

CITY CLERK
ORIGINAL
LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
VULCAN MATERIALS COMPANY

C-10906
06/15/2016

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 15 day of June, 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Vulcan Materials Company, a New Jersey corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On January 29, 2016, under the S.A.V.E Cooperative Purchasing Agreement, the City of Chandler entered into a contract with Contractor to purchase the goods and services described in the Hot Mix Asphalt Materials Agreement, Agreement No. ST6-745-3633 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement purchases can be made by governmental entities from the date of award, which was January 29, 2016, until the date the contract expires on January 31, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond January 31, 2021. The initial period of this

Agreement, therefore, is the period from the Effective Date of this Agreement until January 31, 2017. The City Manager or designee, however, may renew the term of this Agreement for four (4) additional one-year periods until the Cooperative Purchasing Agreement expires on January 31, 2021. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed thirty five thousand dollars (\$35,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Kenneth W. Vayda
6210 W. Myrtle Ave., Suite 111
Glendale, Arizona 8530
623-930-2674

and

Vulcan Materials Company
c/o Patti Southway
2526 E. University Dr.
Phoenix, AZ 85034
602-803-9828

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

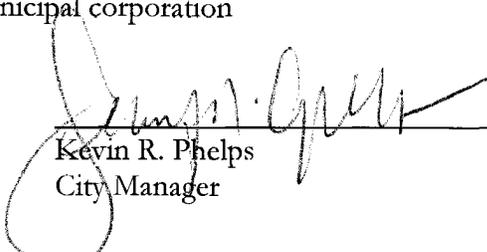
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“Contractor”

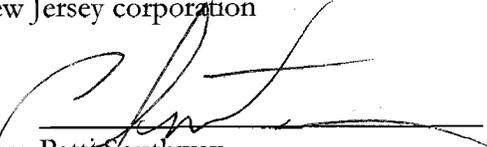
City of Glendale, an Arizona
municipal corporation

Vulcan Materials Company,
a New Jersey corporation

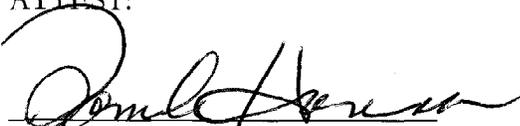
By:


Kevin R. Phelps
City Manager

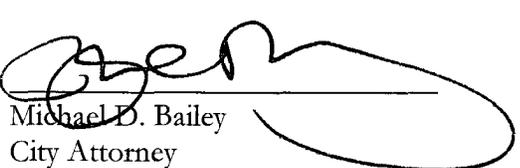
By:


Name: Patti Southway
Title: Sr. Sales Representative

ATTEST:


Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
VULCAN MATERIALS COMPANY**

EXHIBIT A
CITY OF CHANDLER PURCHASE AGREEMENT, HOT MIX ASPHALT MATERIALS
AGREEMENT NO. ST6-745-3633

100-0-000

**CITY OF CHANDLER PURCHASE AGREEMENT
HOT MIX ASPHALT MATERIALS
AGREEMENT NO.: ST6-745-3633**

THIS AGREEMENT is made and entered into this 21 day of January, 2016, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Vulcan Materials Company, hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

- 1.1. **Agreement Administrator.** Contractor shall act under the authority and approval of the Streets Superintendent or designee (Agreement Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.
- 1.3. **Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.
- 1.4. **Subcontracts.** Contractor shall not enter into any subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK/SPECIFICATIONS: Contractor shall provide hot mix asphalt materials all as more specifically set forth in Exhibit A, attached hereto and made a part hereof by reference.

- 2.1. **Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.
- 2.3. **Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.
- 2.4. **Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.

 - 2.4.1. The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".
 - 2.4.2. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.

- 2.4.3. The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4. The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.5. The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.5. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this agreement will be made only upon issuance of a City Purchase Order, a Agreement Release Order or use of a City Procurement Card.
- 2.6. **Annual Usage Report.** Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by the agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each agreement item by individual purchasing unit.
- 2.7. **Catalogs/Agreement Price Listing.** As applicable, the Contractor (s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline agreement prices.
- 2.9. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.10. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.11. **New Products.** New products announced by manufacturers on agreement may be submitted by the Contractor for add-ons to the existing agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.12. **Packing and Shipping.** The Contractor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 2.13. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. Contractor shall retain title and control of all goods until they are delivered and accepted by City. All risk of transportation and all related charges shall be the responsibility of Contractor. All claims for visible or concealed damage shall be filed by Contractor. City will notify Contractor promptly of any damaged goods and shall assist Contractor in arranging for inspection.
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- 2.14. **Risk of Loss:** Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the purchase order or Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.
- 2.16. **Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.

- 2.17. Quality:** Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for one year after acceptance by City of the materials, they shall be:
- 2.17.1. Of a quality to pass without objection in the trade under the Agreement description;
 - 2.17.2. Fit for the intended purposes for which the materials are used;
 - 2.17.3. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;
 - 2.17.4. Adequately contained, packaged and marked as the Agreement may require; and
 - 2.17.5. Conform to the written promises or affirmations of fact made by Contractor.
- 2.18. Fitness:** Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.
- 2.19. Inspection/Testing:** The warranties set forth in Section 2 herein are not affected by inspection or testing of or payment for the materials by City.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.
- 3.1. Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.
 - 3.2. Audit.** At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
 - 3.3. New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.
- 4. PRICE:**
- 4.1.** CITY shall pay to CONTRACTOR an amount not to exceed **THREE HUNDRED TWENTY NINE THOUSAND NINE HUNDRED FIVE DOLLARS FIFTY FIVE CENTS (\$329,905.55)** for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
 - 4.2. Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse

Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

- 4.3. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice. Any quantities shown on Exhibit B are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.
- 4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.
- 4.6. **Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:**

* 5.1. The term of the Agreement is **ONE (1) year**, commencing on **February 1, 2016** and terminating on **JANUARY 31, 2017** unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to **FOUR (4)** additional terms of **ONE (1)** year each.

* 6. **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

* 6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

6.2. **Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

6.3. **Non-Exclusive Agreement.** This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. **Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7.5. **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

8. TERMINATION:

8.1. **Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein.

8.2. **Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;

- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.
- 8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.
- 8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

10.2. Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

10.3. Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

11. INDEMNIFICATION: To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

12. NOTICES: All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY
Agreement Administrator: Streets Superintendent
Contact: Rex Hartmann
Mailing Address: _____
Physical Address: 975 E. Armstrong Way
City, State, Zip: Chandler, AZ 85225
Phone: 480-782-3495
FAX: _____

In the case of the CONTRACTOR
Firm Name: Vulcan Materials Co.
Contact: Patti Southway
Address: 2526 E. University Dr.
City, State, Zip: Phoenix, AZ 85034
Phone: 602-803-9828
FAX: 602-528-8979
southwayp@vmcmail.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

13. CONFLICT OF INTEREST:

13.1. No Kickback. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.

13.2. Kickback Termination. City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

13.3. No Conflict: Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

14. GENERAL TERMS:

15.1. Ownership. All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.

15.2. Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.

15.3. Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.

15.4. Amendments. The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.

15.5. Independent Contractor. The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

15.6. No Parole Evidence. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

15.7. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 29
day of January, 2016.

FOR THE CITY OF CHANDLER

[Signature]
Mayor

Approved as to form:

[Signature]
City Attorney

ATTEST:

[Signature]
City Clerk

FOR THE CONTRACTOR

By: [Signature]
Signature

ATTEST: If Corporation

[Signature]
Secretary



EXHIBIT A

GENERAL INFORMATION & VENDOR QUALIFICATIONS

Contractor shall provide Hot Mix Asphalt Materials as specified herein.

The Contractor shall be in compliance with all applicable Federal, State, Local, ANSI and OSHA laws, rules and regulations and all other applicable regulations for the term of this contract.

The Contractor, without additional expense to the City, shall be responsible for obtaining and maintaining any necessary licenses and permits required in connection with the completion of the required services herein.

The Contractor must hold a valid license issued by the State of Arizona Registrar of Contractors prior to submission of a proposal/bid and must maintain same throughout the duration of the contract term and any subsequent contract extensions. Failure to maintain said license may be grounds for default of the contract and subsequent termination.

The Contractor may not subcontract any segment or services covered herein, without prior approval of the Contract Administrator. All subcontractors used under the scope of this contract shall meet all requirements, terms and conditions set forth herein. All subcontracted services shall be warranted by and be the responsibility of the Contractor.

All products supplied by the Contractor shall meet all applicable Federal, State, Local, ANSI, and OSHA laws, rules, and regulations pertaining to the products covered under the scope of this contract.

SCOPE OF WORK

CONTRACTOR shall provide the following required mixes: Maricopa Association of Governments (MAG) 3/8", 1/2", 3/4", Cold Mix Asphalt, and sand seal, depending on type of work being done by City crews. All material will follow the specifications of the most recent version of Maricopa Association of Governments specifications and shall meet the most current approved East Valley Asphalt Committee (EVAC) mix design criteria. The most current 2015 Approved Asphalt Mix is attached (Exhibit C).



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

MEMO NO. ST16-013

1. Agenda Item Number:

19

**2. Council Meeting Date:
January 28, 2016**

TO: MAYOR and COUNCIL

3. Date Prepared: December 17, 2015

THROUGH: CITY MANAGER

**4. Requesting Department:
Transportation & Development**

5. SUBJECT: Agreement with Vulcan Materials Company for Hot Mix Asphalt Materials

6. RECOMMENDATION: Staff recommends City Council approve Agreement No. ST6-745-3633, with Vulcan Materials Company, for hot mix asphalt materials, in an amount not to exceed \$329,905.55, for one year, February 1, 2016 through January 31, 2017, with options to renew for up to four additional one-year periods.

7. BACKGROUND/DISCUSSION: Hot mix asphalt material is used in the repair and maintenance of City streets and is an essential material to have readily available at a reasonable price. The Streets Division maintains an annual agreement for hot mix material to repair and maintain street defects and condition deficiencies.

Although the Streets Division uses various asphalt sizes for repair and maintenance, eighty-five percent (85%) of the City's previous estimated annual requirements have been for 3/8" hot mix asphalt material for street surface patching. We currently estimate the percentage for 3/8" hot mix material to be closer to sixty-five percent (65%), thirty percent (30%) for 1/2" hot mix, and five percent (5%) for 3/4" hot mix material. The three principal sizes of hot mix will allow a better representation and cross-section of full depth repairs and surface preservation.

8. EVALUATION PROCESS: On November 12, 2015, City staff issued an Invitation for Bid for hot mix asphalt materials. Notification was sent to all registered vendors. One response was received as follows:

Vulcan Materials Company: \$329,905.55

Staff recommends award to Vulcan Materials Company, as the lowest, responsive, responsible bidder. The term of this agreement will be one year, February 1, 2016 through January 31, 2017, with options to renew for up to four additional one-year periods.

9. FINANCIAL IMPLICATIONS:

Cost: \$329,905.55
Savings: N/A
Long Term Costs: N/A

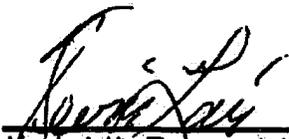
<u>Acct. No.</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
215.3300.0000.5332	HURF	Street Const. Materials	No	\$329,905.55

10. PROPOSED MOTION: Move City Council approve Agreement No. ST6-745-3633, with Vulcan Materials Company, for hot mix asphalt materials, in an amount not to exceed \$329,905.55, for one year, February 1, 2016 through January 31, 2017, with options to renew for up to four additional one-year periods.

ATTACHMENT: Agreement

APPROVALS

11. Requesting Department



Kevin Lair, Transportation Manager

12. Department Head



R.J. Zeder, Transportation & Development Director

13. Procurement Officer



Raquel McMahon, CPPB

14. Acting City Manager



Marsha Reed

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
VULCAN MATERIALS COMPANY**

EXHIBIT B
Scope of Work

PROJECT

The City of Glendale is securing a qualified vendor to provide hot mix asphalt materials for city streets on an as needed basis.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
VULCAN MATERIALS COMPANY**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Method of payment is provided in Section 3 of the agreement.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$35,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The City of Glendale is securing a qualified vendor to provide hot mix asphalt materials for city streets on an as needed basis.

**EXHIBIT B
FEE SCHEDULE**

<u>Description</u>	<u>Price Per Ton</u>	<u>Est. Qty</u>	<u>Extended Price</u>
Hot Mix Asphalt 3/8" - 1 to 2 Tons	\$ <u>76.54</u>	300	\$ <u>22,962.</u>
Hot Mix Asphalt 3/8" - 2 or more tons	\$ <u>76.54</u>	2,500	\$ <u>191,350</u>
Hot Mix Asphalt 1/2" - 1 to 2 Tons	\$ <u>67.50</u>	75	\$ <u>5062.50</u>
Hot Mix Asphalt 1/2" - 2 or more tons	\$ <u>67.50</u>	1500	\$ <u>101,250</u>
Hot Mix Asphalt 3/4" - 1 to 2 Tons	\$ <u>66.97</u>	10	\$ <u>669.70</u>
Hot Mix Asphalt 3/4" - 2 or more tons	\$ <u>66.97</u>	10	\$ <u>669.70</u>
Hot Mix Asphalt Sand Seal - 1 or More Tons	\$ <u>76.64</u>	10	\$ <u>766.40</u>
Cold Mix Patch Asphalt - Per Ton	\$ <u>95.67</u>	75	\$ <u>7175.25</u>
		TOTAL	\$ <u>329,905.55</u>

Delivery Price to Chandler per ton
(Minimum of 24 tons on delivery) \$ 9.00

***All prices shall include applicable tax.**

EXHIBIT C
EVAC Approved Mix as of 4/15/15

APPROVED ASPHALT MIXES

By the East Valley Asphalt Committee / DATE 04-15-15

Mix Designation	Product Percent Code Binder	Approval Date
SOUTHWEST ASPHALT		
<i>Plant #2 Florence</i>		
R ½"	2259MLMHH5 5.3	01-01-15
R ¾"	2350MLMHH5 5.0	01-01-15
A ½"	2259MHSHH5 5.3	01-01-15
A ¾"	2348MHSHH5 4.8	01-01-15
<i>Plant #3 Queen Creek</i>		
R ½"	3253MLMHH5 5.3	01-01-15
R ¾"	3950MLMHH5 5.2	01-01-15
A ½"	3253MHSHH5 5.5	01-01-15
A ¾"	3948MHSHH5 4.8	01-01-15
<i>Plant #4 El Mirage</i>		
R ½"	4259MLMHH5 5.3	01-01-15
R ¾"	4350MLMHH5 5.0	01-01-15
A ½"	4250MHSHH5 5.0	01-01-15
A ¾"	4348MHSHH5 4.8	01-01-15
<i>Plant #10 New River</i>		
R ½"	1253MLMHH5 5.3	03-11-15
R ¾"	1350MLMHH5 5.0	03-11-15
A ½"	1250MHSHH5 5.0	03-11-15
A ¾"	1348MHSHH5 4.8	03-11-15
VULCAN		
<i>Plant #5179-211 Queen Creek</i>		
R ½"	331522 5.3	01-01-15
R ¾"	231527 5.2	01-01-15
A ½"	331517 5.2	01-01-15
A ¾"	231518 4.8	01-01-15
<i>Plant #5181-211 Val Vista</i>		
R ½"	331528 5.3	02-05-15
R ¾"	213537 5.2	02-05-15
A ½"	331529 5.7	02-05-15
A ¾"	231535 4.8	02-05-15
<i>Plant #5184-211 W. Broadway</i>		
R ½"	311521 5.5	02-09-15
R ¾"	211539 5.3	02-09-15
A ½"	311547 5.4	02-09-15
A ¾"	211511 4.8	02-09-15
<i>Plant #5182-211 W. 43rd Ave</i>		
R ½"	311535 5.4	02-09-15
R ¾"	211532 5.0	02-09-15
A ½"	311536 5.0	02-09-15
A ¾"	211533 4.6	02-09-15

APPROVED ASPHALT MIXES

By the East Valley Asphalt Committee / DATE 03-11-15

Mix Designation	Product	Percent	Code	Binder	Approval Date
VULCAN					
<i>Plant #5224-211 19th Ave</i>					
R ½"	311526			5.5	02-4-15
R ¾"	211540			5.1	02-04-15
A ½"	311545			5.0	01-28-15
A ¾"	211542			4.5	01-28-15
<i>Plant #5223-221 Gomez</i>					
R ½"	311526			5.5	02-04-15
R ¾"	211540			5.0	02-04-15
A ½"	311545			5.0	01-28-15
A ¾"	211542			4.5	01-28-15
<i>Plant #5227-211 Maricopa</i>					
R ½"	311526			5.5	02-04-15
R ¾"	211540			5.0	02-04-15
A ½"	311545			5.0	01-28-15
A ¾"	211542			4.5	01-28-15
<i>Plant #5228-211 Sacaton</i>					
R ½"	311526			5.5	02-04-15
R ¾"	211540			5.0	02-04-15
A ½"	311545			5.0	01-28-15
A ¾"	211542			4.5	01-28-15
<i>Plant #5229-211 Coolidge</i>					
R ½"	311526			5.5	02-04-15
R ¾"	211540			5.0	02-04-15
A ½"	311545			5.0	01-28-15
A ¾"	211542			4.5	01-28-15
HANSEN					
<i>Plant #34 Higley</i>					
R ½"	3412ER			5.8	01-23-15
R ¾"	3419ER			5.2	01-23-15
A ½"	3412SPEA			5.0	01-23-15
A ¾"	3419SPEA			4.7	01-23-15
<i>Plant #36 61st Ave</i>					
R ½"	3512MR			5.4	03-05-15
R ¾"	3519MR			5.1	03-05-15
A ½"	3512SPMA			5.0	03-05-15
A ¾"	3519SPMA			4.5	03-05-15