

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made and entered by and between **WHIRLIX DESIGN, INC.**, (hereinafter referred to as "Contractor"), and the **CITY OF NORTH RICHLAND HILLS, TEXAS**, a municipal corporation (hereinafter referred to as "City"), to be effective from and after the date hereinafter provided.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. The parties agree that the contract documents shall consist of the following:

1. This signed Construction Agreement;
2. The Contractor's Response to RFQ #22-018 (elements listed below)
 - a. General Conditions,
 - b. Non-Collusion Affidavit,
 - c. Conflict of Interest Questionnaire,
 - d. Project Guidelines, Proposal Form,
 - e. Addendum #1,
 - f. Addendum #2,
 - g. Insurance Certificate,
 - h. Contractor's proposal,
 - i. Contractor's site plan
3. Negotiated revised Contractor's proposal, dated August 30, 2022
4. Negotiated revised Contractor's site plan CT NRH 01-03, dated July 12, 2022
5. Payment Bond;
6. Performance Bond;

These contract documents form the construction agreement and are a part of this construction agreement as if fully set forth herein. The contract documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the contract documents, the inconsistency shall be resolved by giving precedence to the contract documents in the order in which they are listed above.

THE WORKS

- II.** Contractor shall provide all labor, supervision, materials and equipment necessary to perform all work required by the contract documents in connection with the construction of **Cross Timbers Playground Replacement**, RFP #22-018.

TIME OF COMMENCEMENT; COMPLETION

- III.** Contractor shall commence work within ten (10) calendar days after receiving from City a Notice to Proceed. Contractor agrees that all work hereunder shall be complete within 210 calendar days from Notice to Proceed which will be the date of Substantial Completion.

CONTRACT SUM

- IV.** The City shall pay the Contractor in currently available funds for the performance of the work, subject to additions and deductions by change orders as provided in the contract documents, the amount of ONE-HUNDRED EIGHTY-NINE THOUSAND, FOUR-HUNDRED AND EIGHTY DOLLARS (\$189,480.00). Payment will be due upon completion of work and acceptance of the work by the City.

CHOICE OF LAW; VENUE

- V.** The parties agree that the laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this construction agreement, and that the exclusive venue for any legal proceeding involving this construction agreement shall be Tarrant County, Texas. No additional work shall be authorized or charged for unless authorized by a change order signed by a person authorized by the City to do so. In the event of litigation between the parties, the prevailing party shall be entitled to reasonable attorney's fees that are necessary, equitable and just, in accordance with applicable law, and as awarded by a court of competent jurisdiction.

INSURANCE

- VI.** The Contractor shall, at his own expense, maintain and keep in force insurance coverage in the minimum amounts as specified in the general conditions and specifications of RFP #22-018, with the City as an additional named insured providing primary coverage. Certificates of coverage, including workers compensation insurance, must be submitted with the contract. Insurance coverage must also cover all subcontractors employed by Contractor. Insurance coverage shall be written by companies approved by the State of Texas and acceptable to the Owner.

All required insurance certificates must be submitted prior to commencement of work.

ENTIRE AGREEMENT; AMENDMENTS; BINDING EFFECT

- VII.** This construction agreement, including the contract documents listed in Paragraph I represents the entire and integrated agreement between City and the Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This construction agreement may be amended only by written instrument signed by both City and Contractor.

EFFECTIVE DATE

VIII. This construction agreement, shall be effective upon the date of execution by the City of North Richland Hills City Manager.

IN WITNESS WHEREOF, the parties have executed this construction agreement upon the year and date indicated beneath their signatures hereto.

CITY OF NORTH RICHLAND HILLS

WHIRLIX DESIGN, INC.

BY: _____
City Manager

BY:  _____
Jason Edmundson

DATE: _____

TITLE: President

DATE: 9/14/22

ATTEST:

ATTEST: _____

Alicia Richardson,
City Secretary/Chief Governance Officer

TITLE: _____

APPROVED AS TO FORM AND LEGALITY:

NRH Council Action Y/N

Date Approved _____

Agenda No. _____

Ord /Res No. _____

Maleshia B. McGinnis, City Attorney