance with Section 25 of this Agreement.

23 (ii) ANAHEIM shall identify the Project Administrator by written notice to
24 CONTRACTOR; ANAHEIM may change the Project Administrator at any time and will provide
25 CONTRACTOR written notice as soon as it is practical. The Project Administrator shall have
26 the power to act on behalf of ANAHEIM for review and approval of all Services performed by
27 CONTRACTOR under this Agreement. The Project Administrator shall not be authorized to
28 approve Extra Services, change billing rates, or terminate Services under this Agreement.

1 7. **STANDARD OF CARE**

2 7.1 CONTRACTOR shall perform all Services under this Agreement in a
3 skillful and competent manner, consistent with the standards generally recognized as being
4 employed by professionals in the same discipline in the State of California. CONTRACTOR
5 represents and maintains that it is skilled in the professional calling necessary to perform the
6 Services. CONTRACTOR warrants that all employees and subcontractors, if any, shall have
7 sufficient skill and experience to perform the Services assigned to them. By delivery of
8 completed work, CONTRACTOR certifies that the work conforms to the requirements of this
9 Agreement; all applicable federal, state and local laws; and the professional standard of care.

10 7.2 CONTRACTOR represents and warrants to ANAHEIM that it has, shall
11 obtain, and shall keep in full force in effect during the Term hereof, at its sole cost and expense,
12 all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally
13 required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of
14 Anaheim business license during the Term.

15 8. **FAMILIARITY WITH WORK**

16 By executing this Agreement, CONTRACTOR represents and warrants that
17 CONTRACTOR: (i) has thoroughly investigated and considered the Services to be performed;
18 (ii) has carefully considered how the Services should be provided; and (iii) fully understands the
19 facilities, difficulties and restrictions attending the provision of the Services under this
20 Agreement. Should CONTRACTOR discover any latent or unknown conditions materially
21 differing from those inherent in the provision of such Services or as represented by ANAHEIM,
22 CONTRACTOR shall immediately inform ANAHEIM of such fact and shall not proceed except
23 at CONTRACTOR's risk until written instructions are received from ANAHEIM.

24 9. **INDEPENDENT CONTRACTOR**

25 9.1 Neither ANAHEIM nor any of its employees shall have any control over
26 the manner, mode or means by which CONTRACTOR, its agents or employees, perform the
27 Services, except as otherwise set forth herein. Except as expressly provided herein, ANAHEIM
28 shall have no voice in the selection, discharge, supervision or control of CONTRACTOR's

1 employees, servants, representatives or agents, or in fixing their number, compensation or hours
2 of service. CONTRACTOR shall perform all Services as an independent contractor of
3 ANAHEIM and shall remain at all times, as to ANAHEIM, a wholly independent contractor with
4 only such obligations as are consistent with that role. CONTRACTOR shall not at any time or in
5 any manner represent that it or any of its agents or employees are agents or employees of
6 ANAHEIM. ANAHEIM shall not in any way or for any purpose become or be deemed to be a
7 partner of CONTRACTOR in its business or otherwise or a joint venture or a member of any
8 joint enterprise with CONTRACTOR.

9 9.2 In consideration for the compensation paid to CONTRACTOR by
10 ANAHEIM, CONTRACTOR agrees that ANAHEIM shall not be liable or responsible for any
11 benefits, including, but not limited to, worker's compensation, disability, retirement, life,
12 unemployment, health or any other benefits, and CONTRACTOR agrees that it shall not sue or
13 file a claim, petition or application therefor against ANAHEIM or any of its officers, employees,
14 agents, representatives or sureties.

15 10. INSURANCE

16 10.1 Without limiting ANAHEIM's right to indemnification, it is agreed that
17 CONTRACTOR shall secure, prior to commencing any activities under this Agreement, and
18 maintain, during the Term, insurance coverage as follows:

19 .01 Workers' Compensation Insurance as required by California law
20 and Employers Liability Insurance in an amount not less than \$1,000,000 per occurrence.

21 .02 Commercial General Liability Insurance, including coverage for
22 Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed
23 Operations Liability, and Independent Contractor's Liability, in an amount not less than
24 \$2,000,000 per occurrence, \$4,000,000 annual aggregate, written on an occurrence form. Such
25 insurance shall be written on a primary basis, but may include a deductible of not more than
26 \$10,000 per occurrence, provided that such deductible is disclosed to ANAHEIM, in writing, at
27 the inception of this Agreement.

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1 .03 Comprehensive Automobile Liability Coverage including-as
2 applicable-owned, non-owned, and hired autos, in an amount not less than \$1,000,000 per
3 occurrence, combined single limit, as required by California law.

4 .04 Professional Liability Insurance in an amount not less than
5 \$3,000,000 per claim, and CONTRACTOR shall maintain such coverage for at least two (2)
6 years from the termination of this Agreement. Such insurance shall be written on a primary basis
7 (i.e., without a self-insured retention), but may include a deductible of not more than \$5,000 per
8 claim, provided that such deductible is disclosed to ANAHEIM, in writing, at the inception of
9 this Agreement.

10 10.2 Each insurance policy required by this Agreement shall contain the
11 following clause or shall otherwise provide for the following conditions: "This insurance shall
12 not be cancelled, or limited in scope or coverage, until after thirty (30) days prior written notice
13 has been given to the City Clerk, City of Anaheim, 200 S. Anaheim Blvd., Anaheim, CA 92805,
14 except in the event of cancellation for non-payment of premium which shall provide for not less
15 than ten (10) days notice."

16 10.3 Each insurance policy required by this Agreement, excepting policies for
17 Professional Liability and Workers' Compensation, shall contain the following clauses or shall
18 otherwise provide for the following conditions:

19 .01 "It is agreed that any insurance maintained by CONTRACTOR,
20 pursuant to this Agreement, shall be primary to, and not contribute with, any insurance or self-
21 insurance maintained by the City of Anaheim."

22 .02 "The City of Anaheim, its officers, agents, employees,
23 representatives and ANAHEIM-designated volunteers are added as additional insureds as
24 respects the acts, omissions, operations and activities of, or on behalf of, the named insured, in
25 regard to products supplied to, or work or services performed for, or related to, the City of
26 Anaheim."

27 10.4 Prior to commencing any work under this Agreement, CONTRACTOR
28 shall deliver to ANAHEIM insurance certificates confirming the existence of the insurance

1 required under this Agreement, and including the applicable clauses referenced above. Also,
2 within thirty (30) days of the execution date of this Agreement, CONTRACTOR shall provide
3 ANAHEIM: (i) endorsements to the insurance policies which add to these policies the applicable
4 clauses referenced above; or (ii) in lieu of said endorsements, documentation acceptable to
5 ANAHEIM evidencing that the coverage, terms, and conditions set forth in the above-referenced
6 clauses are otherwise included in said insurance policies. Insurance required hereunder shall be
7 placed with insurers: (i) admitted to write insurance in California; (ii) possessing an A. M.
8 Best's rating of A VII or higher; or (iii) otherwise acceptable to ANAHEIM, with prior written
9 permission from ANAHEIM. In the event that a claim or other legal action is filed against
10 ANAHEIM, and if ANAHEIM, in its good faith opinion, believes it may have coverage under
11 any of the insurance required herein, then ANAHEIM has the right to demand, and to receive
12 within a reasonable time period, copies of the insurance policies related to such required
13 insurance; provided, however, that this provision shall not apply if the Parties agree that
14 CONTRACTOR shall fully defend, hold harmless, and indemnify ANAHEIM against any such
15 claim or other legal action.

16 10.5 In addition to other remedies ANAHEIM may have if CONTRACTOR
17 fails to provide or maintain any insurance policies or policy endorsements to the extent and
18 within the time herein required, ANAHEIM may, at its sole option:

19 .01 Order CONTRACTOR to stop work under this Agreement and/or
20 withhold any payment(s) which become due to CONTRACTOR hereunder until
21 CONTRACTOR demonstrates compliance with the requirements hereof; or

22 .02 Terminate this Agreement.

23 Exercise of any of the above remedies, however, is an alternative to other remedies ANAHEIM
24 may have and is not the exclusive remedy for CONTRACTOR's failure to maintain insurance or
25 secure appropriate endorsements.

26 10.6 Nothing herein contained shall be construed as limiting in any way the
27 extent to which CONTRACTOR may be held responsible for payments of damages to persons or
28

property resulting from CONTRACTOR's, (or CONTRACTOR's contractors/subcontractor, if any) performance of the work covered under this Agreement.

10.7 In the event CONTRACTOR hires other persons or firms to perform some of the work related to this Agreement, CONTRACTOR shall ensure, and certify to ANAHEIM in writing that: (i) the acts or omissions of such persons or firms are covered under the above-referenced liability insurance; or (ii) 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 Agreement (except for firms which are not performing professional services-such firms shall not be required to carry the above-referenced professional liability insurance); and in either instance, CONTRACTOR shall provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to ANAHEIM.

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

11. INDEMNIFICATION

11.1 As respects acts, errors or omissions in the performance of professional services, CONTRACTOR 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, arising directly out of CONTRACTOR's (or CONTRACTOR's contractors' or subcontractors', if any) negligent acts, errors or omissions in the performance of professional services under this Agreement.

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

1 CONTRACTOR's contractors' or subcontractors', if any) acts, errors, omissions, or work,
2 relative to this Agreement; except for those Claims which arise out of the sole negligence or
3 willful misconduct of ANAHEIM.

4 11.3 The obligations set forth in this indemnification provision (i) shall be in
5 effect without regard to whether or not ANAHEIM, CONTRACTOR, or any other person
6 maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such
7 Claims; and (ii) shall survive the termination of this Agreement.

8 **12. PREVAILING WAGES**

9 12.1 By its execution of this Agreement, CONTRACTOR certifies that it is
10 aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as
11 well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"),
12 which require the payment of prevailing wage rates and the performance of other requirements
13 on certain "public works" and "maintenance" projects. CONTRACTOR agrees to fully comply
14 with such Prevailing Wage Laws in the performance of the Services. The prevailing rate of per
15 diem wages are available at:

16 <http://www.dir.ca.gov/dlst/DPreWageDetermination.htm>.

17 CONTRACTOR shall make copies of the prevailing rates of per diem wages for
18 each craft, classification or type of worker needed to execute the Services available to interested
19 parties upon request, and shall post copies at the CONTRACTOR's principal place of business
20 and at the project site. CONTRACTOR shall defend, indemnify and hold the ANAHEIM, its
21 elected officials, officers, employees and agents free and harmless from any claims, liabilities,
22 costs, penalties or interest arising out of any failure or alleged failure by CONTRACTOR or its
23 employees, agents, contractors, and subcontractors to comply with the Prevailing Wage Laws.

24 12.2 CONTRACTOR shall pay all workers subject to the Prevailing Wage
25 Laws not less than the prevailing wage rates as determined by the Director of Industrial
26 Relations in accordance with the provisions of the Labor Code. As provided in Labor Code
27 Section 1775, if CONTRACTOR violates the foregoing, CONTRACTOR shall forfeit, as a
28 penalty to ANAHEIM, Fifty Dollars (\$50) for each calendar day or portion thereof, for each

1 workman paid less than the stipulated prevailing wage rate for such work or craft in which such
2 workman is employed. for any Service subject to the Prevailing Wage Laws. In addition to said
3 penalty and pursuant to said Section 1775, the difference between such stipulated prevailing
4 wage rates and the amount paid to each workman shall be paid to each workman by
5 CONTRACTOR, as applicable.

6 12.3 CONTRACTOR shall strictly adhere to the provisions of the Labor Code,
7 including Sections 1810 through 1813 and 1815, regarding minimum wages, the 8-hour day and
8 40-hour week, overtime, Saturday, Sunday, and holiday work. CONTRACTOR shall forfeit to
9 ANAHEIM the penalties prescribed in the Labor Code for noncompliance, including the
10 penalties set forth in Section 1813 for violations of Sections 1810 through 1815.

11 12.4 CONTRACTOR shall comply with the provisions of Labor Code,
12 Sections 1777.5 and 1777.6, and Title 8 of the California Code of Regulations, Sections 200 et
13 seq., relating to apprentice employment and training. CONTRACTOR shall assume full
14 responsibility for compliance with said sections with respect to all apprenticeable occupations
15 providing Services. In the event of noncompliance by CONTRACTOR, ANAHEIM shall
16 withhold the penalties provided for under Section 1777.7 of the Labor Code from payments then
17 due.

18 12.5 Pursuant to the requirements of Section 1860 of the Labor Code,
19 CONTRACTOR will be required to secure the payment of workers' compensation to his
20 employees in accordance with the provisions of Section 3700 of the Labor Code.

21 12.6 ANAHEIM will not recognize any claim for additional compensation
22 because of the payment by CONTRACTOR of any wage rate in excess of the prevailing wage
23 rate effective on the Effective Date. The possibility of prevailing wage increases is one of the
24 elements to be considered by CONTRACTOR at the time of proposal submission, and will not
25 under any circumstances be considered as the basis of a claim against the ANAHEIM for
26 additional compensation.

27 12.7 CONTRACTOR shall maintain accurate payroll records in accordance
28 with the provisions of Labor Code Section 1776 and shall, upon request, file said records with

1 ANAHEIM.

2 12.8 CONTRACTOR shall forfeit as a penalty to ANAHEIM Twenty Five
3 Dollars (\$25) for each calendar day during which a CONTRACTOR employee subject to the
4 Prevailing Wage Laws is required or permitted to work more than eight (8) hours in any one
5 calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the
6 Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that the
7 Services performed by the employees of CONTRACTOR in excess of eight (8) hours per day
8 and forty (40) hours during any one week shall be permitted upon compensation of all hours
9 worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate
10 of pay as provided in said Section 1815.

11 **13. RESPONSIBILITY FOR DAMAGES OR INJURY**

12 13.1 ANAHEIM and all officers, employees and representatives thereof shall
13 not be responsible in any manner for any loss or damage to any of the materials or other things
14 used or employed in performing the Services or for injury to or death of any person as a result of
15 CONTRACTOR's performance of the Services required hereunder; or for damage to property
16 from any cause arising from the performance of the Services by CONTRACTOR, or its
17 subcontractors, or its workers, or anyone employed by either of them.

18 13.2 CONTRACTOR shall be responsible for any liability imposed by law and
19 for injuries to or death of any person or damage to property resulting from defects, obstructions
20 or from any cause arising from CONTRACTOR's performance of the Services, or the work of
21 any subcontractor or supplier selected by the CONTRACTOR.

22 13.3 CONTRACTOR shall perform all Services in a manner to minimize
23 public inconvenience and possible hazard, to restore other work areas to their original condition
24 and former usefulness as soon as possible, and to protect public and private property.
25 CONTRACTOR shall be liable for any private or public property damaged during the
26 performance of the Services.

27 13.4 The rights and obligations set forth in this Section shall survive the
28 termination of this Agreement.

1 **14. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

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

11 **15. SUBCONTRACTING**

12 Except for those subcontractors set forth in the Scope of Services, if any,
13 CONTRACTOR shall not subcontract any portion of the work to be performed under this
14 Agreement without the prior written authorization of ANAHEIM. CONTRACTOR shall be
15 fully responsible to ANAHEIM for all acts and omissions of any approved subcontractor.
16 Nothing in this Agreement shall create any contractual relationship between ANAHEIM and
17 subcontractor nor shall it create any obligation on the part of ANAHEIM to pay or to see to the
18 payment of any monies due to any such subcontractor other than as otherwise required by law.
19 ANAHEIM is an intended beneficiary of any work performed by any subcontractor for purposes
20 of establishing a duty of care between the subcontractor and ANAHEIM pursuant to this
21 Agreement.

22 **16. USE AND OWNERSHIP OF DOCUMENTS AND DATA**

23 16.1 ANAHEIM shall furnish to CONTRACTOR such documents and
24 materials as may be relevant and pertinent to the provision of services hereunder as ANAHEIM
25 may possess or acquire.

26 16.2 All documents and materials furnished by ANAHEIM to
27 CONTRACTOR, pursuant to Section 16.1, shall remain the property of ANAHEIM and shall be
28 returned to ANAHEIM upon termination of this Agreement, for any reason. All documents or

1 material prepared or caused to be prepared by CONTRACTOR, its officers, employees, agents
2 and subcontractors, in the course of implementing this Agreement, shall become the exclusive
3 property of ANAHEIM, and ANAHEIM shall have the sole right to use such materials in its
4 discretion without further compensation to CONTRACTOR or any other party. CONTRACTOR
5 shall, at CONTRACTOR's sole cost and expense, provide such documents and material to
6 ANAHEIM upon prior written request.

7 16.3 Documents and material prepared by CONTRACTOR, pursuant to this
8 Agreement, are not intended or represented to be suitable for reuse by ANAHEIM or others on
9 any other project. Any use of completed documents for other projects and any use of incomplete
10 documents without specific written authorization from CONTRACTOR will be at ANAHEIM's
11 sole risk and without liability to CONTRACTOR. Further, any and all liability arising out of
12 changes made to CONTRACTOR's deliverables under this Agreement by ANAHEIM or
13 persons other than CONTRACTOR, is waived against CONTRACTOR and ANAHEIM
14 assumes full responsibility for such changes unless ANAHEIM has given CONTRACTOR prior
15 notice and has received from CONTRACTOR written consent for such changes.

16 **17. CONFIDENTIALITY**

17 17.1 "Confidential Information" means, with respect to a Party hereto, all information
18 or material which either (1) is marked or identified as "Confidential," "Restricted," or
19 "Proprietary Information" or other similar marking or identification, or (2) the other Party knew,
20 as recipient, or under the circumstances, should have known, was considered confidential or
21 proprietary by the Disclosing Party (as defined below). Confidential Information shall consist
22 of all information, whether in written, oral, electronic, or other form, furnished in connection
23 with this Agreement by the Disclosing Party or its Representatives ("Representative" is defined
24 as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor or
25 contractor of a Party or any of its subsidiaries or affiliates) to the Receiving Party (as defined
26 below) or to its Representatives, and specifically includes but is not limited to ANAHEIM's
27 individually identifiable customer information, and ANAHEIM's customer usage data and
28 financial data.

1 17.2 CONTRACTOR and ANAHEIM shall each hold the other's Confidential
2 Information in confidence. Neither Party shall make the other's Confidential Information
3 available in any form to any third party or use the other's Confidential Information for any
4 purpose other than as specified in this Agreement. The Party providing Confidential Information
5 ("Disclosing Party") to the other Party ("Receiving Party") shall remain the sole owner of such
6 information. Except as provided elsewhere within this Agreement, nothing contained in this
7 Agreement shall be construed as granting or conferring any right or license in any Confidential
8 Information or in any patents, copyrights, software or other technology, either expressly or by
9 implication to the Receiving Party, or to its Representatives or to others. The term Confidential
10 Information shall not include any of the following: (1) information already in possession of, or
11 already known to, the Receiving Party as of the Effective Date without an obligation of
12 confidentiality; (2) information in the public domain at the time of the disclosure, or which, after
13 such disclosure, enters into the public domain through no breach of this Agreement by the
14 Receiving Party or its Representative(s); (3) information lawfully furnished or disclosed to the
15 Receiving Party by a non-party to this Agreement without any obligation of confidentiality and
16 through no breach of this Agreement by the Receiving Party or its Representative(s); (4)
17 information independently developed by the Receiving Party without use of any Confidential
18 Information of the Disclosing Party; or (5) information authorized in writing by the Disclosing
19 Party to be released from the confidentiality obligations herein.

20 17.3 By virtue of this Agreement, each Party hereto may disclose to the other
21 Party information that is Confidential Information. This Agreement does not diminish, revoke or
22 supersede any existing confidentiality, non-disclosure or similar agreement between the Parties
23 that does not pertain to the subject matter of this Agreement. However, any Confidential
24 Information, whether or not previously disclosed, that pertains to the subject matter of this
25 Agreement shall be governed by the terms of this Section 17 which shall supersede any such
26 previous agreement with respect to such Confidential Information and any Confidential
27 Information relating to the subject matter of this Agreement that was exchanged under such
28 previous agreement it shall be treated as though it was exchanged under this Agreement as of the

1 date of such exchange.

2 17.4 The Receiving Party will treat all Confidential Information of the
3 Disclosing Party, no matter written, electronic, or oral, as confidential and proprietary, and the
4 Receiving Party shall only use such information in furtherance of this Agreement. As such, the
5 Receiving Party shall hold in confidence the Confidential Information of the Disclosing Party,
6 and ensure that such Confidential Information is not disclosed to any other person or entity,
7 except as expressly permitted by this Agreement or as authorized in writing by the Disclosing
8 Party. Receiving Party shall not disclose Confidential Information of the Disclosing Party
9 received under this Agreement to any person other than its Representatives who require
10 knowledge of such Confidential Information in furtherance of this Agreement. The Receiving
11 Party shall inform its Representatives of the confidential nature of the Confidential Information
12 of the Disclosing Party and advise such Representatives of the limitations on the use and
13 disclosure and prohibition on making copies or summaries of such Confidential Information. The
14 Receiving Party shall be responsible for any breach of this Agreement by its Representatives.
15 Neither Party shall use the Confidential Information of the other Party for any commercial
16 purpose.

17 17.5 If the Receiving Party becomes legally compelled (by oral questions,
18 interrogatories, request for information or documents, subpoena, civil investigative demand, or
19 similar process) to disclose any Confidential Information of the Disclosing Party or is requested
20 Confidential Information pursuant to the California Public Records Act or similar law, the
21 Receiving Party will provide the Disclosing Party with written notice of such an occurrence (if
22 so permitted) as soon as possible. Thereafter, at its sole costs and expense, the Disclosing Party
23 may seek a protective order or other appropriate remedy, or waive compliance with the
24 provisions of this Agreement. So long as it is consistent with applicable law, the Receiving Party
25 will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at
26 the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other
27 reliable assurance that confidential treatment will be accorded the Confidential Information. If
28 the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing

1 Party waives compliance with the requirements of the preceding sentence, the Receiving Party
2 will disclose only that Confidential Information that it is legally required to disclose, and will
3 exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable
4 assurance that confidential treatment will be accorded the Confidential Information so disclosed.

5 17.6 In the event the Receiving Party discloses, disseminates or releases any
6 Confidential Information, except as expressly permitted by this Agreement, such disclosure,
7 dissemination or release will be deemed a material breach of this Agreement and the Disclosing
8 Party may demand prompt return of all Confidential Information previously provided to the
9 Receiving Party. As soon as the Receiving Party becomes aware that it has made an
10 unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all
11 necessary actions to recover the improperly disclosed Confidential Information and immediately
12 notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective
13 measures being taken. Each Party agrees that any breach of their confidentiality obligations
14 could cause irreparable harm to the other Party, the amount of which would be extremely
15 difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not
16 be a sufficient remedy for any material breach of this Agreement and that specific performance
17 and injunctive relief in addition to monetary damages shall be appropriate remedies for any
18 breach or any threat of such breach. The provisions of this Paragraph are in addition to any other
19 legal rights or remedies the Disclosing Party may have.

20 17.7 Within two (2) weeks of the termination of this Agreement,
21 CONTRACTOR will return to ANAHEIM or destroy, to the extent permitted by law, any and all
22 Confidential Information, including all originals, copies, translations, transcriptions or any other
23 form of said material, without retaining any copy or duplicate thereof; provided that
24 CONTRACTOR may retain Confidential Information contained on backup media created in the
25 ordinary course of business provided further that there is no effort to access such Confidential
26 Information and CONTRACTOR's confidential obligations with respect to such information
27 shall continue so long as such information is retained. CONTRACTOR shall certify in writing
28 the destruction of the Confidential Information. ANAHEIM may perform an audit of

1 CONTRACTOR's records to confirm the return or destruction of the Confidential Information.
2 ANAHEIM shall have this audit right for three (3) years after the termination of this Agreement.

3 17.8 Notwithstanding the termination of this Agreement, this Confidentiality
4 Section shall survive the expiration or earlier termination of this Agreement.

5 **18. INTELLECTUAL PROPERTY INDEMNITY**

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

11 **19. FISCAL RECORDS AND AUDIT**

12 CONTRACTOR shall keep records and invoices in connection with the Services.

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

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

28 CONTRACTOR will be notified in writing of any exception taken as a result of

1 an audit. Any adjustments and/or payments which must be made as a result of any such audit or
2 inspection of CONTRACTOR's invoices and/or records shall be made within thirty (30) days
3 from presentation of ANAHEIM's findings to CONTRACTOR. If CONTRACTOR fails to
4 make such payment, CONTRACTOR agrees to pay interest, accruing monthly, at a rate of ten
5 percent (10%) per annum unless another section of this Agreement specifies a higher rate of
6 interest, then the higher rate will prevail. Interest will be computed from the date of written
7 notification of exception(s) to the date CONTRACTOR reimburses ANAHEIM for any
8 exception(s). If an audit inspection or examination in accordance with this article discloses
9 overcharges (of any nature) by CONTRACTOR to ANAHEIM in excess of one percent (1%) of
10 the value of that portion of the Agreement that was audited, the actual cost of ANAHEIM's audit
11 shall be reimbursed to ANAHEIM by CONTRACTOR.

12 20. WITHHOLDINGS

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

21 21. ERRORS AND OMISSIONS

22 In the event of errors or omissions that are due to the negligence or professional
23 inexperience of CONTRACTOR which result in expense to ANAHEIM greater than what would
24 have resulted if there were not errors or omissions in the Services performed by
25 CONTRACTOR, the additional cost and expense shall be borne by CONTRACTOR. Nothing in
26 this paragraph is intended to limit ANAHEIM's rights under the law or any other sections of this
27 Agreement.
28

1 **22. ANAHEIM'S RIGHT TO EMPLOY OTHER CONTRACTORS**

2 CONTRACTOR acknowledges and agrees that this Agreement and the provision
3 of services hereunder are nonexclusive and that ANAHEIM may enter into similar agreements
4 with other entities for the provision of similar services.

5 **23. CONFLICTS OF INTEREST**

6 CONTRACTOR or its employees may be subject to the provisions of the
7 California Political Reform Act of 1974 (the "Act"), which: (1) requires such persons to disclose
8 any financial interest that may foreseeably be materially affected by the Services performed
9 under this Agreement; and (2) prohibits such persons from making, or participating in making,
10 decisions that will foreseeably financially affect such interest.

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

15 **24. NOTICES**

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

21 If to ANAHEIM: ANAHEIM Secretary/City Clerk
22 City of Anaheim
23 200 S. Anaheim Boulevard, 2nd Floor
24 Anaheim, California 92805
25 FAX No. (714) 765-4105

26 With copies to: Public Utilities General Manager
27 City of Anaheim
28 201 S. Anaheim Blvd., Suite 1101
 Anaheim, CA 92805
 FAX No. (714) 765-4138

To CONTRACTOR: Kana Subsurface Engineering
12620 Magnolia Ave
Riverside, CA 92503
Attention: Erick Castro, President and Malo Tauaese, Manager
FAX No. 714-986-1416

25. ENFORCEMENT OF AGREEMENT

25.1 Events of Default.

.01 For purposes of this Section 25, the word "Default" shall mean the failure of CONTRACTOR to perform any of CONTRACTOR's duties or obligations or the breach by CONTRACTOR of any of the terms and conditions set forth in this Agreement. In addition, CONTRACTOR shall be deemed to be in Default upon CONTRACTOR'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 CONTRACTOR's assets or of CONTRACTOR'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 CONTRACTOR 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.

25.2 Immediate Termination for CONTRACTOR's Default. In the event of any Default by CONTRACTOR, ANAHEIM may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by CONTRACTOR of written notice

1 from ANAHEIM. In such event, CONTRACTOR shall have no further rights hereunder, and
2 ANAHEIM shall have all other rights and remedies as provided by law.

3 25.3 Termination Without Cause. ANAHEIM may terminate this Agreement at
4 any time without the necessity of cause or Default by giving seven (7) days notice in writing to
5 CONTRACTOR. In such event, the Parties shall have no further rights hereunder, except that
6 CONTRACTOR shall be paid for all services adequately rendered prior to such termination.
7 CONTRACTOR may not terminate this Agreement except for cause.

8 25.4 Suspension, Postponement or Abandonment of the Services. The Services
9 may be suspended or abandoned for any reason with or without notice. If any part of the Project
10 is suspended or abandoned for any reason, ANAHEIM shall have the right to suspend or
11 terminate the affected portions(s) of this Agreement, including any part of the Services. In the
12 event of such suspension or termination, CONTRACTOR shall only expend such additional time
13 as is necessary to assemble the Services in progress for the purpose of properly filing and closing
14 the job and as is previously approved by Project Administrator. In no event shall additional time
15 exceed ten percent (10%) of the total time expended on the suspended or abandoned portion of
16 the Services prior to the date of notice of suspension or termination.

17 In the event the Services are suspended for longer than six (6) months,
18 CONTRACTOR may terminate this Agreement as it applies to the suspended portion of the
19 Project, by giving ANAHEIM at least thirty (30) days' written notice.

20 23.5 CONTRACTOR shall not be relieved of liability to ANAHEIM for
21 damages sustained by ANAHEIM by virtue of any breach of Agreement by CONTRACTOR,
22 and ANAHEIM may withhold any payments to CONTRACTOR for the purpose of set-off until
23 such time as the exact amount of damages due ANAHEIM from CONTRACTOR is determined.
24 In addition, ANAHEIM may pursue all remedies available under law for breach of this
25 Agreement. The waiver by either party of any breach to this Agreement shall not constitute a
26 waiver as to any succeeding breach.

27 25.5 The General Manager is authorized on behalf of ANAHEIM to terminate
28 this Agreement in accordance with the provisions of this Section 25.

1
2 **26. COMPLIANCE WITH ALL LAWS**

3 CONTRACTOR shall at its own cost and expense comply with all statutes,
4 ordinances, regulations and requirements of all governmental entities, including federal, state,
5 county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared
6 by CONTRACTOR shall conform to applicable local, county, state and federal laws, rules,
7 regulations and permit requirements and be subject to approval of the Project Administrator.

8 **27. WAIVER**

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

12 **28. INTEGRATED CONTRACT**

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

18 **29. CONFLICTS OR INCONSISTENCIES**

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

21 **30. INTERPRETATION**

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

26 **31. AMENDMENTS**

27 This Agreement may be modified or amended only by a written document
28 executed by both CONTRACTOR and ANAHEIM and approved as to form by the ANAHEIM

1 City Attorney.

2
3 **32. SEVERABILITY**

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

10 **33. REMEDIES CUMULATIVE**

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

16 **34. NO THIRD PARTY BENEFICIARIES**

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

20 **35. CONTROLLING LAW AND VENUE**

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

24 **36. DISCRIMINATION**

25 CONTRACTOR agrees not to discriminate against any person or class of persons
26 by reason of sex, color, race, creed, religion, marital status, handicap, ancestry, national origin or
27 other prohibited basis in its provision of Services or hiring of subcontractors or employees. To
28 the extent this Agreement provides that CONTRACTOR offer accommodations or services to

1 the public, such accommodations or services shall be offered by CONTRACTOR to the public
2 on fair and reasonable terms.

3 **37. AUTHORITY**

4 Each individual executing this Agreement on behalf of a corporation, nonprofit
5 corporation, partnership or other entity or organization, represents and warrants that he or she is
6 duly authorized to execute and deliver this Agreement on behalf of such entity or organization
7 and that this Agreement is binding upon the same in accordance with its terms. CONTRACTOR
8 shall, at ANAHEIM's request, deliver a certified copy of its governing board's resolution or
9 certificate authorizing or evidencing such execution.

10 **38. EFFECTIVE DATE**

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

13 **[SIGNATURES ON FOLLOWING PAGE]**
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OFFICE OF THE CITY ATTORNEY
CITY OF ANAHEIM
200 S. ANAHEIM BOULEVARD, SUITE 356
ANAHEIM, CA 92805
(714) 765-5169
FAX (714) 765-5123

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

3
4 DATE: _____ CITY OF ANAHEIM,
5 a municipal corporation

6
7 By: _____
8 Dukku Lee, Public Utilities
9 General Manager


10 ATTEST
11 DATE: _____

12 By: _____
13 Acting City Clerk

14
15 KANA SUBSURFACE ENGINEERING, a
16 California Corporation

17 DATE: 9/14/17 By: Erick Castro
18 Erick Castro, President

19
20 APPROVED AS TO FORM:
21 ANAHEIM CITY ATTORNEY

22 By: 
23 Daniel A. Ballin, Deputy City Attorney

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25 CAO 124468
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EXHIBIT A
SERVICES
[ATTACHED BEHIND THIS PAGE]

CITY OF ANAHEIM
PUBLIC UTILITIES DEPARTMENT
ELECTRIC, WATER AND FIBER OPTICS UNDERGROUND LOCATING SERVICES
SPECIFICATION

August 11, 2017

PART I – GENERAL

1.01 SCOPE OF WORK

The scope of work (Work) will consist of the Contractor (locating Contractor) receiving the Underground Service Alert (regional notification center) tickets with instructions to locate and mark electric, fiber optic, and water facilities owned by the City of Anaheim and completing the locates within two (2) working days from receiving the notifications, or earlier under emergent requests. The Work shall include furnishing all labor, material, equipment, and any other services necessary to complete the work including the following:

- A. Mark with water-soluble, environmentally-approved paint and/or appropriate flags, in delineated areas as described by the requesting entity/excavating contractor, Anaheim's underground facilities in conformance to the Government Code Section 4216 using the following colors:
 - Electric – Red
 - Fiber Optics – Orange
 - Water - Blue
- B. The Contractor shall provide adequate staff and equipment to be able to locate an average of 9,500 locates for electric operations, 8,000 locates for fiber optics, 8,000 locates for water operations, plus an additional 4,500 locates for office reviews and referrals to Anaheim, annually.
- C. Provide a vehicle, cell phone, vault entry, traffic control equipment and locating device(s) for the Contractor personnel to locate the designated City of Anaheim facilities. The Contractor's field crew shall have the ability to communicate with the City's Electric/Water/Fiber Optics staff via e-mail, cellular phone, or other means, as directed by City, at any time during the course of work.
- D. The Contractor shall provide the cost and details per locate request as required by the City.

1.02 CONDITIONS

- A. Before submitting a bid and entering into a contract for this work, the Contractor shall become familiar with all conditions and requirements pursuant to this specification.
- B. It shall be the Contractor's responsibility to ensure that the work done on this contract shall be in strict compliance with all applicable requirements, laws, codes and standards, including General Order 128, City Administrative Labor Code, and Title #8.
- C. The contractor shall obtain prior written approval of the City's authorized representative prior to authorizing a subcontractor to perform work under this contract.
- D. The Contractor shall set up an FTP (File Transfer Protocol) site for the City to post current maps and other related documents. The Contractor shall set up internal notification each time the City transfers a new file or update existing files.
- E. When working with electric facilities, all contractors' employees shall be capable and have the requisite training, safety gear and equipment to access underground structures and clamp onto energized conductors of up to 240 volts, including but not limited to streetlight pull boxes and customer service panels.
- F. When working with water facilities, all contractors' employees shall be capable and have the requisite training, safety gear and equipment to access underground structures and clamp onto water service lines, fire hydrants and backflow devices.
- G. When working with fiber optics facilities, all contractors' employees shall be capable and have the requisite training, safety gear and necessary equipment to access underground structures and clamp onto locate wires.
- H. In case the Contractor finds the City records are not clear, or accurate locating cannot be achieved using the clamping or other locating methods, the Contractor shall inform the City representative immediately and inform the contractor or agency who initiated the locate request.

1.03 SITE CONDITIONS

- A. The contractor shall locate underground electric, water and fiber optics facilities in all areas within public and private right-of-ways and on private property, including but not limited to streets, sidewalks, grass areas, parking lots, planters, and other areas that may contain the utility subsurface infrastructure.
- B. Protection of Persons and Property
 - a. The Contractor shall initiate, train, supervise and maintain all safety precautions and programs in connection with the Work.

- b. The Contractor shall take all reasonable precautions to ensure the safety of, and provide all reasonable protection to prevent damage, injury or loss to:
 - i. All Contractors' employees and other field personnel at the work site.
 - ii. All works, materials and equipment to be incorporated in the project.
 - iii. Other property at the site and adjacent areas.
 - iv. Members of the general public who may be affected before, during or after the work is completed.
- c. The Contractor shall provide all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property, and their protection from damage, injury or loss.
- d. The Contractor will promptly remedy all damages or loss to any facilities, or public or private property caused in whole or in part by the Contractor, contractors' subcontractor or employees at contractors' expense including removal of marks on surfaces, if required to be removed.
- e. The Contractor will coordinate to minimize interference with, or disruption to the City's operations, projects, and other activities.
- f. The Contractor shall be responsible for any and all damages to the City's electric, water and/or fiber optic facilities caused by third parties as a result of Contractors' delayed, wrong or missed locates.

1.04 LOCATIONS

- A. The electric, water and fiber optics facilities may be located within the boundaries of Anaheim, and its neighboring cities including Orange, Placentia, Buena Park, Fullerton and Garden Grove.
- B. The facilities could be as deep as twenty-two (22) feet or as shallow as twelve (12) inches.

1.05 WORK INCLUDED

- A. Provide all materials, labor and equipment to complete the work specified in Section 1.01 Scope of Work.
- B. Paint or flag at no more than fifty-foot (50) interval in a straight line, as close as three (3) feet if direction changes or as requested or warranted by field conditions. The line length is to conform to the standards available in the Underground Service Alert handouts and manuals.
- C. Unless otherwise specified, all traffic control will be as specified in the American Public Works Association W.A.T.C.H. handbook.

- D. When it is necessary, and no other means is available, the Contractor is to request approval from the electric utility representative twenty-four (24) hours in advance if attachment to an energized piece of high voltage utility equipment above 240 Volt AC is required to properly locate the delineated areas.
- E. The Contractor is required to recognize the differences in voltages of the cables per Title #8 of the State Safety Orders and the National Electric Code. At no time any high voltage cable will be touched or manipulated by the Contractor. Contractor shall notify the electric utility representative in advance to assess the work planned.
- F. After locating the facility with locks opened, bolts removed or seals broken, the Contractor shall replace or restore these fixtures to its original condition prior to leaving the area.
- G. Any damaged or broken facility enclosures noted in the course of locating the underground facilities is to be reported by the Contractor to the appropriate utility representative.
- H. The Contractor shall immediately notify the electric utility representative if any stand-by high voltage qualified electrical checker is required, or if the facility is in immediate danger of failure as a result of the excavating contractors' work.

1.06 RESPONSE TIME REQUIREMENTS

- A. The Contractor shall complete all locate requests within two working days. In case of an emergency or urgent requests, the Contractor shall be available to respond 24 hours a day, 7 days a week and respond, after being called by the City representative, within:
 - a. Two hours during the hours of 7 a.m. to 5 p.m., Monday to Sunday
 - b. Three (3) hours 5 p.m. to 7 a.m., Monday thru Sunday.

PART II – EXECUTION

2.01 EXECUTION GUIDELINES

- A. The City will transfer PDF files to an FTP site set up by Contractor which are diagrammatic in nature. The Contractor's field personnel shall be responsible for accessing and distributing these files. The Contractor will be required to sign the critical infrastructure information request provided by the City and maintain control of the FTP site documents as delineated under the agreement.
- B. The Contractor shall provide the City with a monthly invoice each for electric, water and fiber optics itemized by work ticket for all work completed during the previous calendar month. Payment terms are net 30 days after the first two months.

- C. The Contractor shall use an automated ticket management system providing the City the ability to search for, view, download and printing of real time locating activities, ticket status and read ticket details. The Contractors' comprehensive electronic documentation package shall include time and date, the locate and marking that was completed, ticket number assigned by the One Call Center, GPS generated stamp displaying the exact location of the technician's vehicle of on-site location, type of markings used, aerial image of locate site with marked infrastructure specifying exact location of utility, photos of markings placed, locators' comments, and the locators' signature.
- D. All locating and marking documentation produced by the Contractor for City use shall be in a verifiable and unalterable electronic form. The City shall have access to the manifest information at all times.

PART III – PROPOSAL PROCESS

3.01 PROPOSAL FORMAT

- A. A "field worked ticket" is one in which the Contractor responds to the site and marks the underground facilities as necessary, using paint or flags to adequately delineate the facility. This is approximately 86 percent of all tickets.
- B. An "office worked ticket" is one in which it is known that no Anaheim electric, water or fiber optics facilities are contained in the area. These tickets do not require a field meet and therefore, do not have anything other than administrative costs involved. This is approximately 8 percent of all the tickets.
- C. A "referred ticket" is one that could not be worked by the Contractor by any means and must be referred back to the designated city representative to be worked on. These will involve administrative cost but will be less than an "office worked ticket". This is approximately 6 percent of all the tickets.
- D. For emergency or urgent locate requests, the Contractor shall provide quotes for "field worked ticket", "office worked ticket" and "referred ticket" as defined above.
- E. Bids shall be considered all-inclusive, and shall include the cost of all labor, equipment, materials, insurance, and other services that are included in this contract.

Exhibit B

**Underground Utility Locating Services
Kana Subsurface Engineering
Pricing**

Item	Description	Type	Qty	Unit Price	Subtotal
1	FIELD-WORKED TICKET REQUIRING FIELD RESPONSE TO SITE AND PAINT OR FLAG UNDERGROUND FACILITIES	EA	25500	\$19.23	\$490,365.00
2	OFFICE-SCREENED TICKET REQUIRING INTERPRETATION OF MAPS IN OFFICE ONLY. NO FIELD RESPONSE.	EA	4000	\$4.83	\$19,320.00
3	REFERRED TICKET REQUIRING CONTRACTOR TO REFER TO CITY STAFF TO LOCATE BECAUSE OF LIMITED ACCESS TO FACILITIES IN ENERGIZED FACILITY	EA	500	\$4.83	\$2,415.00
4	Work as directed by COA Electrical Engineering group on a Time & Material basis. Not to exceed \$25,000.00	T&M			\$25,000.00
Total (Not to Exceed)					\$537,100.00

The above rates and annual total not to exceed amount are valid for each year of the Initial Term. For Subsequent Terms, the above rates and annual total not to exceed amount shall be adjusted in accordance with Section 4.3 of the Agreement.