

THREE (3) YEAR SALT UTILIZATION AGREEMENT

by and between

State Highway Administration

and

Town of Upper Marlboro TOWN, Maryland

This AGREEMENT (“**Agreement**”) is made as of the 1st day of September 2023, executed in duplicate, by and between the State Highway Administration (“**SHA**”) acting for, and on the behalf of the State of Maryland and Town of Upper, Maryland, a political subdivision of the State of Maryland and a body politic and corporate (“**TOWN**”), sometimes collectively referred to as “the **Parties**”.

WHEREAS, during certain winter snow emergency operations (“**Snow Event**”) the TOWN may have a need to obtain additional salt (“**Salt**”) to effectively complete their winter snow operations; and

WHEREAS, the TOWN has requested, and SHA has agreed, to allow the TOWN to obtain Salt from SHA stockpiles during a Snow Event in accordance with the terms and conditions contained herein; and

WHEREAS the TOWN shall reimburse SHA for the cost of Salt plus other related expenses; and

WHEREAS SHA and the TOWN agree that this Agreement will benefit both parties of this Agreement and will promote the safety, health and general welfare of the citizens of the State.

NOW, THEREFORE, in consideration of the premises and of the mutual promises between SHA and the TOWN, as set forth herein, the adequacy of which is hereby acknowledged, the Parties hereby agree to the following:

I. TERM & BUDGET

The term of this Agreement is three (3) years, beginning the first (1st) day of September 2023 and ending on the thirty first (31st) day of August 2026, both dates inclusive, unless sooner terminated as set forth herein (the “**Term**”). For budgeting and planning purposes only, during the Term of this Agreement the total cost for Salt shall not exceed Two Thousand Dollars (\$2,000). The TOWN shall be responsible for actual costs incurred at the time of delivery.

II. SALT COSTS

- A. The cost of Salt, at the execution of this Agreement is Eighty Five Dollars and Twenty Three Cents (\$85.23) per ton, which includes the price of the Salt, a delivery charge and an overhead charge.
- B. The Salt price listed herein is subject to change.
- C. The “**Delivery Charge**” includes the cost of fuel and mileage to transport the Salt to a SHA Salt dome. The “**Overhead Charge**” is determined by the federally approved Overhead Rate that may be adjusted on October 1st of each year. The current Overhead Rate is eight and twenty two hundredths percent (8.22%).
- D. The cost of the Salt may be adjusted weekly to account for Delivery Charge variances.

III. CHARGE NUMBER

SHA has established a charge number for the TOWN which will be used to document Salt withdrawals from SHA’s inventory system. The current charge number for the TOWN is BY **BY289M84**.

IV. PROCEDURES

- A. Salt Loading
 - 1. SHA Shop Locations: For purposes of this Agreement, the SHA shops to be used for Salt for the TOWN, as determined by SHA, are:
 - Marlboro Salt Dome-RME-Ernie Johnson-
 - 2. Prior to a Snow Event: The TOWN will contact Ernie Johnson SHA’s Resident Maintenance Engineer (RME), or designee, of the Marlboro Shop at 301 952-0555 to arrange for the TOWN’s trucks to be loaded with the Salt at the designated location the day before a local forecasted snow if time permits; otherwise SHA and the TOWN will determine which SHA salt storage site is appropriate to use to load the Salt onto the trucks and SHA will provide an operator to facilitate the loading of the Salt.
 - 3. During the Snow Event: The TOWN will contact the appropriate SHA Shop nearest to that truck and request to be loaded at an approximate preferred time of arrival. SHA will then arrange for an operator to meet the TOWN truck at that location as close to the preferred time as possible without negatively affecting SHA operations. In addition, if a TOWN truck is in the vicinity of a specific dome during a Snow Event and a SHA operator is present, the TOWN truck may then be topped off, if desired. In situations where the SHA Snow Event operations are already active

when the TOWN operations begin, the TOWN can notify SHA as far in advance as possible and SHA will make every effort to provide an operator at all the locations requested to begin loading TOWN trucks with Salt.

4. Post Snow Event: The TOWN can contact the appropriate SHA shop to request re-loading after a Snow Event, and SHA will schedule the re-loading at the Parties' convenience.
5. The TOWN shall not return any unused Salt to any SHA shop.

B. Load Records

1. The TOWN shall ensure all vehicles picking up Salt on their behalf are identified by a sticker or placard indicating the TOWN's name.
2. Only a SHA authorized loader operator shall load the TOWN trucks.
3. SHA shall create a written loading record that must be signed by the TOWN driver. A copy shall be given to the TOWN driver to account for every load of Salt that the TOWN receives from SHA. Each load record shall contain the following information:
 - a. truck number or license tag number,
 - b. the number of scoops/ buckets loaded,
 - c. the number of tons loaded based on the scoops / bucket size value multiplied by the number of scoops /buckets.

V. PAYMENT

- A. SHA shall provide a detailed invoice to the TOWN by May 31st of each year for all actual costs incurred to provide Salt to the TOWN. The invoice shall be accompanied by normal documentation from SHA to evidence actual costs incurred.
- B. Upon request by the TOWN, SHA may provide information to include the number of buckets and estimated tonnage provided to the TOWN for each date of delivery.
- C. The estimated cost of the Salt is based on the average amount of Salt used during the previous three (3) years at the prevailing rate at the time of execution of this Agreement and will be subject to future adjustments during the Term according to costs for Salt, delivery and overhead in effect at that time.
- D.

Reimbursement to SHA for the Salt during the Term, including SHA overhead, is estimated to be Two Thousand Dollars (\$2,000) and is based on quantities from the previous term, however, actual costs and tonnage may vary and the TOWN

shall reimburse SHA for all actual tonnage (which includes the delivery charge) and overhead costs.

- E. In the event of extremely heavy Salt usage, SHA reserves the right to submit progress billings to the TOWN in lieu of an annual invoice.
- F. Invoices for Salt are due within thirty (30) days of receipt.
- G. In the event SHA does not receive payment of an invoice within thirty (30) days of the TOWN's receipt, SHA will notify the TOWN of the overdue payment and provide the TOWN the opportunity to pay such overdue amounts. If payment of the overdue amount is not received within thirty (30) days following notification, SHA will then notify the TOWN in writing, and the parties hereby agree that SHA may make a deduction from the TOWN's share of Highway User Revenue equal to the overdue invoice amount(s) or SHA may refer the overdue amount to the Central Collection Unit, at 300 West Preston Street, Room 500, Baltimore MD 21201-2365 for collection of any overdue amount.

VI. GENERAL

- A. SHA does not supply brine, a pretreatment salt-based mixture.
- B. Title VI Assurances. All parties to this Agreement shall comply with the requirements of **APPENDIX A** (2 pages) and **APPENDIX E** (1 page) of SHA's Standard Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A which generally set forth non-discrimination regulations and other civil rights related regulations. **APPENDIX A** and **APPENDIX E** are attached hereto and incorporated herein as substantive parts of this Agreement. The term "Acts" in Appendix A refers to 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3. The term "Recipient" in Appendix refers to MDOT SHA.
- C. SHA and the TOWN agree to cooperate with each other to accomplish the terms and conditions of this Agreement.
- D. The provisions contained in this Agreement shall be binding upon the parties until the earlier to occur of; (i) three (3) years from the date first written above, (ii) thirty (30) days after written notice has been given by either party to the other that they elect to no longer be bound by the terms and conditions of this Agreement, or (iii) August 31, 2026. However, termination of this Agreement, and any Amendments thereto, is contingent on all outstanding invoices being paid by the TOWN.
- E. The TOWN shall indemnify, hold harmless and defend, at SHA's option, the State of Maryland, SHA and the Maryland Department of Transportation, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, incurred in connection with the loss of life, personal injury and/or property damage arising from or in connection with the activities

performed pursuant to this Agreement by the TOWN or its contractors, agents or assigns.

- F. SHA reserves the right to limit or deny Salt to the TOWN to avoid jeopardizing SHA's snow remediation operations.
- G. This Agreement shall inure to and be binding upon the Parties, their agents, successors and assigns.
- H. This Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.
- I. The recitals (WHEREAS clauses) at the beginning of this Agreement are incorporated as substantive provisions of this Agreement.
- J. All notices and/or invoices, if to the TOWN, shall be addressed to:

Darnell Bond
Director of Public Works
14211 School Lane
Upper Marlboro, MD 20772
Phone: 301-509-4756
Fax:
E-mail: Dbond@uppermarlboromd.gov

And if to SHA:

Ernie Johnson
Resident Maintenance Engineer
State Highway Administration
6500 S.E. Crain Highway
Upper Marlboro, MD 20870
Phone: 301-952-0555
Fax:
E-mail: ejohnson1@mdot.maryland.gov

With copies to:

Derek Gunn
District Engineer, D-3
State Highway Administration
9300 Kenilworth Avenue
Greenbelt, MD 20770
Phone: 301-513-7498
Fax:
Email: dgunn@mdot.maryland.gov

And,

SHA Agreements Team

Office of Procurement and Contract Management
State Highway Administration
707 N. Calvert Street
Mailstop C-405
Baltimore, MD 21202
Phone: (410) 545-5547
E-mail: shaagreementsteam@mdot.maryland.gov

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the day, month and year first above written.

STATE HIGHWAY ADMINISTRATION

WITNESS

By: _____ (SEAL)
Andre Futrell
Deputy Administrator for
District Operations

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

RECOMMENDED FOR APPROVAL:

Assistant Attorney General

Ernie Johnson
Resident Maintenance Engineer D-3

William J. Bertrand
Director
Office of Finance

TOWN OF UPPER MARLBORO, MARYLAND
a body corporate and politic

WITNESS

BY: _____ (Seal)
Sarah Franklin
Mayor

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Town Of Upper Marlboro Attorney

APPENDIX A OF THE TITLE VI ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such. provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction; the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP 'persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 741 00);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).