

violation of any terms or conditions of said contract.

3. **Term.** This Contract shall be for a period of **one (1) year**, commencing on **October 26, 2021** and expiring on **October 25, 2022**, and may be extended at the sole discretion of the **County** for an additional **one (1) year**, under the same rates, terms and conditions unless this Contract is terminated pursuant to the provisions herein, whichever occurs first. The **County** also reserves the right to continue this bid for an additional sixty (60) day grace period at the end of the contract term for unforeseen delay of award for the next term and under the same rates, terms and conditions.

4. **Licenses.** As a condition of this Contract, **Company** shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority during the term hereof to provide the Services. If such license or permit is suspended or revoked, this Contract shall automatically be terminated and **Company** shall immediately notify the **County**.

5. **Company** shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.

6. All trucks or vehicles operated by the **Company** to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employed or subcontracted by the **Company** who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

7. **Consideration.** As consideration for rendering the Service provided for in this Contract, the **County** agrees to pay the **Company** the amounts specified in Exhibit "B" attached hereto payable against written invoice submitted by the **Company** in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

8. **Insurance:** Consistent with its status as an independent contractor and at its sole expense, **Company** agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which are specified in the Procurement Packet and/or which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, **Company's** activities and all persons, vehicles, equipment and property connected with providing Services, to include theft or loss. The amount of insurance required shall be in accordance with amounts specified by the **County** or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act.

These requirements do not establish limits of the **Company's** liability. Any and all applicable insurance requirements and amounts are incorporated herein by reference for all purposes. The **Company** is responsible for ensuring all required insurance policies are valid for the duration of the contract. All insurance policies are to be issued by an insurance **company** authorized to do business in the State of Texas and acceptable to the **County**. The **Company** shall cause all subcontractors utilized by the **Company** to also comply with these specifications. The **Company** shall furnish to the **County** certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect. (See Exhibit "C" attached hereto and incorporated herein for all purposes). **For each applicable policy, the Company shall name the County as an additional insured.** The **Company** shall notify the **County** a minimum of thirty (30) days in advance of cancellation of all or part of a policy. The **Company** shall make any other insurance documentation available to the **County** upon request.

9. **INDEMNIFICATION. THE COMPANY SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES INCLUDING ATTORNEY'S FEES FOR THE DEFENSE OF ANY ACTION AGAINST THE COUNTY ARISING OUT OF, RESULTING FROM, OR CONNECTED WITH THE PROVISION OF THE SERVICE BY THE COMPANY UNDER THIS CONTRACT. SAID INDEMNITY SHALL COVER ANY ACT OR FAILURE TO ACT BY THE COMPANY, ITS AGENTS OR EMPLOYEES.**

10. **Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party.

11. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

12. **No Waiver.** No waiver by the **County** of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

13. **Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship that the **County** has no supervision of the performance of the Services provided by the **Company**, and that the **Company** is an independent contractor under this Contract.

14. **Notice.** Any notice required or permitted to be given hereunder shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, as set forth below:

If to County: The County of Hidalgo
 Attn: County Judge
 100 E. Cano, 2nd Floor
 Edinburg, Texas 78539

Copy to: Hidalgo County Purchasing Dept.
 Attn: Alexandra B. Vela
 C/O Purchasing Director
 2802 S. Bus. Hwy 281
 Edinburg, Texas 78539

If to Company: Upper Valley Materials LLC
 3609 W. Palmavista Drive
 Palmview, TX 78572

15. **Provisions.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. **Termination.** This Contract may be terminated by the **County** without cause upon thirty (30) days written notice.

17. **Successors.** This Contract shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

18. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in **Hidalgo County, Texas**. The **Company** hereby consent to personal jurisdiction in **Hidalgo County, Texas**.

19. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of the **County** under this Contract, the **County** may terminate this Contract upon ninety (90) days written notice to **Company**. The **County** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Contract. The parties intend this provision to be a continuing

right to terminate this Contract at the expiration of each budget period of the **County**. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903*: In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of the **County** under this Agreement, the **County** may terminate this Contract upon ninety (90) days written notice to **Company**, the **County** agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Contract. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of the **County** in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).

20. **Headings.** The headings and captions contained in this Contract are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

21. **Gender and Number.** All pronouns used in this contract shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate

22. **Authority to Execute.** The execution and performance of this Contract by the **County** and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of the **County** and Contractor in accordance with its terms.

23. **Entire Agreement.** This Contract contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this contract not specifically set forth herein. This contract may be modified or amended only by contract in writing executed by the parties hereto, and not otherwise.

24. **Immunities.** Nothing in this Contract is intended to and the **County** does not hereby waive, release or relinquish any right to assert any of the defenses the **County** enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to the County as to any claim or action of any person, entity, or individual against the **County**.

25. **Nondiscrimination.** The **Company**, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this

contract/agreement. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial Procurement Packet and are incorporated herein and made a part of this contract for all purposes.

26. **Additional Documents.** The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this contract.

27. **Required Contract Provision for Contracts Subject to Federal Award (if applicable).** Pursuant to 2 CFR 200.326, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, The **County** contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this contract for all purposes.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED and effective as of the day and year first written above.

COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

Upper Valley Materials LLC.

By: _____

Printed Name: _____

Title: _____

Approved By Commissioners Court On: _____

APPROVED AS TO FORM:
Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

Amanda Diane Austin, Assistant District Attorney