

AGREEMENT FOR THE SUPPLY OF MAGNESIUM CHLORIDE BETWEEN  
EAGLE COUNTY, COLORADO  
AND

THIS AGREEMENT (“Agreement”) is effective as of the \_\_\_\_\_, 2019 by and between, \_\_\_\_\_ a Colorado corporation with its principal place of business at \_\_\_\_\_ (hereinafter “Vendor”) and Eagle County, Colorado, a body corporate and politic (hereinafter “County”).

RECITALS

WHEREAS, County desires to purchase magnesium chloride product from Vendor (hereinafter “Materials”); and

WHEREAS, Vendor agrees to supply to County a magnesium chloride product that contains a minimum 30% magnesium chloride (the “Materials”) as more specifically provided in Vendor’s bid, which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, County has no obligation to purchase any amount of Materials. The Materials will be available as set forth in Exhibit A and will be purchased by County at County’s sole discretion; and

WHEREAS, Vendor is authorized to do business in the State of Colorado and has the time, skill, expertise, and experience necessary to provide the Materials and/or materials as set forth below in paragraph 1 hereof; and

WHEREAS, this Agreement shall govern the relationship between Vendor and County in connection with the procurement of Materials.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the following promises Vendor and County agree as follows:

1. Materials. Vendor agrees to provide to County a magnesium chloride product that contains a minimum 30% magnesium chloride (the “Materials”) as more specifically provided in Vendor’s bid, which is attached hereto as Exhibit A and incorporated herein by reference. Vendor shall have a minimum of 30,000 gallons of magnesium chloride available for pick-up from 6:00 a.m. to 7:00 p.m., Monday through Friday beginning April 15, 2019 and continuing through November 29, 2019 at Glenwood Springs Rail Yard. Vendor shall have a minimum of

40,000 gallons delivered per occurrence to Gypsum Rail Yard within ten (10) days of “Request to Deliver” from County. Deliveries shall occur as needed by “Request to Deliver” from County beginning April 15, 2019 through November 29, 2019. The Materials shall be provided in accordance with the provisions and conditions of this Agreement.

a. Vendor agrees to furnish the Materials from April 15, 2019 through November 29, 2019 and in accordance with the schedule established in Exhibit A. If no date is specified in Exhibit A, then Vendor agrees to furnish the Materials in a timely and expeditious manner. By signing below, Vendor represents that it has the expertise and personnel necessary to properly and timely provide the Materials.

b. In the event of any conflict or inconsistency between the terms and conditions set forth in Exhibit A and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail.

c. County shall have the right to inspect all Materials. Inspection and acceptance shall not be unreasonably delayed or refused. In the event County does not accept the Materials for any reason in its sole discretion, then Vendor shall upon County’s request and at no charge to County:

- i. take the Materials back;
- ii. exchange the Materials; or
- iii. repair the Materials.

d. Liquidated Damages: County and Vendor recognize that time is of the essence of this Agreement and that County will suffer financial loss if the Materials are not available as specified in paragraph 1. They also recognize the delays, expense, and difficulties involved in proving a legal or arbitration preceding the actual loss suffered by County if the Materials are not available on time. Accordingly, instead of requiring such proof, County and Vendor agree that as liquidated damages for delay (but not as a penalty) Vendor shall pay County Three Hundred dollars (\$300.00) for each day the Materials are not available as set forth in Exhibit A.

2. County’s Representative. The Eagle County Road & Bridge Director, or his designee shall be Vendor’s contact with respect to this Agreement.

3. Term of the Agreement. This Agreement shall commence upon the date first written above, and subject to the provisions of paragraph 10 hereof, shall continue in full force and effect through November 29, 2019.

4. Extension or Modification. Any amendments or modifications shall be in writing signed by both parties. No additional Materials shall be provided by Vendor unless and until Vendor has obtained written authorization and acknowledgement by County for such additional Materials in accordance with County's internal policies. Accordingly, no course of conduct or dealings between the parties, nor verbal change orders, express or implied acceptance of alterations or additions to the Materials, and no claim that County has been unjustly enriched by any Materials, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable hereunder. In the event that written authorization and acknowledgment by County for such additional Materials is not timely executed and issued in strict accordance with this Agreement, Vendor's rights with respect to such additional Materials shall be deemed waived and such failure shall result in non-payment for such additional Materials.

5. Compensation. County shall compensate Vendor for the Materials in a sum computed and payable as set forth in Exhibit A. The Materials under this Agreement **shall not exceed**

\_\_\_\_\_.

a. Payment will be made for Materials satisfactorily delivered and accepted by County within thirty (30) days of receipt of a proper and accurate invoice from Vendor. All invoices shall include detail regarding the Materials and such other detail as County may request.

b. If, at any time during the term or after termination or expiration of this Agreement, County reasonably determines that any payment made by County to Vendor was improper because the Materials for which payment was made were not provided as set forth in this Agreement, then upon written notice of such determination and request for reimbursement from County, Vendor shall forthwith return such payment(s) to County. Upon termination or expiration of this Agreement, unexpended funds advanced by County, if any, shall forthwith be returned to County.

c. County will not withhold any taxes from monies paid to the Vendor hereunder and Vendor agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement.

d. Notwithstanding anything to the contrary contained in this Agreement, County shall have no obligations under this Agreement after, nor shall any payments be made to Vendor in respect of any period after December 31 of any year, without an appropriation therefor by County in accordance with a budget adopted by the Board of County Commissioners in compliance with Article 25, title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.) and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20).

6. Insurance. Vendor agrees to provide and maintain at Vendor's sole cost and expense, the following insurance coverage with limits of liability not less than those stated below:

a. Types of Insurance.

i. Workers' Compensation insurance as required by law.

ii. Auto coverage with limits of liability not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance, including coverage for owned, hired, and non-owned vehicles.

iii. Commercial General Liability coverage to include premises and operations, personal/advertising injury, products/completed operations, broad form property damage with limits of liability not less than \$1,000,000 per occurrence and \$1,000,000 aggregate limits.

b. Other Requirements.

i. The automobile and commercial general liability coverage shall be endorsed to include Eagle County, its associated or affiliated entities, its successors and assigns, elected officials, employees, agents and volunteers as additional insureds. A certificate of insurance consistent with the foregoing requirements is attached hereto as Exhibit B.

ii. The insurance provisions of this Agreement shall survive expiration or termination hereof.

iii. The parties hereto understand and agree that the County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or rights, immunities and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or otherwise available to County, its affiliated entities, successors or assigns, its elected officials, employees, agents and volunteers.

iv. Vendor is not entitled to workers' compensation benefits except as provided by the Vendor, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by Vendor or some other entity. The Vendor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

7. Indemnification. The Vendor shall indemnify and hold harmless County, and any of its officers, agents and employees against any losses, claims, damages or liabilities for which

County may become subject to insofar as any such losses, claims, damages or liabilities arise out of, directly or indirectly, this Agreement, or are based upon any performance or nonperformance by Vendor or any of its subcontractors hereunder; and Vendor shall reimburse County for reasonable attorney fees and costs, legal and other expenses incurred by County in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnification shall not apply to claims by third parties against the County to the extent that County is liable to such third party for such claims without regard to the involvement of the Vendor. This paragraph shall survive expiration or termination hereof.

8. Documents. Vendor shall execute any bill of sale or other documents required by County to transfer title of the Materials to County. Vendor shall provide copies of any instruction or operations manuals and shall further provide copies of any manufacturers warranties associated with the Materials.

9. Notice. Any notice required by this Agreement shall be deemed properly delivered when (i) personally delivered, or (ii) when mailed in the United States mail, first class postage prepaid, or (iii) when delivered by FedEx or other comparable courier service, charges prepaid, to the parties at their respective addresses listed below, or (iv) when sent via facsimile so long as the sending party can provide facsimile machine or other confirmation showing the date, time and receiving facsimile number for the transmission, or (v) when transmitted via e-mail with confirmation of receipt. Either party may change its address for purposes of this paragraph by giving five (5) days prior written notice of such change to the other party.

COUNTY:

Eagle County, Colorado  
Attention: Road & Bridge Department  
Post Office Box 250  
Eagle, CO 81631  
Telephone: 970-328-3540  
Facsimile: 970-328-3546

With a copy to:

Eagle County Attorney  
500 Broadway  
Post Office Box 850  
Eagle, Co 81631  
Telephone: 970-38-8685  
Facsimile: 970-328-8699  
E-Mail: atty@eaglecounty.us

VENDOR:

10. Termination. County may terminate this Agreement, in whole or in part, at any time and for any reason, with or without cause, and without penalty therefor with seven (7) calendar days' prior written notice to the Vendor. Upon termination of this Agreement, Vendor shall immediately provide County with all documents as defined in paragraph 8 hereof, in such format as County shall direct and shall return all County owned materials and documents in the possession of Vendor, if any. County shall pay Vendor for Materials satisfactorily inspected and accepted to the date of termination.

11. Venue, Jurisdiction and Applicable Law. Any and all claims, disputes or controversies related to this Agreement, or breach thereof, shall be litigated in the District Court for Eagle County, Colorado, which shall be the sole and exclusive forum for such litigation. This Agreement shall be construed and interpreted under and shall be governed by the laws of the State of Colorado.

12. Execution by Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the parties to this Agreement: (i) Electronic or facsimile delivery of a fully executed copy of the signature page; (ii) the image of the signature of an authorized signer inserted onto PDF format documents. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. 24-71.3-101 to 121.

13. Other Contract Requirements and Vendor Representations.

a. Vendor has familiarized itself with the intended purpose and use of the Materials to be provided hereunder, the intended use of such Materials by County, and with all local conditions, federal, state and local laws, ordinances, rules and regulations that in any manner affect cost, progress, or Materials.

b. Vendor will make, or cause to be made, examinations, investigations, and tests as he deems necessary for the performance of this Agreement.

c. The fact that the County has accepted or approved the Materials shall not relieve Vendor of any of its responsibilities. Vendor represents and warrants that it has the expertise and personnel necessary to properly perform the terms of this Agreement. Vendor shall provide appropriate supervision to its employees to ensure the performance in accordance with this Agreement. Vendor will provide the Materials in a skillful, professional and competent manner and in accordance with the standard of care applicable to vendors supplying similar Materials.

d. Vendor warrants merchantability and fitness of the Materials for its intended use and purpose.

e. Vendor hereby represents and warrants that the Materials will be new and guarantees all Materials against defects for a period of one (1) year from the date the Materials is accepted by County, or such longer period as may be provided by the law or as otherwise agreed to by the parties.

f. All guarantees and warranties of Materials furnished to Vendor by any manufacturer or supplier are for the benefit of County. If any manufacturer or supplier of any Materials furnishes a guarantee or warranty for a period longer than one (1) year, then Vendor's guarantee or warranty shall extend for a like period as to such Materials.

g. Vendor warrants that title to all Materials shall pass to County either by incorporation into the County facility or upon receipt by Vendor of payment from County (whichever occurs first) free and clear of all liens, claims, security interests or encumbrances. Vendor further warrants that Vendor (or any other person performing Work) purchased all Materials free and clear of all liens, claims, security interests or encumbrances. Notwithstanding the foregoing, Vendor assumes all risk of loss with respect to the Materials until County has inspected and approved the same.

h. Within a reasonable time after receipt of written notice, Vendor shall correct at its own expense, without cost to County, and without interruption to County:

i. Any defects in Materials which existed prior to or during the period of any guarantee or warranty provided in this Agreement; and

ii. Any damage to any property caused by such defects or the repairing of such defects.

i. Guarantees and warranties shall not be construed to modify or limit any rights or actions County may otherwise have against Vendor in law or in equity.

j. Vendor agrees to work in an expeditious manner, within the sound exercise of its judgment and professional standards, in the performance of this Agreement. Time is of the essence with respect to this Agreement.

k. This Agreement constitutes an agreement for performance by Contractor as an independent Contractor and not as an employee of County. Nothing contained in this Agreement shall be deemed to create a relationship of employer-employee, master-servant, partnership, joint venture or any other relationship between County and Vendor except that of independent Vendor. Vendor shall have no authority to bind County.

l. Vendor represents and warrants that at all times in the performance of the Agreement, Vendor shall comply with any and all applicable laws, codes, rules and regulations.

m. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements or understanding between the parties with respect thereto.

n. Vendor shall not assign any portion of this Agreement without the prior written consent of the County. Any attempt to assign this Agreement without such consent shall be void.

o. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely for the parties, and not to any third party.

p. No failure or delay by either party in the exercise of any right hereunder shall constitute a waiver thereof. No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach.

q. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

r. The signatories to this Agreement aver to their knowledge no employee of the County has any personal or beneficial interest whatsoever in the Materials described in this Agreement. The Vendor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Agreement and Vendor shall not employ any person having such known interests.

s. The Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) to the extent applicable shall comply with C.R.S. 24-76.5-103 prior to the effective date of this Agreement.

14. Prohibitions on Government Contracts.

As used in this Section 14, the term undocumented individual will refer to those individuals from foreign countries not legally in the United States as set forth in C.R.S. 8-17.5-101, et. seq. If Vendor has any employees or subcontractors, Vendor shall comply with C.R.S. 8-17.5-101, et. seq., and this Agreement. By execution of this Agreement, Vendor certifies that it does not knowingly employ or contract with an undocumented individual who will perform under this Agreement and that Vendor will participate in the E-verify Program or other Department of Labor and Employment program (“Department Program”) in order to confirm the eligibility of all employees who are newly hired for employment to perform Services under this Agreement.

a. Vendor shall not:

i. Knowingly employ or contract with an undocumented individual to perform Services under this Agreement; or

ii. Enter into a subcontract that fails to certify to Vendor that the subcontractor shall not knowingly employ or contract with an undocumented individual to perform work under the public contract for services.

b. Vendor has confirmed the employment eligibility of all employees who are newly hired for employment to perform Services under this Agreement through participation in the E-Verify Program or Department Program, as administered by the United States Department of Homeland Security. Information on applying for the E-verify program can be found at:

[http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm)

c. Vendor shall not use either the E-verify program or other Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

d. If Vendor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an undocumented individual, Vendor shall be required to:

i. Notify the subcontractor and County within three (3) days that Vendor has actual knowledge that the subcontractor is employing or contracting with an undocumented individual; and

ii. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (i) of the paragraph (d) the subcontractor does not stop employing or contracting with the undocumented individual; except that Vendor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an undocumented individual.

e. Vendor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to its authority established in C.R.S. 8-17.5-102(5).

f. If Vendor violates these prohibitions, County may terminate the Agreement for breach of contract. If the Agreement is so terminated specifically for breach of this provision of this Agreement, Vendor shall be liable for actual and consequential damages to County as required by law.

g. County will notify the Colorado Secretary of State if Vendor violates this provision of this Agreement and County terminates the Agreement for such breach.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*



EXHIBIT A

SCOPE OF SERVICES AND MATERIALS, SCHEDULE, FEES

EXHIBIT B  
INSURANCE CERTIFICATES