

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 1st day of December 2019, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **VULCAN MATERIALS COMPANY**, hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall furnish and deliver As Needed Crushed Stone as described and defined herein.

All services provided shall be in accordance with the following, in order of precedence: this Agreement for Service assigned Fairfax Water Contract No. 2019-073 ("Agreement" or "Contract"); the Contractor's Bid Submission dated August 29, 2019; and FW's Invitation for Bid (IFB) No. 19-77 dated August 13, 2019, (including all addenda), (both of which are incorporated into this Contract by reference). In the event that the IFB and the Contractor's Bid Submission Form contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

1.0 TERM OF CONTRACT AND ANNUAL RENEWALS

1.1 CONTRACT TERM:

The term of this contract shall be from December 1, 2019 through November 30, 2020, with the option to renew the contract for an additional four 1-year terms through November 30, 2024 at the discretion of Fairfax Water.

1.2 ANNUAL RENEWALS:

- A. Contract renewals will be renewed at the then current rates, terms and conditions unless a price adjustment is requested. Contractors may submit a request for contract price increases once annually for each renewal year. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 days prior to the end of the then current contract year.
- B. If the CPI-U for Washington-Arlington-Alexandria is not the appropriate index for the item(s) being bid, the bidder may substitute any other single BLS price index (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the

greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Bidder must specify the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237) on their Bid Submission Form. The specific BLS index identified by the Bidder on their Bid Submission Form will be used for the duration of the contract. If the substituted BLS index is discontinued by the BLS during any contract term, the Bidder may submit a request to the Procurement Contact to change the substituted BLS index to a different BLS index so as long as the newly substituted BLS index meets the requirements of this paragraph. If an alternate BLS index does not exist, or if the Contractor fails to request a change in the BLS index, the Contractor will automatically revert to the CPI-U for Washington-Arlington-Alexandria for the remainder of the contract terms.

- C. Any request for contract price increases must be submitted at least 60 days prior to the end of the then current contract year.
- D. Issuance of a written renewal document and/or purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.
- E. Negative BLS index: If the agreed upon index is a negative number the contractor shall reduce contract rates by the same amount for new contract year.

2.0 SCOPE OF WORK

2.1 Crushed Stone Material List and Estimated Quantities by Delivery Location

- A. DELIVERY SITE 1 – Falls Church Maintenance Facility
217 Gordon Road
Falls Church, VA 22046

Material	Estimated Annual Quantity
VA #21A	3,000 tons
VA #57	3,000 tons

- B. DELIVERY SITE 2 – Chantilly Maintenance Facility
4400 Henninger Court
Chantilly, VA 29151

Material	Estimated Annual Quantity
VA #21A	3,700 tons
VA #57	2,000 tons

- C. DELIVERY SITE 3 – Newington Maintenance Facility
8001 Cinder Bed Road
Lorton, VA 22079

Material	Estimated Annual Quantity
VA #21A	4,800 tons
VA #57	2,000 tons

2.2 Delivery / Time of Performance

- A. Fairfax Water requires that delivery be made at the delivery site within 1-business day after Contractor receipt of order.
- B. The delivery site will be identified for each order placed. Deliveries shall be made between the hours of 7:00 am and 2:30 pm on regular FW business days unless other arrangements have been made in advance.
- C. All deliveries shall be FOB Destination. Haul rates shall include all charges that may be imposed in fulfilling the terms of the contract. Fairfax Water will not pay any charges not included on the Bidder's Bid Submission Form.
- D. Fairfax Water reserves the right to pick up materials from the Contractor when it is in the best interest of Fairfax Water. In these instances, FW will notify the Contractor in advance and the Contractor shall release the materials only to the designated FW representative authorized to pick up materials.

2.3 Crushed Stone Delivery Driver and Vehicle Requirements

- A. Any driver delivering crushed stone material to a FW site on behalf of the crushed stone contractor shall possess all the qualifications and licenses required by the National Surface Transportation Board, the Department of Transportation, the Virginia Division of Motor Vehicles, and any other agency or governing body with jurisdiction over transportation services. The crushed stone contractor shall not permit an unqualified or disqualified driver to perform delivery services to a FW site at any time during the term of the contract. At the request of FW, the crushed stone contractor shall provide copies of all permits or applicable evidence of qualification and registration of any driver performing delivery services to a FW facility on their behalf.
- B. The crushed stone contractor shall require all drivers delivering crushed stone material to a FW facility on behalf of the crushed stone contractor to have established programs that comply with all federal and state laws and regulations regarding the use of controlled substances and the use of alcohol by its drivers
- C. While on a FW site, the driver shall remain in the designated delivery area. The driver may perform normal and necessary safety inspections and operations checks of his

vehicle but at no time shall the driver perform maintenance or repairs to his vehicle without the express approval of the FW site manager or his designated representative.

- D. All vehicles used to deliver crushed stone material to a FW site on behalf of the crushed stone contractor shall have a current inspection sticker properly placed and visible, shall be well maintained and free from known defects, and shall be equipped with back up alarms, Mine Safety and Health Administration approved tarp, engine muffler and any other equipment as may be required by federal, state, and local law and regulations.
- E. If the delivery driver experiences an accident or spill while on a FW site, the delivery driver shall notify the FW site manager as soon practical after the accident or spill, but in all instances prior to leaving the FW site.

2.4 Emergency Purchases

Should the Contractor be unable to furnish the required item within the period of time specified in the contract, FW reserves the right to make emergency purchases from other sources.

2.5 Additions of Similar Material and Haul Services

Fairfax Water reserves the right to add similar crushed stone material and haul services during the period of the contract. Fairfax Water and the Contractor will mutually agree to material prices for any material added to the contract. Haul rates for any added material shall be at the same rates as currently in effect for the applicable delivery site location at the time the new material is added to the contract. Contract amendments will be issued for all additions.

2.6 Sales/Delivery Tickets

All deliveries shall be supported by the Contractor's Sales/Delivery Ticket. The Sales/Delivery Ticket shall contain the following information:

1. Contractor's Name
2. Applicable Delivery Site's Purchase Order Number
3. Date of Purchase
4. Stone Quantity listed in Tons, Unit Price per Ton and Total Cost for the Stone
5. Haul Rate per ton for Delivery to the Applicable Delivery Site and Total Cost for the Delivery
6. Signature and Printed Name of the FW Authorized Representative receiving the material

2.7 Estimated Quantities

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year and shall not be construed to represent an amount which

FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to FW's actual needs. Bidder acknowledges and agrees that FW will only be responsible for the amounts actually purchased.

3.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

3.1 Annual Economic Price Adjustment

- A. Contract renewals will be renewed at the then current rates, terms and conditions unless a price adjustment is requested. Contractors may submit a request for contract price increases once annually for each renewal year. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 days prior to the end of the then current contract year.
- B. If the CPI-U for Washington-Arlington-Alexandria is not the appropriate index for the item(s) being bid, the bidder may substitute any other single BLS price index (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Bidder must specify the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237) on their Bid Submission Form. The specific BLS index identified by the Bidder on their Bid Submission Form will be used for the duration of the contract. If the substituted BLS index is discontinued by the BLS during any contract term, the Bidder may submit a request to the Procurement Contact to change the substituted BLS index to a different BLS index so as long as the newly substituted BLS index meets the requirements of this paragraph. If an alternate BLS index does not exist, or if the Contractor fails to request a change in the BLS index, the Contractor will automatically revert to the CPI-U for Washington-Arlington-Alexandria for the remainder of the contract terms.
- C. Any request for contract price increases must be submitted at least 60 days prior to the end of the then current contract year.
- D. Issuance of a written renewal document and/or purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.
- E. Negative BLS index: If the agreed upon index is a negative number the contractor shall reduce contract rates by the same amount for new contract year.

- F. By submission of a bid, Contractors agree and accept the terms of items A, B, C, D and E above for the duration of the contract.

3.2 Anti-Discrimination

By entering into a contract, the Contractor certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3.3 Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

3.4 Arrearage

By entering into a contract, the Contractor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Contractor further agrees that it shall make diligent efforts to avoid becoming in arrears during the initial term of this Contract, or any renewal period of this Contract.

3.5 Assignment of Interest

The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

3.6 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

3.7 Contract Changes / Change Orders

A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from IFB 19-77 or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in IFB 19-77, or this Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the FW Purchasing Agent or his designated representative. Contract changes shall be in writing and shall be on official FW General Manager or Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Purchasing Agent.

B. Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs

incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

3.8 Contractor's Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this Contract, including all actions of the Contractor's delivery driver while performing delivery services to FW.
- B. The use of a subcontractor of any kind performing any requirement needed to fulfill the obligations of this Contract does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the damaged property, and all such work must be approved by FW Project Manager.

3.9 Delivery

- A. By entering into a contract, the Contractor guarantees delivery of contract items within the timeframe specified herein. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.

- B. Deliveries must be made by within the delivery time specified herein. If a delay is anticipated, the Contractor shall provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.

3.10 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to this Contract resulting from IFB 19-77, are proper and in accordance therewith.

3.11 Examination of Records

By entering into a contract, the Contractor agrees that FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to IFB 19-77, or until audited by FW, whichever is sooner. Contractor shall provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

3.12 Familiarity with Specifications

- A. The Contractor bears all responsibility for having thoroughly examined IFB 19-77 in its entirety. In the event that the Contractor had any questions or comments regarding the proper meaning or intent of any aspect of IFB 19-77, then the Contractor shall have submitted all such questions and comments in writing to the Procurement Contact identified on the cover sheet of solicitation IFB 19-77.
- B. By entering into a Contract as a result of IFB 19-77, the Contractor shall be deemed to constitute a representation on the part of the Contractor that it has thoroughly examined solicitation IFB 19-77 and has submitted any and all questions and comments it may have had regarding the meaning or interpretation of the solicitation to Fairfax Water in the manner prescribed in IFB 19-77.

3.13 Governing Law; Venue; Waiver of Jury Trial

Notwithstanding any provision to the contrary, this Contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

3.14 Incorporation by Reference

This Contract is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the Contract. By entering into a contract, Contractor acknowledges the VPPA and agrees to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

<http://www.eva.virginia.gov/pages/eva-vppa.htm>

3.15 Indemnification and Responsibility for Claims and Liability

Contractor is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

3.16 Insurance

- A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, the Contractor may be required to provide a list of all insurance claims made against it within the past 36 months. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.
- B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of

Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.

- C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor shall cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract.
- E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
For Construction Contracts:	
◆ Directors & Officers – Errors & Omissions	\$2,000,000
- F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.

- G. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

3.17 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

3.18 Pass-through Price Increases and Decreases

For annually renewable contracts:

- A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.
- B. Decreases:
1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass-through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.1 above.
 2. Prior to the end of the then current contract year, the pass-through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

3.19 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

- A. That any contract awarded by FW include the following clauses:
 - 1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
 - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
 - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
 - 2. Bidders shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
 - 3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
 - 4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

3.20 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other

departmental reps. Failure to comply may result in late payments for which FW will not be liable.

- B. **Terms:** All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. **Invoices:** The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- E. **Refunds:** If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- F. **Unreasonable Charges:** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

3.21 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

3.22 Price Firm Period

Contract pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

3.23 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

3.24 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be affected by FW's issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

3.25 Rider Clause

Subject to the mutual agreement between the parties, any contract awarded on the basis of IFB 19-77 may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of IFB 19-77 will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Contractor and subsequently accepted by FW.

3.26 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax identification number is 54-6025290.

3.27 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the

provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

- B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

3.28 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

3.29 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

3.30 Immigration Reform and Control Act of 1986

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

4.0 SPECIAL TERMS AND CONDITIONS

4.1 Delays

- A. By the Contractor: After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW and to recover any additional costs for obtaining a replacement contractor, lost funds and/or related

expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.

- B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inactions of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

4.2 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW or Member, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

4.3 Priority Customer

By submitting a Bid in response to this solicitation, Bidder understands and acknowledges that FW provides services that are essential to the health and welfare of the public. To the extent that the Contractor must prioritize and/or allocate services among its customers, the requirements of FW will be honored before service is provided to a customer with no obligations with regard to the public health and welfare.

4.4 TIME IS OF THE ESSENCE!

Time is of the essence! This is a time critical project! Once started, this project must continue without delay or interruption, and unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project services and charge any additional or increased costs to the defaulted Contractor.

5.0 COMPENSATION

For the contract term effective December 1, 2019 through November 30, 2020, the Contractor shall be compensated for material and delivery charges for Delivery Site 3 in accordance with the Total Cost per Ton listed in the Pricing Table shown below. The Contractor acknowledges and agrees that the quantities specified herein are only estimates and shall not be construed to represent an amount to which FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to the actual needs of the FW.

Contractor agrees that FW will only be responsible for the actual amounts ordered and received. Furthermore, the Contractor acknowledges and agrees that the Unit Prices listed in the table below are all inclusive and represents the total cost per ton to FW for the purchase of the specified goods and services, and that FW will not pay any additional charges.

DELIVERY SITE 3
 Newington Maintenance Facility
 8001 Cinder Bed Road
 Lorton, VA 220179

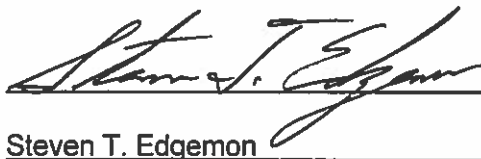
Material	Estimated Quantity	UOM	Material Unit Cost	Haul Rate per Ton	Total Cost per Ton
VA #21A	4,800	Ton	\$14.50	\$4.25	\$18.75
VA #57	2,000	Ton	\$19.50	\$4.25	\$23.75

FAIRFAX COUNTY WATER AUTHORITY
 8570 Executive Park Avenue
 Fairfax, Virginia 22031

VULCAN MATERIALS COMPANY
 13880 Dulles Corner Lane, Suite 450
 Herndon, Virginia 20171

Procurement Contact: Tammy L. Spinks
 Phone: 703-289-6275
 Email: tspinks@fairfaxwater.org

Contact: Jess Brindisi
 Phone: 703-282-3509
 Email: jess@vmcmail.com

By: 
 Name: Steven T. Edgemon

By: P. Jess Brindisi
 Name: P. Jess Brindisi

Title: General Manager

Title: Account Manager

Date: 10/28/19

Date: 10/29/19