

CITY OF DANA POINT**AGENDA REPORT**

Reviewed By:

DH _____

CM _____

CA _____

DATE: AUGUST 23, 2006

TO: CITY MANAGER/CITY COUNCIL

FROM ANDREW GLASS, ACCOUNTING MANAGER

SUBJECT: AUTHORIZATION TO ISSUE REQUEST FOR PROPOSAL FOR AUDITING SERVICES

RECOMMENDED ACTION:

That the City Council authorize Staff to issue a Request for Proposal (RFP) for auditing services.

ISSUES:

Shall an independent audit of the City's financial records be performed?

BACKGROUND:

An independent examination of the City's financial records and a report on this examination directly to the City Council is a key component of the City's accounting control structure. This audit is an independent review of the City's accounting records and financial statements, and is performed annually. Pursuant to a Request for Proposal (RFP) issued in fiscal 2004, the City hired the firm Teaman, Ramirez & Smith to conduct this audit for fiscal years 2004 through 2006.

DISCUSSION:

An (RFP) has been prepared which includes the following scope of services:

- Examination of the City's Financial Statements and Records.
- Performing a Single Audit (for funds received pursuant to Federal grants, such as Community Development Block Grant, Federal Emergency Management, etc.)
- Reviewing and reporting on the City's Gann Debt Limit Computation.

- Rendering of a report to City Management on any identified weaknesses in the City's system of internal financial controls.
- Serving on the City's Investment Review Committee
- Conducting an annual review of the City's Investment Policy
- Providing consulting advice, as needed, on general financial accounting matters.

This scope of work is the same as provided by Teaman, Ramirez & Smith for the past ten years. The fees charged by Teaman, Ramirez & Smith for these services for fiscal years 2004, 2005 and 2006 were \$13,500, \$13,900 and \$14,200, respectively. During their tenure, Teaman, Ramirez & Smith assisted the City in preparing nine award-winning annual reports (fiscal years 1996 through 2005).

NOTIFICATION/FOLLOWUP:

A bidders list has been prepared containing eleven firms with offices in Southern California that perform governmental accounting and auditing. The list contains those firms listed as members of the California Society of Municipal Finance Officers Association as well as all firms which have requested to be on the City's bid list for auditing services.

FISCAL IMPACT:

None by this action.

ALTERNATIVE ACTIONS:

1. Direct Staff to negotiate an extension of the existing contract with Teaman, Ramirez & Smith for an additional term.
2. Other actions as maybe identified by the City Council.

ACTION DOCUMENTS:

None.

SUPPORTING DOCUMENTS:

A. Request for Proposal - Auditing Services	<u>3</u>
B. Request for Proposals – Prospective Bidders List	<u>12</u>
C. Agreement for Auditing Services (Contract)	<u>13</u>

CITY OF DANA POINT
AUDITING SERVICES - REQUEST FOR PROPOSAL

INVITATION

The City of Dana Point is requesting proposals for auditing services from qualified firms. It is anticipated that the term for the services offered will be three consecutive years, beginning with the fiscal year ending June 30, 2007.

I. NATURE OF SERVICES REQUIRED

A. General

The City is selecting auditors to perform an examination of the financial statements of all fund types and account groups of the City for the year ending June 30, 2007 and for the two succeeding years.

B. Auditing Standards to be Followed

Each examination is to be performed in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants (AICPA). In addition, the minimum auditing standards set forth in the Single Audit Act and OMB Circular A-128 must be met.

C. Reports to be Issued

Audit reports are required for the general purpose financial statements of the City, a Single Audit report and a report on your review of the City's Gann Limit computation will be required. The City also requires a management letter containing comments and recommendations regarding the auditor's review and evaluation of the systems of internal control and accounting procedures.

D. Special Considerations

The City desires assistance in preparation of the Comprehensive Annual Financial Report (CAFR) to ensure compliance with the reporting requirements for a Certificate of Achievement for Excellence in Financial Reporting issued by the Government Finance Officers Association (GFOA). The City has won such an award every year since its January 1, 1989 incorporation.

It is expected that the auditor selected will be available throughout the year for general consultation regarding matters of accounting.

- E. The external auditor serves as an ex-officio member of the City's Investment Review Committee. This committee meets at City Hall periodically to review the City's investment portfolio and discuss investment strategies. In addition, the auditor is asked to review the City's Investment Policy annually to ensure conformity with all applicable State and Federal laws. The Investment Policy is adopted annually by the City Council. (A partner or manager level individual is required for service on the Investment Review Committee).
- F. Working Paper Retention and Access to Working Papers

Working papers are to be retained for a period of five years and are to be made available (upon reasonable notice) to City staff as well as any third parties authorized by the City.

II. DESCRIPTION OF THE GOVERNMENT

The City of Dana Point is a General Law City in the State of California located in southern Orange County. The City was incorporated on January 1, 1989 and operates under a Council-Manager form of government. The City is a coastal community consisting of approximately six square miles with an estimated population of 36,000. The City is bordered by Laguna Beach, Laguna Niguel, San Juan Capistrano and San Clemente.

Dana Point operates as a "contract city", primarily utilizing contracts with other governmental entities, private firms and individuals to provide many of the traditional municipal services to the community. Contracted services include police, city attorney, road maintenance, and certain planning, building and engineering services. Fire protection is provided by the Orange County Fire Authority. The County of Orange administers operations of the Dana Point Harbor.

The City's principal revenue sources are transient occupancy taxes (34%), sales & uses taxes (13%), and property taxes (32%).

The City employs 47 full-time and 7 regular part-time staff. During summer months additional part-time staff are employed by the City's recreation department.

The City's offices are located at 33282 Golden Lantern, Suite 203, Dana Point, California, 92629. The contact person for further information or questions regarding this request for proposal is Andrew Glass, Accounting Manager, who can be reached at 949/248-3521 or via e-mail at aglass@danapoint.org.

A. Background Financial Information

The following summarizes key budgetary information from the adopted fiscal year 2006-07 budget:

General Fund:	
Revenues	\$26,801,720
Expenditures:	
Personnel	5,080,451
Materials & Services	18,248,383
Capital Outlay	125,000
Risk Management	<u>787,150</u>
Total General Fund Expenditures	\$24,240,984

B. The City currently utilizes the following funds and account groups:

1. General Fund - general operations of the City.
2. Gasoline Tax Fund - state subventions for gasoline taxes.
3. Capital Improvement Project Fund - major construction projects.
4. Measure M Fund - proceeds of Measure M taxes.
5. Coastal Transit Fund - proceeds of California Coastal Commission grants
6. AB2766 Fund - proceeds of AB2766 (for air quality improvements).
7. Supplemental Law Enforcement Services Fund - proceeds of State's Citizens Options for Public Safety program.
8. Park Development Fund - proceeds of park development in-lieu fees.
9. Agency Funds - funds held by the City in a trustee capacity.
10. Facilities Improvement Fund – improvements to City Hall and Recreation Center

C. Budgetary Basis of Accounting

Budgets are adopted bi-annually by the City Council and are prepared for each fund in accordance with its basis of accounting (generally modified accrual). The City Manager is responsible for preparing the budget and for its implementation after adoption. All appropriations lapse at year end. The City Council has the authority to amend the budget during the year.

The City maintains budgetary controls to ensure compliance with legal provisions embodied in the appropriated budget approved by the City Council. The level of budgetary control is established by function and activity within each fund.

D. Federal, State and Local Assistance

The City receives financial assistance in the form of Community Development Block Grants (administered by the County of Orange) and other state and federal programs which vary from year to year. Accordingly, compliance with the Single Audit Act of 1984 and implementing regulations issued by the United States Office of Management and Budget (OMB) Circular A-128 will be required in years when such expenditures exceed \$500,000.

E. Pension Plan

The City is a member of the California Public Employees Retirement System (CalPERS), an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for cities and school districts in California.

F. Long-term Debt

The City's long-term debt consists of vested amounts due to employees pursuant to the City's comprehensive annual leave program. In August 2006 the City retired the outstanding balance of its other debt which consisted of a long-term capital lease obligation relating to the City's Community Center facility.

G. Risk Management

The City is a member of the California Joint Powers Insurance Authority ("CJPIA"), a public entity risk pool. In addition, the City has designated \$1 million of unreserved General Funds for use in payment of any material claims not covered through the SCJPIA program.

H. Treasury/Investment of Funds

The City Manager serves as the City Treasurer. Investment of funds is administered through the Administrative Services Department pursuant to the Investment Policy adopted by the City Council. As of June 30, 2006, the City's portfolio consisted of \$18.6 million in the State of California Local Agency Investment Fund (LAIF) and \$24.25 million of U.S. Treasury Notes. The City directly manages its investment portfolio.

I. Department of Administrative Services Operations

The Department of Administration Services encompasses the general accounting, treasury, risk management, payroll, personnel, information technology, general administration, community services, and purchasing functions. It consists of a full-time staff of seven located at City Hall, including the Director of Administrative Services, Accounting Manager, Accounting Technician, Management Analysts, and Administrative Secretary. It also includes four full-time staff located at the City's Community Center.

Typical transaction volume is as follows:

Number of bank accounts - 1
Number of cash disbursement per month - 350
Number of purchase orders issued per month - 50
Number of cash receipt batches per month - 50
Number of payroll checks per month - 150

J. Computer System

The City utilizes a Local Area Network (LAN) for all its data processing. It consists of approximately 75 workstations operating under Windows XP.

The City uses DataTeam Fund Accounting software. This includes general ledger and accounts payable. Fund Accounting is an "off the shelf" software package. Payroll services are provided through an outside service, ADP.

K. Internal Audit Function

Due to its small size, the City does not have an internal audit function. Within the constraints of available staffing, the City attempts to maintain segregation of key duties and responsibilities.

L. Availability of Prior Reports and Working Papers

The audits of the City for the ten fiscal years ending June 30, 2006 were performed by Teaman, Ramirez & Smith, LLP, Riverside. It is anticipated that their working papers will be available for review.

III. TIME REQUIREMENTS

It is anticipated that the audit work will be performed in two phases:

A. Interim Audit Work

Interim work should take place in late May or early June and would consist of planning and interim audit procedures (such as gaining an understanding of relevant systems, procedures and internal controls, selected compliance and transaction testing, etc.)

B. Year-End Audit Work

The second phase would involve updating and completing the examination of the General Purpose Financial Statements, and preparing opinion letters and other relevant financial reports. The year-end audit field work is to begin no earlier than the Tuesday following the

Labor Day holiday, and is to be completed no later than the last day of September. Any proposed audit adjustments must be identified no later than the conclusion of audit field work.

C. Draft Reports

The Auditor shall provide the City with a complete draft of the Financial Statements, including footnotes and supplementary schedules by November 1. Drafts of the Single Audit and Gann Limit Reports are due no later than November 15. A draft of the management letter is due no later than November 30. The City will review and provide comments or responses to the auditors within 10 calendar days of receipt of each of the draft reports.

IV. ASSISTANCE TO BE PROVIDED TO THE AUDITOR

A. Finance Department and Clerical Assistance

City Staff members will be made available to assist in the audit. We will prepare any necessary schedules, provide documents (invoices, checks, council minutes, etc.) and prepare (type) all confirmations. In addition, we will be available to respond to any questions which may arise during the audit.

B. Report Preparation

The Auditor is responsible for preparation of the Independent Auditor's Report, Basic Financial Statements (including footnotes) and applicable Supplementary Information. The MD&A, Introductory and Statistical sections of the CAFR are prepared by City Staff and are reviewed by the Auditor. These reports, together with the Single Audit Report, Gann Review Report and Management Letter are to be completed and delivered to the City as described in Section III.C. In addition to delivery in printed form, the footnote section of the financial report shall also be provided to the City in an electronic format compatible with Microsoft Word 2003 and Excel 2003.

C. Other

The City will provide the auditors with suitable workspace, telephone, access to FAX machine and photocopier.

V. PROPOSAL REQUIREMENTS

A. Sealed Proposals

Proposals must be submitted in a sealed envelope or package bearing the title "City of Dana Point Audit Proposal" and the proposer's name and address. The proposer shall submit five (5) copies of the completed proposal and other pertinent information to the office of the City Clerk no later than 2:00 p.m. on Thursday, September 21, 2006 at 33282 Golden Lantern, Suite 203, Dana Point, California 92629. It is the responsibility of the proposer to ensure that the proposal is delivered on time. Any proposal received after the deadline will be disqualified.

B. Public Information

All submitted proposals, and information included therein and attached thereto, shall become public record upon receipt by the City Council for consideration of selection of auditor.

VI. SELECTION PROCESS AND CRITERIA

A. Selection Committee

All proposals will be reviewed by a selection committee to be established by the City Manager. The selection process will involve the review of the proposal for compliance with the requirements of the RFP, qualifications of the firm, fee competitiveness and references.

Based upon the selection committee's review of the proposals, interviews may be scheduled at the City of Dana Point City Hall with the most qualified proposer(s). Finalists will be notified of specific times and will be allowed a total of thirty minutes for their presentation and to answer questions from the selection committee.

The consultants will be ranked by the selection committee and Staff will recommend the top ranked auditing firm to the City Council for award of contract.

B. Contents of Proposal

Proposals shall contain the following information:

1. A general summary of the audit engagement plan including nature of interim/year-end testing procedures and the extent of support which will be required from City Staff (i.e. pulling invoices, checks, schedule preparation, etc.)
2. A discussion of your firms qualifications and relevant experience including recent experience in compliance auditing under the Single Audit Act.

3. A discussion of educational background and relevant experience of the Partner, Supervisor(s) and Staff which will be assigned to this engagement.
4. A summary of recent audit engagements of other similarly sized governmental agencies, including individuals from five recent engagements whom we may contact for reference.
5. A preliminary schedule including tentative dates for completion of interim and year-end audit work.
6. A fee proposal including hours for each member of the engagement team, hourly billing rates, out-of-pocket expenses and a total proposed cost for each of the three years. The budget must be categorized into the following three categories:
 - Financial Audit
 - Single Audit
 - Review of City's Investment Policy

In the event that a Single Audit is not required in any year covered by this agreement then that component of the fee proposal shall be excluded from the services provided. For each of the three fee categories listed above the proposer must state an all-inclusive maximum price (including out-of-pocket expenses) for all services outlined in section I. of this Request for Proposal.

7. A listing of billing rates, by staffing level, which would apply to any supplemental services outside the scope of this agreement which may be requested by the City during the term of the contract.

C. Criteria for Selection

Selection of the auditor shall be based upon the following criteria:

1. Technical qualifications and experience of key members of the engagement team & firm.
2. Experience with similarly sized governmental agencies in providing the types of services outlined in this Request for Proposal.
3. Capability of handling all aspects of the engagement and providing ongoing support and technical assistance throughout the year.
4. Ability to provide continuity of staff from year to year.
5. Thoroughness of auditors proposed scope of work.
6. Clearly defined schedule of work to be performed and ability to meet required completion

dates for key parts of the audit.

7. Reasonableness and competitiveness of cost budget.

The award of the contract will not be based on the lowest fee proposed, but on a combination of all of the above factors, as evaluated by the selection committee and approved by the City Council.

VII. TIMESCHEDULE

The City anticipates using the following time schedule, which should result in the selection of an auditor by May 12, 2004:

August 23, 2006	RFP Agenda report to City Council
August 24, 2006	Mail RFP's to potential bidders
September 21, 2006	Written proposals due by 2:00 p.m.
Sept. 22 – Oct. 13, 2006	Evaluation of proposals
November 8, 2006	Recommendation to City Council
November 9, 2006	Notification of bidders

VIII. SUPPLEMENTARY INFORMATION

The City's Comprehensive Annual Financial Report for the year ended June 30, 2005 is available for download on the City's website at www.danapoint.org This document will also be provided in PDF format to bidders upon request. Direct any such requests to aglass@danapoint.org.

In addition selected portions of the adopted budgets for fiscal years 2006 and 2007 are also available on the City's website.

The following information represents the fee history for audit services for the three fiscal years ended June 30, 2006:

- Fiscal year ended June 30, 2004 - \$13,500
- Fiscal year ended June 30, 2005 - \$13,900
- Fiscal year ended June 30, 2006 - \$14,200

Above listed fees are all-inclusive (includes City Audit, Single Audit and Investment Policy Review)

**REQUEST FOR PROPOSALS - AUDIT SERVICES
PROSPECTIVE BIDDERS LIST (11 FIRMS)**

Diehl, Evans & Company
Attn: Nitin Patel
2120 Alton Parkway, Ste. 100
Irvine, CA 92606

Mayer Hoffman McCann P.C.
Attn: Michael Harrison
2301 DuPont Drive, Suite 200
Irvine, CA 92612

Moreland & Associates
Attn: Michael Moreland
1201 Dove Street, Ste. 680
Newport Beach, CA 92660

Teaman, Ramirez & Smith
Attn: Greg Fankhanel
4201 Brockton Ave., Suite 100
Riverside, CA 92501

Caporicci & Larson
Attn: Gary Caporicci
9 Corporate Park, Suite 100
Irvine, CA 92606

Vavrinek, Trine, Day & Co.
Attn: Kevin Pulliam
8270 Aspen St.
Rancho Cucamonga, CA 91729

Charles Z. Fedak & Co, CPA's
Attn: Paul Kaymark
6081 Orange Ave., 2nd Floor
Cypress, CA 90630

Lance, Soll & Lunghard, CPAs LLP
Attn: Michael Chu
203 North Brea Blvd., Suite 203
Brea, CA 92821

McGladrey & Pullen, LLP
Attn: Rod LeMond
3880 Lemon St. Ste 100
Riverside, CA 92501

MSW Consultants
Attn: David Davis
27393 Ynez Road, Suite 160
Temecula, CA 92591

Rogers Anderson Malody & Scott, LLP
Attn: Scott Manno
290 North D Street, Suite 300
San Bernardino, CA 92401

AGREEMENT FOR AUDITING SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2006, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY" and _____, certified public accountants, hereinafter referred to as "AUDITOR."

WITNESSETH:

WHEREAS, on August 23, 2006, CITY invited bids for an independent audit of its financial statements and records; and

WHEREAS, pursuant to said invitation, AUDITOR submitted a bid which was accepted by CITY for said professional service; and

WHEREAS, AUDITOR is recognized as a competent and qualified certified public accountant, duly authorized to practice and licensed as such by the California State Board of Accountancy.

NOW THEREFORE, for and in consideration of the mutual promises, obligations, and covenants contained herein, the parties herein agree as follows:

1. TERM. The term of this Agreement shall be for a period of three (3) consecutive years, beginning with the fiscal year ending June 30, 2007.
2. CITY'S OBLIGATIONS. For and in consideration of AUDITOR furnishing service(s) specified in this Agreement CITY shall pay and AUDITOR shall receive in full compensation a total sum not to exceed \$_____, \$_____, and \$_____ for the fiscal years ending June 30, 2007, 2008, and 2009, respectively.

Payments to AUDITOR shall be made within thirty (30) days after receipt by CITY of invoices from AUDITOR, which shall be rendered not more often than monthly. Special examinations, surveys, or detailed reports of any nature outside the scope of this Agreement shall be billed separately by AUDITOR and must be specifically authorized in writing by CITY in advance of such additional services proposed to be provided.

3. AUDITOR'S OBLIGATIONS. For and in consideration of payments and agreements hereinafter mentioned to be made and performed by CITY, AUDITOR agrees with CITY to furnish those services as set forth in Attachment 1, Request for Proposal for Auditing Services, attached hereto and incorporated herein by reference, and to perform as required by this Agreement and the said specifications.

4. INSURANCE. AUDITOR shall procure and maintain for the entire term of this Agreement, valid insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by AUDITOR, or AUDITOR'S agents, representatives, employees, or subcontractors. AUDITOR shall further maintain professional liability insurance in the amount of one-million dollars (\$1,000,000.00) to protect CITY for AUDITOR'S negligent acts, errors, and/or omissions of a professional nature.

5. HOLD HARMLESS AND INDEMNIFICATION. AUDITOR, agrees to indemnify, defend, and hold harmless CITY, its officials, officers, employees, representatives, and agents from and against all claims, lawsuits, liabilities, or damages of whatever nature including without limitation all consequential damages arising out of or in connection with, or relating in any manner to work performed by AUDITOR, his agents, employees and subcontractors, and employees thereof pursuant to this Agreement. AUDITOR shall investigate and indemnify CITY and do whatever is necessary to protect CITY, its officials, officers, employees, agents, and representatives as to any such claims, lawsuits, liabilities, or damages.

6. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon written approval by the CITY'S Director of Financial Management.

7. TERMINATION. If, at any time during the term of this Agreement, CITY determines that AUDITOR is not faithfully abiding by any term or condition contained herein, CITY may notify AUDITOR in writing of such defect or failure to perform; which notice must give AUDITOR a ten (10)-day notice of time thereafter in which to perform said work or cure the deficiency. If AUDITOR has not performed the work or cured the deficiency within the ten (10) days specified in the notice, such shall constitute a breach of this Agreement and CITY may terminate this Agreement immediately by written notice to the AUDITOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities or rights under this Agreement except, however, any and all obligations of AUDITOR'S surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, AUDITOR shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day it received CITY'S Notice of Termination, less any offset from such payment representing the CITY'S damages from such breach. CITY reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the CITY'S sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall AUDITOR be entitled to receive in excess of the compensation quoted in its bid.

8. INCORPORATION BY REFERENCE. The Request for Proposal for Auditing

Services, Attachment 1 hereto, and the proposal submitted by _____, on _____, Attachment 2 hereto, are hereby incorporated by reference and made a part of this Agreement.

9. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the final, complete, and exclusive agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein or executed as an amendment hereto, shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

10. CONTRACT ASSIGNMENT. AUDITOR shall not assign, transfer, convey, or otherwise dispose of this Agreement, or its right, title, or interest, or its power to execute such an Agreement to any individual or business entity of any kind without the prior written consent of CITY.

11. INDEPENDENT CONTRACTOR.

a. AUDITOR is, and at all times hereafter shall be, an independent contractor of CITY during the entire term of this Agreement. AUDITOR specifically recognizes and acknowledges said status as an independent contractor and not as an employee of CITY. All personnel of AUDITOR shall be employees of AUDITOR and not employees of CITY. AUDITOR shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all withholding taxes.

b. AUDITOR shall comply with all Federal and State statutes and regulations relating to the employer/employee relationship including, but not limited to, minimum wage, non-discrimination, equal opportunity, workers compensation, hazardous/unsanitary or dangerous surroundings, the Fair Labor Standards Act 29 USCA Section 201 et seq., and the Immigration Reform and Control Act of 1986 * USCA Section 245(a) et seq.

12. ANTI-DISCRIMINATION. In the performance of the terms of this Agreement, AUDITOR agrees that it will not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry, or religion of such persons. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735.

13. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

CITY:

City of Dana Point
Attn: Administrative Services Director
33282 Street of the Golden Lantern
Dana Point, CA 92629

AUDITOR:

Attention: _____

All notices sent pursuant to this Agreement shall be deemed received (1) immediately if served by personal delivery, and (2) on the fifth day after deposited in the custody of the U.S. Postal Service if served by mail.

14. ATTORNEYS FEES. In the event an action is commenced by either party to enforce any rights under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs, in addition to any other relief granted by the Court.

15. CONFLICT OF INTEREST.

a. All information gained by AUDITOR in performance of this Agreement shall be considered confidential and shall not be released by AUDITOR without CITY'S prior written authorization excepting that information which is a public record and subject to disclosure pursuant to the Public Records Act, government Code Section 6250 et seq. AUDITOR, its officers, employees, agents, or subcontractors, shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the project or cooperate in any way with a party who may be adverse to CITY or whom AUDITOR reasonably should know may be adverse in any subsequent litigation. AUDITOR shall incur no liability under this Agreement for materials submitted by it which are later released by CITY, its officers, employees, or agents. AUDITOR shall also incur no liability for statements made by it at any public meeting, or for any document released by it for which prior written CITY authorization was obtained.

If AUDITOR or any of its officers, employees, consultants, or subcontractors does voluntarily provide information in violation of this Agreement, CITY has the right to reimbursement and indemnity from AUDITOR for any damages caused by AUDITOR'S conduct--including attorney's fees.

AUDITOR shall promptly notify CITY should AUDITOR, its officers, employees, agents or subcontractors be served with any Summons, Complaint, Subpoena, Notice of Deposition, Request for Documents, Interrogatories, Request for Admissions or other discovery requests from any party regarding this agreement and the work performed thereunder. CITY retains the right, but not the obligation, to represent AUDITOR and/or to be present at any deposition, hearing, or similar proceeding. AUDITOR agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by AUDITOR. However, CITY'S right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

CITY warrants that AUDITOR will have fully met the requirements of this provision by obtaining CITY'S written approval prior to providing documents, testimony, or declarations; Consulting with CITY before responding to a Subpoena or court order; in the case of depositions upon providing Notice to CITY of same; or providing CITY opportunity to review discovery responses prior submission. For purposes of this section, a written authorization from CITY shall include a "faxed" letter.

b. AUDITOR covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly which will conflict in any manner or degree with the performance of their services hereunder. AUDITOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. AUDITOR further covenants that AUDITOR has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnerships owning property in the CITY or the study area and further covenants and agrees that AUDITOR and/or its subcontractors shall provide no service or enter into any contract with a any developer(s) and/or property owner(s) and/or firm(s), and/or partnership(s) owning property in the CITY and/or study area prior to completion of this Agreement.

16. AUTHORITY TO EXECUTE AGREEMENT. Both CITY and AUDITOR hereby represent and covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF DANA POINT:

AUDITOR:

By: _____
Doug Chotkevys
City Manager

By: _____

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney
