

## CITY OF LEWISVILLE

### ANNUAL CONTRACT FOR ASPHALT REHAB PROJECTS

**THIS CONTRACT SERVICES AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF LEWISVILLE, TEXAS (the "City") and Reynolds Asphalt and Construction Company (the "Contractor") (jointly, the "Parties").

**WHEREAS**, the City wishes to enter into an agreement with the Contractor, whereby the Contractor will provide various asphalt rehab services to the City, including, but not limited to, the pulverization, stabilization, and asphalt overlay of existing asphalt pavements as set forth hereinafter in this Agreement, and the Contractor wishes to enter in 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 Proposal ("Proposal"), attached as Exhibit "A", to provide a variety of asphalt rehab services for City streets throughout the City, as described in the request for proposals for the annual requirements contract for asphalt rehab projects ("RFP") attached hereto as Exhibit "B", which is incorporated herein by reference. The Contractor agrees to perform the services as described in the RFP (Exhibit "B") and the Proposal (Exhibit "A") (the "Services"). As a material inducement to the City entering into this Agreement, the Contractor represents and warrants that the Contractor is experienced in performing the Services contemplated herein and, in light of such status and experience, the Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder. For the purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more firms performing similar work under similar circumstances, as determined by the City.

**1.2 Conflict among Documents.** In the event of any inconsistency between the terms of the Proposal, the RFP, and this Agreement, documents shall control in the following order: (1) Agreement; (2) RFP (Exhibit "B"); (3) Proposal (Exhibit "A"), except that in the event of any inconsistency between any answers to questions or clarifications provided by the City which are included in the Proposal (Exhibit "A") and the original information provided in the RFP (Exhibit "B"), the clarified information provided in the Proposal (Exhibit "A") shall control.

**1.3 Familiarity with Work.** By executing this Agreement, the Contractor warrants that the Contractor (a) has thoroughly investigated and considered the scope of Services to be performed, (b) has been on the premises where the Services are to be performed and is thoroughly familiar with the premises and the structures thereon, (c) has carefully considered how the Services should be performed, and (d) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, the Contractor warrants that the Contractor has, or will, investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of Services hereunder. Should the Contractor discover any latent or unknown conditions which will materially affect the performance of the Services hereunder, the Contractor shall immediately inform the City of such fact and shall not proceed except at the Contractor's risk until written instructions are received from the City.

**1.4 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, except such losses or damages as may be caused by the City's own negligence.

**1.5 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.

**1.6 Additional Services.** The City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the RFP (Exhibit "B") and Proposal (Exhibit "A") or make changes by altering, adding to or deducting from said Services. No such extra work may be undertaken unless written order is first given by the City to the Contractor, incorporating therein any adjustment in the time to perform the Agreement, which said adjustment is subject to the written approval of the Contractor. It is expressly understood by the Contractor that the provisions of this section shall not apply to Services specifically set forth in the RFP (Exhibit "B") and Proposal (Exhibit "A") or reasonably contemplated therein. The Contractor hereby acknowledges that the quantities of work provided for in the RFP (Exhibit "B") and the Proposal (Exhibit "A") are estimates, and that this Agreement is a requirements contract for work as needed by the City. The Contractor hereby acknowledges that it accepts the risk that the Services to be provided pursuant to this Agreement may be more costly or time consuming than the Contractor anticipates and that the Contractor shall not be entitled to additional compensation therefore.

## **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 Proposal (Exhibit "A").

**2.2 Payment Terms.** Contractor shall submit invoices for the Services as outlined in the Proposal (Exhibit "A"). 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 in duplicate to the City of Lewisville, Accounts Payable, P.O. Box 299002, Lewisville, TX 75029-9002.

**2.3 Changes to Compensation.** Any change in unit prices outlined in the Proposal (Exhibit "A") during the initial term or any renewal terms 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 Proposal (Exhibit "A") may be increased by more than 25% during the term of this Agreement or any renewal terms. No change shall be made to the unit prices provided in the Proposal (Exhibit "A") without the written agreement of both Parties.

## **3.0 COORDINATION OF WORK**

**3.1 Representative of Contractor.** Ned Tankersley 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. 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 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 Prohibition against Subcontracting or Assignment.** The Contractor shall not contract with any

entity to perform in whole or in part the Services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.

**3.4 Independent Contractor.** Neither the City nor any of its officials or employees shall have any control over the manner, mode or means by which the Contractor, its agents or employees, perform the Services required herein, except as otherwise set forth in this Agreement, the RFP, or Proposal. The Contractor shall perform all services required herein as an independent contractor of the City and shall remain under only such obligations as are consistent with that role. The Contractor shall not at any time or in any manner represent that it, or any of its agents or employees, are agents or employees of the City.

#### **4.0 INSURANCE, BONDS, AND INDEMNIFICATION**

**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 RFP (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 contract.

**4.2. Warranty and Bonds.** The Contractor shall provide a warranty and payment and maintenance bonds as required in the RFP.

**4.3 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 THE 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.**

#### **5.0 TERM AND ADDITIONAL PERIODS; TERMINATION**

**5.1 Initial Term.** The initial term of this Agreement shall be for a period of one (1) year beginning on \_\_\_\_\_, 2019. The payment of any compensation due under this Agreement for any year

within the initial term 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 two (2) one-year terms subject to the mutual agreement between both parties.

**5.3 Transition Term.** Upon the expiration of the initial term, any subsequent term, or all options to renew, 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.** Either party may terminate this Agreement at any time upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Contractor shall immediately cease all Services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the City, the Contractor shall be entitled to compensation for all Services rendered in compliance with this Agreement prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contract Officer after the termination notice, and the City shall be entitled to reimbursement for any compensation paid in excess of the services rendered after the termination notice. If additional services rendered upon authorization by the Contract Officer are not in compliance with the level of service outlined in this Agreement, no payment will be owed. In the event of termination by either Party, the City may enter into an agreement for substantially similar services to those Services provided for in this Agreement immediately upon receipt by the applicable party of the cancellation notice required herein.

## **6.0 MISCELLANEOUS**

**6.1 Covenant against Discrimination.** The Contractor covenants by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

**6.2 Non-liability of City Officers and Employees.** No officer, official or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

**6.3 Successors and Assigns.** The City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Contractor shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Contractor.

**6.4 Governing Law and Venue.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.

**6.5 Arbitration.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration

**6.6 Severability.** In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity 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.

**6.7 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.

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

**6.9 Immigration Reform and Control Act (8 U.S.C. §1324a).** The City of Lewisville supports the Immigration Reform and Control Act (IRCA) 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 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 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 the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of 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 declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.

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

**6.11 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](http://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.

Said person should consult with legal counsel if they have 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 2270.** Pursuant to Texas Government Code Chapter 2270, 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.

**6.8 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.

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

**6.10 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: Public Works Director  
151 W. Church Street  
P.O. Box 299002  
Lewisville, Texas 75057

For Company by notice to:

Reynolds Asphalt and Construction Company  
Attn: Ned Tankersley, Vice President  
P.O. Box 370  
Euless, Texas 76039

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.

**IN WITNESS WHEREOF,** the parties have executed and entered into this Agreement as of the date first written above.

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

By: \_\_\_\_\_  
Donna Barron, City Manager

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Julie Heinze, City Secretary

**CITY OF LEWISVILLE**  
151 West Church Street  
Lewisville, Texas 75057

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

**REYNOLDS ASPHALT AND**  
**CONSTRUCTION COMPANY**

By: Ned Tankersley  
Ned Tankersley, Vice President

Date: 3/28/19

Attest: Laura Mayo

**REYNOLDS ASPHALT AND**  
**CONSTRUCTION COMPANY**  
P.O. Box 370  
Euless, TX 76039