

SECTION 00 52 43
AGREEMENT FOR EMERGENCY PROCUREMENT OF
WATER MAIN BREAK REPAIRS – SUMMER 2022 HEAT WAVE

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 Conatser Construction TX, LP., 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 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 repair is complete and the water main is functioning. 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 One Million Dollars (\$1,000,000.00). 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:
 - 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.

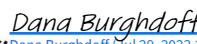
SIGNATURE PAGE AND ANY ATTACHMENTS/EXHIBITS TO FOLLOW

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:
CONATSER CONSTRUCTION TX, LP.

CITY OF FORT WORTH

By: 
Name: Jesus Martinez
Title: Vice President

By: 
Dana Burghdoff (Jul 29, 2022 15:49 CDT)
Dana Burghdoff
Assistant City Manager

Date: 7-20-2022

Date: Jul 29, 2022

Address:
5327 Wichita St., PO Box 15448
Fort Worth, TX 76119

Attest:

Jannette S. Goodall (Jul 29, 2022 16:15 CDT)
Jannette S. Goodall, City Secretary

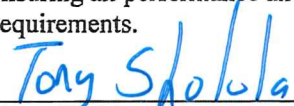
(Seal)

APPROVAL RECOMMENDED:

M&C N/A (Attached 07/14/22 Emergency Memo)
Date: N/A (Attached 07/14/22 Emergency Memo)


Christopher Harder (Jul 28, 2022 16:51 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 29, 2022 12:49 CDT)
Douglas W. Black
Sr. Assistant City Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/28/2022

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).

PRODUCER The Sweeney Company 1121 E. Loop 820 South P O Box 8720 Fort Worth TX 76124-0720		CONTACT NAME: Joyce Womack PHONE (A/C, No, Ext): (817) 457-6700 FAX (A/C, No): (817) 457-7246 E-MAIL ADDRESS: Joyce@thesweeneyco.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Bitco National Insurance Company	
		INSURER B: Bitco General Insurance Corporation	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE 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, 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	☒ COMMERCIAL GENERAL LIABILITY			CLP 3 719 892	08/01/2022	08/01/2023	EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☒ CONTRACTUAL, XCU						MED EXP (Any one person) \$ 5,000
	☒ INDEP CONT, BFPD						PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE \$ 2,000,000
	☐ POLICY ☒ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	☒ OTHER: \$1,000 DED PER PD OCC						Sudden, Acc Pollution \$ 1,000,000
B	☒ AUTOMOBILE LIABILITY			CAP 3 719 893	08/01/2022	08/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO						BODILY INJURY (Per person) \$
	☐ OWNED AUTOS ONLY	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB			CUP 2 821 982	08/01/2022	08/01/2023	EACH OCCURRENCE \$ 5,000,000
	☐ EXCESS LIAB	☒ OCCUR					AGGREGATE \$ 5,000,000
	☐ DED	☐ CLAIMS-MADE					
	☒ RETENTION \$ 10,000						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC 3 719 891	08/01/2022	08/01/2023	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Brock Huggins Pres, Jessie Martinez VP, Obed Gatewood VP, all office only						

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

Section 00 52 43 emergency water main break repairs summer 2022 heat wave. 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.

CERTIFICATE HOLDER

CANCELLATION

CITY OF FORT WORTH 200 TEXAS ST FT WORTH TX 76102	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

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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 14, 2022

To: Dana Burghdoff, Assistant City Manager

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

Subject: EMERGENCY REPAIRS – SUMMER 2022 HEAT WAVE

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 repair support is required. We have reached out to several of the contractors who assisted us during the deep freezes of 2020 and 2021 to be on-call for emergency 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 intends to engage with the following contractors to perform main break repairs, street repaving or other related tasks as needed:

- Jackson Construction, LTD
- Tejas Commercial Construction, LLC
- Conatser Construction TX, LP
- Reyes Group, LTD

Each contract will be in an amount up to \$1,000,000 and work will be billed against this amount on a task order basis. The contractors will reconcile with the Water Department their expenditures and a follow-up M&C will be presented to the City Council for ratification of the costs.

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. Water main breaks can occur at any point within the system and are thus, unforeseen, regardless of the anticipation that they may occur.

APPROVED FOR EMERGENCY PROCUREMENT:

Recommended:

Christopher Harder

Christopher Harder (Jul 14, 2022 08:51 CDT)

Chris Harder, Director, Water Department

DBL

Approved as to form and Legality:

DBlack (Jul 14, 2022 12:53 CDT)

Douglas W. Black, Sr. Assistant City Attorney

For CG, John Padini

For CG, John Padini (Jul 18, 2022 11:08 CDT)

Approve:

Cynthia Garcia, Assistant Director, Purchasing

Dana Burghdoff

Dana Burghdoff (Jul 18, 2022 19:24 CDT)

Approve:

Dana Burghdoff, Assistant City Manager