

**CITY OF FULLERTON
MAINTENANCE SERVICES AGREEMENT
WITH
BIG BEN, INC.**

THIS MAINTENANCE SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2026, by and between the City of Fullerton, a California municipal corporation ("City"), and Big Ben, Inc; a California Corporation ("Contractor").

RECITALS

A. City proposes to utilize the services of Contractor as an independent Contractor to provide as needed repairs to the City's underground utilities, as more fully described herein.

B. Pursuant to the City's purchasing and procurement policies, Administrative Policy No. 4.1.2., the City can "piggy-back" and award a contract or agreement off another public agency's competitive bid utilizing that agency's same terms and conditions.

C. The City of Anaheim released a Request for Proposal (RFP) for water system construction, maintenance, repair, and immediate response services on April, 2022, in which Big Ben, Inc. won the bid and was awarded the Agreement on August 9, 2022.

D. The City seeks to "piggy-back" off the City of Anaheim's Master Agreement with Big Ben, Inc. (Contractor) and enter into a Maintenance Services Agreement with Contractor, conforming to Anaheim's agreement's scope of services, terms and conditions.

E. Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services.

F. City and Contractor desire to contract for the services and desire to set forth their rights, duties and liabilities in connection with the performance of such services.

G. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONTRACTOR

1.1. Scope of Services. Therefore, Contractor shall perform all services described in Contractor's response to City of Anaheim's Request for Proposal (the "Proposal") attached hereto as Exhibit "A," both incorporated herein by this reference (the "Services"). Services provided by the Contractor are within the terms and conditions and general services described in the City of Anaheim's Master Agreement with Big Ben, Inc. incorporated herein and attached hereto as Exhibit "B". Any section of the contract that specifies "City" will conform to the latest Fullerton standards. The City may reduce and/or increase the levels of service and corresponding payment upon written notice to Contractor.

1.2. Performance to Satisfaction of City. Contractor agrees to perform all the work to

the complete satisfaction of City and within the hereinafter specified. Evaluations of the work will be done by City's Public Works Director or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Require the Contractor to review the quality of the work and resolve the matters of concern within two hours' of notification;
- (b) Have the work performed by an alternate source at Contractor's expense;
- (c) Issue a five percent (5%) deduction of the base monthly cost per occurrence for the specified jobsite, per day, until the deficiency is corrected;
- (d) Terminate the Agreement as hereinafter set forth.

1.3. Compliance with Applicable Law. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable federal and state employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other applicable federal, state and local laws and ordinances. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.5. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other Contractors for services similar to the Services in this Agreement or may have its own employees perform services similar to those Services contemplated by this Agreement.

1.6. Delegation and Assignment. Contractor may not delegate or assign this Agreement, in whole or in part, to any person or entity without the prior written consent of City. Contractor may engage a subContractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Contractor shall be compensated in accordance with the City of Anaheim's Master Agreement's "*Terms of Agreement*", "*Item C. Compensation and Payment*."

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Contractor shall perform all services

under this Agreement in a timely, regular basis consistent with industry standards for professional skill and care, and in accordance with any schedule of performance set forth in the Scope of Services. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement is made pursuant and contingent to the City of Anaheim's Master Agreement with Big Ben, Inc., attached hereto as Exhibit "B", specified under section "Part III – Terms of Agreement, Item A, Term of Agreement".

5.0. INSURANCE

5.1. Insurance Required. Contractor shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with products, materials or services supplied to the City. Contractor shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained within the purchase order agreement or the extent to which Contractor may be held responsible for payments of damages to persons or property.

5.2. Minimum Scope and Limits of Insurance.

- A. Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.
- B. Business Automobile Liability Insurance. Contractor shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$2,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- C. Workers' Compensation and Employers' Liability Insurance. Contractor shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
- D. Contractors' Pollution Legal Liability, and/or Asbestos Legal Liability, and/or Errors & Omissions (if project involves environmental hazards): CONTRACTOR shall maintain project specific pollution or asbestos pollution liability insurance with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 policy aggregate. If

the coverage provided applies to asbestos related losses, the policy shall be endorsed to cover losses caused by either work performed or by any occurrence. Completed operations shall not be limited. If the services involve lead-based paint or asbestos identification/remediation, CONTRACTOR'S pollution liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, CONTRACTOR'S pollution liability policy shall not contain a mold exclusion and the definition of pollution shall include microbial matter, including mold.

5.3. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the City.

5.4. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

- A. The City, its elected and appointed officials, officers, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work or operations; or with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code §2782(b). The coverage shall contain no special limitations on the scope of its protection afforded to the City, its officers, employees, and volunteers. (Note: In lieu of a Commercial General Liability policy with this endorsement, the Contractor may supply a separate owner's policy.)
- B. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage as broad as ISO CG 20 01 04 13 as respects the City, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought, or a claim is made. Any insurance or self-insurance maintained by the City, its officers, employees, and volunteers shall be in excess of this insurance and shall not contribute with it.
- C. If any coverage required is written on a "claims made" coverage form the retroactive date must be shown and this date must be before the execution date of the contract or the beginning of contract work. The insurance must be maintained for at least five (5) consecutive years following completion of the project and must thereafter, submit annual evidence of coverage. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date or start of work date, CONTRACTOR must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. Additionally, CONTRACTOR shall provide copies of the claims reporting requirements contained within the policies.
- D. The CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the

payment of any loss. CONTRACTOR agrees to obtain any endorsement necessary to affect this waiver of subrogation. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

- E. Builders Risk Insurance (Course of Construction): If required, CITY shall be named as a loss payee.
- F. All Coverages: Each insurance policy required by this clause shall state that coverage shall not be canceled, except with notice to the CITY. Contractor agrees to oblige its insurance agent or broker and insurers to provide CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. This cancellation must be provided through "NOTIFICATION TO OTHERS OF CANCELLATION ENDORSEMENT".
- G. Subcontractors
Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.
- H. Special Risks or Circumstances
City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

5.5 Acceptability of Insurers. All required insurance shall be placed with insurers acceptable to the City with current BEST'S ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the City, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if Contractor evidences the requisite need to the sole satisfaction of the City.

5.6 Verification of Coverage. Contractor shall furnish the City with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Contractor shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by City before work commences or products and materials are delivered. The City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements. The insurance certificates shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

5.7 If the contractor maintains higher limits or has broader coverage than the minimums shown above, the City requires and shall be entitled to all coverage, and to the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including Exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Contractor in the performance of this Agreement.

Contractor shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Contractor or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to Contractor:
Big Ben Inc.
Attention: Sep Sharifi
4790 Irvine Blvd., Suite 105-404
Irvine, CA 92620

If to City:
City of Fullerton
Public Works Department
1580 West Commonwealth Avenue
Fullerton, CA 92833

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.7. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless City, its elected officials, officers, agents and employees, at Contractor's expense, from and against any and all claims, actions, suits or other legal proceedings brought against City, its elected officials, officers, agents and employees arising out of the performance of Contractor, its employees, and/or authorized subContractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply upon showing of negligence or wrongdoing by Contractor, its employees, and/or authorized subContractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of Contractor, its employees, and/or authorized subContractors, and/or whenever any claim, action, complaint or suit asserts liability against City, its elected officials, officers, agents and employees based upon the work performed by Contractor, its employees, and/or authorized subContractors under this Agreement, whether or not Contractor, its employees, and/or authorized subContractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Contractor shall not be liable for the defense or indemnification of City for claims, actions, complaints or suits arising out of the negligence or willful misconduct of City. If the matter is resolved in court with an apportionment of fault to both Contractor and City, legal fees and damages will be divided between Contractor and City based on a comparative basis of fault. This provision shall supersede and replace all other indemnity provisions contained either in City's specifications or Contractor's Proposal, which shall be of no force and effect.

Further, the Contractor is obligated as follows:

- 1) The Contractor will promptly pay any judgment rendered against the Contractor or the City covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the Contractor.
- 2) In the event that the City is made a party to any action or proceeding filed or prosecuted against the Contractor for such damages or other claims arising out of or in connection with the work, operation, or activities of the Contractor, the Contractor agrees to pay to the City any and all cost and expense incurred by the City in such action or proceeding together with reasonable attorneys' fees.
- 3) The City may hold money that would otherwise be due the Contractor under and by virtue of the contract as shall be considered necessary by the City until disposition has been made of such actions or claims for damages as aforesaid.

6.9. Independent Contractor. Contractor is and shall be acting at all times as an independent Contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and

all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent Contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subContractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subContractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subContractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.12. Conflict of Interest. Contractor and its officers, employees, associates and subContractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subContractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subContractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.13. Prohibited Employment. Contractor will not employ any regular employee of City while this Agreement is in effect.

6.14. Order of Precedence. In the event of an inconsistency in this Agreement, the Proposal, or the RC Contract and any of the attached Exhibits thereto, the terms set forth in the listed documents shall prevail in the order listed. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this

Agreement shall govern over the document referenced.

6.15. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.16. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.17. Headings. Headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.19. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.20. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.21. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.23. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.24 Executive Order N-6-22. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S.

government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the City determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The City shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the City.

Contractor shall immediately notify City in writing upon being subjected to Economic Sanctions or upon being charged by a government agency of conducting prohibited transactions within the meaning of Executive Order N-6-22.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF FULLERTON

Signature

Date: _____

Name and Title

CONTRACTOR

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____

EXHIBIT A

CITY OF ANAHEIM'S REQUEST FOR PROPOSAL

EXHIBIT B

ANAHEIM'S CONTRACT (#?????)

EXHIBIT C

INSURANCE CERTIFICATES