

THIS CONTRACT, made this 21<sup>st</sup> day of December, 2023, by and between THE CITY OF SANIBEL, FLORIDA, hereinafter called "OWNER", and VULCAN CONSTRUCTION MATERIALS, LLC, a for profit corporation with its principal place of business in Birmingham, AL, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the covenants set forth below and other good and valuable consideration, the sufficiency and receipt of which is acknowledged, OWNER and CONTRACTOR hereby agree as follows:

1. The term "CONTRACT DOCUMENTS" means and includes the following, all of which are incorporated herein and made part of the CONTRACT:
  - A. "Sanibel Island Post Hurricane Ian Emergency Berm/Beach Recovery Project" ITB-PW-4-2023/SK dated November 10, 2023, including, without limitation, all General Specifications, General Conditions, Special Provision, Required Contract Provisions, Technical Specifications, Appendices, and particularly the specifications for sand included therein;
  - B. The Proposal submitted by Eastman Aggregate Enterprises, LLC, and accepted by the OWNER in response to ITB-PW-4-2023/SK on December 7, 2023, and particularly CONTRACTOR's pricing for sand included therein;
  - C. This CONTRACT;
  - D. Notice of Award to Eastman Aggregate Enterprises, LLC;
  - E. Notice to Proceed issued to Eastman Aggregate Enterprises, LLC; and
  - F. Change Order(s).

In the event of a conflict between the terms of A, B, C, D, E and F, and the terms of this CONTRACT, the terms of this CONTRACT shall govern.

2. The CONTRACTOR provided a certain material bid incorporated into the above-referenced competitively bid Proposal Submitted by Eastman Aggregate Enterprises, LLC and accepted by OWNER, which obligates CONTRACTOR to provide required sand at the specifications, amount, and price detailed in the CONTRACT DOCUMENTS (the "Specified Sand") for the project titled:

**"Sanibel Island Post Hurricane Ian Emergency Berm/Beach Recovery Project" as described in the CONTRACT DOCUMENTS (the "Work")**

3. As authorized in the above-referenced bid documents for ITB-PW-4-2023/SK, **"Sanibel Island Post Hurricane Ian Emergency Berm/Beach Recovery Project"**, the OWNER has elected to purchase the Specified Sand required for the Work directly from the CONTRACTOR at a unit cost of \$8.23/ton.
4. In accordance with the CONTRACT DOCUMENTS, the CONTRACTOR will furnish, more or less, 410,000 tons of Specified Sand for the Work and shall include all material, supplies, tools, equipment, labor, and other services necessary to provide and load the Specified Sand to Eastman Aggregate Enterprises, LLC, on behalf of the OWNER. As to the Specified Sand sold by CONTRACTOR to OWNER hereunder, CONTRACTOR warrants to OWNER for a period of one (1) year from date of delivery only that said material substantially complies with

CONTRACTOR'S specifications for said material. **CONTRACTOR HEREBY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF THE MATERIAL SOLD BY CONTRACTOR TO OWNER HEREUNDER, OTHER THAN THE EXPRESS WARRANTY STATED ABOVE.**

5. The CONTRACTOR agrees to provide 410,000 tons of Specified Sand to the owner in accordance with the CONTRACT DOCUMENTS for the sum of **\$3,375,123.00** said amount being the total **"unit price sum"** as listed in the contract between the OWNER and Eastman Aggregate Enterprises, LLC for this Work.
6. The CONTRACTOR will provide the Specified Sand to the OWNER beginning December 18, 2023, through the end of the Work, which date is expected to be on or before May 1, 2024, but which is to be solely determined by the OWNER.
7. The CONTRACTOR acknowledges and agrees that the OWNER may increase the quantity of Specified Sand necessary for the Work solely at the discretion of the OWNER, and the CONTRACTOR will provide any additional quantity of Specified Sand at the established unit price of \$8.23/ton, in the contract between the OWNER and Eastman Aggregate Enterprises, LLC. The CONTRACTOR will honor the unit price of \$8,23/ton to the OWNER for the duration of the Work, which is expected to be completed on or before May 1, 2024.
8. The CONTRACTOR may invoice the OWNER up to once per week during the duration of the Work for Specified Sand that has been delivered to Eastman Aggregate Enterprises, LLC for the Work; however, the OWNER will only process invoices once or twice per calendar month, based upon when the verified invoice is received. "Verified invoice" means an invoice from CONTRACTOR which has been verified by or through OWNER to be an accurate statement of Specified Sand received during the invoiced period. Verified invoices for shipments between the 1<sup>st</sup> and last day of the month, received by the third working day of the following month, will be paid on or before 25th day of the following month. The OWNER will not withhold any percentage of the CONTRACTOR invoice as retainage for the Specified Sand.
9. The CONTRACT DOCUMENTS embody the entire agreement of CONTRACTOR and OWNER regarding the Work. No deviation from the CONTRACT DOCUMENTS will be allowed, honored, or compensated unless accompanied by a fully executed change order.
10. This CONTRACT shall be binding upon all parties hereto and their respective administrators, successors, and assigns; however, CONTRACTOR shall not assign or otherwise transfer its rights, duties, or obligations under this CONTRACT without prior written consent of OWNER.
11. **EXCEPT AS PROVIDED BY FLORIDA STATUTES, THE CONTRACTOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, LIQUIDATED OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, WHETHER SUCH CLAIM IS BASED ON EXPRESS OR IMPLIED WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY OWNER OR COULD HAVE BEEN REASONABLY FORESEEN.**
12. Neither party will hold the other responsible for any delays in performance of this CONTRACT, which delays result from circumstances beyond its reasonable control, including, but not limited to, acts of God, strike, riots, civil commotion, government order or action, war,

insurrection, hurricane, tornado, fire, pandemic, plague, quarantine, epidemic, disruption of service, terrorism, or any cause, whether similar in kind to the foregoing or otherwise ("Force Majeure event").

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in counterparts each of which shall be deemed an original on the date first above written.

(SEAL)

ATTEST



Name Scotty Lynn Kelly, MMC

Title City Clerk

OWNER City of Sanibel

By *Steve C. Chaipel*

Name Steve Chaipel

Title Deputy City Manager/CFO

(SEAL)

ATTEST

Name \_\_\_\_\_

Title \_\_\_\_\_

CONTRACTOR: Vulcan Construction Materials LLC

By *Walter A. Crabtree*

Name Walter Crabtree

Title Manager, Operations Support

Email crabtreew@vmcmail.com

Approved as to form

*John P. Aguano*  
City Attorney