

ARTICLE 3. CONTRACT TIME / LIQUIDATED DAMAGES.

Unless otherwise stated in this agreement, **time shall be considered of the essence.**

- a. When **time is of** the essence, the CONTRACTOR shall be liable for failure to deliver or delay in delivery occasioned by and including without limitation strikes, lock-outs, inability of obtaining material or shopping space, breakdowns, delays of carriers or suppliers, and preexisting governmental acts and regulations of the Federal and State governments or any subdivision thereof, unless such governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the CONTRACTOR prior to submission of his/her bid and City Council's acceptance thereof.
- b. When **time is not of** the essence, this agreement shall be inoperative during such period of time that aforesaid delivery or acceptance may be rendered impossible by reason of fire, strike, Acts of God, or government regulation. Provided, however, to the extent that the CONTRACTOR has any commercially reasonable alternative method of performing this contract by purchase on the market or otherwise, he/she shall not be freed of his/her obligation hereunder by this clause, even though the goods intended for this contract were destroyed or their delivery delayed because of any event described above.
- c. **As time is of the essence on this contract**, CONTRACTOR agrees to commence work under this contract within ten (10) days from the date specified in the "Notice to Proceed" and complete each phase of construction within the durations specified in the following table. The durations specified are consecutive calendar days and are subject to such extensions of time as are indicated in the Special Provisions. Each subsequent phase after Phase 1 (Phase 2 and 3) shall start immediately following the previous phase. There shall be no stopping of work or delay of work between phases.

Traffic Control Phase	Duration (Calendar Days)	Anticipated Start Timeframe
Phase 1 <i>(North side paving, drainage, and driveway/side street connections)</i>	160 Days	Within 10 days from date on "Notice to Proceed"
Phase 2 <i>(South side paving, drainage, and driveway/side street connections)</i>	140 Days	Immediately after Phase 1 is complete
Phase 3 <i>(Median pavement, islands, and left turn lanes)</i>	100 Days	Immediately after Phase 2 is Complete

<u>Final Acceptance</u>	Within 400 days from date on "Notice to Proceed"
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Any modifications to the durations provided for each phase of construction must be agreed upon in writing by the CONTRACTOR and the OWNER. Additionally, CONTRACTOR agrees to totally complete work within **400** consecutive calendar days after the date specified in the "Notice to Proceed," subject to such extensions of time as are indicated in the Special Provisions.

d. Milestones included in this contract are as follows:

- 1) **Completion of Traffic Control Phase 1 per the Traffic Control Plan** provided in the Construction Drawings within 160 calendar days and starting within 10 days from the date on the "Notice to Proceed" (subject to such extensions of time as are indicated in the Special Provisions). For purposes of this section, to considered completed, all construction activities included in the Sequence of Construction provided in the Construction Drawings must:
 - a. be in place;
 - b. be functional;
 - c. all storm drain pipes, inlets, and structures within Phase 1 must be completed and operational as determined by the OWNER;
 - d. outfall storm drain connection must be complete as determined by the OWNER;
 - e. all temporary surfaces must be smooth and traversable by property owners;
 - f. all proposed pavement within Phase 1 shall be paved and traversable, AND;
 - g. all erosion control devices shall be inspected, repaired, and/or modified as needed.

In the event that this milestone is not met, OWNER shall have the right to terminate the contract upon thirty (30) days' written notice to CONTRACTOR, if CONTRACTOR does not complete all items within the limits of Phase 1 to the OWNER's satisfaction.

- 2) **Completion of Traffic Control Phase 2 per the Traffic Control Plan** provided in the Construction Drawings within 140 calendar days starting from the completion of Traffic Control Phase 1 (subject to such extensions of time as are indicated in the Special Provisions).
 - a. be in place;
 - b. be functional;
 - c. all storm drain pipes, inlets, and structures within Phase 2 must be completed and operational as determined by the OWNER;
 - d. all temporary surfaces must be smooth and traversable by adjacent property owners;

- e. all proposed pavement within Phase 2 shall be paved and traversable, AND;
- f. all erosion control devices shall be inspected, repaired, and/or modified as needed.

In the event that this milestone is not met, OWNER shall have the right to terminate the contract upon thirty (30) days' written notice to CONTRACTOR, if CONTRACTOR does not complete all items within the limits of Phase 2 to the OWNER's satisfaction.

- 3) **Completion of Traffic Control Phase 3 per the Traffic Control Plan** provided in the Construction Drawings within 100 calendar days starting from the completion of Traffic Control Phase 2 (subject to such extensions of time as are indicated in the Special Provisions).
- a. be in place;
 - b. be functional;
 - c. all storm drain pipes, inlets, and structures within Phase 3 must be completed and operational as determined by the OWNER;
 - d. all proposed pavement within Phase 3 shall be paved and traversable;
 - e. all erosion control and traffic control devices shall be removed and the site is cleaned.

In the event that this milestone is not met, OWNER shall have the right to terminate the contract upon thirty (30) days' written notice to CONTRACTOR, if CONTRACTOR does not complete all items within the limits of Phase 3 to the OWNER's satisfaction.

Calendar Days is defined as any day of the week or month; no days being excepted, such as, Saturdays, Sundays, holidays and inclement weather days. Counting of contract time will only be stopped when the Owner issues a written notice stating this fact, or when the project is noted as substantially complete by written notice from the Owner. OWNER shall determine when such action is necessary.

Extensions of time due to weather delays shall be determined in accordance with the following formula:

$$E = R - P \text{ where } R \text{ is greater than or equal to } P, \text{ and}$$

- E = Extra Precipitation Days
- P = Average Precipitation Days
- R = Total Precipitation Days

Average Precipitation Days (P) is defined as a day of rain, sleet, hail, snow or any combination thereof, and shall be based upon the average precipitation

for each month of the year as defined in the Local Climatological Data summaries issued by the National Climatic Data Center in Asheville, North Carolina, and for this contract shall be as follows:

Average Precipitation

Month	Jan	Feb	Mar	Apr	May	June
Number of Days	6	6	7	7	8	6
Month	July	Aug	Sept	Oct	Nov	Dec
Number of Days	4	4	6	6	6	6

Partial months shall be prorated uniformly for the entire month and the sum of all the months used will be rounded to the nearest whole number. This number shall be P.

Total Precipitation Days (R) is defined as a day of rain, sleet, hail, snow or any combination thereof, if determined by the Owner's Project Representative that the Contractor's construction cannot progress substantially due to precipitation and thus be put in the Daily Inspection Logs as a precipitation day. The sum of all precipitation days shall be R.

The total number of Extra Precipitation Days (E) shall be granted to the Contractor as extension of time due to weather delays, and no additional time due to drying time for saturated soil will be allowed. This contract time is both multi-tiered and cumulative.

e. Liquidated Damages. The CONTRACTOR further agrees to pay the following as liquidated damages:

- (1) \$1,250 per Calendar Day for any unfinished work beyond 400 consecutive calendar days after the "Notice to Proceed" issuance date. This rate shall continue until such time that the Project is complete and accepted by the OWNER
- (2) It is understood between the parties hereto that these sums shall be treated as liquidated damages and not as a penalty, and the OWNER may withhold from the CONTRACTOR's compensation such sums as liquidated damages.

The parties consider the CONTRACTOR's failure to complete performance of the entire contract within the 400th calendar day after the "Phase I Notice to Proceed" date a substantial breach of this agreement, and the amount of liquidated damages set forth herein is a reasonable and fair estimate of just compensation for CONTRACTOR's failure to timely perform the contract.

If there is any conflict between any provision of this Article 3, and any other Provision in this agreement, or in any attachment hereto or any other Contract Document, this Article 3 shall control.

ARTICLE 4. PARTIAL PAYMENT.

OWNER shall make payments to the CONTRACTOR in the following manner. On or about the first of each month, the OWNER, or the OWNER's Authorized Representative, will make accurate estimates of the value, based on contract prices, of the work done and materials incorporated in the work and of materials suitably stored at the site during the preceding calendar month. The CONTRACTOR shall furnish to the OWNER, or the OWNER's Representative, such detailed information as the OWNER may request to aid OWNER as a guide in the preparation of the monthly estimate.

Within the following thirty (30) days, OWNER shall make partial payments to the CONTRACTOR for work performed during the preceding calendar month as estimated by the OWNER or OWNER's Representative. Ten percent (10%) of each estimate shall be retained by the OWNER until final completion and acceptance of all work covered by the Contract for contracts less than four hundred thousand dollars (\$ 400,000). Five percent (5%) of each estimate shall be retained by the OWNER until final completion and acceptance of all work covered by the Contract for contracts greater than four hundred thousand dollars (\$ 400,000). Upon completion and acceptance of all work in compliance with the Contract, the OWNER shall, within thirty (30) days, pay the CONTRACTOR the balance due under the terms and conditions of the Contract.

It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of work done or of its quality or sufficiency nor as an acceptance of the work or the release of the CONTRACTOR of any of its responsibility under the Contract.

ARTICLE 5. DISCRIMINATION.

The CONTRACTOR agrees, in connection with the performance of work under this contract as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin or ancestry. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- b. The CONTRACTOR agrees to include this non-discrimination clause in any subcontracts connected with the performance of this agreement.
- c. In the event of the CONTRACTOR's non-compliance with the above non-discrimination clause, the contract may be canceled or terminated by the OWNER. The CONTRACTOR may be declared by the OWNER to be ineligible for future contracts with the OWNER, until satisfactory proof of intent to comply shall be made by the CONTRACTOR.

ARTICLE 6. ENTIRE CONTRACT.

This Contract and Agreement contains the entire understanding and agreement of the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in writing as part of this Agreement or the Contract Documents.

ARTICLE 7. MODIFICATION.

This contract cannot be modified except by a writing signed by both parties.

ARTICLE 8. VARIABLES IN COST.

The parties hereto assume and understand that the variables in the CONTRACTOR's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in the CONTRACTOR's costs will in no way alter the CONTRACTOR's obligations under this contract nor excuse nonperformance or delay on his/her part.

ARTICLE 10. VENUE.

This contract shall be governed by the laws of the State of Texas. Venue for any court proceedings shall be in Tarrant County, Texas.

ARTICLE 11. CONTRACT DOCUMENTS.

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) This Agreement
- (2) Addendum(s)
- (3) "Notice to Bidders" advertisement
- (4) Bidder's Proposal
- (5) Special Instruction to Bidders
- (6) Performance, Payment and Maintenance Bonds
- (7) Certification of Insurance
- (8) Notice to Proceed
- (9) Technical Specifications
- (10) City of North Richland Hills' Public Works Design Manual
- (11) Special Provisions
- (12) General Provisions
- (13) Special Specifications
- (14) Project Construction Plans/Drawings
- (15) Special Material and/or Equipment Specifications
- (16) Special Material and/or Equipment Drawings
- (17) "Public Works Construction Standards - North Central Texas" adopted by the North Central Texas Council of Governments (NCTCOG), Fifth Edition, Adopted November 2017
- (18) TxDOT Standard Specifications for Construction and Maintenance of Highways, Street, and Bridges (TxDOT Specifications)
- (19) North Central Texas Council of Government references

ARTICLE 12. SUBCONTRACTORS

Any subcontractor who furnishes labor or materials to fulfill an obligation to CONTRACTOR under this Contract or who performs all or part of the work required by this Contract, must comply with all notice and filing requirements of Texas Property Code, Chapter 53 in order to perfect a mechanic's, contractor's or materialman's lien. If a subcontractor complies with Chapter 53 of the Texas Property Code, Owner shall be authorized to withhold payment from the CONTRACTOR for payment of the claim. Owner shall release any such payment to the CONTRACTOR upon written notice and sufficient documentation to Owner from subcontractor that the claim has been paid or otherwise settled.

IN TESTIMONY WHEREOF, the CITY OF NORTH RICHLAND HILLS has caused this instrument to be signed in its corporate name, and on its behalf by the Mayor, duly authorized to execute this instrument by action of the City Council and _____ a corporation, a partnership, an individual acting
(Name of Contractor) ("**X**" out the inappropriate wording)
by and through its duly authorized officials, thereby binding themselves for the faithful and full performance of the terms and provisions of this Agreement.

CITY OF NORTH RICHLAND HILLS:

CONTRACTOR:

By: _____

Mark Hindman

City Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

Alicia Richardson

City Secretary

Name: _____

Title: _____

APPROVED TO FORM AND LEGALITY:

By: _____

Maleshia B. McGinnis, City Attorney