

STANDARD FORM CONSTRUCTION AGREEMENT

THE STATE OF TEXAS

COUNTY OF TARRANT

THIS AGREEMENT is entered into by and between the CITY OF BENBROOK, a municipal corporation, hereinafter called "OWNER," and

F+M FENCE, INC

hereinafter called "Contractor."

Owner and Contractor in consideration of the mutual covenants contained in this Agreement, agree as follows:

ARTICLE 1. WORK

Contractor covenants and agrees to perform the Work in every detail as specified and indicated in the Contract Documents. All of which are incorporated in this Agreement in their entirety as though written word for word. The Work is described as follows:

Construction of Westpark Fence Project on Benbrook Blvd Between Amory Drive and Overcrest Drive And Winchester Fence Project on Rolling Hills Drive and Jerry Dunn Parkway Between Oncor Easement and Trinity Ranch Road as outlined in the Specifications including other incidentals as necessary to complete the project in accordance with these Contract Documents.

ARTICLE 2. CONTRACT PRICE

Owner agrees to pay Contractor for completion of the Work, in accordance with the Contract Documents, for the TOTAL AMOUNT OF: \$ _____

ARTICLE 3. STATE AND LOCAL SALES AND USE TAXES

The Owner qualifies for exemption from the state and local sales and use taxes pursuant to the provisions of Section 151.309, Texas Tax Code. Therefore, the Contractor shall not pay these taxes which would otherwise be payable in connection with the performance of this Work. The Contractor shall issue an exemption certificate in lieu of the tax on the purchase of:

- (a) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved;
- (b) all materials, supplies, equipment and other tangible personal property used or consumed by the Contractor in performing the Work.

"Materials and supplies used in the performance of the Work" includes only those materials actually incorporated into the property being improved and those supplies

directly used to incorporate such materials into the property being improved. Overhead supplies and supplies used indirectly or only incidental to the performance of the Work are not included in the exemption. Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the Contractor must name the Owner and the project for which the equipment, material, and supplies are being purchased.

ARTICLE 4. PAYMENT PROCEDURES

The Owner agrees that upon receipt of the Contractor's invoice, the City will verify the value of the work done during the month under the Agreement, based upon the prices furnished in Contractor's bid proposal and the actual quantities of work performed, as measured or verified by the City in accordance with the Contract Documents. Lump sum units shall be estimated and paid on a percentage-of-completion basis. The Contractor shall furnish the City information as may be requested to aid the City as a guide in the verification of Contractor's estimates. The City shall verify and confirm the monthly invoice submitted by the Contractor, subject to the rules set forth in Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications. If the confirmed value of the work done since the last previous estimate exceeds \$100.00 in amount, a percentage of such confirmed sum will be paid to the Contractor about fifteen (15) days after receipt of Contractor's invoice. Owner shall not be liable for interest on any delayed, disputed or delinquent payment, pursuant to Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications; this sentence and Item 109.5.1 Monthly Estimate of the NCTCOG Standard Specifications shall constitute the sole, controlling contract terms with respect to interest owed on delayed, disputed or delinquent payments in lieu of Article 601f, Vernon's Texas Civil Statutes. Payment may include amounts for acceptable, non-perishable materials delivered to the job site, based on the net invoice value as presented in the Contractor's invoice, and confirmed by the City. The percentage retained by the Owner shall be as provided in Item 109.5.2 of the Standard Specifications and General Conditions, as amended, hereinafter called "Standard Specifications." In no event shall payment for any bid item of work exceed the unit price for the item stated in Contractor's Bid Proposal, nor shall payment be made in excess of quantities of work constructed or supplied.

ARTICLE 5. CONTRACT TIME

Contractor agrees to commence work under this Agreement on a date to be specified in a work order of the City Engineer, and to complete fully all the Work within 120 Calendar Days thereafter. The Contractor agrees to pay as liquidated damages the sum of five hundred dollars zero cents (\$500.00) DOLLARS for each calendar day thereafter, as provided in Item 108.8.1 of the Standard Specifications.

ARTICLE 6. WARRANTY

Contractor shall guarantee that the Work it performs shall be free from any defects in workmanship and materials for the period of not less than shown on the Bid Form from the date of completion thereof. Contractor shall be responsible for the replacement or repair, without additional charge, of all of the work done or furnished in accordance with its contract which shall become defective within the time period shown on the Bid Form after the completion of the Work it performs. The correction of such Work shall include, without additional charge, all additional expenses and damages (excluding consequential and punitive damages) in connection with such removal or replacement of all or any part of the Work and common areas of work which may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Work shall be contained in the contract with the Contractor which shall be so written that such guarantees or warranties shall inure to the benefit of both the City and Contractor, as their respective interests may appear and can be directly enforced by either.

ARTICLE 7. CONTRACT DOCUMENTS

(a) **Documents Listed.** The Contract Documents which comprise the entire Agreement between Owner and Contractor for the performance of and payment for the Work consist of the following:

- (1) Notice & Special Instructions to Bidders;
- (2) Proposal & Addendum;
- (3) This Agreement;
- (4) Warranty;
- (5) Attachments to this Agreement including the Certificate of Insurance;
- (6) Special Specifications including Prevailing Wage Rates;
- (7) North Central Texas Council of Governments Standard Specification for Public Works Construction, latest edition with revisions (hereinafter referred to as the Standard Specifications, and available separately);
- (8) Work order issued by Owner in accordance with Item 103.2 and Item 103.6 of the Standard Specifications;

(b) **Amendments.** The documents listed in Items 1 through 8 above are attached to this Agreement except as expressly noted above. There are no Contract Documents except those listed in Items 1 through 8 above. The Contract Documents may be amended to provide for additions, deletions, or revisions to the Work or to modify the terms of the Contract Documents in one or more of the following ways:

- (1) a formal written amendment;

- (2) a Change Order (pursuant to Item 104.2 of the Standard Specifications);
or
- (3) a work change directive, the price of which is negotiated in a later change order.

(c) **Minor Variations.** In addition, the requirements of the Contract Documents may be supplemented and minor variations or deviations in the Work which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Contract Work as a functioning whole, may be authorized in one or more of the following ways:

- (1) a field order by the City Engineer;
- (2) the City Engineer's approval of shop drawings in accordance with Item 105.3 of the Standard Specifications,
- (3) the City Engineer's written interpretation or clarification.

IN TESTIMONY WHEREOF, the CITY OF BENBROOK has caused this instrument to be signed in its corporate name, and on its behalf by the Mayor, duly authorized to execute this instrument, passed by the City Council on _____

_____, a corporation acting by and through its duly authorized officials, thereby binding themselves, their heirs, successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Agreement, individually, jointly and severally.

EXECUTED this the _____ day of _____ 2020.

City of Benbrook

Mayor

Contractor

ATTEST:

ATTEST:
