

STANDARD FORM OF CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AGREEMENT is entered into this the 15th day of May, 2017, by and between the CITY NORTH RICHLAND HILLLS, a municipal corporation, of the County of Tarrant and State of Texas, hereinafter called "OWNER" and JLB Contracting, LLC of the City of Fort Worth, County of Tarrant and State of Texas 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, in a good and first-class workmanlike manner as specified and indicated in the Contract Documents, of which are incorporated in this Agreement in their entirety as if they were herein set out at length written word for word. The CONTRACTOR shall furnish all labor, materials, tools and equipment required to perform and complete the Work in strict accordance with these Contract Documents. The Work is described as follows:

MEADOW LAKES DRIVE EXTENSION

ARTICLE 2. CONTRACT PRICE.

OWNER agrees to pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, the price or prices shown in the bidder's proposal, which total the following amount:

Two hundred ninety-five thousand five hundred five dollars and 83/100
(\$ 295,505.83)

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.

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 to totally complete the Work within 120 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.

This contract time is both multi-tiered and cumulative. The CONTRACTOR further agrees to pay the following as liquidated damages:

- (1) \$150 per calendar day for any unfinished work for the first 30 days beyond the 120 days. This \$150 rate will start on the 121st consecutive calendar day after the "Notice to Proceed" issuance date and continue through the 170 consecutive calendar day after the "Notice to Proceed" issuance date.
(Day 30 After Contract Time Expires)
- (2) \$300 per calendar day for any unfinished work beyond the 150th consecutive calendar day after the "Notice to Proceed" issuance date. This rate shall continue until such time that the Project is complete and accepted by the OWNER.

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.

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 9. 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 10. 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), October 2004 Edition
- (18) North Central Texas Council of Government references

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 JLB Contracting, LLC, 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.

<u>City of North Richland Hills</u> OWNER	<u>CONTRACTOR</u>
By: <u>Mark Hindman, City Manager</u>	By: _____
	Title: _____
Attest: _____	Attest: _____
Title: _____	Title: _____