

CITY OF ANAHEIM MASTER CONSTRUCTION AGREEMENT – WATER

THIS AGREEMENT ("Master Agreement"), dated for purposes of identification only this 9th day of August, 2022, is made by the CITY OF ANAHEIM, a municipal corporation, hereafter referred to as "ANAHEIM," and BIG BEN, INC., a California corporation, hereafter referred to as "CONTRACTOR."

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

RECITALS

WHEREAS, ANAHEIM desires to obtain construction, maintenance, repair, abandonment, relocation, and immediate response services (collectively, the "Work") in connection with its water production, transmission and distribution systems (collectively, the "Water System") from time to time on an as-needed basis as requested by ANAHEIM; and

WHEREAS, ANAHEIM has issued a request for prequalification proposals dated April 21, 2022, to perform the Work ("Request for Prequalification"); and

WHEREAS, in response to the Request for Prequalification, CONTRACTOR submitted a prequalification proposal dated May 12, 2022 ("Proposal"), and ANAHEIM evaluated the Proposal and determined CONTRACTOR to be prequalified to perform the Work; and

WHEREAS, the Proposal is incorporated herein by reference and is applicable to the Work unless otherwise set forth herein; and

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

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

PART I - WORK TO BE PERFORMED BY CONTRACTOR

A. References. Except as otherwise indicated, all references to ANAHEIM include its elected officials, officers, directors, employees, agents, and volunteers. Except as otherwise indicated, all references to CONTRACTOR include its personnel, employees, agents, and subcontractors.

B. Scope of Work.

1. CONTRACTOR agrees to perform the Work and supply all materials required for the Work in connection with ANAHEIM's Water System from time to time on an as-needed basis as requested by ANAHEIM. The Work is generally described in the "General Scope of Work," attached hereto as Exhibit A and incorporated herein by this reference. The specific Work to be provided by CONTRACTOR shall be specified in an individual work order package ("Work Order Package") to be prepared and issued by ANAHEIM or, for services that become necessary with little or no notice that are determined by the Director of Public Works or the Anaheim Public Utilities General Manager ("General Manager"), as applicable, or their respective designees, at their sole discretion, to require an immediate response ("Immediate Response Services"), in a request for Immediate Response Services ("Request"). By entering into this Master Agreement, ANAHEIM does not give any guarantee to CONTRACTOR that ANAHEIM will award CONTRACTOR any Work Order Packages or Requests.

2. Each Work Order Package and Request shall contain a specific Work description, plans, bid list, scheduled start and Work completion date, and bond requirements. The terms and conditions in this Master Agreement shall govern performance under, and shall apply to, all Work Order Packages and Requests received from ANAHEIM.

3. Any preprinted or other CONTRACTOR-inserted provisions on CONTRACTOR's acknowledgment or other submittals that purport to set forth general terms and conditions shall not govern or have any application to transactions between the Parties involving any Work Order Package or Request that references this Master Agreement.

4. CONTRACTOR shall provide the Work in accordance with this Master Agreement, the applicable Work Order Package or Request received from ANAHEIM's

Representative, as defined herein, Appendices A through G hereto ("Appendices"), the latest Standard Specifications for Public Works Construction adopted by ANAHEIM ("Standard Specifications"), the Standard Specifications Supplement ("Standard Specifications Supplement"), ANAHEIM's Water Services Standard Specifications ("Water Standard Specifications"), and the Special Provisions of ANAHEIM's Water Services Standard Specifications ("Special Provisions").

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

- 1) Change Order, Faithful Performance Bond, and Labor and Material Bond;
- 2) Work Order Package or Request;
- 3) Master Agreement;
- 4) Special Provisions when applicable;
- 5) Water Standard Specifications;
- 6) the Appendices hereto, except for the Faithful Performance Bond, and Labor and Material Bond;
- 7) the Standard Specifications Supplement;
- 8) the Standard Specifications;
- 9) General Scope of Work, Exhibit A to this Master Construction Agreement; and
- 10) Proposal.

6. In entering into this Master Agreement, CONTRACTOR offers and agrees to assign to ANAHEIM all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Cal. Bus & Prof. Code, Sec. 16700-16728), arising from purchases of goods, services, or materials pursuant to this Master Agreement. This assignment shall be made and become effective at the time

1 ANAHEIM tenders final payment to CONTRACTOR on a Work Order Package or Request,
2 without further acknowledgment by the Parties.

3 **C. Representatives of CONTRACTOR.**

4 1. Prior to commencing the Work under any Work Order Package or
5 Request, CONTRACTOR shall designate for each Work Order Package or Request a
6 representative ("Representative" or "CONTRACTOR's Representative") with whom all contacts
7 concerning that Work Order Package or Request shall be made. CONTRACTOR's
8 Representative or designee shall be on the job site at all times during performance of the Work.

9 2. ANAHEIM shall have the right but not the obligation to approve
10 CONTRACTOR's designation of a Representative for each Work Order Package or Request. If
11 ANAHEIM disapproves CONTRACTOR's Representative for a Work Order Package or
12 Request, CONTRACTOR shall promptly designate another Representative acceptable to
13 ANAHEIM. Failure by ANAHEIM to object to CONTRACTOR's designation of a
14 Representative at any time before or during performance of the Work shall not be a waiver of
15 ANAHEIM's right to require CONTRACTOR to replace Representative at any time during
16 performance of the Work.

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

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

23
24 **PART II - ANAHEIM**

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

B. Representative of ANAHEIM.

1. For Work defined as public works pursuant to state law and/or municipal ordinance and so identified in the applicable Work Order Package, the Director of Public Works of ANAHEIM or designee shall serve as "ANAHEIM's Representative" in all matters pertaining to Work to be performed under this Master Agreement. CONTRACTOR shall, in the performance of this Master Agreement, consult with the Director of Public Works or designee and other ANAHEIM employees as the Director of Public Works or designee may direct.

2. For the Work defined as maintenance, operation, inspection, and/or repair of the Water System pursuant to ANAHEIM's municipal code or as Immediate Response Services, and so identified in the applicable Work Order Package or Request, the General Manager or designee shall serve as ANAHEIM's Representative in all matters pertaining to Work to be rendered under this Master Agreement, including without limitation, termination of this Master Agreement and giving any notices required under this Master Agreement on behalf of ANAHEIM. CONTRACTOR shall, in the performance of this Master Agreement for Work, consult with the General Manager or designee and such other ANAHEIM employees as the General Manager or designee may direct.

C. Research of ANAHEIM Records. ANAHEIM's Water Engineering Division will assist CONTRACTOR in researching ANAHEIM's record data pertaining to ANAHEIM's facilities. For Critical Infrastructure Information, CONTRACTOR shall execute all confidentiality and/or nondisclosure agreements required by ANAHEIM for access to that information. If CONTRACTOR fails to execute such agreements, ANAHEIM may treat this failure as a breach of this Master Agreement.

D. Inspection. ANAHEIM may, at any time and from time to time, inspect the Work prior to its completion to see that the Work is or has been performed in accordance with the Work Order Package or Request. Such inspections will be conducted at reasonable times. Notwithstanding the above, ANAHEIM may inspect the Work at any time if the Public Works Director or General Manager, as applicable, or their respective designees, determine, at their sole discretion, that an inspection is necessary for health and safety reasons. Inspections

1 conducted by ANAHEIM, irrespective of outcome, shall not waive ANAHEIM's right to inspect
2 and/or reject the Work at a later time, and shall not relieve CONTRACTOR from its obligation
3 to complete the Work in accordance with the applicable Work Order Package or Request.

4
5 **PART III - TERMS OF AGREEMENT**

6 **A. Term of Agreement.**

7 1. The term of this Master Agreement ("Term") shall commence on the
8 Effective Date, as defined herein, and shall terminate on September 30, 2027, unless terminated
9 earlier as provided herein. The General Manager or designee is authorized to extend the Term of
10 the Master Agreement for such a time period necessary for completion of outstanding Work
11 Order Packages or Requests in progress at the end of the Term. In no event, however, shall the
12 extension exceed twelve (12) months.

13 2. All Parties recognize that the continuation of this Master Agreement after
14 the close of any fiscal year of ANAHEIM, which fiscal year ends on June 30 of each year, shall
15 be subject to budget approval providing for or covering contract items as an expenditure in the
16 budget. ANAHEIM does not represent that the budget or any particular budget item will be
17 adopted, since budget determinations are made by the ANAHEIM City Council at the time of the
18 consideration of each budget. No penalty shall accrue to ANAHEIM in the event this provision
19 shall be exercised. Should termination be accomplished in accordance with this Section, a
20 settlement shall be negotiated by the Parties based on items delivered, Work provided, monies
21 paid and monies due.

22 **B. Commencement and Completion of Performance.**

23 1. When Work under this Master Agreement other than Immediate Response
24 Services is required, ANAHEIM will send a written or electronic Work Order Package to all
25 prequalified contractors, including the CONTRACTOR so long as CONTRACTOR is also
26 prequalified for the Work. If interested in performing the Work, CONTRACTOR, along with
27 other prequalified contractors, shall submit a sealed bid indicating cost and other information
28 requested. In the alternative, CONTRACTOR shall submit an electronic sealed bid when it is

1 required by a Work Order Package, and CONTRACTOR shall abide by all Work Order
2 Package's electronic proposal requirements. ANAHEIM will be open either written or electronic
3 bids at the pre-established time and place as set forth in the Work Order Package.

4 2. Water Engineering Division will administer the bidding process and bid
5 opening. The Water Engineering Division will select the qualified contractor based on the
6 lowest responsive total price bid to complete the Work within the time frame established in the
7 Work Order Package.

8 3. When Immediate Response Services are required, ANAHEIM will contact
9 via telephone prequalified contractors until the Immediate Response Service requirements have
10 been satisfied. Under this Immediate Response Service process, ANAHEIM may or may not
11 contact CONTRACTOR. The Water Engineering Division will administer the Immediate
12 Response Service process. If awarded, CONTRACTOR shall commence performance of the
13 Work as may be requested by the Water Engineering Division in a timely and expeditious
14 manner until either (1) final completion and acceptance by ANAHEIM of the Work or (2) earlier
15 suspension or termination of the Work in accordance with the provisions of this Master
16 Agreement.

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

20 5. The nature of the Work makes timely performance critical to the orderly
21 progress of related work and to the operating schedule of ANAHEIM. CONTRACTOR shall, if
22 required under the applicable Work Order Package or Request, provide a proposed construction
23 schedule in its sealed bid that sets forth, at a minimum, each phase of the Work, the number of
24 personnel to be utilized for each phase, and the specific time required to complete each phase.
25 CONTRACTOR shall revised the construction schedule as requested by ANAHEIM, which has
26 final approval.

27 6. If performance of the Work falls behind the schedule agreed upon by the
28 Parties, CONTRACTOR shall, upon request by ANAHEIM's Representative, make reasonable

1 efforts to accelerate its performance of the Work at no additional cost to ANAHEIM until
2 performance of the Work conforms to the agreed-upon schedule.

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

8 8. The time period(s) specified for performance of the Work Order Package
9 or Request may be extended for force majeure events. This Part III.B.8 is applicable to a
10 Request only when ANAHEIM has specified a time period for completion of Work within the
11 Request. Force majeure events include unforeseeable causes beyond the control and without the
12 fault or negligence of CONTRACTOR, including, but not limited to, acts of God or of the public
13 enemy, unusually severe weather, fires, earthquakes, floods, pestilence, and other natural
14 catastrophes, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation,
15 civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, government
16 priorities, restraint by court order or public authority and action or non-action by or inability to
17 obtain the necessary authorization or approvals from any governmental agency or authority,
18 and/or acts of any governmental agency, including ANAHEIM, which by the exercise of due
19 diligence CONTRACTOR could not reasonably have been expected to avoid and which by
20 exercise of due diligence has been unable to overcome, if CONTRACTOR immediately notifies
21 ANAHEIM's Representative in writing of the causes of the delay and the anticipated length of
22 the delay. ANAHEIM's Representative shall ascertain the facts and the extent of delay, and may
23 extend the time for performing the Work Order Package or Request for the period of the
24 enforced delay if, in the judgment of ANAHEIM's Representative, the delay is justified. The
25 determination of ANAHEIM's Representative shall be final and conclusive upon the Parties to
26 this Master Agreement. In the event of delay, however caused, CONTRACTOR's sole remedy
27 shall be an extension of the time of performance of the Work Order Package or Request,
28 pursuant to this Section, and CONTRACTOR shall not be entitled to recover damages against

1 ANAHEIM. Any change to the Work completion date shall be documented by a written Change
2 Order to the Work Order Package or Request.

3 9. The Parties agree that time is of the essence in obtaining the Work and that
4 it is essential that CONTRACTOR provide the Work by the date specified in each Work Order
5 Package or Request. The Parties agree that in the event that the Work is not provided by this
6 date, actual damages to ANAHEIM as a result of that failure would be impractical or extremely
7 difficult to ascertain. In the event of CONTRACTOR's failure to complete the Work by the date
8 specified in the Work Order Package or Request, CONTRACTOR agrees to pay ANAHEIM
9 liquidated damages for every calendar day's delay beyond the completion date specified in the
10 Work Order Package or Request an amount equal to either (a) Five Hundred Dollars (\$500.00)
11 per calendar day; or (b) the liquidated damages amount, if any, specified in an applicable Work
12 Order Package or Request. The foregoing sentence shall be subject to Part III.B.8 above.

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

19 **C. Compensation and Payment.**

20 1. Limits.

21 a. Per Project. The Parties understand and agree that full and complete
22 payment for Work performed for a single Work Order Package or Request in accordance with
23 this Master Agreement shall not exceed the sum of Five Hundred Thousand Dollars
24 (\$500,000.00), excluding change orders. CONTRACTOR's performance of the Work shall be
25 compensated either on a lump sum basis in an amount not to exceed the amount set forth in the
26 applicable Work Order Package or Request or on a Unit Price, Crew Hour Rate or Time and
27 Equipment basis as set forth in the Proposal, at ANAHEIM's election.

1 b. Per Fiscal Year. The Parties understand and agree that the combined
2 cumulative value of all Work Order Packages and Requests awarded to Contractor during each
3 fiscal year (July 1 through June 30) during the Term of the Agreement shall not exceed the sum
4 of Three Million Dollars (\$3,000,000.00), excluding change orders. Any unused portion of this
5 annual limit shall expire and not carry over to increase the dollar limit of Work that may be
6 awarded in the subsequent fiscal year.

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

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

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

23 5. Rental Costs.

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

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

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

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

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

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

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

21 9. Method of Payment.

22 a. No payment shall be made under any Work Order Package or
23 Request until ANAHEIM has received the executed acknowledgment of the Work Order
24 Package or Request, any current required certificate(s) of insurance, and bond(s) from
25 CONTRACTOR.

26 b. For Time, Material and Equipment Work, CONTRACTOR shall
27 submit a copy of time sheets daily, for approval and retention by ANAHEIM's Representative,
28 listing: employee name, classification, hours worked straight time and overtime, and

1 identification of equipment and materials utilization and materials used. Each monthly invoice
2 shall be supported with sufficient detail to allow ANAHEIM to evaluate the invoiced costs,
3 including hours for each classification, with sheets and approved time sheets and applicable
4 rates, invoiced costs from suppliers and subcontractors, and equipment rental charges.

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

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

17 e. As part of CONTRACTOR's application for payment
18 CONTRACTOR shall (1) certify that the portion of the Work for which compensation is claimed
19 has been completed in accordance with the terms and conditions and specifications of this Master
20 Agreement, (2) state CONTRACTOR's estimate of the percentage of construction completed to
21 date and the actual construction costs incurred to date, (3) state that the amount claimed has not
22 been the subject of a prior application for payment, and (4) provide an estimate of the time
23 required for completion of the Work. Each application for payment shall be accompanied by an
24 executed Estoppel Certificate in the form set forth in Appendix A hereto. Each Estoppel
25 Certificate shall identify the Work Order Package or Request to which it applies and shall be
26 signed by an authorized officer of CONTRACTOR and must be attached to the application for
27 payment.

28

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

3
4 City of Anaheim
5 Public Utilities Department
6 Attention: Project Manager
7 Master Agreement No. xx
8 Water Engineering
9 201 S. Anaheim Blvd, Suite 601
10 Anaheim, California 92805

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

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

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

D. Warranty.

1. CONTRACTOR expressly warrants that all the Work performed by it and any subcontractors shall be in conformance with this Master Agreement and the Work Order Package or Request, and shall be free from defects in workmanship. CONTRACTOR further warrants that the Work shall be performed in a manner consistent with prudent construction and utility industry practices.

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

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

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

5. In the event any Work performed by CONTRACTOR does not comply with the terms of this Master Agreement or the Work Order Package or Request, and ANAHEIM's Representative deems it necessary that this non-conforming Work shall be

1 temporarily utilized, CONTRACTOR agrees that such Work may be utilized by ANAHEIM
2 until the Work is corrected in accordance with this Master Agreement. CONTRACTOR shall
3 not claim any compensation from ANAHEIM for such temporary utilization.

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

14 7. All Work performed, and any and all measurements of the Work
15 performed, under the Work Order Package or Request shall be made to the satisfaction of the
16 Director of Public Works or the General Manager, as applicable, or their respective designees,
17 whose sole judgment shall determine whether the quality of the Work shall satisfy the
18 requirements of the Work Order Package or Request.

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

23 **E. Title.**

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

26 2. Title to the Work as passed through to ANAHEIM from CONTRACTOR
27 shall be free and clear of all liens and encumbrances.
28

1 3. All sketches, documents, drawings, tracing, field survey notes,
2 computations, detail, data diskettes, photographs, and/or computer software developed
3 specifically pursuant to the Master Agreement and other materials prepared by CONTRACTOR
4 are recognized by ANAHEIM to be instruments of CONTRACTOR's Work and shall become
5 the property of ANAHEIM at the time of payment to CONTRACTOR for such Work, and
6 CONTRACTOR shall promptly deliver them to ANAHEIM at the request of ANAHEIM.
7 CONTRACTOR agrees not to use these documents and other materials for any purpose other
8 than the performance of Work required by this Master Agreement without the prior written
9 authorization of ANAHEIM.

10 F. Changes and Extra Work.

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

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

27 3. Should changes or extra Work be authorized by ANAHEIM,
28 CONTRACTOR shall furnish the necessary labor with requisite tools and/or materials required

1 for performing such additional Work. All authorized changes and extra Work and the agreed-to
2 price shall be confirmed and directed through a Change Order to the Work Order Package or
3 Request.

4 4. CONTRACTOR shall implement a change or extra Work only after it has
5 received a written copy of an authorized Change Order. All changes or extra Work shall be
6 performed under the terms and conditions of this Master Agreement, except as specified in the
7 Change Order. All Change Orders shall be signed by Representatives of both Parties prior to
8 commencing the specified Work.

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

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

18 **G. Other Work.**

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

26 2. If any part of CONTRACTOR's Work depends upon the work of another
27 contractor or of the employees of ANAHEIM, CONTRACTOR shall inspect the other
28 contractor's work and promptly report to ANAHEIM's Representative any defects that render it

1 unsuitable for its intended role in the proper execution and results of CONTRACTOR's Work.
2 Failure to so inspect and report any defective Work shall constitute an acceptance of the same by
3 CONTRACTOR as being fit and suitable for the proper execution and results of the Work.

4 3. CONTRACTOR further agrees that during the performance of the Work,
5 CONTRACTOR shall not hinder or interfere with any individual or business entity ANAHEIM
6 may employ to do any Work. CONTRACTOR shall suspend any part of the Work, or shall carry
7 on the same, as directed by ANAHEIM's Representative, so as to afford all reasonable facilities
8 for the performance of the other Work. CONTRACTOR shall not claim any extra compensation
9 for delays in the Work. CONTRACTOR's sole recourse shall be an extension of time for
10 performance as ANAHEIM may grant in accordance with the provisions hereof.

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

17 **I. Protective Measures.** CONTRACTOR shall be responsible for the
18 proper care and protection of all equipment and materials delivered and the Work performed
19 until final acceptance of the Work and issuance of a notice of completion for that Work Order
20 Package or Request by ANAHEIM. CONTRACTOR shall also adequately protect adjacent
21 property as provided by law and by this Master Agreement, including, but not limited to,
22 protection of any Work existing in public property. CONTRACTOR shall take all necessary
23 precautions for the safety of its employees and the employees of its contractors, subcontractors,
24 or others working on its behalf on the Work and prevent accidents or injury to individuals on,
25 about, or adjacent to the premises where the Work is being performed. In addition,
26 CONTRACTOR shall erect and properly maintain at all times, as required by the conditions and
27 progress of the Work, all necessary safeguards and warnings for the protection of its employees
28

1 and the employees of its contractors, subcontractors, and others working on its behalf, as well as
2 the public, including, but not limited to, temporary covering on all equipment pads.

3 **J. Risk of Loss and Damage.** CONTRACTOR shall be responsible for
4 any loss or damage to the Work, or material furnished by ANAHEIM for the Work, until final
5 acceptance of the Work and issuance of a notice of completion by ANAHEIM for a specific
6 Work Order Package or Request. In the event of loss or damage, if it should become necessary
7 to replace materials furnished by ANAHEIM, the cost of replacement shall be paid by
8 CONTRACTOR to ANAHEIM. ANAHEIM may deduct replacement costs from any amounts
9 due or to become due CONTRACTOR.

10 **K. ANAHEIM-Furnished Tools and Equipment.** Should ANAHEIM
11 furnish any tools or equipment to CONTRACTOR to perform any Work, any tools or
12 equipment shall be provided solely as a convenience to CONTRACTOR, and only under the
13 following conditions:

14 1. CONTRACTOR shall ensure that any employee using any loaned tool or
15 equipment is adequately and properly trained in its correct, intended, and safe use, and shall
16 actively supervise, with trained personnel, all employees using any ANAHEIM loaned tool or
17 equipment in order to ensure that, at all times, the use of the tool or equipment is correct, safe, in
18 accordance with the intended use, and creates no risk of injury or damage to individuals and/or
19 property.

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

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

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

5 **L. Suspension of Work.**

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

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

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

25 **M. Termination.** ANAHEIM may terminate this Master Agreement with or
26 without cause upon giving CONTRACTOR fifteen (15) days prior written notice. ANAHEIM
27 may terminate any specific Work order issued pursuant to a Work Order Package or Request
28 with or without cause upon giving CONTRACTOR five (5) days prior notice. If this Master

1 Agreement or any Work order is terminated without cause, CONTRACTOR will be paid for
2 costs incurred and actual Work satisfactorily performed for ANAHEIM up to and including the
3 date of termination. Termination of this Master Agreement, with or without cause, shall result in
4 (1) immediate suspension of the CONTRACTOR's pre-qualified status, (2) immediate
5 prohibition of further bids and proposals by CONTRACTOR under this Master Agreement, and
6 (3) immediate termination of all pending Work Order Packages and Requests awarded to
7 CONTRACTOR under this Master Agreement, except such operations as may be necessary to
8 prevent damage to property or to the Work already accomplished, and those operations shall be
9 terminated as soon as practicable. Such termination shall be duly noticed and provide the
10 CONTRACTOR an opportunity for appeal and a hearing consistent with ANAHEIM's pre-
11 qualification procedures.

12 The General Manager or designee is authorized to terminate the Master
13 Agreement as stated herein.

14 **N. Disputes.** Any dispute that cannot be resolved between the
15 Representatives of the Parties shall be referred to the General Manager or his/her designee,
16 whose decision shall be final. CONTRACTOR shall have no cause of action for any alleged
17 breach of this Master Agreement by ANAHEIM until after ANAHEIM has made final payment
18 for all Work provided hereunder.

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

23 **P. Fiscal Records and Audits.**

24 1. CONTRACTOR shall keep a correct and current accounting of payroll
25 costs, travel, subsistence, field and incidental expenses. CONTRACTOR shall use recognized
26 accounting methods in preparing invoices and reports. ANAHEIM reserves the right to
27 designate its own employee representative(s) or its contracted representative(s) with a certified
28 public accounting firm who shall have the right to audit CONTRACTOR's accounting

1 procedures and internal controls of CONTRACTOR's financial systems and to examine any
2 cost, revenue, payment, claim, other records or supporting documentation resulting from any
3 items set forth in this Master Agreement. If CONTRACTOR fails to provide supporting
4 documentation satisfactory to ANAHEIM for any costs charged ANAHEIM, then
5 CONTRACTOR agrees that ANAHEIM may delete such items from the invoice or
6 CONTRACTOR shall reimburse ANAHEIM for those costs. Any audit(s) shall be undertaken
7 by ANAHEIM or its representative(s) at reasonable times and in conformance with generally
8 accepted auditing standards. CONTRACTOR agrees to fully cooperate with all audit(s).

9 2. This right to audit shall extend during the length of this Master Agreement
10 and for a period of three (3) years, or longer if required by law, following the date of final
11 payment of the last Work Order Package or Request performed by CONTRACTOR.
12 CONTRACTOR agrees to retain all necessary records/documentation for the entire length of this
13 audit period.

14 3. CONTRACTOR will be notified in writing of any exception taken as a
15 result of an audit or pre-payment review of an invoice. Any adjustments and/or payments which
16 must be made as a result of any audit or inspection of CONTRACTOR's invoices and/or records
17 shall be made within thirty (30) days from presentation of ANAHEIM's findings to
18 CONTRACTOR. If CONTRACTOR fails to make a required adjustment or payment,
19 CONTRACTOR agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per
20 annum unless another part of this Master Agreement specifies a higher rate of interest, then the
21 higher rate will prevail. Interest will be computed from the date of written notification of
22 exception(s) to the date CONTRACTOR reimburses ANAHEIM for any exception(s). If an
23 audit inspection or examination in accordance with this article discloses overcharges (of any
24 nature) by CONTRACTOR to ANAHEIM in excess of one percent (1%) of the value of that
25 portion of the contract that was audited, the actual cost of ANAHEIM's audit shall be reimbursed
26 to ANAHEIM by CONTRACTOR. CONTRACTOR reserves the right to contest any exception.

27 4. CONTRACTOR shall include a similar clause in its agreements with
28 subcontractors reserving the right to designate its own employee representatives from a certified

1 public accounting firm, and/or representative(s) from ANAHEIM, who shall have the right to
2 audit and to examine any cost, payment, settlement or other supporting documentation resulting
3 from any item set forth in its agreements.

4 **Q. Indemnity and Insurance.**

5 1. Indemnity. CONTRACTOR agrees to indemnify, defend, and hold
6 harmless ANAHEIM, its officials, agents, employees, and representatives, from and against any
7 and all claims, demands, defense costs and liability of any kind or nature (collectively referred to
8 hereinafter as "Claims") arising out of or in connection with CONTRACTOR's (or
9 CONTRACTOR's subcontractors', if any) performance or failure to perform work performed by
10 or on behalf of CONTRACTOR, or goods or services provided by or on behalf of
11 CONTRACTOR under the terms of this contract; except for those Claims which arise out of the
12 sole negligence or willful misconduct of ANAHEIM. Such agreement shall be in effect without
13 regard to whether or not ANAHEIM, CONTRACTOR, or any other person or entity maintains or
14 fails to maintain insurance coverage for any such Claims. The obligations set forth in this
15 indemnification/defense provision shall survive the termination of this Master Agreement.
16 ANAHEIM's Risk Manager is hereby authorized to amend the requirements set forth herein in
17 the event that such amendment is in ANAHEIM's best interest.

18 2. Insurance. Without limiting ANAHEIM's right to indemnification, the
19 Parties agree that CONTRACTOR shall secure, prior to commencing any activities under this
20 Master Agreement, and maintain, during the Term of this Master Agreement, insurance coverage
21 as follows:

22 Workers' Compensation Insurance as required by California law and Employers
23 Liability Insurance in an amount not less than \$1,000,000.00 per occurrence.

24 Commercial General Liability Insurance, including coverage for Premises and
25 Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations
26 Liability, and Independent Contractors' Liability (if applicable), in an amount of not less than
27 Two Million Dollars (\$2,000,000.00) per occurrence, Four Million Dollars (\$4,000,000.00)
28 annual aggregate, written on an occurrence form.

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

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

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

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

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

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

19 "This insurance shall not be canceled, limited in scope or coverage,
20 or non-renewed until after thirty (30) days prior written notice has
21 been given to the City Clerk, City of Anaheim, 200 S. Anaheim
22 Blvd., Anaheim, CA 92805, except in the event of cancellation for
23 non-payment of premium which shall provide for not less than ten
24 (10) days notice."

25 Each insurance policy required by this Master Agreement, except policies for
26 Workers' Compensation, shall contain the following clauses or shall otherwise provide for the
27 following conditions:
28

1 "It is agreed that any insurance maintained by CONTRACTOR
2 pursuant to this Master Agreement shall be primary to, and not
3 contribute with, any insurance or self-insurance maintained by the
4 City of Anaheim."

5 "The City of Anaheim, its officers, agents, employees,
6 representatives and volunteers are added as additional insureds as
7 respects acts, omissions, operations, goods or work provided, or
8 activities of, or on behalf of, the named insured under an
9 agreement or contract with the City of Anaheim."

10 Prior to commencing any Work under this Master Agreement, CONTRACTOR
11 shall deliver to ANAHEIM insurance certificates confirming the existence of the insurance
12 required by this Master Agreement, and including the applicable clauses referenced above. Also,
13 within thirty (30) days of the execution date of this Master Agreement, CONTRACTOR shall
14 provide to ANAHEIM (i) endorsements to the insurance policies which add to these policies the
15 applicable clauses referenced above, or (ii) in lieu of said endorsements, documentation
16 acceptable ANAHEIM evidencing that the coverage, terms, and conditions set forth in the
17 above-referenced clauses are otherwise included in said insurance policies. Should it be deemed
18 necessary by ANAHEIM, it shall be CONTRACTOR's responsibility to see that ANAHEIM
19 receives documentation acceptable to ANAHEIM which sustains that the individual signing said
20 endorsements is indeed authorized to do so by the insurance company. Insurance required
21 hereunder shall be placed with insurers (i) admitted to write insurance in California, (ii)
22 possessing A.M. Best's rating of A VII or higher, or (iii) otherwise acceptable to ANAHEIM,
23 with prior written permission from ANAHEIM. In the event that (i) a claim or other legal action
24 is filed against ANAHEIM, and ANAHEIM, in its good faith opinion, believes it may have
25 coverage under any of the insurance required herein, and (ii) the issuer of any such insurance has
26 failed to fully accept, without reservation, ANAHEIM's submission of said claim or legal action,
27 then ANAHEIM has the right to demand, and to receive within a reasonable time period, copies
28 of the insurance policies related to such required insurance; provided, however, that this

1 provision shall not apply if the Parties agree that CONTRACTOR shall fully defend, hold
2 harmless, and indemnify ANAHEIM against any such claim or other legal action.

3 3. Remedies. In addition to any other remedies ANAHEIM may have if
4 CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to
5 the extent and within the time herein required, ANAHEIM may, at its sole option:

6 a. Order CONTRACTOR to stop Work under this Master Agreement
7 and/or withhold any payment(s) which become due to CONTRACTOR hereunder until
8 CONTRACTOR demonstrates compliance with the requirements hereof;

9 b. Terminate this Master Agreement.

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

13 4. Subcontractors.

14 a. Nothing herein contained shall be construed as limiting in any way
15 the extent to which CONTRACTOR may be held responsible for payment of damages to persons
16 or property resulting from CONTRACTOR's, or CONTRACTOR's contractors/subcontractor's,
17 if any, performance of the Work covered under this Master Agreement.

18 b. In the event CONTRACTOR hires other persons or firms to
19 perform some of the Work related to this Master Agreement, CONTRACTOR shall ensure (i)
20 that the acts or omissions of such persons or firms are covered under the above-referenced
21 liability insurance, or (ii) that such firms maintain insurance equal to or better than and subject to
22 the same limits, terms and conditions as, the insurance required of CONTRACTOR under this
23 Master Agreement; and in either instance, CONTRACTOR shall provide, or cause to be
24 provided, evidence of such insurance coverage, reasonably acceptable to ANAHEIM.

25 **R. Required Bonds.** At the execution of this Master Agreement,
26 CONTRACTOR shall provide both a performance bond and a bond for payment for labor and
27 material to secure its performance of Work under this Master Agreement. CONTRACTOR shall
28 maintain these bonds for the entire Term of this Master Agreement. Each bond shall be written in

1 the principal amount of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00)
2 and in the form set forth in the Sample Faithful Performance Bond attached hereto as Appendix
3 B and Sample Labor and Material Bond attached hereto as Appendix C. However, should the
4 total value of all Work awarded to CONTRACTOR but not yet completed by CONTRACTOR
5 and accepted by ANAHEIM exceed \$150,000.00 at any time, CONTRACTOR agrees to
6 increase the principal amount of its bonds to an amount not less than the total value of
7 CONTRACTOR's outstanding Work Order Packages and/or Requests. CONTRACTOR shall
8 not commence any Work unless and until CONTRACTOR has complied with the foregoing.
9 This higher bond amount shall be maintained until one or more outstanding Work Orders
10 Packages or Requests have been completed and a corresponding portion of the bond has been
11 released by ANAHEIM. At that time the total principal amount of the bonds may be reduced to
12 the new total amount of all Work Orders or Requests then awarded but not yet completed and
13 accepted by ANAHEIM. Notwithstanding the above, in no event shall the principal amount of
14 each of the bonds be less than One Hundred and Fifty Thousand Dollars (\$150,000.00) at any
15 time during the Term of this Master Agreement, including any extensions. All bonds shall be
16 written with surety (i) authorized to do business in the State of California by the California
17 Department of Insurance, and (ii) listed on the most current version of the Department of
18 Treasury's Circular 570. Bonds shall be in the form set forth in Appendices B and C, attached
19 hereto, and any bond riders issued to increase or decrease the principal amount shall be on forms
20 acceptable to ANAHEIM. All signatures by principals and sureties on bonds and any bond riders
21 shall be notarized. ANAHEIM will not reimburse CONTRACTOR for the premium of the initial
22 principal bond amount of One Hundred and Fifty Thousand Dollars (\$150,000.00); however,
23 CONTRACTOR will be allowed to include a bond fee, in the cost of each Work Order or
24 Request, corresponding to the value of the awarded Work Order Package or Request.

25 **S. Breach of Agreement.** CONTRACTOR shall not be relieved of liability
26 to ANAHEIM for damages sustained by ANAHEIM by virtue of any breach of this Master
27 Agreement by CONTRACTOR, and ANAHEIM may withhold any payments to
28 CONTRACTOR for the purpose of set-off until the exact amount of damages due ANAHEIM

1 from CONTRACTOR is determined. In addition, ANAHEIM may pursue all remedies available
2 under law for breach of this Master Agreement. The waiver by either Party of any breach to this
3 Master Agreement shall not constitute a waiver as to any succeeding breach.

4 **T. Compliance with Laws.**

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

13 2. ANAHEIM's Representative may enter the jobsite to make reasonable
14 inspections to monitor compliance with the Laws and Practices and with the terms of this Master
15 Agreement. CONTRACTOR shall at all times maintain proper facilities and provide safe access
16 for inspection by ANAHEIM's Representative to all parts of the jobsite. When specifications in
17 a Work Order Package or Request require Work to be specially tested or approved, it shall not be
18 tested or approved without timely advance notice to ANAHEIM's Representative of its readiness
19 for testing and approval and without prior written consent by ANAHEIM's Representative.

20 3. If ANAHEIM's Representative identifies an occurrence of noncompliance
21 with Laws and Practices, he or she may inform CONTRACTOR's Representative of the
22 occurrence and require that CONTRACTOR's Representative promptly bring the jobsite into
23 compliance with Laws and Practices.

24 4. If ANAHEIM's Representative identifies a situation which, in the opinion
25 of the Representative, constitutes an immediate potential for bodily harm or significant property
26 damage, he or she may contact CONTRACTOR's Representative and recommend that Work be
27 stopped until the situation is rectified to the satisfaction of ANAHEIM's Representative.
28

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

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

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

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

16 9. CONTRACTOR certifies and agrees that all persons employed or
17 applying for employment by it, its affiliates, or holding companies, and all subcontractors,
18 bidders and vendors, are and will be treated equally by it without regard to, or because of race,
19 color, religion, sex, marital status, national origin or ancestry, pregnancy, childbirth or related
20 medical condition, medical condition (cancer related) in compliance with all anti-discrimination
21 laws and regulations of the United States, the State of California and ANAHEIM as they now
22 exist or may hereafter be amended.

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

26 **U. Labor Code.**

27 1. ANAHEIM and CONTRACTOR acknowledge that this Master
28 Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with

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

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

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

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

25 c. Pursuant to Labor Code Section 1776, CONTRACTOR and any
26 subcontractor shall keep accurate payroll records, showing the name, address, social security
27 number, work classification, straight time and overtime hours worked each day and week, and
28 the actual per diem wages paid to each journeyman, apprentice, worker, or other employee

1 employed by CONTRACTOR or any subcontractor in connection with this Master Agreement.
2 Each payroll record shall contain or be verified by a written declaration that it is made under
3 penalty of perjury, stating both of the following: (1) the information contained in the payroll
4 record is true and correct; and (2) the employer has complied with the requirements of Labor
5 Code Sections 1811 and 1815 for any work performed by its employees on any portion of the
6 Work. The payroll records enumerated under this Subpart shall be certified and shall be
7 available for inspection at all reasonable hours as required by Labor Code Section 1776.

8 d. This Master Agreement is further subject to 8-hour work day and
9 wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as
10 well as California nondiscrimination laws, as follows: CONTRACTOR shall strictly adhere to
11 the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime,
12 Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed,
13 color, national origin, ancestry, physical disability, mental disability, medical condition, marital
14 status, sex or sexual orientation, except as provided in Section 12940 of the Government Code.
15 Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's
16 work. Work performed by CONTRACTOR's employees in excess of eight hours per day, and 40
17 hours during any one week, must include compensation for all hours worked in excess of eight
18 hours per day, or 40 hours during any one week, at not less than one and one-half times the basic
19 rate of pay. CONTRACTOR shall forfeit as a penalty to ANAHEIM an amount of \$25.00 or any
20 greater penalty set forth in the Labor Code for each worker employed in the execution of the
21 Work by CONTRACTOR or by any subcontractor of CONTRACTOR, for each Calendar Day
22 during which such worker is required or permitted to Work more than eight (8) hours in one
23 Calendar Day or more than 40 hours in any one calendar week in violation of the provisions of
24 the Labor Code.

25 e. CONTRACTOR shall at all times comply with the express
26 requirements of Labor Code Sections 1725.5, 1771.1, 1771.4 and 1776, including but not limited
27 to the contractor and subcontractor registration and requirements related to certified payroll
28 records.

1 f. This Master Agreement is subject to Public Contract Code Section
2 6109: CONTRACTOR shall be prohibited from performing Work subject to this Master
3 Agreement with a subcontractor who is ineligible to perform the Work pursuant to Sections
4 1777.1 or 1777.7 of the Labor Code.

5 **V. Confidentiality.**

6 1. "Confidential Information" means, with respect to a Party hereto, all
7 information or material which either (1) is marked or identified as "Confidential," "Restricted,"
8 or "Proprietary Information" or other similar marking or identification, or (2) the other Party
9 knew, as recipient, or under the circumstances, should have known, was considered confidential
10 or proprietary by the Disclosing Party (as defined below). Confidential Information shall consist
11 of all information, whether in written, oral, electronic, or other form, furnished in connection
12 with this Agreement by the Disclosing Party or its Representatives ("Representative" is defined
13 as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor or
14 consultant of a Party or any of its subsidiaries or affiliates) to the Receiving Party (as defined
15 below) or to its Representatives, and specifically includes but is not limited to ANAHEIM's
16 individually identifiable customer information, and ANAHEIM's customer usage data and
17 financial data.

18 2. CONTRACTOR and ANAHEIM shall each hold the other's Confidential
19 Information in confidence. Neither Party shall make the other's Confidential Information
20 available in any form to any third party or use the other's Confidential Information for any
21 purpose other than as specified in this Agreement. The Party providing Confidential Information
22 ("Disclosing Party") to the other Party ("Receiving Party") shall remain the sole owner of such
23 information. Except as provided elsewhere within this Agreement, nothing contained in this
24 Agreement shall be construed as granting or conferring any right or license in any Confidential
25 Information or in any patents, copyrights, software or other technology, either expressly or by
26 implication to the Receiving Party, or to its Representatives or to others. The term Confidential
27 Information shall not include any of the following: (1) information already in possession of, or
28 already known to, the Receiving Party as of the Effective Date without an obligation of

1 confidentiality; (2) information in the public domain at the time of the disclosure, or which, after
2 such disclosure, enters into the public domain through no breach of this Agreement by the
3 Receiving Party or its Representative(s); (3) information lawfully furnished or disclosed to the
4 Receiving Party by a non-party to this Agreement without any obligation of confidentiality and
5 through no breach of this Agreement by the Receiving Party or its Representative(s); (4)
6 information independently developed by the Receiving Party without use of any Confidential
7 Information of the Disclosing Party; or (5) information authorized in writing by the Disclosing
8 Party to be released from the confidentiality obligations herein.

9 3. By virtue of this Agreement, each Party hereto may disclose to the other
10 Party information that is Confidential Information. This Agreement does not diminish, revoke or
11 supersede any existing confidentiality, non-disclosure or similar agreement between the Parties
12 that does not pertain to the subject matter of this Agreement. However, any Confidential
13 Information, whether or not previously disclosed, that pertains to the subject matter of this
14 Agreement shall be governed by the terms of this Section V, which shall supersede any such
15 previous agreement with respect to such Confidential Information and any Confidential
16 Information relating to the subject matter of this Agreement that was exchanged under such
17 previous agreement it shall be treated as though it was exchanged under this Agreement as of the
18 date of such exchange.

19 4. The Receiving Party will treat all Confidential Information of the
20 Disclosing Party, no matter written, electronic, or oral, as confidential and proprietary, and the
21 Receiving Party shall only use such information in furtherance of this Agreement. As such, the
22 Receiving Party shall hold in confidence the Confidential Information of the Disclosing Party,
23 and ensure that such Confidential Information is not disclosed to any other person or entity,
24 except as expressly permitted by this Agreement or as authorized in writing by the Disclosing
25 Party. Receiving Party shall not disclose Confidential Information of the Disclosing Party
26 received under this Agreement to any person other than its Representatives who require
27 knowledge of such Confidential Information in furtherance of this Agreement. The Receiving
28 Party shall inform its Representatives of the confidential nature of the Confidential Information

1 of the Disclosing Party and advise such Representatives of the limitations on the use and
2 disclosure and prohibition on making copies or summaries of such Confidential Information. The
3 Receiving Party shall be responsible for any breach of this Agreement by its Representatives.
4 Neither Party shall use the Confidential Information of the other Party for any commercial
5 purpose.

6 5. If the Receiving Party becomes legally compelled (by oral questions,
7 interrogatories, request for information or documents, subpoena, civil investigative demand, or
8 similar process) to disclose any Confidential Information of the Disclosing Party or is asked for
9 Confidential Information pursuant to the California Public Records Act or similar law, the
10 Receiving Party will provide the Disclosing Party with written notice of such an occurrence (if
11 so permitted) as soon as possible. Thereafter, at its sole costs and expense, the Disclosing Party
12 may seek a protective order or other appropriate remedy, or waive compliance with the
13 provisions of this Agreement. So long as it is consistent with applicable law, the Receiving Party
14 will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at
15 the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other
16 reliable assurance that confidential treatment will be accorded the Confidential Information. If
17 the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing
18 Party waives compliance with the requirements of the preceding sentence, the Receiving Party
19 will disclose only Confidential Information that it is legally required to disclose, and will
20 exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable
21 assurance that confidential treatment will be accorded the Confidential Information so disclosed.

22 6. In the event the Receiving Party discloses, disseminates or releases any
23 Confidential Information, except as expressly permitted by this Agreement, such disclosure,
24 dissemination or release will be deemed a material breach of this Agreement and the Disclosing
25 Party may demand prompt return of all Confidential Information previously provided to the
26 Receiving Party. As soon as the Receiving Party becomes aware that it has made an
27 unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all
28 necessary actions to recover the improperly disclosed Confidential Information and immediately

1 notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective
2 measures being taken. Each Party agrees that any breach of their confidentiality obligations
3 could cause irreparable harm to the other Party, the amount of which would be extremely
4 difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not
5 be a sufficient remedy for any material breach of this Agreement and that specific performance
6 and injunctive relief in addition to monetary damages shall be appropriate remedies for any
7 breach or any threat of such breach. The provisions of this Paragraph are in addition to any other
8 legal rights or remedies the Disclosing Party may have.

9 7. Within two (2) weeks of the termination of this Agreement,
10 CONTRACTOR will return to ANAHEIM or destroy, to the extent permitted by law, any and all
11 Confidential Information, including all originals, copies, translations, transcriptions or any other
12 form of material, without retaining any copy or duplicate thereof; provided that CONTRACTOR
13 may retain Confidential Information contained on backup media created in the ordinary course of
14 business provided further that there is no effort to access such Confidential Information and
15 CONTRACTOR's confidential obligations with respect to such information shall continue so
16 long as such information is retained. CONTRACTOR shall certify in writing the destruction of
17 the Confidential Information. ANAHEIM may perform an audit of CONTRACTOR's records to
18 confirm the return or destruction of the Confidential Information. ANAHEIM shall have this
19 audit right for three (3) years after the termination of this Agreement.

20 8. Notwithstanding the termination of this Agreement, this Confidentiality
21 Section shall survive the expiration or earlier termination of this Agreement.

22 23 **PART IV - GENERAL PROVISIONS**

24 **A. Notification.**

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

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

4
5 ANAHEIM: City of Anaheim
6 Attention: City Clerk
7 200 S. Anaheim Boulevard, Suite 217
8 Anaheim, CA 92805
Telephone: (714) 765-5166
Facsimile: (714) 765-4105

9 WITH COPIES TO: City of Anaheim
10 Attention: Public Utilities General Manager
11 201 South Anaheim Boulevard, Suite 1101
12 Anaheim, CA 92805
Telephone: (714) 765-4157
Facsimile: (714) 765-4138

13 AND

14 City of Anaheim
15 Attention: Director of Public Works
16 200 South Anaheim Boulevard, Suite 276
Anaheim, CA 92805
Telephone: (714) 765-5700
Facsimile: (714) 765-5225

17 CONTRACTOR: Big Ben, Inc.
18 4790 Irvine Blvd. #105-404
19 Irvine, California 92620
20 Attention: Sep Sharifi
Telephone: (949) 400-1800
Facsimile: (949) 333-3672

21 2. Upon written notice to each Party concerned, served by means
22 provided in the above paragraph, either Party may change the above addresses. The General
23 Manager is authorized to give the notices required herein to be given on behalf of ANAHEIM.

24 **B. Independent Contractor.**

25 1. The performance of CONTRACTOR's Work hereunder shall be in the capacity
26 of an independent contractor and not as an officer, agent, or employee of ANAHEIM. In
27 consideration for the compensation paid to CONTRACTOR by ANAHEIM, CONTRACTOR
28 agrees that ANAHEIM shall not be liable or responsible for any benefits, including, but not

1 limited to, worker's compensation, disability, retirement, life, unemployment, health or any other
2 benefits and CONTRACTOR agrees that it shall not sue or file a claim, petition or application
3 therefor against ANAHEIM or any of its officers, employees, agents, representatives, or sureties.

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

10 **C. Successors and Assigns.** All of the terms, conditions and provisions
11 hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective
12 successors and assigns, provided, however, that no assignment of this Master Agreement shall be
13 made without the prior written consent of the Parties to this Master Agreement, which consent
14 shall not be unreasonably withheld.

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

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

24 **F. Complete Agreement.** This Master Agreement constitutes the
25 complete and entire agreement between the Parties and supersedes any previous
26 communications, representations or agreements, whether oral or written, with respect to the
27 subject matter hereof. There are no additions to, or deletions from, or changes in any of the
28 provisions hereof, and no understandings, representations or agreements concerning any of the

1 same, which are not expressed herein, unless stated below. No modification or revision shall be
2 of any force or effect, unless the same is in writing and executed by the Parties hereto. THE
3 PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING
4 OR COURSE OF PERFORMANCE UNDER THIS MASTER AGREEMENT SHALL BE A
5 PART OF THIS MASTER AGREEMENT OR SHALL BE USED IN THE
6 INTERPRETATION OR CONSTRUCTION OF THIS MASTER AGREEMENT. ANAHEIM
7 has provided the following Appendices to CONTRACTOR, which are incorporated herein by
8 this reference:

9 Appendix A - Estoppel Certificate

10 Appendix B - Sample Faithful Performance Bond

11 Appendix C - Sample Labor and Material Bond

12 Appendix D - Equipment Specifications

13 Appendix E - Instrumentation and Electrical Specifications

14 Appendix F - Civil Work Specifications

15 Appendix G - Mechanical Specifications

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

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

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

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

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

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

15
16
17 **[SIGNATURES ON FOLLOWING PAGE]**
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EXHIBIT A

GENERAL SCOPE OF WORK

[ATTACHED BEHIND THIS PAGE]

EXHIBIT A
GENERAL SCOPE OF WORK

PART A: CONSTRUCTION, MAINTENANCE SERVICES

The City of Anaheim ("ANAHEIM") requires the services of CONTRACTOR, on an as-needed basis, for the construction, maintenance, repair, abandonment, relocation and immediate response services ("WORK") in connection with its water production, transmission, and distribution systems ("Water System"). Except for Immediate Response Services, which are defined and addressed below in Part B, typical WORK will include, but not be limited to, the following:

1. Work Order Categories

- a. **WORK ORDER CATEGORY NO. 1 (Water System Components)** WORK will consist of, abandoning, repairing, relocating, extending, replacing, and installing water infrastructure system components, including, but not limited to vaults, valves, meter vaults, meter vault lids, conduits, substructures, welding, inspecting and evaluating damages and restoring service to water distribution, production, and/or communication facilities, and other water facilities as needed. WORK may further consist of earthwork, excavation, trenching, backfilling, landscaping, and slope maintenance as needed.
- b. **WORK ORDER CATEGORY NO. 2 (Transmission & Distribution Pipelines)** WORK will consist of, abandoning, repairing, relocating, extending, replacing, and installing water infrastructure system components, including, but not limited, water mains at any depth and associated appurtenances including, but not limited to, fire hydrants, large services (3" and above), small services (below 3"), linestops, valves, conduits, substructures, welding, inspecting and evaluating damages and restoring service to water distribution, production, and/or communication facilities, and other water facilities as needed. WORK may further consist of earthwork, excavation, trenching, backfilling, landscaping, and slope maintenance as needed.

c. **WORK ORDER CATEGORY NO. 3 (Motors & Pumps) –**

- WORK will consist of, but not be limited to pulling, inspecting, testing, dismantling, rewinding, cleaning, repairing, overhauling, replacing parts, balancing, reassembling, resistance testing, performing running tests, painting, replacing, and installing (i) horizontal and vertical induction motors for municipal Water System pumps, (ii) split-case horizontal, end-suction, axial and mixed flow, and vertical turbine centrifugal pumps, and (iii) diesel engine pumps for ANAHEIM water supply booster stations, deep wells, and treatment plants.
- All WORK shall be done in accordance with Model Repair Specifications for Low Voltage Induction Motors, latest edition, including all supplements, as written and promulgated by the U.S. Department of Energy's Office of Industrial Technologies (OIT). Copies of the Model Repair Specifications for Low Voltage Induction Motors specifications may be obtained from Office of Industrial Technologies Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, D.C. 20585, telephone (800) 862-2086.

d. **WORK ORDER CATEGORY NO. 4 (Electrical & Instrumentation) –**

- WORK will consist of, but not be limited to, repairing, replacing, and installing medium and low voltage electrical conduits, cables and conductors, motor control center components, electrical panel lineups, plant wiring, Supervisory Control and Data Acquisition (SCADA) system components, instrumentation, communication system components, security cameras, door/gate access controls, and main control panels for ANAHEIM Water System.
- WORK will include, but not be limited to, trenching for conduits; constructing concrete pads for meter pedestals, junction boxes, cabinets, and panels; wiring terminations; primary and secondary conductor installations; replacing and installing conduits; pulling wires; meter and panel installations; pump motor starter installations and pump wiring hook ups; circuit breaker repairs, replacements, and installations; transformer repairs, replacements, and

installations; troubleshooting and repairing failed and tripped circuits; bringing power to remote valves, pumps, water pressure regulating stations, wells, water storage tanks, water reservoirs, water pump stations, and other water facilities; electrical panel lineups repairs, replacements, and installations; troubleshooting and testing damaged system components; repairing and replacing communication and power conduit and wiring; repairing, replacing, and calibrating instrumentation equipment such as, pressure transmitters, flow transmitters, vibration transmitters, level transmitters, alarm switches, solenoid valves, limit switches, pilot systems, analyzers, valve actuators, and etc.; replacing control panels; installing variable frequency drives and solid state reduced voltage (soft) starters and associated components; installing and mounting equipment hardware in new and existing systems and panels such as, programmable logic controllers (PLCs), human-machine interfaces (HMIs), radios and antennas, uninterrupted power supplies (UPSs), servers and desktop personal computers (PCs), networking equipment and switches, alarm devices, sensors, closed circuit television and surveillance cameras, and meters; and performing final wire and communication terminations, testing and start-up of systems; and other related work.

e. **WORK ORDER CATEGORY NO. 5 (Welding)** –

- WORK will consist of, but not be limited to, the welding for repair of water transmission mains, distribution mains, vault hatches/covers and other Water System components as needed.

2. Conditions Common to All Work Order Categories

- a. WORK will also include, but not be limited to, setting up traffic control, excavating within the limits specified on the plans or as directed by the Engineer, potholing existing underground water facilities, utilities, conduits and/or substructures, coordinating the surveying of the construction staking, and backfilling, compacting, and replacing pavement or concrete within the limits specified.

- b. CONTRACTOR shall provide traffic control per the current Manual on Uniform Traffic Control Devices, subject to modifications by ANAHEIM's Public Works Construction Services Division and Traffic & Transportation Services as needed to accommodate field conditions. CONTRACTOR shall submit a traffic control plan at least fourteen (14) days prior to the start of construction to ensure approval by Construction Services Division and Traffic & Transportation Services. CONTRACTOR shall set up required traffic control, and access shall comply with Section 7-10 of the latest edition of the "Standard Specifications for Public Works Construction" at the time of the Work Order Package, and any supplements (collectively, "Standard Specifications").
- c. CONTRACTOR shall provide shoring or bracing per Subsection 306-1.1.6 of the Standard Specifications and shall meet all Cal OSHA requirements. Trench excavations shall be closed by backfill or steel traffic plating at the close of the WORK period during the construction stage, depending upon the location of the trench, traffic conditions, and the total non-working hours the trench would be left open. If a trench must remain open, steel plates of adequate thickness to support traffic may be placed over the excavations. All other open excavations shall be protected from pedestrian and vehicular traffic and all public access by fencing or other effective means in a manner approved by the Engineer. CONTRACTOR shall provide temporary chain link fencing at least 6 feet (1.8 meters) high along all open excavations not attended by its personnel.
- d. CONTRACTOR shall notify Underground Service Alert at least 48 hours in advance of potholing and make arrangements for the existing utilities to be marked by the affected utility companies.
- e. CONTRACTOR shall provide all labor (except survey services), materials, tools, equipment and permits required to complete the WORK as per the Work Order Package or Immediate Response Services Request ("REQUEST").

- f. CONTRACTOR is responsible for protecting in place all existing substructures and utilities (e.g., electrical, telephone ducts and cables, water, sewer, storm drain, gas, oil, fiber optic ducts and cable, irrigation lines, laterals, and manholes). CONTRACTOR shall, at its own expense, repair, replace or restore to the satisfaction of the Engineer, all property of any type or nature which has been moved, damaged or altered in any way by its operations.
- g. Upon completion of the excavation, trenching, backfilling and compaction operation the CONTRACTOR shall restore to their original condition all pavements, sidewalks, curbs, gutters to the nearest joint, landscaping, fencing, irrigation, striping, traffic loops, pavement legends, raised pavement markers and roadway signs within the limits of the WORK.
- h. CONTRACTOR shall maintain safe construction work areas in accordance with local, State and Federal laws, orders and regulations.
- i. CONTRACTOR shall pay for all testing, except soil density and concrete cylinders, required as part of the WORK, and also arrange for and perform all testing in the presence of the "Water Utilities Inspector" designated by ANAHEIM.
- j. CONTRACTOR shall coordinate with the Water Utilities Inspector to arrange for Water System shut downs, tie-ins, and activations.
- k. The CONTRACTOR agrees that it is solely and completely responsible for job site conditions during the course of construction of the Project, including safety of all persons and property, that this requirement shall apply continuously, and that the CONTRACTOR shall defend, indemnify and hold harmless ANAHEIM and its officials, agents, employees and representatives from any and all liability, claims and damages, real and alleged, in connection with the performance of WORK,

excepting any liability arising from the sole negligence or willful misconduct of ANAHEIM.

- l. Materials shall be furnished by ANAHEIM and/or CONTRACTOR for completion of WORK as specified in Work Order Packages prepared by the Water Engineering Division. All WORK shall be planned, executed, and completed in accordance with the Work Order Package; Work Order Drawings; ANAHEIM's Water Services Standard Specifications and applicable Special Provisions; latest edition of the Standard Specifications adopted by ANAHEIM at the time the Work Order Package is issued; the Standard Specifications Supplement and the Appendices included in Volume II of the Master Construction Agreement Proposal Package.
- m. CONTRACTOR shall operate in and around active or energized equipment and shall therefore conduct itself in accordance with all applicable federal, state, and local laws, orders and regulations. CONTRACTOR shall follow ANAHEIM's Water Services Standard Specifications and applicable Special Provisions in the testing and activation of new and existing Water System components. Required System Outages shall be scheduled with and approved by ANAHEIM through the Water Utilities Inspector five (5) working days before the required date. The requirements for installing water facilities to complete the WORK shall be described in the individual Work Order Package and REQUEST.

PART B: IMMEDIATE RESPONSE SERVICES

ANAHEIM also requires the services of CONTRACTOR, on an as-needed basis, to provide expedited or emergency WORK in the form of "Immediate Response Services," which are defined by ANAHEIM to mean reporting to a job site with required resources within two (2) hours of telephone notification. Immediate Response Services WORK can be from any of the Work Order Categories described above and may include, but not be limited to, the following:

1. Inspect and evaluate damages and restore service to water distribution, production, and/or communication facilities.
2. Repair and/or replace water mains, valves, fire hydrants, services, meters, line stops, vaults, sampling stations, conduits, and substructures.
3. Weld water mains, vault hatches/covers, etc.
4. Clean up environmental/hazardous spills and by-products of combustion and/or disinfection.
5. Repair and/or replace water well, booster station, and treatment plant equipment, including but not limited to pumps, electric motors, diesel engine pumps, motor control center components, electrical panel lineups, wiring, control panel components, etc.
6. Repair and/or replace other ANAHEIM incidental utilities such as electric, sewer, storm drain, etc.
7. Repair and/or replace associated curb, gutter, sidewalk, roadway, drive approaches, etc.
8. Repair and/or replace communication, telecommunications, and SCADA facilities.
9. Earthwork, excavation, trenching, backfilling, landscaping, and slope maintenance as needed.

Materials shall be furnished by CONTRACTOR for completion of WORK. All WORK shall be planned, executed, and completed in accordance with the REQUEST; REQUEST DRAWINGS; ANAHEIM's Water Services Standard Specifications and applicable Special Provisions; latest edition of the Standard Specifications adopted by ANAHEIM at the time the REQUEST is issued; the Standard Specifications Supplement and the Appendices included in Volume II of the Master Construction Agreement Proposal Package.

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

3
4 CITY OF ANAHEIM
a municipal corporation

5
6 DATE: 9/14/2022

7 By: [Signature]
Dukku Lee,
Public Utilities General Manager

8
9
10 DATE: 9/19/2022

11 ATTEST
12 By: [Signature]
Theresa Bass, City Clerk



13
14
15 DATE: 06/20/2022

16 BIG BEN, INC.,
a California corporation
17 By: [Signature]
Sep Sharifi
President

18 "CONTRACTOR"

19 APPROVED AS TO FORM:
ROBERT FABELA, CITY ATTORNEY

20
21 By: [Signature]
Daniel J. Payne
Deputy City Attorney

22
23
24 CAO#146009

Executed in Triplicate

Bond Number: 4457962
Premium : \$2,040.00

Premium is for contract term and subject to adjustment based on the final contract term.

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City of Anaheim, a municipal corporation of the State of California in the County of Orange, has entered into with Big Ben, Inc., a California corporation, License No. 774444 (hereinafter called "Principal") the **2022 Five-Year Anaheim Public Utilities "CITY OF ANAHEIM MASTER CONSTRUCTION AGREEMENT – WATER"** approved by the Anaheim City Council on or around July 2022, which said contract is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract.

NOW, THEREFORE, we, Big Ben, Inc., a California corporation, as Principal, and Markel Insurance Company as Surety, are held and firmly bound unto the City of Anaheim, a municipal corporation (hereinafter called "City"), in the penal sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)**, lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that, if the above bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and provisions in the said contract and any alteration thereof made as therein provided, on his, her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

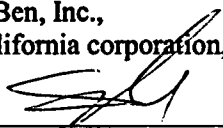
As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed hereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

Big Ben, Inc.,
a California corporation,

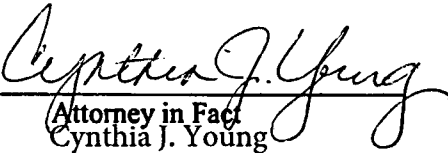
By:  Sepehr Sharifi

Dated: 08/18/2022

By: _____

Dated: July 11, 2022

SURETY

By:  Attorney in Fact
Cynthia J. Young

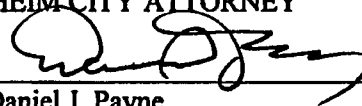
Dated: 7/11/2022

CORPORATE ADDRESS OF SURETY:

Markel Insurance Company
4521 Highwood Pkwy
Glen Allen, VA 23060

APPROVED AS TO FORM:

ROBERT FABELA
ANAHEIM CITY ATTORNEY

By:  Daniel J. Payne
Deputy City Attorney

Dated: 10/6/22

Please Note: Except for City Attorney signature, all signatures must be notarized.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

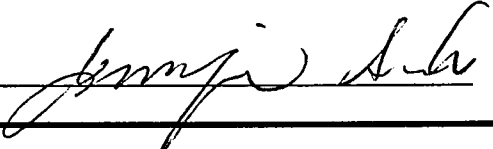
State of California
County of Orange

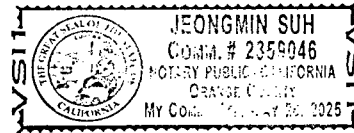
On August 18, 2022 before me, Jeongmin Suh, Notary Public,
(insert name and title of the officer)

personally appeared Sepehr A. Sharifi,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

ss.

On JUL 11 2022 before me, Rebecca Elizabeth Adcock, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Cynthia J. Young
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rebecca Elizabeth Adcock
Signature of Notary Public



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual

☐ Corporate Officer

Title _____

☐ Partner -- ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

Other: _____

RT THUMBPRINT
OF SIGNER

Top of thumb here

Signer is Representing: _____

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE N° 07500
SAN FRANCISCO

Amended
Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,

Markel Insurance Company

of Deerfield, Illinois, organized under the
laws of Illinois, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within the State, subject to
all provisions of this Certificate, the following classes of insurance: Fire, Marine,
Surety, Disability, Plate Glass, Liability, Workers' Compensation,
Common Carrier Liability, Boiler and Machinery, Burglary, Credit,
Sprinkler, Team and Vehicle, Automobile, and Miscellaneous,
as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made
under authority of the laws of the State of California as long as such laws or requirements are in effect
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 16th
day of January, 2002, I have hereunto
set my hand and caused my official seal to be affixed this
16th day of January, 2002.



By

Harry W. Low
Insurance Commissioner

Victoria S. Sidbury
Deputy

NOTICE:

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Jay P. Freeman, Cynthia J. Young, Laurie B. Druck, Christina Mountz, Melissa D. Schwartz

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000 00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

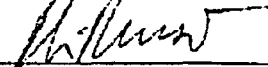
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 08 day of August, 2020.

SureTec Insurance Company

By: 
Michael C. Keimig, President



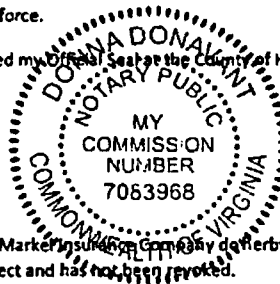
Markel Insurance Company

By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 08 day of August, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individual's and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official Seal at the County of Henrico, the day and year first above written.



By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

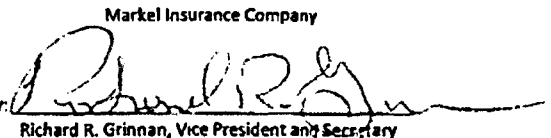
IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 11th day of July, 2022.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary



Markel Insurance Company

By: 
Richard R. Grinnan, Vice President and Secretary

Executed in Triplicate

Bond Number: 4457962
Premium included in charge
for Performance Bond

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City of Anaheim, a municipal corporation of the State of California in the County of Orange, has entered into with Big Ben, Inc., a California corporation, License No. 774444 (hereinafter called "Principal") the **2022 Five-Year Anaheim Public Utilities "CITY OF ANAHEIM MASTER CONSTRUCTION AGREEMENT – WATER"** approved by the Anaheim City Council on or around July 2022, which said contract is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said agreement, Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Anaheim to secure the claims to which reference is made in Part 6 of Division 4 of the Civil Code of the State of California (commencing with Section 8000).

NOW, THEREFORE, said Principal and the undersigned as corporate Surety are held firmly bound unto the City of Anaheim and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in Part 6 of Division 4 of the Civil Code of the State of California (commencing with Section 8000) in the sum of **One Hundred Fifty Thousand Dollars (\$150,000.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Part 6 of Division 4 of the Civil Code of the State of California (commencing with Section 8000), so as to give a right of action to them or their assigns in any suit brought upon this bond.

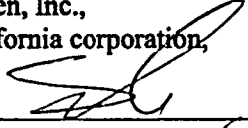
Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

Big Ben, Inc.,
a California corporation,

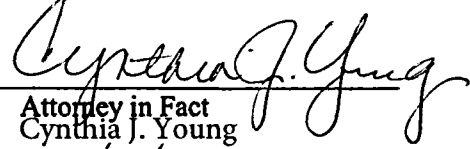
By:  Sepetir Sharifi

Dated: 08/18/2022

By: _____

Dated: July 11, 2022

SURETY

By: 
Attorney in Fact
Cynthia J. Young

Dated: 7/11/2022

CORPORATE ADDRESS OF SURETY:

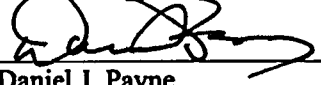
Markel Insurance Company

4521 Highwood Pkwy.

Glen Allen, VA 23060

APPROVED AS TO FORM:

ROBERT FABELA
ANAHEIM CITY ATTORNEY

By: 
Daniel J. Payne
Deputy City Attorney

Dated: 10/6/22

Please Note: Except for City Attorney signature, all signatures must be notarized.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On August 18, 2022 before me, Jeongmin Suh, Notary Public,
(insert name and title of the officer)

personally appeared Sepehr A. Sharifi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

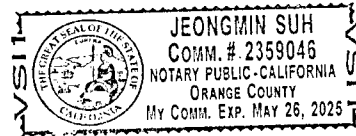
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jeongmin Suh

(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

SS.

On JUL 11 2022 before me, Rebecca Elizabeth Adcock, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Cynthia J. Young

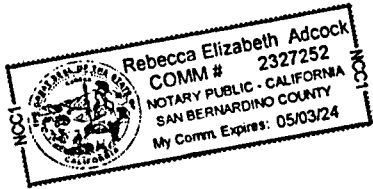
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rebecca Elizabeth Adcock
Signature of Notary Public



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
Other: _____

RT THUMBPRINT
OF SIGNER

Top of thumb here

Signer is Representing: _____

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE NO 07500
SAN FRANCISCO

Amended
Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,

Markel Insurance Company

of Deerfield, Illinois , organized under the
laws of Illinois , subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within the State, subject to
all provisions of this Certificate, the following classes of insurance: Fire, Marine,
Surety, Disability, Plate Glass, Liability, Workers' Compensation,
Common Carrier Liability, Boiler and Machinery, Burglary, Credit,
Sprinkler, Team and Vehicle, Automobile, and Miscellaneous ,
as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made
under authority of the laws of the State of California as long as such laws or requirements are in effect
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 16th
day of January , 2002 , I have hereunto
set my hand and caused my official seal to be affixed this
 16th day of January , 2002 .



By

Harry W. Low
Insurance Commissioner

Victoria S. Sidbury
Deputy

NOTICE:

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Jay P. Freeman, Cynthia J. Young, Laurie B. Druck, Christina Mountz, Melissa D. Schwartz

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000 00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 08 day of August 2020 .

SureTec Insurance Company

By: Michael C. Keimig
Michael C. Keimig, President



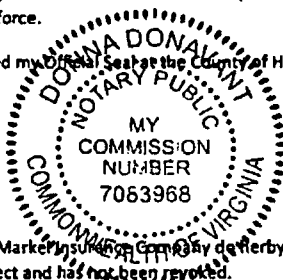
Markel Insurance Company

By: Rubin Russo
Rubin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 08 day of August 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.



By: Donna Donavant
Donna Donavant, Notary Public
My commission expires 1/31/2023

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 11th day of July 2022 .

SureTec Insurance Company

By: M. Brent Beatty
M. Brent Beatty, Assistant Secretary



Markel Insurance Company

By: Richard R. Grinnan
Richard R. Grinnan, Vice President and Secretary



CITY COUNCIL AGENDA REPORT

City of Anaheim DEPARTMENT OF PUBLIC WORKS

DATE: AUGUST 9, 2022

FROM: PUBLIC WORKS AND PUBLIC UTILITIES DEPARTMENTS

**SUBJECT: APPROVAL OF MASTER AGREEMENT FOR WATER
CONSTRUCTION, MAINTENANCE, REPAIR, AND IMMEDIATE
RESPONSE PROJECTS**

ATTACHMENT (Y/N): YES

ITEM # 12

RECOMMENDATION:

That City Council, by Motion:

- 1) Determine that the projects to be performed under the attached Master Agreement shall be categorically exempt under the California Environmental Quality Act (CEQA), Sections 15301, 15302, 15303, and/or 15304 of Title 14 of the California Code of Regulations;
- 2) Approve the Master Agreement for water construction, maintenance, repair, and immediate response projects (Master Agreement) for a five year term, with an optional 12 month extension to complete outstanding work order packages or requests, between the City of Anaheim (City) and contractors pre-qualified by the City, and approve a not-to-exceed award amount of \$500,000 per work order package, with a limit per contractor of \$3 million in total awards during each fiscal year of the Agreement term, plus change order authorization in an amount not-to-exceed \$50,000 per occurrence, with total change orders per work order not-to-exceed \$100,000;
- 3) Authorize and direct the Public Utilities General Manager or designee, on behalf of the City, to execute the Master Agreement with Arnaz Engineering Contractors, Inc.; Big Ben, Inc.; Ferreira Coastal Construction Co., Inc.; General Pump Company, Inc.; J. De Sigio Construction, Inc.; J.A. Salazar Construction and Supply Corporation, Inc.; J.R. Filanc Construction Company, Inc.; Mike Bubalo Construction Co., Inc.; Paulus Engineering, Inc.; Stephen Doreck Equipment Rentals, Inc.; T.E. Roberts, Inc.; W.A. Rasic Construction Company, Inc.; and such other contractors pre-qualified by the City in the future during the term of the Master Agreement;
- 4) Authorize the Public Utilities General Manager or designee, on behalf of the City, to take any and all actions as are necessary or advisable to implement and administer the Master Agreement; and

- 5) Authorize de minimis changes that do not substantially change the terms and conditions of the Master Agreement, as determined by the City Attorney.

DISCUSSION:

At its meeting on June 22, 2022, the Public Utilities Board (PUB) recommended that City Council approve these actions.

Since 2004, Public Works and Anaheim Public Utilities (APU) have collaborated on the development of a Master Agreement process to accelerate public contracting awards for water utility infrastructure projects. By pre-qualifying contractors on three-year terms and establishing standard Master Agreements with general terms and conditions, contractors are able to efficiently provide competitive bids for specific scopes of work on small water construction or maintenance projects that serve to improve reliability to Anaheim customers. The bidding process is conducted in accordance with Section 1211 of the Charter of the City of Anaheim and utilizes the City's online bidding system. The proposed Master Agreement will replace the current agreements that were approved by City Council on September 10, 2019, and will expire in September 2027.

APU utilizes outside contractors to supplement internal staff in order to (1) perform small water capital improvement projects in a timely fashion, and (2) establish access to contractors with specialized equipment for immediate response should an emergency event occur. The Master Agreement also optimizes staffing levels by accommodating fluctuations in workload through external contractors rather than relying solely on internal crews. Work to be performed under the Master Agreement may include as-needed construction of water mains, services, and valves, as well as repair, rehabilitation, or maintenance of groundwater wells, pump stations, and water treatment plant equipment.

A Request for Bids was advertised through the City's online bidding platform on April 21, 2022. The solicitation established minimum qualifications required by the City to perform construction of water facilities and pipelines. The City received 12 proposals, and City staff reviewed each proposal for qualifications and reasonableness of fees. Staff recommends that City Council award Master Agreements to the following 12 proposers:

- | | |
|--|--|
| 1. Arnaz Engineering Contractors, Inc.
Anaheim, CA
License No. 755332 | 2. Big Ben, Inc.
Irvine, CA
License No. 774444 |
| 3. Ferreira Coastal Construction Co., Inc.
Rancho Cucamonga, CA
License No. 985180 | 4. General Pump Company, Inc.
San Dimas, CA
License No. 496765 |
| 5. J. De Sigio Construction, Inc.
Baldwin Park, CA
License No. 737593 | 6. J.A. Salazar Construction and Supply
Corporation, Inc.
La Habra, CA
License No. 743587 |

- | | |
|--|---|
| 7. J.R. Filanc Construction Company, Inc.
Escondido, CA
License No. 134877 | 8. Mike Bubalo Construction Co., Inc.
Baldwin Park, CA
License No. 771279 |
| 9. Paulus Engineering, Inc.
Anaheim, CA
License No. 724114 | 10. Stephen Doreck Equipment Rentals, Inc.
Pico Rivera, CA
License No. 665471 |
| 11. T.E. Roberts, Inc.
Irvine, CA
License No. 603008 | 12. W.A. Rasic Construction Company, Inc.
Long Beach, CA
License No. 368761 |

When APU staff determines that work cannot be accommodated by field crews, work order packages are prepared for bidding. The Master Agreement contractors are invited to compete, via an on-line bid process, to perform the work. The value of each work order package is limited to \$500,000, which has been established as the threshold for small water construction or maintenance projects. One change has been made to the Master Agreement to increase the individual change order authority from \$10,000 to \$50,000 per occurrence, while still retaining the overall change order authority not-to-exceed \$100,000. This is to reflect increasing costs for labor, supplies, and equipment on projects.

Ensuring Proper Controls

The Department has implemented a number of measures to ensure transparency in the way the Master Agreement work packages are advertised, awarded, and managed. These include:

- A provision which limits the cumulative annual award amount to \$3,000,000 per contractor to encourage competition among qualified contractors.
- All work packages are advertised through the City's online system. This allows electronic notifications, bid downloads and submittals, online access to the bid documents, and closes bidding for all contractors at the same time. This automated means of bidding eliminates the need for city staff's involvement in tallying bid submittals as bid results are immediately posted electronically.
- The Department provides a quarterly report to the Public Utilities Board (PUB) that includes details on all Master Agreement work package awards. The PUB has the opportunity to review and inquire about any of the Department's Master Agreement awards. The information is accessible by the public on the City's Board and Commissions webpage.
- To ensure that the Master Agreement work packages are within the budgetary constraints, the Department has internal controls in place so project managers are required to obtain management authorization prior to issuing any work package for bidding.
- A review of contractors' insurance and bonding is conducted prior to each award to ensure that they are in compliance with the terms of the Master Agreement.

These Master Agreement contracts will remain in effect through September 30, 2027, and the authorization includes a provision to add other contractors that meet all requirements in order to increase competition from qualified firms. Expenditures are subject to the Council-approved budget for APU.

ENVIRONMENTAL DETERMINATION:

Since the projects to be carried out under the Master Agreement will typically consist of replacements, repairs, maintenance, or small additions and alterations, they will fall into one or more of the following CEQA Categorical Exemptions: Section 15301, Section 15302, Section 15303, and/or Section 15304 of Title 14 of the California Code of Regulations.

IMPACT ON BUDGET:

There is no budgetary impact as a result of pre-qualifying the contractors in the Master Agreement. Projects ultimately awarded to a contractor through the Master Agreement will be supported by funds included in Public Utilities FY22/23 Water Utility budget, and funds for subsequent years are subject to City Council approval.

Respectfully submitted,

Concurred by,

Rudy Emami
Director of Public Works

Dukku Lee
Public Utilities General Manager

Attachments:

1. Exhibit A for Each Contractor
2. Master Construction Agreement

EXHIBIT A

Project:

Master Agreement for Water System Construction, Repair, Maintenance and Immediate Response includes work such as construction, maintenance, repair, relocation, inspection and immediate response services in connection with Anaheim's water production, transmission, and distribution system.

MASTER AGREEMENT CONTRACTOR:

Big Ben, Inc.
4790 Irvine Blvd. #105-404
Irvine, CA 92620
(949) 400-1800
Contact: Sep Sharifi

PUBLICATION DATES:

4/21/22, 4/28/22 & 5/5/22

BID OPENING DATE:

May 12, 2022

PREVAILING WAGE RATE RESOLUTION NO:

98R-94

AWARD DATE:

August 9, 2022

CONTRACT PRICE:

Per individual work order packages

CONTRACT COMPLETION DAYS:

Per individual work order packages

LIQUIDATED DAMAGES:

Assigned per work order packages or One Thousand (\$1,000) per calendar day as liquidated and actual damages for the delay, whichever is greater.