

**INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
SUPPLY AND APPLICATION OF MAGNESIUM CHLORIDE  
TO VARIOUS ROADS IN ARCHULETA COUNTY**

The Board of County Commissioners of Archuleta County, Colorado, hereinafter referred to as “County”; and Desert Mountain Corporation, hereinafter referred to as “Contractor” do hereby enter into this Independent Contractor Services Agreement under the following terms:

1. **TERM:** The term of this Agreement shall be from March 1, 2021, until project completion. Subject to continued availability and appropriation of such funds, at the end of the applicable term, it is the County’s intent to enter into new contracts for two additional one year agreements for 2022 and 2023, unless the County gives notice of its intent to rebid. Said contracts will be closed out annually for accounting, retainage and bonding purposes so that the agreement is for one year only and not an accumulative amount or duration. The Parties agree upon said term from a completion schedule and a range of negotiated and mutually agreeable work hours.
  
2. **IFB AND PROPOSAL PART OF CONTRACT:** Contractor agrees to perform the services as set forth and in accordance with the Invitation for Bid No. 4312-20-001 for the project, and Contractor’s Proposal as opened at a Bid Opening on February 20, 2020 and (as expected to be approved by the County on March 17, 2020). Said IFB and Proposal are incorporated herein and will be on file in the Archuleta County Original Contract File.
  
3. **INDEPENDENT CONTRACTOR:** Contractor is an Independent Contractor, not an employee of County or the State of Colorado, and is not subject to County or State personnel systems. Contractor is engaged in an independent trade, occupation, profession or business and is qualified to perform the services pursuant to this Agreement. County shall rely upon Contractor’s expertise, and Contractor is free from control and direction by County in performance of said services. County shall not provide any training to the Contractor, nor oversee the actual work, nor instruct Contractor as to how the work will be performed. Contractor is free to provide services to others and is not required to work exclusively for County. Contractor is responsible for providing its own tools and benefits at its own cost. Contractor is not entitled to workers’ compensation benefits or unemployment insurance benefits unless paid for by contractor and contractor is obligated to pay federal (including social security) and state income tax an any monies earned pursuant to his contract relationship. Contractor is responsible for complying with all employment laws and insurance laws relating to its own employees, and shall purchase and provide proof of workers’ compensation coverage for such employees. Contractor agrees to acquire and maintain throughout the term hereof sufficient liability insurance to fully perform its obligations hereunder. Contractor is and shall remain a separate and distinct entity from the County; the business operations of the County shall in no way combine with the business operations of the Contractor.

4. **COMPENSATION:** Payments for services rendered pursuant to this Agreement shall not exceed \$411,562.32 at the rates set forth in Contractor's bid/proposal at \$0.78 per gallon, deliver and apply approximately 527,644 gallons of Magnesium Chloride to various roads in Archuleta County. Payment is set at a contract rate for the work and is not set as a salary or hourly-employment rate. Payments shall be made by warrants payable to the trade or business name of the contractor and not to any individual. Such payments are to be made on a monthly basis for services rendered subject to the Contractor providing County with an itemized statement of services provided, along with documentation showing the total number of gallons of magnesium chloride applied, the roads to which the magnesium chloride was applied, as well as the application distance measured in feet for each road, pursuant to this Agreement. If this Agreement is terminated, County shall compensate Contractor for all services rendered to the date of termination.
  
5. **INSURANCE:** Contractor is required to hold throughout the initial term and all subsequent terms of this contract general liability insurance in the amount of \$150,000 per person/\$1,000,000 per occurrence/\$3,000,000 aggregate, which names the Board of County Commissioners of Archuleta County, Colorado as an Additional Insured. The Certificate of Insurance shall also contain an endorsement that coverage may not be canceled or terminated without 10 day's prior written notice to the County. Contractor further agrees to comply with all state Workers' Compensation Insurance requirements throughout the term of this Contract.
  
6. **INSPECTION:** County reserves the right to periodically inspect project work. If the work is being performed incorrectly, County may notify Contractor of such deficiency and offer Contractor an opportunity to correct said work; or if such incorrect work constitutes a substantial breach of this Agreement, County reserves the right to terminate this Agreement immediately upon written notice to Contractor.
  
7. **INDEMNIFICATION:** Contractor hereby agrees to defend, save and hold harmless County, or any of its departments, agencies, officers or employees from all cost, damage and liability incurred by any of the above and from any other damage, cost and liability to any person or property whatsoever, which is caused by an activity, condition or event arising out of the negligent performance or non-performance of any provision of this Agreement by Contractor, its agents or independent subcontractors. Indemnification is intended to extend to all such claims, irrespective of whether they are covered by insurance. The above cost incurred by County or any of its departments, agencies, employees, or officers shall include, in the event of legal action, court costs, expenses of litigation and reasonable attorney's fees.
  
8. **ENTIRE AGREEMENT:** This written Agreement is the entire agreement between the Parties. This Agreement is one for personal services and as such, may not be assigned or delegated, by either Party, in any manner, without the express prior written consent of the other Party. Any and all prior or contemporaneous statements, understandings not contained herein shall be of no further force and effect. This Agreement may not be

amended except in writing and signed by both Parties. An original facsimile signature to this agreement or amendments hereto will be considered as an original.

9. **VENUE/LEGAL FEES:** The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the applicable laws of the State of Colorado. If any legal action is necessary to enforce the terms and conditions of this Agreement, the parties agree that the jurisdiction and venue for bringing such action shall be in the appropriate court in Archuleta County, Colorado. The prevailing party in any action to enforce the terms and conditions of this Agreement shall collect all reasonable costs and expenses incurred in such action, including, but not limited to, reasonable attorney's fees.
10. **NO WAIVER OF GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.
11. **NO THIRD-PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Agreement or, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.
12. **APPROPRIATION OF PUBLIC FUNDS:** Because this Agreement involves the expenditure of public funds, this Agreement is contingent upon continued availability and appropriation of such funds by the County. The obligations described herein shall not constitute a general obligation, indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the constitution or the laws of the State of Colorado.

