

SECTION 00 52 43
AGREEMENT FOR EMERGENCY PROCUREMENT OF
SUMMER 2022 HEAT WAVE – PAVEMENT REPAIR FOR MULTIPLE WATER MAIN BREAKS

THIS AGREEMENT is made by and between the City of Forth Worth, a Texas home rule municipality, acting by and through its duly authorized City Manager, (“City”), and Texas Materials Group, Inc. dba Texas Bit, 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 as specified or indicated in the “Contract Documents” attached hereto or specifically referenced herein, for the Project described below.

Article 2. PROJECT

The “Project” is generally as follows: Perform pavement repairs of water main breaks attributable to the Summer Heat Wave.

The Work is detailed in attached work plan and in city specifications sections 33 05 10, 33 04 40, 33 11 05, 33 11 13, 33 12 25, 33 05 20, 33 05 22.

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 at each jobsite until the pavement repair is complete. The City expects the Contractor to have a sense of urgency to complete repairs as soon as possible.

Article 4. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work, based on Contractor’s invoices, an amount up to Seven Hundred and Fifty Thousand Dollars (\$750,000.00). This figure may be adjusted up or down as final invoices are received.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

- A. 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
 - c. Memorandum of Emergency Authority
 3. General Conditions incorporated by reference

Article 6. INDEMNIFICATION

- 6.1 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/No Waiver.

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.

Failure by City or Contractor to enforce any provision of this Agreement shall not render that provision un-enforceable should there be a future breach.

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 2274 of the Texas Government Code-(as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2), 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 2274 of the Texas Government Code (as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2). **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 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 (as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1), 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 (as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1). **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 executed this Agreement which is effective as of the date signed by the City's Assistant City Manager ("Effective Date").

CONTRACTOR:
TEXAS MATERIALS GROUP, INC. dba
TEXAS BIT

CITY OF FORT WORTH

By: 

Name: Sam Davis
Title: Vice President/ GM Construction

Date: 7/25/2022

Address:
420 Decker Dr. Ste 200
Irving, TX 75062

By: 
Dana Burghdoff (Jul 25, 2022 17:40 CDT)

Dana Burghdoff
Assistant City Manager

Date: Jul 25, 2022

Attest:

Jannette S. Goodall (Jul 26, 2022 07:54 CDT)

Jannette S. Goodall, City Secretary

(Seal)

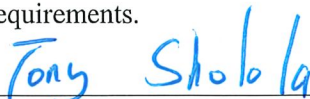
APPROVAL RECOMMENDED:


M&C N/A (Attached 07/20/22 Emergency Memo)
Date: N/A (Attached 07/20/22 Emergency Memo)


Christopher Harder (Jul 25, 2022 14:17 CDT)

Christopher Harder, P.E.
Director, Water Department

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, P.E.
Assistant Director

Approved as to Form and Legality:

DBlack (Jul 25, 2022 17:27 CDT)

Douglas W. Black
Sr. Assistant City Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Liberty Mutual Insurance Co. National Insurance East 2000 Westwood Dr. Wausau, WI 54401	CONTACT NAME: Trish McCall	
	PHONE (A/C No., Ext): (214)741-3531 X85718 FAX (A/C, No):	
www.LibertyMutual.com	E-MAIL ADDRESS: patricia.mccall@texasbit.com	
INSURED TEXAS MATERIALS GROUP, INC. (211-IRV) dba TexasBit 420 Decker Dr., Ste. 200 Irving, TX 75062	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Liberty Mutual Fire Insurance Company	23035
	INSURER B: Liberty Insurance Corporation	42404
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 63321237

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Primary/Non-Contributory <input checked="" type="checkbox"/> Separation of Insured GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	TB2-C81-004095-111 XCU Coverage Included	9/1/2021	9/1/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$50,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AS2-C81-004095-121 AS2-C81-054502-521 Physical Damage only: Comprehensive Ded \$10,000 Collision Ded \$10,000	9/1/2021	9/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	WA7-C8D-004095-021 All except OH, ND, WA, WY WC7-C81-004095-011 WI, MN	9/1/2021	9/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

For all operations in the State of Texas.
City of Ft. Worth is additional insured on the GL and AL with waiver of subrogation on all coverage.

CERTIFICATE HOLDER

City of Ft. Worth
200 Texas St.
Ft. Worth, TX 76102

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Valerie Reece

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ACORD 25 (2016/03)

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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 Slipform 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.

INTEROFFICE MEMO

Date: July 20, 2022

To: Dana Burghdoff, Assistant City Manager

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

Subject: EMERGENCY REPAIR – SUMMER 2022 HEAT WAVE – PAVEMENT REPAIR FOR MULTIPLE WATER MAIN BREAKS

In June, 2022, unseasonably high temperatures, exceeding 100°F on many days, began in North Texas. So far, the month of July has seen nearly every day exceeding 100°F. This sustained heat has caused 89 water main breaks in June and thus far 82 for the month of July. The water main breaks are disrupting the water distribution services we provide. Water is critical to the citizens' health and well-being during a heat wave such as this. Water Field Operations has been adequately keeping up with the main breaks, but due to the volume we're now seeing, additional support is required.

On July 14, 2022, an emergency memo was circulated recommending that the City engage additional available contractors for emergency water main repairs. Due to the anticipated amount of repairs to be completed by these contractors, there is a need to retain paving contractors to augment our on-call paving contracts in order to keep up with pavement repair subsequent to the water main repairs.

This memo is submitted to inform the CMO that, pursuant to the emergency authority found in City Code Chapter 2, Article I, Section 2-9 of the City's Code of Ordinances, the Water Department has instituted emergency procurement of the following contractors to perform timely pavement repairs subsequent to the water main break repairs:

- Jackson Construction, Ltd.
- Texas Materials Group, Inc. dba Texas Bit

The contracts will be in amounts up to \$750,000.00 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.

M&C(s) will be circulated to ratify the above contracts after the work has been performed.

APPROVED FOR EMERGENCY PROCUREMENT:

Recommended:


Kar, S. (Jul 21, 2022 11:02 CDT)

Chris Harder, Director, Water Department

Approved as to form and Legality:


DBlack (Jul 21, 2022 13:11 CDT)

Douglas W. Black, Sr. Assistant City Attorney

Approve:


John Padinj, Sr. Purchasing Manager (Jul 21, 2022 14:47 CDT)

Cynthia Garcia, Assistant Director, Purchasing

Approve:


Dana Burghdoff (Jul 21, 2022 17:53 CDT)

Dana Burghdoff, Assistant City Manager