

CITY OF LEWISVILLE

PRIMARY ANNUAL REQUIREMENTS CONTRACT FOR 25-81-A CONCRETE REPAIRS

THIS CONTRACT SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between the CITY OF LEWISVILLE, TEXAS, a Texas home rule municipal corporation (the “City”) and HD WAY CONCRETE SERVICE LLC, a Texas limited liability corporation (the “Contractor”) (jointly, the “Parties”).

WHEREAS, the City wishes to enter into an agreement with the Contractor, whereby the Contractor will provide concrete repairs as outlined in the City’s Request for Bids #25-81-A (“RFB”), and the Contractor wishes to enter into an agreement to provide such services to the City.

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. The City accepts the Contractor’s Bid (“Bid”), attached hereto as Exhibit “A”, to provide concrete repairs to the City of Lewisville as provided for in the RFB (Exhibit “B”), both documents are incorporated herein by reference. The Contractor agrees to perform as the primary service provider to the City, and be contacted first to perform the services necessary to provide concrete repairs as described in the RFB (Exhibit “B”) and the Bid (Exhibit “A”) (the “Services”). It is understood that quantities shown in the Bid (Exhibit “A”) are estimates and do not obligate the City to order or accept more than the City’s actual requirements during the Agreement, nor do the estimates limit the City to ordering less than its actual needs during the Agreement, subject to availability of appropriate funds. If the primary contractor is unable to respond to a service call when requested by the City, or if the estimate repair price is deemed by the City to be excessive, the secondary contractor will be notified. If the City is unable to secure the service from the secondary contractor, the City reserves the right to secure such services on the open market.

1.2 Order of Priority of Documents. In the event of any inconsistency between the terms of the Bid, the RFB, and this Agreement, documents shall control in the order set forth in the RFB (Exhibit “B”). In the exhibits, any reference to “Seller” shall mean “Contractor,” and any reference to “Buyer” shall mean “City.”

1.3 Care of Work. The Contractor shall adopt reasonable methods during the term of this Agreement to furnish appropriate protection to City property, and the equipment and materials used to perform and carry out the Services shall be appropriate and proper, with the expressed intent of preventing losses or damages. The Contractor shall be responsible for all such damages to persons or property caused by the performance of Services provided to the City under this Agreement, as set forth in Exhibit “B”.

1.4 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under the Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

2.0 COMPENSATION

2.1 Compensation Based on Unit Pricing. For the Services rendered pursuant to this Agreement, the Contractor shall be compensated for Services performed in accordance with the unit prices outlined in the schedule of fees provided by Contractor in the Bid (Exhibit “A”) and any other payment terms outlined in the

RFB (Exhibit “B”).

2.2 Payment Terms. Payments will be subject to the terms outlined in the Bid (Exhibit “A”). Contractor shall submit invoices for the Services as outlined in the RFB (Exhibit “B”). Payment terms are net 30 days after services are complete, as required, or a correct invoice is received, whichever is later. Invoices must be submitted to the City of Lewisville, Accounts Payable, P.O. Box 299002, Lewisville, TX 75029-9002 or emailed to accountspayable_col@cityoflewisville.com. Payment may be withheld for certain failures to comply with the terms of the RFB (Exhibit “B”), as provided for therein.

2.3 Changes to Compensation. Any change in unit prices outlined in the Bid (Exhibit “A”) during the Initial Term or any Renewal Terms, as hereinafter defined, which increase or decrease cost of the Services by \$50,000.00 or more shall require the approval of the Lewisville City Council. No unit price provided in the Bid (Exhibit “A”) may be increased by more than 25% during the total term of this Agreement, including the Initial Term and any Renewal Terms, as hereinafter defined. No change shall be made to the unit prices provided in the Bid (Exhibit “A”) without the written agreement of both Parties, except for price increases upon renewal, for which the City shall receive written documentation as outlined in the RFB (Exhibit “B”).

3.0 COORDINATION OF WORK

3.1 Representative of Contractor. David W. Bowers, President is hereby designated as the principal and representative of the Contractor authorized to act on its behalf with respect to the Services specified herein and make all decisions in connection therewith (“Representative”). The Representative of the Contractor shall have the right to designate another Representative by providing written notice to the City.

3.2 Contract Officer. The City’s Director of Public Services, Aaron Russell is hereby designated as the representative of the City authorized to act in its behalf with respect to the Services specified herein and make all decisions in connection therewith (“Contract Officer”). The City Manager of the City shall have the right to designate another Contract Officer by providing written notice to the Contractor.

3.3 Subcontractors. If subcontractors are used, the subcontractor will be directed and supervised by the Contractor as provided for in the RFB (Exhibit “B”).

3.4 Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the Services, as set forth in the RFB (Exhibit “B”).

3.5 Right of Inspection. The City shall have the right to observe and check all ongoing work in sufficient detail to determine if the Services are proceeding satisfactorily. The City shall have the right to inspect all Services completed before accepting them and making payments in accordance with this Agreement, as provided for in the RFB (Exhibit “B”).

4.0 INSURANCE, BONDS, RETAINAGE, INDEMNIFICATION, AND LIMITATION OF LIABILITY

4.1 Insurance. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City, during the entire term of this Agreement, including any extension thereof, insurance compliant with the requirements provided in the RFB (Exhibit “B”). Contractor shall provide a Certificate of Insurance compliant with the City’s insurance requirements. Insurance must be approved before work may commence and remain in effect throughout the term of the Agreement.

4.2. **Warranty and Bonds.** The Contractor shall provide a warranty and payment, performance, and maintenance bonds as required in the RFB (Exhibit “B”).

4.3 **Retainage.** Retainage shall be required as set forth in the RFB (Exhibit “B”). Retainage shall be released as each individual project or task issued under this Agreement is considered substantially complete, which shall mean that the individual project or task has been completed in accordance with the scope of work, inspected by the City, and accepted as operational and fit for use. All other testing requirements for the completed project or task must be met, all punch list items must be addressed to the satisfaction of the inspector assigned to the Project and redline drawings and all bond documentation must be submitted to the engineer, to release partial or full retainage.

4.4 **INDEMNIFICATION.** THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR’S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY’S REASONABLE ATTORNEY’S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR’S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. ANY INDEMNIFICATION AGREED TO BY THE CITY IS ONLY TO THE EXTENT ALLOWED BY LAW.

5.0 TERM AND ADDITIONAL PERIODS; TERMINATION

5.1 **Initial Term.** The initial term of this Agreement shall be for a period of twelve (12) months (“Initial Term”), beginning on the effective date of this Agreement, which shall be the date of execution of this Agreement by both Parties (“Effective Date”). The payment of any compensation due under this Agreement for any year within the Initial Term or any Renewal Terms (hereinafter defined) provided for herein is contingent upon the annual appropriation of funds by the City Council of the City. The failure of the City Council to appropriate funds for this purpose shall relieve all Parties from any responsibility under this Agreement and terminate the Agreement.

5.2 **Renewal Terms.** The term of this Agreement may be extended by up to three (3) twelve-month terms

("Renewal Terms") subject to the mutual written agreement of the Parties, under the terms outlined in the RFB (Exhibit "B"). The City Manager is hereby authorized to enter into such mutual written agreement on the City's behalf.

5.3 Transition Term. Upon the expiration of the Initial Term or any subsequent Renewal Term, if the Agreement is not extended as provided for in Section 5.2, above, the Contractor shall continue performance under this Agreement until the City has a new contract in place with either the Contractor or another provider or until the City terminates the Agreement. In no event shall this transition term exceed ninety (90) calendar days unless the City and the Contractor mutually agree otherwise in writing. The City will pay Contractor for all Services rendered in compliance with this Agreement during this transition term. If Services rendered during this transition term are not, in the City's judgment, in compliance with the requirements of this Agreement, no payment will be owed.

5.4 Termination Prior to Expiration of Term. This Agreement may be terminated by the City under the terms outlined in the RFB (Exhibit "B").

6.0 MISCELLANEOUS

6.1 Covenant against Discrimination. The Contractor shall comply with all nondiscrimination requirements set forth in the RFB (Exhibit "B").

6.2 Successors and Assigns. Subject to the limitations upon assignment and transfer herein contained, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns. No right or interest in this Agreement shall be assigned or delegation of any obligation made by Contractor except as set forth in the RFB (Exhibit "B").

6.3 Governing Law and Venue. Venue and governing law shall be as provided for in the RFB (Exhibit "B").

6.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.5 Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.

6.6 ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto ("ADA") and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if applicable.

6.7 Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility

Verification Form (I-9) for every worker performing services under the Agreement. The Contractor and its Subcontractors shall establish appropriate procedures and controls so no services or products under the Agreement will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's or Subcontractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Agreement. The audit will be at the City's expense.

6.8 Immigration Reform and Control Act. The City supports the Immigration Reform and Control Act (IRCA; 8 U.S.C. §1324a) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of the IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of the IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its subcontractors shall at all times during the term of this Agreement comply with the requirements of the IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of the IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its subcontractors submit the aforementioned declarations; or (c) the Contractor or its subcontractors fail to timely notify the City of an IRCA violation. The Contractor shall submit the IRCA Compliance Statement, attached as Exhibit "C", to the City prior to any work being performed under this Agreement.

6.9 Advertising. Contractor shall not advertise or publish, without the City's prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

6.10 Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel with any questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

6.11 Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the

Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

6.12 Texas Government Code Chapter 2271. Pursuant to Texas Government Code Chapter 2271, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Contractor employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

6.13 Texas Government Code Chapter 2274. Pursuant to Texas Government Code Chapter 2274, Contractor affirms that execution of this Agreement serves as written verification that Contractor (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Contractor employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274. Any terms used in this section which are defined in Texas Government Code Chapter 2274 shall have the meaning given therein.

6.14 Texas Government Code Chapter 2275. Pursuant to Texas Government Code Chapter 2275, Contractor verifies it is not:

- A. owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - i. individuals who are citizens of China, Iran, North Korea, Russia, or other designated country, as that term is defined in Texas Government Code Section 2275.0101; or
 - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country, as that term is defined in Texas Government Code Section 2275.0101; or
- B. headquartered in China, Iran, North Korea, Russia, or other designated country.

The City may terminate this Agreement immediately without any further liability if the City determines, in its sole judgment, that Contractor has not provided accurate information in response to this section. This section is not applicable if the Agreement does not grant the Contractor direct or remote access to or control of critical infrastructure as defined in the Texas Government Code section 2275.0101, except as specifically allowed by the City for product warranty and support services.

6.15 Texas Government Code Chapter 2276. Pursuant to Texas Government Code Chapter 2276, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not

boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

This section shall not apply if Contractor employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2276.

6.16 Notice. Notices required to be given to any party to this Agreement shall be given by certified mail, return receipt requested, postage prepaid, or overnight delivery by a nationally recognized courier, addressed to the party at its address as set forth below, and, if given by certified mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville
Attn: Aaron Russell, Public Services Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Company by notice to:

HD Way Concrete Services LLC
Attn: Martin Aguayo, General Superintendent
2760 Autumn Breeze
Grand Prairie, Texas 75052

Any party may change the address to which notices are to be sent by giving the other Parties written notice in the manner provided in this paragraph.

6.17 Worker's Compensation. The Contractor shall abide by the worker's compensation requirements outlined in the RFB (Exhibit "B").

6.18 Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.

6.19 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

6.20 Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

6.21 Entire Agreement; Amendments. This Agreement and its exhibits contain the entire agreement of the Parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement shall be made except through a written agreement which has been executed by an authorized representative of both Parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such

amendment.

6.22 Certification of Execution. The Contractor and the person or persons signing and executing this Agreement on behalf of the Contractor, or representing themselves as signing and executing this Agreement on behalf of the Contractor, do hereby warrant and certify that this Agreement has been approved by appropriate action of the Contractor, and that the person or persons signing and executing this Agreement have been duly authorized by the Contractor to sign and execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all terms and conditions herein set forth.

6.23 Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

6.24 Waiver. The City's failure to act with respect to a breach by Contractor does not waive its right to act with respect to subsequent or similar breaches, and the failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision, as more specifically set forth in the RFB (Exhibit "B").

6.25 Closure. By signature below, the Parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have executed and entered into this Agreement on the ____ day of _____, 2025.

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

HD WAY CONCRETE SERVICE LLC

By: _____
Claire Powell, City Manager

By: David Bowers
David W. Bowers, President

Date: _____

Date: 11/27/2025

Attest: _____
Jennifer Malone-Ippolito,
City Secretary

Attest: Anne Bowers

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

HD WAY CONCRETE SERVICE LLC
2760 Autumn Breeze
Grand Prairie, Texas 750524

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

**EXHIBIT A
CONTRACTOR'S BID**

**EXHIBIT B
CITY'S REQUEST FOR BID FOR ANNUAL REQUIREMENTS CONTRACT FOR
25-81-A CONCRETE REPAIRS**