

PROJECT CONDITIONS

1. OWNER AND CONTRACTOR

The Owner and Contractor are those persons or organizations identified as such in the Agreement and are referred to throughout the contract documents as if singular in number and masculine in gender.

The Project Manager shall be understood to represent the Owner. The duties, responsibilities and limitations of authority of the Project Manager as the Owner's representative during construction are as set forth in the contract documents and shall not be extended or limited without written consent of the Owner.

2. CONTRACT DOCUMENTS

The contract documents shall consist of: The Signed Agreement; Maintenance, Performance and Payment Bonds (when required); insurance certificate; general conditions; Specifications; Plans; Addenda and all modifications thereof incorporated in any of the documents before the execution of the agreement.

The contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the contract documents, priority of interpretation shall be in the following order: Signed contract agreement, performance and payment bonds, Contractor's proposal, Notice to Contractors, Specifications, Plans, and General Conditions of Agreement.

3. SUB-CONTRACTOR

The term Sub-Contractor, as employed herein, shall include only those having direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked. There are limitations on the amount of work that can be subcontracted. This provision prohibits a prime contractor from "brokering" (subletting all contract work). The Contractor is required to submit a request notifying the City of all Subcontractors to be used.

4. WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the Corporation for whom it is intended or if delivered at or sent by regular mail to the last business address known to him who gives the notice.

5. WORK

The Contractor is responsible for compliance with local, state, and federal regulations. The Contractor shall be responsible for registering with the City's Building Inspections Division and paying the appropriate fee. The Contractor shall obtain all permitting and request all inspections that are necessary for the completion of the work. The City will not charge for permits or inspections on this project. Regardless of the project type or location, the contractor will be responsible for filling out a Right of Way construction permit and filing it with Public Works (See attached at end of this document). Additionally, when work is performed in public ROW or easement that affects sewer, water, storm lines and streets, the contractor shall secure a maintenance bond in the amount of 2.0% of the value of work that affects the above mentioned infrastructure. Contractor to provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, services,

insurance, and all water, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the contract documents. All materials shall be new and workmanship shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words that so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

6. SITE OBSERVATION BY PROJECT MANAGER/OWNER'S REPRESENTATIVE

The Project Manager/Owner's Representative shall make periodic visits to the site to familiarize him or her with the progress of the executed work and to determine if such work meets the requirements of the specifications and contract documents.

Any review of work in progress, or any visit or observation during construction by the Project Manager/Owner's Representative is agreed by the Contractor to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling Contractor to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the Contractor from full and complete responsibility for the proper performance of his work on the project.

Deviation by the Contractor from plans and specifications that may have been in evidence during any such visitation or observation by the Project Manager/Owner's representative, whether called to the Contractor's attention or not shall in no way relieve the Contractor from his responsibility to complete all work in accordance with said plans and specifications.

7. PROGRESS PAYMENTS FOR WORK

The Contractor shall submit monthly Applications for Payment to the Project Manager by the last day of the month, on AIA G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Project Manager certifies the application, then they shall submit a Certificate for Payment to the Owner. Materials that are verified to be on the jobsite may also be incorporated into the Application for Payment. The Project Manager shall have seven (7) days from date of receipt from the Contractor of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Project Manager to the Contractor within thirty (30) days of receipt of the Certificate of Payment from the Project Manager, unless otherwise provided in the contract Documents. The contractor must complete and submit a Subcontractor and Material Supplier Payment Certification (second through final application) form prior to the approval of the next month's Certificate for Payment. Five percent (5%) retained earnings will be withheld from payment of completed work and shall be so indicated on each application for payment. The retained earnings will be paid to the Contractor upon final acceptance of the project by the Owner if all subcontractor work and supplier materials furnished for the project are complete and the subcontractors and suppliers final payments have been made in full. The contractor must complete and submit a Subcontractor and Material Supplier Payment Certification form prior to the project's final acceptance and payment of the retained earnings.

8. CONTRACTOR'S DUTY AND SUPERINTENDENCE

The Contractor shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor.

The Contractor is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements. Likewise, the Contractor shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder.

Contractor shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

9. CHARACTER OF WORKMEN

The Contractor agrees to employ only orderly and competent men and women, skillful in the performance of the type of work required under this contract; and agrees that whenever the Owner shall inform him in writing that any man or men on the work are, in his opinion, incompetent, unfaithful or disorderly, shall be discharged from the work and shall not again be employed on the work without the Owner's written consent.

10. PRELIMINARY APPROVAL

The Project Manager shall not have the power to waive the obligations of this contract for the furnishing of good material, or of his performing good work as herein described in full accordance with the plans and specifications. No failure or omission of the Project Manager to discover, object to or condemn defective work or material shall release the Contractor from obligations to fully and properly perform the contract, including without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon discovery of said defective work or material; provided, however, that the Project Manager shall, upon request of the Contractor, inspect and accept or reject any material furnished.

Any questioned work may be ordered taken up or removed for re-examination by the Project Manager prior to final acceptance. If found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the Contractor.

11. DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any material brought on the job site for use or selected for use, shall be deemed by the Project Manager as unsuitable or not in conformity with the specifications, the Contractor shall, after receipt of written notice from the Project Manager, remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.

12. CHANGE ORDERS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit in the form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

It is agreed that the quantities of work to be done at unit prices and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the project Manager, to complete the work fully as planned and contemplated. All work is to be performed as provided for in the specifications. The Owner reserves the right to increase or decrease the amount of work to be done by any amount not to exceed twenty-five percent (25%) of the original contract amount. The Contractor shall submit a bid in writing to the Project Manager for approval of the work requested. The Owner reserves the right to reject the Contractor's bid on such extra work and secure such work to be done other than by said Contractor.

If the Owner approves the bid for the requested change in work, a change order will be executed. All change orders shall be approved in writing by the North Richland Hills' designated representative prior to work being executed.

13. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The Owner shall furnish the Contractor with an adequate and reasonable number of copies of all plans and specifications without expense to him. The Contractor shall keep one copy of the same constantly accessible on the work with the latest versions noted thereon.

14. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies furnished by the Project Manager shall not be reused on other work with the exception of the signed contract sets, are to be returned to him on request at the completion of work. All models are the property of the Owner.

15. RIGHT OF ENTRY

The Owner reserves the right to enter the property or location on which the work herein contracted for are to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said Owner may desire.

16. DISCREPANCIES AND OMISSIONS

In the event of any discrepancies between the separate contract documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event there is still any doubt as to the meaning and intent of any portion of the contract, specifications or drawings, the Project Manager shall define which is intended to apply to the work.

17. EQUIPMENT AND MATERIALS

The Contractor shall be responsible for the care, preservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, all means of construction, and any and all parts of the work, whether the Contractor has been paid, partially paid, or not paid for such work until the entire work is completed and accepted.

18. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provision of Federal, State, and Municipal safety laws, building and construction codes. The Contractor shall provide such machinery guards, safe walkways, ladders, bridges, gangplanks, and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility of the Contractor, acting at his discretion as an independent contractor.

19. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the Contractor arising out of the nature of the work to be done, from the action of the elements, from any unforeseen circumstances in the prosecution of the same, from any unusual obstructions or difficulties which may be encountered in the prosecution of the work shall be sustained and borne by the Contractor at his own cost and expense.

20. PROTECTION OF ADJOINING PROPERTY

Contractor shall take proper means to protect all adjacent or adjoining properties in any way encountered which might be injured or seriously affected by any process of construction to be undertaken under the Agreement. Contractor shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The Contractor agrees to indemnify, save and hold harmless the Owner and Project Manager against any claim or claims for damages due to the injury to any adjacent or adjoining property arising or growing out of performance of the contract. Any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

21. LAWS AND ORDINANCES

The Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations, which in any manner effect the contract or the work. If the Contractor observes that the plans and specifications are at variance therewith, he shall promptly notify the Project Manager in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Project Manager, he shall bear all costs arising there from.

22. WAGE RATES

The successful contractor shall be required to comply with Chapter 2258 of the Government Code with respect to the payment of prevailing wage rates. Chapter 2258 states contractors and subcontractors shall not pay less than the prevailing wage rate to all laborers, workmen, and mechanics employed by them in the execution of the contract. Contractors should familiarize themselves with the entire provision of this law and the penalties provided for its violation before submitting their bids.

No portion of this provision shall be construed to prohibit the payment of more than the stated wage rate to any laborer, workman or mechanic employed on the project. It shall be the responsibility of the Contractor to maintain an adequate work force whether higher wages are required or not.

The State of Texas has adopted the Federal Davis-Bacon wage rates for the use in Texas pursuant to and in accordance with the Texas Government Code, Section 2258.022. The U.S. Department

of Labor web site may be accessed at www.access.gpo.gov. to obtain the appropriate wage rates to be used in Tarrant County, Texas.

It shall be the responsibility of the successful contractor to obtain the proper wage rates for Tarrant County for the type of work defined in the bid specifications.

The City will audit the contractor and all sub-contractors employed by contractor to ensure they are paying the prevailing wage rate weekly. Contractor and all sub-contractors must submit certified payrolls on a weekly basis per the [Contractor's Application](#) that must be filed prior to bidding. In the event an audit is performed, the contractor shall be required to supply a certified copy of the records showing the prevailing wage rates have been met.

23. TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the Contractor shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal.

The Contractor shall submit, at such times as may reasonably be requested by the Project Manager, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

24. EXTENSION OF TIME

Contractor shall give the Project Manager immediate notice in writing of any delay in completion of project. If the Owner decides an extension of time is justified, the Project Manager shall issue a written extension of time for completing the work. Extension shall be sufficient to compensate for the delay.

25. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE WORK ON TIME

The Contractor agrees that, from the compensation otherwise to be paid, The Owner may retain the sum of One Thousand Dollars (\$1,000) for each calendar day after the agreed Date of Substantial Completion that the work remains not substantially complete, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Contractor to complete the work at the time stipulated in the contract. This sum is not to be construed in any sense a penalty.

26. PRICE OF WORK

The Owner agrees to pay the Contractor for furnishing of all necessary labor, equipment and material, and the satisfactory completion of all work, the prices set forth in the Proposal hereto attached, which has been made a part of this contract. All materials embraced in the completion of this Contract must be in full conformity with the specifications and stipulations herein contained.

27. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, and use shall not be deemed an acceptance of any work not completed in accordance with the contract documents.

The Contractor shall notify the Project Manager when, in the Contractor's opinion, the contract is "substantially completed" and when so notifying the Project Manager, the Contractor shall furnish to the Project Manager in writing a detailed list of unfinished work.

The Project Manager will review the Contractor's list of unfinished work and will add thereto such items as the contractor has failed to include. The "substantial completion" of the structure or facility shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the structure of facility in accordance with the contract documents.

28. PAYMENTS WITHHELD

The Owner may, on account of subsequently discovered evidence, withhold or nullify any certificate to such extent as may be necessary to protect himself from loss on account of:

- (1) Defective work not remedied.
- (2) Claims filed or reasonable evidence indicating probable filing of claims.
- (3) Failure of the Contractor to make payments properly to Sub-Contractors or for material or labor.
- (4) Damage to another contractor.
- (5) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
- (6) Reasonable indication the work will not be completed within contract time.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

29. ABANDONMENT BY CONTRACTOR

If the Contractor shall fail to commence work within ten (10) calendar days after written notice to commence is served on Contractor or if the Contractor stops work or fails to pursue work in a timely fashion and fails to resume and pursue work in a timely fashion within ten (10) calendar days of a written notice of work stoppage or failure to pursue work in a timely fashion, or if the Contractor fails to comply with orders consistent with the contract documents, the Owner may declare the contract abandoned and direct the surety on the performance bond with a written notice to complete the work. A copy of the notice to the surety shall be served on the Contractor.

After receiving the notice of abandonment, the Contractor shall not remove any materials or supplies from the job site.

After the contract is declared abandoned, the Owner shall be entitled to pursue any legal remedy and to seek damages for breach of contract from the Contractor and, to the extent that it fails to honor its obligations under the performance bond, from the surety on the bond.