

SECTION 00 52 43
AGREEMENT FOR EMERGENCY PROCUREMENT OF
EMERGENCY REPAIR - 78-INCH SANITARY SEWER MAIN LEAK AT 7900
TRINITY BOULEVARD

THIS AGREEMENT is made by and between The City of Fort Worth, a Texas home rule municipality acting by and through its duly authorized City Manager, (“City”), and **William J. Schultz, Inc. d/b/a Circle “C” Construction Company** a corporation authorized to do business in Texas, acting by and through its duly authorized representative (“Contractor”). City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work specified or indicated in the attachments to the Contract Documents, as attached hereto or specifically referenced herein, for the Project described below.

Article 2. PROJECT SUMMARY

The “Project” is generally as follows: Perform replacement of 78-inch water main near the Trinity River.

Article 3. CONTRACT TIME

Time is of the essence.

Contractor recognizes that time is of the essence, and the Contractor will be required to remain on the jobsite until the replacement water main is complete and functioning. The City expects the Contractor to have a sense of urgency to procure and bring the equipment online to perform the Work.

Article 4. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work, based on Contractor’s invoices, an amount up to Two Million Dollars (\$2,000,000.00). This figure may be adjusted up or down as final invoices are received.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of the following:

1. This Agreement.
2. Exhibits to this Agreement:
 - a. Evidence of Current Insurance
 - b. Current Prevailing Wage Rate Table
3. General Conditions incorporated by reference

Article 6. INDEMNIFICATION

Contractor covenants and agrees to indemnify, hold harmless and defend, at its own expense, the city, its officers, servants and employees, from and against any and all claims arising out of, or alleged to arise out of, the work and services to be performed by the contractor, its officers, agents, employees, subcontractors, licenses or invitees under this contract. This indemnification provision is specifically intended to operate and be effective even if it is alleged or proven that all or some of the damages being sought were caused, in whole or in part, by any act, omission or negligence of the city. This indemnity provision is intended to include, without limitation, indemnity for costs, expenses and legal fees incurred by the city in defending against such claims and causes of actions.

- 6.2 Contractor covenants and agrees to indemnify and hold harmless, at its own expense, the city, its officers, servants and employees, from and against any and all loss, damage or destruction of property of the city, arising out of, or alleged to arise out of, the work and services to be performed by the contractor, its officers, agents, employees, subcontractors, licensees or invitees under this contract. This indemnification provision is specifically intended to operate and be effective even if it is alleged or proven that all or some of the damages being sought were caused, in whole or in part, by any act, omission or negligence of the city.**

Article 7. MISCELLANEOUS

7.1 Terms.

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

7.2 Assignment of Contract.

This Agreement, including all of the Contract Documents may not be assigned by the Contractor without the advanced express written consent of the City.

7.3 Successors and Assigns.

City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.4 Severability.

Any provision or part of the Contract Documents held to be unconstitutional, void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR.

7.5 Governing Law and Venue.

This Agreement, including all of the Contract Documents is performable in the State of Texas. Venue shall be Tarrant County, Texas, or the United States District Court for the Northern District of Texas, Fort Worth Division.

7.6 Other Provisions.

7.6.1 City Wage Rate. The Contractor agrees to pay at least minimum wage per hour for all labor as the same is classified, promulgated and set out by the City.

7.6.2 Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

7.6.3 Prohibition On Contracts With Companies Boycotting Israel. Contractor, unless a sole proprietor, acknowledges that in accordance with Chapter 2271 of the Texas Government Code, if Contractor has 10 or more full time-employees and the contract value is \$100,000 or more, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this contract, Contractor certifies that Contractor's signature provides written verification to the City that if Chapter 2271, Texas Government Code applies, Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.**

7.6.4 Prohibition on Boycotting Energy Companies. Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more, which will be paid wholly or partly from public funds of the City, with a company (with 10 or more full-time employees) unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" have the meaning ascribed to those terms by Chapter 2276 of the Texas Government Code. **To the extent that Chapter 2276 of the Government Code is applicable to this Agreement, by signing this Agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.**

7.6.5 Prohibition on Discrimination Against Firearm and Ammunition Industries. Contractor acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more which will be paid wholly or partly from public funds of the City, with a company (with 10 or more full-time employees) unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate," "firearm entity" and "firearm trade association" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code. **To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.**

7.6.6 Immigration Nationality Act. Contractor shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

7.7 Authority to Sign.

Contractor shall attach evidence of authority to sign Agreement, if other than duly authorized signatory of the Contractor.

SIGNATURE PAGE AND ANY ATTACHMENTS/EXHIBITS TO FOLLOW

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's designated Assistant City Manager ("Effective Date").

Contractor:
William J. Schultz, Inc. d/b/a Circle "C"
Construction Company

City of Fort Worth

By: *Teri Skelly*
Name: Teri Skelly
Title: President

By: *Fernando Costa*
Fernando Costa
Assistant City Manager

Date: 7-3-24

Date Jul 9, 2024

Address:
500 W Trammell PO Box 40328
Fort Worth, TX 76140

Attest:

Jannette S. Goodall

Jannette S. Goodall, City Secretary

(Seal)

APPROVAL RECOMMENDED:

Approved as to Form and Legality:

Christopher Harder
Christopher Harder (Jul 3, 2024 13:59 CDT)
Chris Harder, P.E.
Director, Water Department

Douglas Black
Douglas Black (Jul 9, 2024 12:30 CDT)
Douglas W. Black
Senior Assistant City Attorney

M&C N/A - see Attached 6/13/24 Emergency Memo

Date N/A
Form 1295 N/A

CONTRACT COMPLIANCE MANAGER:

By signing, I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Tony Sholola
Tony Sholola, P. E.
Assistant Director

INTEROFFICE MEMO

Date: June 13, 2024

To: Fernando Costa, Assistant City Manager

From: Chris Harder, P.E., Water Director

Subject: **EMERGENCY REPAIR- 78-INCH SANITARY SEWER MAIN LEAK AT 7900 TRINITY BOULEVARD, AFFECTING WEST FORK OF THE TRINITY RIVER**

On Saturday, May 4, 2024, Water Field Operations crews discovered multiple leaks at an aerial crossing location of a 78-inch sanitary sewer main. The leaks are discharging into a creek that flows to the Trinity River. Due to high rate of flow and pressure in the pipe, attempts by City crews to stop the leaks failed. City crews have constructed a temporary dam to contain the overflows and then pumping the discharged wastewater back into the collection system until the pipe crossing is repaired or replaced.

Water Department staff have analyzed the situation has determined that the best long-term solution to preserve the city's asset is to repair/replace the existing piers and replace segments of the deteriorated sewer pipe if warranted.

Given that City crews do not have the ability to conduct the necessary permanent repairs, this memo is submitted to inform the City Manager's Office and the City Council that, pursuant to the emergency authority found in Chapter 2, Article I, Section 2-9 of the City's Code of Ordinances, the Water Department will initiate emergency procurement of the following contractor for the services and costs as indicated below to perform emergency repair/replacement of the leaking segment of the sewer main.

- William J. Schultz, Inc. dba Circle C Construction Company (Emergency sewer main repair/replacement: \$2,000,000.00)

The contract and work will be billed on a task order basis.

Waiting to bid and award a contract to perform this work is not the best interest of the health and safety of the City of Fort Worth. In addition to the citations, above, Section 252.022 of the Local Government Code exempts from normal bidding requirements expenditures that are necessary to preserve or protect public health or safety of the municipality's residents and procurements necessary because of unforeseen damage to public machinery, equipment, or property.

An M&C will be circulated to ratify the above contract after the work has been performed.

APPROVED FOR EMERGENCY PROCUREMENT:

Recommended:

Christopher Harder

Christopher Harder (Jun 14, 2024 09:30 CDT)

Chris Harder, P.E., Director, Water Department

Approved as to form and Legality:

Douglas Black

Douglas Black (Jun 14, 2024 16:14 CDT)

Douglas W. Black, Sr. Assistant City Attorney

Approve:

Jo Ann Gunn

Jo Ann Gunn (Jun 14, 2024 16:19 CDT)

Jo Ann Gunn, Chief Procurement Officer, Purchasing

Approve:

Fernando Costa

Fernando Costa, Assistant City Manager



2013 PREVAILING WAGE RATES
(Heavy and Highway Construction Projects)

CLASSIFICATION DESCRIPTION	Wage Rate
Asphalt Distributor Operator	\$ 15.32
Asphalt Paving Machine Operator	\$ 13.99
Asphalt Raker	\$ 12.69
Broom or Sweeper Operator	\$ 11.74
Concrete Finisher, Paving and Structures	\$ 14.12
Concrete Pavement Finishing Machine Operator	\$ 16.05
Concrete Saw Operator	\$ 14.48
Crane Operator, Hydraulic 80 tons or less	\$ 18.12
Crane Operator, Lattice Boom 80 Tons or Less	\$ 17.27
Crane Operator, Lattice Boom Over 80 Tons	\$ 20.52
Crawler Tractor Operator	\$ 14.07
Electrician	\$ 19.80
Excavator Operator, 50,000 pounds or less	\$ 17.19
Excavator Operator, Over 50,000 pounds	\$ 16.99
Flagger	\$ 10.06
Form Builder/Setter, Structures	\$ 13.84
Form Setter, Paving & Curb	\$ 13.16
Foundation Drill Operator, Crawler Mounted	\$ 17.99
Foundation Drill Operator, Truck Mounted	\$ 21.07
Front End Loader Operator, 3 CY or Less	\$ 13.69
Front End Loader Operator, Over 3 CY	\$ 14.72
Laborer, Common	\$ 10.72
Laborer, Utility	\$ 12.32
Loader/Backhoe Operator	\$ 15.18
Mechanic	\$ 17.68
Milling Machine Operator	\$ 14.32
Motor Grader Operator, Fine Grade	\$ 17.19
Motor Grader Operator, Rough	\$ 16.02
Off Road Hauler	\$ 12.25
Pavement Marking Machine Operator	\$ 13.63
Pipelayer	\$ 13.24
Reclaimer/Pulverizer Operator	\$ 11.01
Reinforcing Steel Worker	\$ 16.18
Roller Operator, Asphalt	\$ 13.08
Roller Operator, Other	\$ 11.51
Scraper Operator	\$ 12.96
Servicer	\$ 14.58
Small Silpform Machine Operator	\$ 15.96
Spreader Box Operator	\$ 14.73
Truck Driver Lowboy-Float	\$ 16.24
Truck Driver Transit-Mix	\$ 14.14
Truck Driver, Single Axle	\$ 12.31
Truck Driver, Single or Tandem Axle Dump Truck	\$ 12.62
Truck Driver, Tandem Axle Tractor with Semi Trailer	\$ 12.86
Welder	\$ 14.84
Work Zone Barricade Servicer	\$ 11.68

The Davis-Bacon Act prevailing wage rates shown for Heavy and Highway construction projects were determined by the United States Department of Labor and current as of September 2013. The titles and descriptions for the classifications listed are detailed in the AGC of Texas' Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas.