00\_52\_43E Emergency Agreement Page 1 of 5

#### **SECTION 00 52 43**

# AGREEMENT FOR EMERGENCY PROCUREMENT OF 16-INCH WATER MAIN CONDITION ASSESSMENT AND REPAIRS AT NORTH TARRANT PARKWAY AND IH-35W

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 Conatser Construction TX L.P., 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 pipeline leak detection and condition assessment on existing 16-inch B-303 Reinforced Concrete Water Pipe within 36-inch steel casing at North Tarrant Parkway and IH-35W and repair/replace damaged pipe joints and other incidental work, as needed.

The Work is detailed in attached work plan and in specification 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. Contractor shall have a sense of urgency to complete this work as soon as possible.

Contract time may be adjusted due to availability and lead time of pipe joints, fittings etc. to perform the initial repairs in order to restore service before the summer months in 2022. If condition assessment results conclude the water main will need full replacement across the IH-35W ROW at North Tarrant Parkway, the second phase may include water main relocation later this year.

## 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:

- 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:

CITY OF FORT WORTH 16-INCH WATER MAIN CONDITION ASSESSMENT AND REPAIRS AT NORTH TARRANT PARKWAY AND IH-35W

- a. Evidence of Current Insurance
- b. Current Prevailing Wage Rate Table
- 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 invitecs 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.
- 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: CITY OF FORT WORTH CONATSER CONSRUCTION TX L.P. By: Dana Burghdoff
By: Dana Burghdoff (May 3, 2022 10:45 CDT) Dana Burghdoff Name/Jesus Martinez Title: Vice President Assistant City Manager Date: May 3, 2022 Date: 4-27-22 Address: Attest: 5327 Wichita St. P.O. Box 15448 Jannette S. Goodall Fort Worth, TX 76119 Jannette S. Goodall (May 4, 2022 09:24 COT) Jannette S. Goodall, City Secretary (Seal) M&C N/A (Attached 08/18/22 Emergency Memo) APPROVAL RECOMMENDED: Date: N/A (Attached 08/18/22 Emergency Memo) Christopher Harder
Christopher Harder (May 2, 2022 16:25 CDT) Contract Compliance Manager: Christopher Harder, P.E. Director, Water Department 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. John Kasavich, P.È Project Manager Approved as to Form and Legality: DBIGCk (May 3, 2022 09:49 CDT) Douglas W. Black

Sr. Assistant City Attorney



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/OD/YYYY) 04/28/2022

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).

th	is certificate does not confer rights to											
PROD	UCER				CONTAC NAME:	CONTACT Joyce Womack						
The	Sweeney Company	PHONE	PHONE AIC. No. Ext): (817) 457-6700 FAX (A/C, No): (817) 457-7246					57-7246				
1121	E. Loop 820 South	PHONE (817) 457-6700 FAX (AIC, No): (817) 457-7246 E-MAIL ADDRESS: Joyce@thesweeneyco.com										
РΟ	Box 8720	E .					NAIC#					
Fort Worth TX 76124-0720						INSURERA: Bitco National Insurance Company					20109	
INSURED						INSURER B : Bitco General Insurance Corporation					20095	
Conatser Construction TX, LP						INSURER C:						
	P.O.Box 15448				INSURER D:							
					INSURER E:							
Fort Worth				TX 76119-0448	INSURER F:							
				NUMBER:	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,												
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.												
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  Agreement for emergency procurement of 16-inch water main repair at North Tarrant Pkwy & IH-35W. WC, GL & auto include a blanket automatic waiver of subrogation endt & the GL, auto include a blanket automatic additional insured endt providing additional insured & waiver of subrogation status to the cert holder only when there is a written contract between the named insured & the cert holder that requires such status. The additional insured endts contains special primary & noncontributory wording. Umbrella follows form additional insured & waiver of subrogation. The policies include an endt providing 30 day notice of cancellation (10 days for non-pay of premium) to the cert holder.												
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CITY OF FORT WORTH						SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.						
1	200 TEXAS ST	AUTH	AUTHORIZED REPRESENTATIVE									
	FT WORTH	TX 76102		Charles of Sweepey								

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# INTEROFFICE MEMO

Date:

April 18, 2022

To:

Dana Burghdoff, Assistant City Manager

From:

Chris Harder, P.E., Water Director

Subject:

EMERGENCY REPAIRS - IH-35W North Tarrant Express Segment 3B-3C NTI/TXDOT

Construction Project

CFW Water Transmission Main: Existing 16-inch reinforced concrete water main inside

30-inch steel casing pipe at North Tarrant Parkway and IH-35W

On January 21, 2022 the Water Department was informed by North Tarrant Infrastructure, LLC ("NTI"), the Design-Build Contractor for the North Tarrant Express Segment 3C project on IH-35W, of a possible leak on the existing 16-inch water main, south of North Tarrant Parkway, crossing IH-35W. NTI and/or TXDOT previously identified this crossing as Conflict 144 ("Conflict 144") as it is at the junction between Segment 3B, mostly constructed by TXDOT and Segment 3C, controlled by NTI. The leak materialized on IH-35W just south of Heritage Trace Blvd. between the southbound frontage road and southbound freeway lanes and pooled on the freeway lanes backing up traffic to the Alliance Airport area. NTI redirected all traffic to exit at North Tarrant Parkway and re-enter the highway at the next available entrance ramp to avoid the pooled water. Water Field Operations used a pump to attempt to clear the ponding but it had difficulty keeping up with the amount of water leaking from the transmission main. Until this incident, this 16-inch water transmission main, installed in 2005, which serves not only residents but also area customer cities, including Westlake, Keller, and Southlake, has had no recorded maintenance history or any known breaks or leaks.

Water Field Operations took measures to restrict the flow through the pipe to prevent additional pooling and performed leak detection activities on January 26 and 27 which identified multiple locations of possible leaks within and outside the IH-35 corridor. Water Field Operations completed its investigation and determined that the leaks are all emanating from within the I-35W corridor in areas where NTI is performing significant work. Water Field Ops has now taken the line out of service to minimize the amount of water loss as well as to prevent further pooling in the active southbound lanes of IH-35.

The Water Department was not notified of construction activity at this location as this area was not included in the Segment 3C highway project as the highway improvement limits end at the north side of North Tarrant Parkway. Plans subsequently provided by TXDOT indicated grading, storm sewer installations and pavement as part of a set of plans labeled North Tarrant Express 3B-3C Interface from North Tarrant Parkway to Basswood Blvd. Segment 3B was ultimately turned over to NTI/NTEMP to finish and manage, thus the terms of the agreements between TXDOT, NTEMP and NTI control and dictate that protection of city pipelines shall be observed. Despite their obligations to notify the City in advance, construction activities occurred and were ongoing for weeks or months before the leaks appeared and construction activities continue.

NTI has denied responsibility but on or about February 15, performed two SUE Level A (top of pipe) test holes and excavated one observation pit in the area of the water main leaks. At a field meeting held March 1, Jackson Construction, NTIs subcontractor, pumped out water from the observation pit, exposing the top of the 30-inch steel easing pipe on the west side of IH-35W. Water was sampled for chlorine, which tested positive, indicating that it was from the city's water supply. No effort has yet been made by NTI to further identify the actual leak locations or perform repairs. Since these pipes are not old, by city water pipe standards, are of reinforced materials and within steel easing in all instances crossing the I-35 ROW, and have never required repairs or maintenance prior to these leaks arising, staff believes that but for NTI's construction activity in, on and over the area of the mains, these leaks would not have occurred.

On April 5, via email, and more formally on April 11, the Water Department issued a demand that NTI undertake repairs. NTI-NTEMP has not responded to date. As a result the Water Department is prepared with city forces and/or contractor(s) to complete all required repairs and/or replacements necessary to restore water service and invoice NTI for the costs.

Section 252.022 of the Local Government Code and Chapter 2-9 of the City 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. Waiting to bid and award a contract to perform this work is not the best interest of the health and safety of the citizens or customers of City of Fort Worth.

The Water Department intends to engage with Conatser Construction to perform the main break repairs, any necessary street repaying and other related tasks as needed. The contract will be in an amount up to \$2,000,000 and work will be billed against this amount on a task order basis. After final cost reconciliation with the Water Department, the Water Department will invoice NTI/NTEMP.

A follow-up M&C will be presented to the City Council for ratification of the costs.

### APPROVED FOR EMERGENCY PROCUREMENT:

Recommended:	Christopher Harder Christopher Harder (Apr.18, 2022 16:50 COT)					
	Chris Harder, Director, Water Department					
Approved as to form and Legality:	OBlack (Apr 22, 2022 16:48 CDT)					
	Douglas W. Black, Sr. Assistant City Attorney					
Approve:	1/2					
•	Cynthia Garcia, Assistant Director, Purchasing					
Approve:	Dana Burghdoff Dana Burghdoff (Apr 25, 201769:22 PDTY)					
**	Dana Burghdoff, Assistant City Manager					



April 11, 2022

North Tarrant Infrastructure, LLC 13601 North Freeway Fort Worth, Texas 76177

NTE Mobility Partners Segments 3, LLC 9001 Airport Freeway, Ste. 600 North Richland Hills, TX 76180

TXDOT
Attn: District Engineer
2501 SW Loop 820
Fort Worth, TX 76133

TXDOT Alternative Project Delivery Office Attn: CDA APD Utility Manager 2501 SW Loop 820 Fort Worth, TX 76133

Re: Segment 3B/3C Connection and/or Segment 3C - Conflict 144 - 16" Water Main Damage

Attention: Mr. Robert Hinkle, Mr. Francisco Manuel Galdeano Moreno, Mr. Korey Coburn:

This letter is to follow up with formal written demand, as indicated in an email I sent to you on April 5, 2022 which has received no reply do date. You are hereby directed to commence investigation and repair of the above-referenced water main. North Tarrant Infrastructure, LLC ("NTI") and/or NTE Mobility Partners Segments 3, LLC ("NTEMP") as well as TXDOT have been on personal, actual notice for more than 30 days that the 16" water transmission main has been leaking within the TXDOT ROW. Your obligation to first, protect from damage, and second, if damaged, to repair the city's facilities is governed by the PUAA, the Facilities Agreement (FA) between NTEMP and TXDOT and further designated by contract between NTEMP and NTI.

Regardless of whether this water transmission main is located in Segment 3C or the 3B-3C connection area which TXDOT has assigned to NTI/NTEMP, NTI/NTEMP have exclusively been performing construction work in the area. Under the terms of the FA, each of you owes the City of Fort Worth, the Utility Owner, certain obligations regarding notice and coordination of any work on, over or around an owner's utility and have a duty to protect it in place. You have failed in this regard. There was no notice given to the City reflecting the work in this area nor any coordination with the City prior to the work over the facility to ensure it would be adequately protected. It is now leaking. The leaks have been isolated to within the ROW. NTI/NTEMP are directly responsible for the damage and subsequent repairs. To date, NTI/NTEMP have not taken responsibility for the damaged main and have not performed sufficient investigation or repairs. As a result, the city has restricted flow in the main to avoid waste and further pooling in the southbound main lanes of I-35W, just south of North Tarrant Parkway.

The City of Fort Worth hereby demands that NTI/NTEMP commence condition assessment and associated repairs to the damaged transmission main within five days of the date of this letter. Failure to do so shall result in the City declaring an emergency, entering the site and performing the repairs with all costs of work being charged to NTI/NTEMP. Reimbursement therefor will be expected within 30 days of your receipt of the City's final costs.

I appreciate your immediate attention to resolving this matter.

Sincerely,

Chris Harder, P.E. Water Director

Clash

Water Department Administration