

State of Oregon



**PRICE AGREEMENT
WITH
DUSTBUSTERS ENTERPRISES, INC.
FOR
CORROSION INHIBITED LIQUID MAGNESIUM
CHLORIDE DEICER**

[PA #2595]

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This Price Agreement ("Agreement") is between the State of Oregon, acting by and through its Department of Administrative Services Procurement Services ("PS") and Dustbusters Enterprises, Inc, a Montana corporation ("Contractor").

Section 1 –Agreement

1.1 Parties

1.1.1 The only parties to this Agreement are Contractor and PS.

1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A ("Goods" and "Services") by issuing ordering instruments that create and become part of separate contracts ("Contracts"). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. PS is an intended beneficiary of each Contract created by an ordering instrument.

1.1.3 As used in this Agreement, "Authorized Purchaser" means:

- Any agency of the State of Oregon
- Any participant in the Oregon Cooperative Purchasing Program ("ORCPP")
- Notwithstanding the above, Authorized Purchaser does not include _____

1.2 Process

1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:

- a) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the PS approved purchase order form. Exhibit B is a sample PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transaction System (SPOTS) card. Unless expressly authorized by PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.
- b) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- c) To be effective, the ordering instrument must specify all of the following:
 - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
 - ii) The specific Goods and quantity of each item ordered.
 - iii) The net price.
 - iv) The requested delivery schedule.
 - v) The delivery location(s).
 - vi) The invoicing address.

vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.

- 1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order(s) or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.
- 1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates. Contractor may, but is not required to accept an ordering instrument that requests delivery schedule of less than any minimum lead time (if any) specified in Exhibit A.
- 1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within one (1) business day after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail or facsimile if that information is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.
- 1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.
- 1.2.6 PS is not obligated or liable under an ordering instrument unless PS is purchasing Goods as the Authorized Purchaser.
- 1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument.
- 1.2.8 Contractor shall reject an ordering instrument from any entity that is not an Authorized Purchaser under this Agreement. Contractor may verify that Authorized Purchasers are ORCPP participants at the following internet address: <http://cms.oregon.gov/DAS/EGS/PS/pages/index.aspx>
- 1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

1.3 Prices

During the Term of this Agreement (defined in Section 1.5 below), Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A, except for price adjustments based on fuel escalation or de-escalation as described in this section, and supply such Goods in accordance with the terms and specifications of this Agreement. Contractor and Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.

1.3.1 Base Price Per Ton Delivered. Agreement prices are firm for the initial term of the Agreement and any subsequent extension term unless modified by Amendment.

During the extension period Contractor may submit a written request to SPO, together with cost and price documentation supporting the requested decrease or increase, within the time period specified on the renewal notice. PS in its sole discretion may grant an increase or decrease for an extension period of the Agreement.

It is Contractor's responsibility to provide a detailed explanation and verifiable supporting documentation for PS to make a determination as to the validity of the request. PS has the sole discretion to make the final determination as to whether price adjustment will be granted.

1.3.2 Base Fuel Price: Contractor provided in its bid a Base Fuel Price amount for each bid line item that represented the portion of the Base Delivered Price attributable to costs for fuel. The Base Fuel Price may not exceed an amount equal to 10 percent of the Base Delivered Price for that line item.

1.3.3 Base Delivered Price: The Base Delivered Price is the price for each location Contractor provided in its bid.

1.3.4 Base Fuel Index Price: The Energy Information Administration of the US Department of Energy (EIA) publishes diesel fuel prices weekly at the following website: <http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp>. PS will use the prices published on this website under "Diesel Fuel" and "West Coast" ("Index Prices") as the basis for Fuel Price Adjustments for this Agreement. The price posted as of June 4, 2012, \$4.101, is the Base Fuel Index Price for this Agreement.

1.3.5 Fuel Price Adjustment Factor: A Fuel Price Adjustment Factor will be determined each month for each line item using the Index Price for the first Monday of the month (or Tuesday if Monday is a holiday). The monthly Fuel Price Adjustment Factor will be a number that represents the percentage change from the Base Index Price of \$4.101. See examples below:

Example 1 (Fuel Price Increase):

If the Index Price for July 2 (first Monday of August) is \$4.216;
\$4.216 (July Index Price) – \$4.101 (Base Index Price) = \$.115
Percentage change (\$.115/\$4.101) is an increase of 2.8% or .028
Fuel Adjustment Factor for August is .028

Example 2 (Fuel Price Decrease):

If the Index Price for August 6 (first Monday of August) is \$3.960;
\$3.960 (August Index Price) - \$4.101 (Base Index Price) = -\$0.141
Percentage change (-\$.141/\$4.101) is a decrease of 3.4% or -.034
Fuel Adjustment Factor for August is -.034

1.3.6 Calculation of Total Delivered Price Including Fuel Price Adjustment: The Total Delivered Price each month will be calculated as follows:

Base Delivered Price + (Base Fuel Price * Fuel Adjustment Factor)

Examples (using the fuel adjustment factors shown above in 1.3.5: .028 for July, and -.034 for August);

Base Delivered Price (fully loaded per ton bid price provided in the bid):	\$200
Base Fuel Price (portion of the \$200 bid price that represents fuel usage):	\$15

Example 1: $\$200 + (\$15 * .028) = \$200 + .42 =$ August price: \$200.42
Example 2: $\$200 + (\$15 * -.034) = \$200 + -.51 =$ August price: \$199.49

1.3.7 Monthly Pricing Worksheet: PS will establish a Pricing Worksheet, in Microsoft Excel format, using the Base Delivered Price Per Ton in Exhibit A, Section 6. PS will update the Pricing Worksheet each month, using the Fuel Price Adjustment method described in this section and provide this Pricing Worksheet by email to the Contractor no later than the first Wednesday of each month, or the first Thursday if the preceding Monday is a holiday.

1.4 VCAF and VSR

Contractor shall remit to PS a Vendor Collected Administrative Fee and Volume Sales Reports as described in Exhibit C.

1.5 Term of Agreement

1.5.1 The initial term of this Agreement begins on the date this Agreement has been signed by PS and Contractor and all required approvals have been obtained (the "Effective Date") and ends on the 1st anniversary of the Effective Date unless sooner terminated or extended as provided in this Agreement. PS has the option to extend this Agreement for up to 7 consecutive one year terms. PS will exercise the option to extend, if at all, by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then-current term. The initial term and all extension terms are collectively the "Term" of this Agreement.

- 1.5.2 After this Agreement is terminated, Contractor shall not accept new ordering instruments.
- 1.5.3 Termination of this Agreement also terminates ordering instruments in which the Contractor is not legally required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as a blanket purchase order (an order that may contain detail of the Goods, but actual sale of Goods is made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.4 Except as provided in Section 1.5.3, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument accepted before termination of this Agreement.
- 1.5.5 PS may terminate this Agreement upon 30 calendar days written notice to Contractor for any or no reason.

1.6 Insurance

Contractor shall obtain insurance specified in Exhibit D and shall maintain the insurance until all Contracts under this Agreement are terminated.

1.7 Miscellaneous

- 1.7.1 **Choice of Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 **Designation of Forum and Consent to Jurisdiction.** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 **Amendments.** No amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 **Transfer.** Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of PS. PS's consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided their permitted legal successors and assigns.
- 1.7.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 **Force Majeure.** Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement.

In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of Contractor's obligations with all reasonable diligence. If necessary, the period for performance under this Agreement will be extended to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- 1.7.8 Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties, or notices to be given under this Agreement, are effective only if given in writing by personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Contractor or PS at the address or number set forth below in Sections 4 and 5, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice so addressed and mailed is deemed given five (5) days after mailing. Any communication or notice delivered by facsimile is deemed given on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours. To be effective against PS, any notice transmitted by facsimile must be confirmed by telephone notice to PS's Contract Administrator. Any communication or notice given by personal delivery or express courier is deemed given immediately upon such delivery, provided such delivery is made to the person indicated below.

The Contract Administrators are identified in Sections 4 and 5, respectively.

- 1.7.9 No Third Party Beneficiaries. PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 1.7.10 Waiver. The failure of PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 Certification of Compliance with Tax Laws. By signature on this Agreement for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
- 1.7.12 PS's performance under this Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated into this Agreement by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- 1.7.13 Contractor shall retain, maintain, and keep accessible all records relevant to this Agreement (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit PS and its duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

Section 2 – Standard Terms for Contracts Under This Agreement

- 2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3, and Exhibit A. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence. In the event of a conflict between Sections 2 and 3 and Exhibit A, the provisions have the following descending order of precedence: Exhibit A, Section 2, then Section 3.
- 2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. Subject to Authorized Purchaser's acceptance of goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- 2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- 2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- 2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
- 2.5.1 Price Agreement number.
 - 2.5.2 Ordering instrument number.
 - 2.5.3 Goods ordered.
 - 2.5.4 Date delivered.
 - 2.5.5 Volume or quantity of Goods delivered.
 - 2.5.6 The price per item of Goods.
 - 2.5.7 The total amount invoiced.
 - 2.5.8 The address to which payment is to be sent.
- 2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.
- 2.7 INSPECTIONS AND ACCEPTANCE:** The Authorized Purchaser has 120 calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods. Notice of rejection must also specify when cure will be allowed.
- 2.7.1 If an Authorized Purchaser rejects the Goods, Contractor shall at Contractor's sole expense remove and replace any Goods that are rejected within 3 calendar days of notice of rejection with product that meets the material Specifications, at no additional cost to Authorized Purchaser, including handling and transportation charges. Removal includes the removal of any material contaminated by the rejected Goods. Authorized Purchaser's personnel will establish the amount of material contaminated.
 - 2.7.2 If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.
 - 2.7.3 Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance in section 3.3.

2.8 REPRESENTATIONS AND WARRANTIES:

- 2.8.1 **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.
- 2.8.2 **WARRANTY ON MATERIALS, DESIGN, MANUFACTURE:** Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit A to the Price Agreement and PNS QPL requirements.
- 2.8.3 **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with standards prevalent in the industry.
- 2.8.4 **WARRANTY OF TITLE:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods which is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.
- 2.8.5 **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA), PNS QPL requirements and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.
- 2.8.6 **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser at time of delivery at no charge.
- 2.8.7 **WARRANTIES CUMULATIVE:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

- 2.9.1 Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.
- 2.9.2 **STATUTORY TERMS:** Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- 2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the law prevails. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify PS and Authorized Purchaser.
- 2.9.4 **RECALLED GOODS OR COMPONENTS:** In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify PS and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or

other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

- a) Cancel any portion of the ordering instrument.
- b) Reject the Goods.
- c) Revoke its acceptance of the Goods.
- d) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
- e) Terminate the Contract.
- f) Impose a price adjustment for non-complying Goods in accordance with Section 3.3.2.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for any payments made.

- 2.10 FOREIGN CONTRACTOR:** If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.
- 2.11 MATERIAL SAFETY DATA SHEET:** Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet (MSDS) as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Price Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.
- 2.12 TIME IS OF THE ESSENCE:** Time is of the essence for performance of Contractor's performance obligations under this Contract.
- 2.13 FORCE MAJEURE:** Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract.
- 2.14 WORKERS COMPENSATION INSURANCE:** All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors, if any, complies with these requirements.
- 2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS:** If Authorized Purchaser is an agency of the State of Oregon, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.
- 2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:**
- 2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.

- 2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.17 INDEMNIFICATION:

- 2.17.1 CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE AUTHORIZED PURCHASER, THE STATE OF OREGON AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW) (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST ANY AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS, EMPLOYEES AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF CONTRACTOR, ITS EMPLOYEES, AGENTS, RELATED TO THIS CONTRACT, (II) ANY ACT OR OMISSION BY CONTRACTOR THAT CONSTITUTES A MATERIAL BREACH OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. AUTHORIZED PURCHASER OR STATE SHALL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM OF WHICH AUTHORIZED PURCHASER OR STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF AUTHORIZED PURCHASER, OR (II) AUTHORIZED PURCHASER'S MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.
- 2.17.2 HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES OR AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

2.18 BREACH:

- 2.18.1 **BY CONTRACTOR:** Contractor breaches this Contract if:
- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
 - c) Contractor commits any breach of any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the breach within the period

specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the breach is curable by Contractor.

- d) Pacific Northwest Snowfighters (PNS) for any reason disqualifies the Goods from the qualified products list (QPL).
- e) Contractor delivers any Goods disqualified from the PNS QPL.
- f) Contractor delivers two or more shipments that deviate from the detailed product specification sheet for the Goods on the PNS.

2.18.2 BY AUTHORIZED PURCHASER: Authorized Purchaser breaches this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any breach of any covenant, warranty, or obligation under this Contract and such breach is not cured within ten (10) business days after delivery of Contractor's notice of breach or such longer period as Contractor may specify in such notice.

2.19 REMEDIES:

2.19.1 AUTHORIZED PURCHASER'S REMEDIES: If Contractor is in breach under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- a) Termination of the Contract as provided in Section 2.20.2;
- b) Withholding all monies due for invoiced Goods that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 CONTRACTOR'S REMEDIES: If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in breach under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.20 TERMINATION:

2.20.1 BY MUTUAL CONSENT: This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.

2.20.2 RIGHTS OF AUTHORIZED PURCHASER. Authorized Purchaser may, at its sole discretion, terminate this Contract for convenience with thirty (30) calendar days written notice. Authorized

Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by Authorized Purchasers under the Price Agreement is prohibited, or Authorized Purchasers are prohibited from paying for such Goods from the planned funding sources; or (c) Contractor is in breach of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.20.3 RIGHTS OF THE CONTRACTOR: Contractor may terminate this Contract with a minimum ten (10) calendar days written notice to Authorized Purchaser, if Authorized Purchaser is in breach of this Contract as described in Section 2.18.2.

2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit PS, the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.22 NOTICES: All notices required under this Contract must be in writing and addressed to the party's authorized representative. For Authorized Purchasers, the authorized representative is identified in the ordering instrument. Contractor's authorized representative is Contractor's Contract Administrator identified in the Price Agreement. Mailed notices will be deemed received five (5) business days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. If a notice is sent by facsimile, upon receipt by the party giving the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile machine and number. Personal delivery is effective upon delivery.

2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.24 GOVERNING LAW: This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.25 VENUE; CONSENT TO JURISDICTION:

2.25.1 STATE CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 ORCPP CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an ORCPP Authorized Purchaser other than an agency of the State of Oregon that arise from

or relate to this Contract order shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Authorized Purchaser resides, or at the ORCPP Authorized Purchaser's option, within such other county as the ORCPP Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

- 2.26 SURVIVAL:** The following provisions survive termination or expiration of this contract: Sections 2.8, 2.9.4, 2.17, 2.19, 2.21, 2.24, 2.25, 2.27; Exhibit C and Section 3 of Exhibit D ("TAIL" COVERAGE).
- 2.27 SEVERABILITY:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- 2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.
- 2.29 MERGER CLAUSE; AMENDMENT; WAIVER:** This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.
- 2.30 Reserved**
- 2.31 VCAF and VSR.** Contractor shall comply with the VCAF and VSR requirements of the Price Agreement.
- 2.32 INTENDED BENEFICIARY.** PS is an intended beneficiary of this Contract. But the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of PS.
- 2.33 ASSIGNMENT OF ANTITRUST RIGHTS.** Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts Under This Agreement

3.1 SPECIFICATIONS – GENERAL PROVISIONS

3.1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for solicitation change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.

3.1.2 **ADHERENCE TO THE SPECIFICATIONS:** Contractor shall correct any deviations from specifications discovered after purchase at no cost to the Authorized Purchaser.

3.2 Contractor shall include with all Goods delivered all of the following items:

3.2.1 **BILL OF LADING.** The bill of lading for each shipment must contain the following information:

3.2.1.1 Name of product.

3.2.1.2 Supplier and manufacturer of product.

3.2.1.3 Delivery Destination.

3.2.1.4 Total number of units being delivered (in both tons and gallons).

i. One ton of Corrosion Inhibited Liquid Magnesium Chloride equals approximately 185 gallons.

3.2.1.5 Total weight of delivery using a certified scale ticket or certified flow meter. Contractor may use a legibly printed certified ticket from a flow meter that has been tested and certified by an approved PNS member state's agency of Weight and Measures. The certification of the meter must not be older than one year. The Authorized Purchaser may at any time choose to spot check a delivery of liquid product by having the load weighed on certified scales before and after delivery to insure the accuracy of the flow meter. No additional cost will be charged to the Authorized Purchaser for spot-checking deliveries of liquid products.

3.2.1.6 Lot Number for the Goods being delivered. The Lot Number is a specific number assigned to that particular product as delivered. This number must be denoted as the "LOT NUMBER" on the bill of lading and shall be clearly legible. The lot number must enable purchaser to track a delivered product back to its manufacture point, date of manufacture and specific batch. Failure to have a defined LOT NUMBER that appears on the Bill of Lading is grounds for rejection of the load.

3.2.1.7 Transport information must include the name of transporting company, tank, trailer or rail car number, point and date of origin.

i. For liquid products include the Contractor quoted concentration and specific gravity.

ii. Each shipment must be accompanied by a current and clearly legible Material Safety Data Sheet.

iii. Authorized Purchaser will not process invoices for payment until Contractor has met all requirements under this section. Contractor shall include the following in each invoice:

1. A copy of the original bill of lading.
2. Contract unit of measure.
3. Total number of units delivered.
4. Contract unit price for product delivered.
5. Total price for units delivered.

3.2.2 **HAZARD COMMUNICATION:** Contractor shall label, tag or mark all products which contain hazardous chemicals, as defined by Oregon Administrative Rules Chapter 437, with the following information:

- i. Identity of the hazardous chemical(s);
- ii. Appropriate hazard warning; and
- iii. Name and address of the chemical manufacturer, importer or other responsible party.

3.3 REJECTION, TESTING AND PRICE ADJUSTMENT.

3.3.1 Authorized Purchaser may elect to reject Goods that do not comply with the Specifications as prescribed in section 2.7, or accept the non-complying Goods and pay the Contractor an adjusted price as set forth in Section 3.3.2 below.

3.3.2 **TESTING.** Authorized Purchaser may in its discretion and at no charge to Contractor test Goods for compliance with the Specifications described in Exhibit A and the current PNS specifications for Category 1 (Corrosion Inhibited Liquid Magnesium Chloride).

For any test of Goods for compliance, Authorized Purchaser shall use PNS test protocols for Category 1 products.

a. Magnesium Chloride Concentration Levels. Tests of field samples taken of the delivered Goods for the appropriate magnesium chloride concentration will be performed according to Test Method 1 of the Specifications for Category 1 products established by PNS. The test results will be compared to Contractor's bidder quoted concentration (BQC) of the product. Any element or compound that is not specific to the product bid will not count towards BQC. For example, if a sample is submitted under Category 1 - Magnesium Chloride, credit will be given for Magnesium Chloride content only. No credit shall be given for trace materials such as Calcium Chloride, Sodium Chloride, etc. The percent values indicated below are percent concentrations of magnesium chloride, not percentage of the BQC.

Contractor shall adjust prices for Goods verifiably noncompliant with the BQC Ranges as follows (for purposes of this section, BQC Range means the concentration range for the Contractor's product as listed on the QPL as of the effective date of this agreement):

- i. BQC less 1.0% but in no case below the minimum QPL concentration limit = No price adjustment
- ii. BQC less 1.1% or greater but in no case below the minimum QPL concentration limit - 35% reduction
- iii. Price Adjustments for chemical products below the minimum QPL concentration are as follows:

Concentration Ranges	
24.0% to 24.9% -----	50% reduction
Less Than 24.0% -----	100% reduction

b. Failure of Goods to meet specifications. Delivered Goods that separate or segregate, or otherwise fail to meet or exceed any of the PNS specifications and requirements, other than the BQC, are subject to a 5% reduction in the delivered price.

c. Notification to Contractor. Authorized Purchaser shall notify Contractor and DAS PS in writing, by mail, email or fax, within 120 calendar days of delivery date if any Goods fail to meet specifications. Notice of price reduction must include itemization of apparent defects, including but not limited to:

- (i) discrepancies between the Goods and the applicable Specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or
- (ii) other nonconformance based on laboratory testing.

Price reductions for failure to meet specifications may either be made by invoice to Contractor by Authorized Purchaser, or credit on a future invoice from Contractor, as agreed to by Authorized Purchaser and Contractor.

Section 4 – Signature of Contractor's Duly Authorized Representative

The undersigned represents:

- (a) He/she is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.
- (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
- (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.

Agreed:

Contractor's Name: **Dustbusters Enterprises, Inc.**

Authorized Signature: E. Craig Prete Date: 8/27/2012

Printed Name of Authorized Signature: E. Craig Prete

Title of Authorized Signature: President

Administrative Contact (also referred to as Contract Administrator – Type or Print):

E. Craig Prete

Telephone Number of Administrative Contact: (307) 789-3878

Fax Number of Administrative Contact: (307) 789-3888

Email Address of Administrative Contact: dustbusters@uintanet.com, craig@dustbustersinc.com

Mailing Address of Administrative Contact:

P.O. Box 15 Evanston, WY 82931-0015

Section 5 – Signature of DAS Procurement Services

Agreed:

Authorized Signature: Melissa Canfield Date: 8/27/2012

Printed Name of Authorized Signature: Melissa Canfield Title: Strategic Sourcing Mgr.

PS Contract Administrator: Gail L. Carter, State Procurement Analyst

Telephone Number: (503) 378-5501 Fax Number: (503) 373-1626 Email: gail.l.carter@state.or.us

**Department of Administrative Services
Enterprise Goods and Services Division
PROCUREMENT SERVICES
FAX (503) 373-1626**

TO:	Gail L. Carter, State Procurement Analyst DAS, Procurement Services 1225 Ferry Street SE U140, Salem, OR 97301
Phone:	(503) 378-5501
FAX:	(503) 373-1626
Email:	gail.l.carter@state.or.us
From:	_____
Phone:	_____
Fax:	_____
Date:	_____
Pages (including this cover page): 2	

Statewide Price Agreement (PA) #2595

I, (**signature**) *E. Craig Peto*, (**title**) *President*

received a complete copy of PA 2595 between the State of Oregon acting by and through the Department of Administrative Services, Procurement Services and Dustbusters Enterprises, Inc. by e-mail from Gail L. Carter.

On August 27, 2012, I signed the printed form of PA 2595 without change from the originally transmitted document. A copy of the signature page from the PA is included with this transmission.

Exhibit A

Specifications, Goods and Services

1.0 SPECIFICATIONS: These specifications describe the type of Deicer that Authorized Purchasers may obtain from this Agreement.

1.1 Corrosion Inhibited Liquid Magnesium Chloride

The technical specifications for the Goods are those for corrosion inhibited liquid magnesium chloride deicer products listed on the 2011 PNS QPL.

The Specifications include PNS general specifications and the PNS chemical product category 1 for corrosion inhibited liquid magnesium chloride deicer specifications and the PNS test method A concentration percentage of active ingredient in liquid chemical product.

The list and most current specifications are available on the PNS web site at <http://www.wsdot.wa.gov/partners/pns/pdf/PNSSPECS.pdf>

During the term of the Agreement Contractor shall provide Goods that meet the specifications on the detailed product sheet for the named product on the QPL list at the effective date of this Agreement.

2.0 DEFINITIONS

"Goods" means the corrosion inhibited liquid magnesium chloride deicer, cold-weather modified corrosion inhibited liquid magnesium chloride deicer, and related Services.

"Services" means the services, if any, to be performed by Contractor under the Contract that are incidental to the purchase of Goods.

3.0 GOODS

Corrosion Inhibited Liquid Magnesium Chloride

4.0 SERVICES AND DELIVERY

4.1 CONTRACTOR HELP DESK:

Contractor shall provide at no cost to Authorized Purchaser one or more qualified persons to respond to Authorized Purchaser inquiries and consult about performance and delivery of the Goods.

3.1 Contractor's help desk must be available to accept calls between 7:00 AM and 5:00 PM Pacific Time, Monday through Friday.

3.2 Contractor shall respond to telephone, fax or e-mail inquiries from Authorized Purchasers.

3.3 Contractor shall provide a service which Authorized Purchaser may use to leave a message for Contractor outside of the hours listed above.

4.2 DELIVERY LOCATIONS:

Authorized Purchaser may place orders to be delivered to locations other than those listed in Exhibit A, Section 6 at any time during the term of this Agreement. Contractor shall provide Goods to an Authorized Purchaser's location within 25 miles of a location listed in Section 6 at the same price as the nearest listed location.

If an Authorized Purchaser requires delivery to a new location that is farther than 25 miles from an already listed location, Contractor shall charge the amount for the nearest location and, notwithstanding the limit on charges, Contractor may charge a reasonable transport fee as agreed upon by Authorized Purchaser and Contractor for the distance in miles traveled beyond 25 miles from the nearest location identified in Exhibit A.

4.3 NON-INTERFERENCE WITH WORK SITE: Contractor shall perform its activities in such a manner that they will not interfere with the work activities of Authorized Purchaser at the facility where delivery is made. Contractor shall not block access to the facility and shall maintain a safe passage for Authorized Purchaser activities.

4.4 ORDERS AND DELIVERIES:

4.4.1 Authorized Purchaser shall place all orders by fax or e-mail. For all accepted ordering instruments, the official order date ("the order date") is the date of the fax or e-mail transmittal if placed with Contractor at or before 2:00 P.M. (all order times reflect Contractor's time) during business days (Monday through Friday, 8 A.M. to 5 P.M., excluding holidays), and the next business day if placed with Contractor after 2:00 P.M. See Tables A and B below for examples. The order date is the date used to determine required delivery dates and price adjustments.

4.4.2 Within two (2) business hours after placement of an order, Contractor shall fax or e-mail back to the Authorized Purchaser a confirmation of receipt and the order delivery date and the delivery quantity. (For orders placed after 2:00 P.M., "within two (2) business hours" means by 10:00 A.M. the following business day.) If the Contractor does not furnish the Authorized Purchaser an order confirmation within two (2) business hours, or confirmation provided by the Contractor states a delivery date past the required delivery date, the Authorized Purchaser may cancel the order and make the purchase from another supplier. The Authorized Purchaser must notify Contractor by fax or e-mail in the event of an order cancellation. Authorized Purchaser shall send notice of cancellation no later than one (1) business day after either 1) receipt of confirmation if delivery date is past the required delivery date or 2) confirmation due date if no confirmation was received.

4.4.3. Contractor shall make all deliveries to the Authorized Purchaser contact person listed on the order form or to that person's delegate. The Authorized Purchaser contact person or delegate shall be at the delivery location at time of delivery for deicer sampling and to sign off on receiving the delivery.

4.4.4. Contractor shall make deliveries Monday through Friday, excluding holidays, between the hours of 8:00 A.M. and 4:00 P.M. Pacific Time, unless the Authorized Purchaser requests weekend or holiday delivery on the order form. Authorized Purchaser may only request weekend or holiday delivery during peak season (defined in Section 4.4.6 below). If Contractor changes the scheduled delivery date from the delivery date stated on the order confirmation, Contractor must provide a minimum 24 hours notice to the Authorized Purchaser of the new delivery date and time prior to delivery, unless otherwise requested or agreed to by the Authorized Purchaser. Failure by Contractor to provide the required notification of a change in delivery schedule may result in a 5% price reduction at the Authorized Purchaser's discretion.

4.4.5. Split Loads: Contractor shall not charge more than \$100.00 as a drop fee for each location following the first delivery any time an order form directs that a load be split between two or more delivery locations. Contractor may not charge any drop shipment fees unless it confirmed the fees in its order confirmation.

4.4.6. Peak Season: The peak season is from October 1st to April 15th, inclusive. The delivery dates in this section apply for all orders placed in the peak season, regardless of whether delivery falls within peak season. For purposes of determining required delivery dates and late delivery price reductions, "Day" is defined to mean 1) a business day if order does not specifically request weekend or holiday delivery or 2) a calendar day if order specifically requests weekend or holiday delivery. During peak season, Contractor shall deliver in three (3) Days or less from official order date on orders designated as "3-day delivery." Contractor shall deliver in six (6) Days or less from the order date on orders designated as "6-day delivery."

4.4.7. Off Season: Contractor shall deliver in fifteen (15) Days or less from the order date on orders placed with the Contractor during the off season from April 16 to September 30. Authorized Purchaser may not request weekend or holiday delivery during off season, so off season delivery requirement is fifteen (15) business days.

4.4.8 If Contractor fails to deliver within the time period required, a 5% price reduction per ton, per Day will be assessed for each Day of delay. The 5% price reduction starts on Day 4 for "3-day orders", starts on Day 7 for "6-day orders", and starts on Day 16 for orders placed during off season. The 5% price reduction per late Day includes the Day delivery is made. Consistently late deliveries may result in Agreement termination by PS.

4.4.9 During the peak season, when orders larger than 50 tons per location are placed, a minimum of 50 tons of that order must be delivered within the 3-day or 6-day time period. If the Contractor cannot deliver the entire order

at once, the balance must be delivered the next Day. If the entire balance is not delivered the next Day, price reductions apply each Day for any remaining balance until the order is fulfilled.

Table A below includes two (2) examples for 3-day delivery. **EXAMPLE 1** is from the week of November 18-24, 2012 (Thanksgiving week) and **EXAMPLE 2** a non-holiday week, December 2-8, 2012.

Table A

EXAMPLE 1: Holiday Week				
Week	Order day/time	Confirmation due (Also the official order date)	Order due if weekend/holiday delivery requested	Order due if weekend/holiday delivery not requested
Nov 18-24	Monday 2:30 pm	Tuesday 10:00 am	Friday	Monday
Nov 18-24	Monday 11:00 am	Monday 1:00 pm	Thursday	Friday
Nov 18-24	Wednesday 8:00 am	Wednesday 10:00 am	Saturday	Tuesday
Nov 18-24	Wednesday 4:00 pm	Friday 10:00 am	Monday	Wednesday
EXAMPLE 2: Non-Holiday Week				
Dec 2-8	Tuesday 9:00 am	Tuesday 11:00 am	Friday	Friday
Dec 2-8	Tuesday 2:00 pm	Tuesday 4:00 pm	Friday	Friday
Dec 2-8	Thursday 7:35 am	Thursday 10:00 am	Sunday	Tuesday
Dec 2-8	Friday 3:00 pm	Monday 10:00 am	Thursday	Thursday

Table B below includes two (2) examples for 6-day delivery. **EXAMPLE 1** is from the week of November 18-24, 2012 (Thanksgiving week) and **EXAMPLE 2** a non-holiday week, December 2-8, 2012.

Table B

EXAMPLE 1: Holiday Week				
Week	Order day/time	Confirmation due (Also the official order date)	Order due if weekend/holiday delivery requested	Order due if weekend/holiday delivery not requested
Nov 18-24	Monday 2:30 pm	Tuesday 10:00 am	Monday	Thursday
Nov 18-24	Monday 11:00 am	Monday 1:00 pm	Sunday	Wednesday
Nov 18-24	Wednesday 8:00 am	Wednesday 10:00 am	Tuesday	Friday
Nov 18-24	Wednesday 4:00 pm	Friday 10:00 am	Thursday	Monday
EXAMPLE 2: Non-Holiday Week				
Dec 2-8	Tuesday 9:00 am	Tuesday 11:00 am	Monday	Wednesday
Dec 2-8	Tuesday 2:00 pm	Tuesday 4:00 pm	Monday	Wednesday
Dec 2-8	Thursday 7:35 am	Thursday 10:00 am	Wednesday	Friday
Dec 2-8	Friday 3:00 pm	Monday 10:00 am	Sunday	Tuesday

OFF SEASON: The only delivery option during Off Season (April 16 – September 30) is 15-day delivery. Contractor shall deliver in fifteen (15) Days or less from official order date on orders placed with the Contractor during the Off Season. (Note: ODOT may not request weekend or holiday delivery during off season, so Off Season delivery requirement is fifteen (15) business days.)

4.4.10 Authorized Purchaser may deduct from Contractor's invoice amounts as specified in this Agreement for improper notification or late delivery. Authorized Purchaser will provide, with payment, documentation that identifies order date, order confirmation, date of delivery, or other information that documents the amount deducted.

4.4.11 Contractor shall, within seven (7) calendar days of receipt of payment from Authorized Purchaser, address with the respective Authorized Purchaser representative identified on a Contract any claims that late deliveries or improper notification resulting in price reductions were due to uncontrollable circumstances on the part of the Contractor. The decision of the Authorized Purchaser representative to accept or to deny the claim will be final and in the best interest of the Authorized Purchaser.

4.4.12 Contractor is responsible for all necessary equipment to transfer Goods to a storage tank fitted with a three-inch male pipe fitting. Authorized Purchaser is responsible for providing a storage tank fitted for delivery of the Goods.

4.4.13 The Contractor is responsible for all Goods it brings onto an Authorized Purchaser's location until the delivery is complete. Contractor shall be prepared for spills typically associated with its delivery equipment, and must utilize proper equipment to prevent spills during delivery to the Authorized Purchaser (such as the use of drip buckets under hose fittings). Contractor shall promptly clean up all spills and leaks of five (5) gallons or greater. Contractor shall use wheel chocks, other physical barrier or warning system to prevent truck departure prior to complete disconnection of flexible or fixed deicer transfer lines. Contractor shall inspect its vehicles prior to departure for discharges from the lowermost drain and all outlets of such vehicles.

4.4.14 Contractor shall store and handle Goods in a manner to prevent spills. If any deicer is released during the delivery, the Contractor shall:

- (1) immediately stop the release,
- (2) immediately report the release to the Authorized Purchaser representative or the representative's delegate,
- (3) proceed to correct the cause of the spill and take steps to prevent recurrence and
- (4) ensure that cleanup of any deicer spill of five (5) gallons or greater proceeds in a timely and diligent manner.

If such remediation measures are not undertaken immediately, Authorized Purchaser may take cleanup measures it deems necessary to return the impacted area to its original condition. Contractor shall be liable for all related costs, including mitigation costs and any litigation costs incurred to recover such costs.

Contractor shall provide an anti-foaming agent, at no additional charge to the Authorized Purchaser, to control foaming during loading, unloading, and agitation of Goods.

4.4.15 Contractor is responsible for all liabilities associated with Goods that are delivered or applied to roadways which are found to be contaminated or are cause for environmental concerns, including without limitation all clean up expenses. This includes but is not limited to clean up measures as needed for the following: storage facility, yard, equipment, and roadside. Contractor is responsible for any unanticipated extraordinary damages to Authorized Purchaser equipment used in the storage or distribution of the Goods.

4.4.16 If Contractor is unable to meet a scheduled delivery date, Authorized Purchaser may pick up, load, and transport Goods from the Contractor's storage location if Contractor agrees. If Authorized Purchaser obtains Goods in this manner, the cost to Authorized Purchaser for the Goods will be 25% less than the delivered price listed in this Agreement. In the case of dire weather circumstances, in the best interest of public safety, if Authorized Purchaser requires Goods sooner than a 3-day time period, Authorized Purchaser may pick up, load, and transport Goods from the Contractor's storage location at the same price as the delivered price. This option is intended only for the most severe and immediate weather circumstances.

5.0 TRAINING

Contractor shall provide technical assistance and information on how the Goods work, proper applications for different roadway and weather conditions, and other pertinent topics that may be requested for Authorized Purchaser deicer training. Classes are typically held in October and November although an Authorized Purchaser may request training between January and December.

- a. Contractor shall provide training as reasonably requested by Authorized Purchaser at dates, times and locations mutually agreed upon by an Authorized Purchaser and Contractor. Training will not be provided unless a purchase order has been issued and a Contract has been executed.
- b. Contractor shall use only training materials approved in advance by Authorized Purchaser for each session. Contractor shall allow reproduction by Authorized Purchaser of all materials and handouts furnished to training participants.
- c. Authorized Purchasers' requests for training may include but are not limited to the following subjects:
 - i. Concepts of anti-icing, de-icing, pre-wetting,
 - ii. Stockpile treatments,
 - iii. Storage and circulation issues,
 - iv. Receiving shipments,
 - v. Sampling procedures,
 - vi. Understanding the eutectic temperature chart and how it is used in regards to chemical deicers,
 - vii. Overview of the Specifications,
 - viii. Realistic expectation of the Goods.
- d. Authorized Purchaser shall provide, schedule and pay for the training facility. It is anticipated that most trainings will be on site at an Authorized Purchaser's facility.

6.0 PRICING, DELIVERY LOCATIONS AND CONTRACTOR STORAGE LOCATIONS

The pricing for this Agreement is in U.S. funds.

6.1 Training: Fixed price for each four-hour training session = \$2,200.00

6.2 Pricing and delivery locations

6.2.1 3 Day Delivery

3 DAY DELIVERY			
Corrosion Inhibited Liquid Magnesium Chloride			
3 Day Item #	District	Delivery Location	Base Delivered Price Per Ton
1-3	1	Clatskanie	159.71
2-3	1	Deer Island (Clatskanie)	147.68
3-3	1	Humbug	161.27
4-3	1	Manning (Banks Maintenance)	161.02
5-3	1	Tillamook	151.54
6-3	1	Warrenton	163.57
7-3	2B	Baldock	159.6
8-3	2B	Canemah (Milwaukie)	135.54
9-3	2B	Carus (Milwaukie)	135.54
10-3	2B	East Portland	155.59
11-3	2B	Milwaukie	155.59
12-3	2B	North Portland	155.59
13-3	2B	Powell Stockpile Site @ I-205 (E. PtInd.)	138.55
14-3	2B	Route 30, MP 13.54 N of Linton (N. PtInd.)	148.57
15-3	2B	Sylvan	133.53
16-3	2B	Wilsonville	138.55
17-3	2C	Cascade Locks	164.33
18-3	2C	Estacada	151.87
19-3	2C	Govt Camp	161.67

20-3	2C	Parkdale	168.47
21-3	2C	Sandy	138.55
22-3	3	Buell (OR Rt. 22, MP 4.64) (McMinnville)	140.27
23-3	3	Detroit	146.83
24-3	3	McMinnville	156.31
25-3	3	Newberg (McMinnville)	146.28
26-3	3	Salem (City/ODOT Salem)	146.28
27-3	3	Woodburn (Salem)	161.85
28-3	4	Albany	163.33
29-3	4	Corvallis	159.2
30-3	4	Ona Beach	164.59
31-3	4	Rose Lodge	161.86
32-3	4	Sweet Home	156.85
33-3	4	Wakefield Rd.(US 20, MP 27) (Ona Beach)	155.57
34-3	5	Florence	166.42
35-3	5	Glenwood	148.37
36-3	5	McKenzie Bridge	166.42
37-3	5	Oakridge	183.46
38-3	5	Veneta	173.43
39-3	7	Boswell Springs	169.42
40-3	7	Davis Slough	190.25
41-3	7	Glendale (I-5 MP 83.29, Barton Rd.) (Shady)	175.1
42-3	7	Port Orford	179.85
43-3	7	Reedsport	162.15
44-3	7	Shady (Roseburg)	182.2
45-3	8	Ashland	191.63
46-3	8	Cave Junction	175.76
47-3	8	Central Point	191.39
48-3	8	Grants Pass	189.08
49-3	8	Hugo (MP 67 on I-5) (Grants Pass)	165.47
50-3	8	Lemolo (MP 73) (Prospect)	191.88
51-3	8	Lincoln (Ashland)	178.51
52-3	8	Prospect	194.35
53-3	8	Siskiyou (Upper Shed) (Ashland)	186.97
54-3	8	Slide Creek (MP 55) (Prospect)	175.4
55-3	9	Arlington	168.6
56-3	9	Condon	154.52
57-3	9	Maupin	148.01
58-3	9	Moro	163.05
59-3	9	Rufus (I-84, MP 109) (The Dalles)	150.43
60-3	9	Shaniko (Moro)	152.79
61-3	9	The Dalles	160.45
62-3	9	Warm Springs	167.47
63-3	10	Bend	175.98
64-3	10	Brothers	182.45
65-3	10	Chemult	162.15
66-3	10	LaPine	171.38
67-3	10	Madras	177.98
68-3	10	Mitchell	174.43
69-3	10	Prineville	177.98
70-3	10	Sisters	177.98

71-3	11	Chiloquin	162.25
72-3	11	Klamath Falls	190.02
73-3	11	Lake-of-the-Woods	179.8
74-3	11	Lakeview	187.82
75-3	12	Heppner	163.49
76-3	12	Hermiston	160.33
77-3	12	Meacham	149.07
78-3	12	Mission Sand Shed (Pendleton)	152.34
79-3	12	Poverty Flats (Meacham)	141.01
80-3	12	Spray	149.53
81-3	12	Ukiah	148.22
82-3	13	Baker City	143.55
83-3	13	Elgin	150.07
84-3	13	Enterprise	155.97
85-3	13	LaGrande	148.1
86-3	13	Richland (Baker City)	126.86
87-3	14	Basque	146.44
88-3	14	Burns	134.99
89-3	14	Canyon City	137.74
90-3	14	Jordan Valley	134.65
91-3	14	Juntura	140.55
92-3	14	Ontario	131.37
93-3	14	Vale	126.19

6.2.2 6 Day Delivery

6 DAY DELIVERY			
Corrosion Inhibited Liquid Magnesium Chloride			
6 Day Item #	District	Delivery Location	Base Delivered Price Per Ton
1-6	1	Clatskanie	158.21
2-6	1	Deer Island (Clatskanie)	146.18
3-6	1	Humbug	159.77
4-6	1	Manning (Banks Maintenance)	159.52
5-6	1	Tillamook	150.04
6-6	1	Warrenton	162.07
7-6	2B	Baldock	158.1
8-6	2B	Canemah (Milwaukie)	134.04
9-6	2B	Carus (Milwaukie)	134.04
10-6	2B	East Portland	154.09
11-6	2B	Milwaukie	154.09
12-6	2B	North Portland	154.09
13-6	2B	Powell Stockpile Site @ I-205 (E. PtInd.)	137.05
14-6	2B	Route 30, MP 13.54 N of Linton (N. PtInd.)	147.07
15-6	2B	Sylvan	132.03
16-6	2B	Wilsonville	137.05
17-6	2C	Cascade Locks	162.83
18-6	2C	Estacada	150.37
19-6	2C	Govt Camp	159.67
20-6	2C	Parkdale	166.97
21-6	2C	Sandy	142.05

22-6	3	Buell (OR Rt. 22, MP 4.64) (McMinnville)	138.77
23-6	3	Detroit	145.33
24-6	3	McMinnville	154.81
25-6	3	Newberg (McMinnville)	144.78
26-6	3	Salem (City/ODOT Salem)	144.78
27-6	3	Woodburn (Salem)	160.35
28-6	4	Albany	161.83
29-6	4	Corvallis	157.7
30-6	4	Ona Beach	163.09
31-6	4	Rose Lodge	160.36
32-6	4	Sweet Home	155.35
33-6	4	Wakefield Rd.(US 20, MP 27) (Ona Beach)	154.07
34-6	5	Florence	164.92
35-6	5	Glenwood	146.87
36-6	5	McKenzie Bridge	164.92
37-6	5	Oakridge	181.96
38-6	5	Veneta	171.93
39-6	7	Boswell Springs	167.92
40-6	7	Davis Slough	188.75
41-6	7	Glendale (I-5 MP 83.29, Barton Rd.) (Shady)	173.6
42-6	7	Port Orford	178.35
43-6	7	Reedsport	160.65
44-6	7	Shady (Roseburg)	180.7
45-6	8	Ashland	190.13
46-6	8	Cave Junction	174.26
45-6	8	Central Point	189.89
48-6	8	Grants Pass	187.58
49-6	8	Hugo (MP 67 on I-5) (Grants Pass)	163.97
50-6	8	Lemolo (MP 73) (Prospect)	190.38
51-6	8	Lincoln (Ashland)	177.01
52-6	8	Prospect	192.85
53-6	8	Siskiyou (Upper Shed) (Ashland)	184.97
54-6	8	Slide Creek (MP 55) (Prospect)	173.9
55-6	9	Arlington	167.1
56-6	9	Condon	153.02
57-6	9	Maupin	146.51
58-6	9	Moro	161.55
59-6	9	Rufus (I-84, MP 109) (The Dalles)	148.93
60-6	9	Shaniko (Moro)	151.29
61-6	9	The Dalles	158.95
62-6	9	Warm Springs	165.47
63-6	10	Bend	173.98
64-6	10	Brothers	180.95
65-6	10	Chemult	160.65
66-6	10	LaPine	169.88
67-6	10	Madras	176.48
68-6	10	Mitchell	172.93
69-6	10	Prineville	176.48
70-6	10	Sisters	176.48
71-6	11	Chiloquin	160.75
72-6	11	Klamath Falls	188.52

73-6	11	Lake-of-the-Woods	178.3
74-6	11	Lakeview	186.32
75-6	12	Heppner	161.99
76-6	12	Hermiston	158.83
77-6	12	Meacham	147.07
78-6	12	Mission Sand Shed (Pendleton)	150.84
79-6	12	Poverty Flats (Meacham)	139.51
80-6	12	Spray	148.03
81-6	12	Ukiah	146.72
82-6	13	Baker City	142.05
83-6	13	Elgin	148.57
84-6	13	Enterprise	154.47
85-6	13	LaGrande	146.1
86-6	13	Richland (Baker City)	125.36
87-6	14	Basque	144.94
88-6	14	Burns	133.49
89-6	14	Canyon City	136.24
90-6	14	Jordan Valley	133.49
91-6	14	Juntura	139.05
92-6	14	Ontario	129.87
93-6	14	Vale	124.69

6.2.3 15 Day Delivery

15 DAY DELIVERY			
Corrosion Inhibited Liquid Magnesium Chloride			
15 Day Item #	District	Delivery Location	Base Delivered Price Per Ton
1-15	1	Clatskanie	156.71
2-15	1	Deer Island (Clatskanie)	144.68
3-15	1	Humbug	158.27
4-15	1	Manning (Banks Maintenance)	158.02
5-15	1	Tillamook	148.54
6-15	1	Warrenton	160.57
7-15	2B	Baldock	156.6
8-15	2B	Canemah (Milwaukie)	132.54
9-15	2B	Carus (Milwaukie)	132.54
10-15	2B	East Portland	152.59
11-15	2B	Milwaukie	152.59
12-15	2B	North Portland	152.59
13-15	2B	Powell Stockpile Site @ I-205 (E. PtInd.)	135.55
14-15	2B	Route 30, MP 13.54 N of Linton (N. PtInd.)	145.57
15-15	2B	Sylvan	130.53
16-15	2B	Wilsonville	135.55
17-15	2C	Cascade Locks	161.33
18-15	2C	Estacada	148.87
19-15	2C	Govt Camp	157.67
20-15	2C	Parkdale	165.47
21-15	2C	Sandy	140.55
22-15	3	Buell (OR Rt. 22, MP 4.64) (McMinnville)	137.27
23-15	3	Detroit	143.83

24-15	3	McMinnville	153.31
25-15	3	Newberg (McMinnville)	143.28
26-15	3	Salem (City/ODOT Salem)	143.28
27-15	3	Woodburn (Salem)	158.85
28-15	4	Albany	160.33
29-15	4	Corvallis	156.2
30-15	4	Ona Beach	161.59
31-15	4	Rose Lodge	158.86
32-15	4	Sweet Home	153.85
33-15	4	Wakefield Rd.(US 20, MP 27) (Ona Beach)	152.57
34-15	5	Florence	163.42
35-15	5	Glenwood	145.37
36-15	5	McKenzie Bridge	163.42
37-15	5	Oakridge	180.46
38-15	5	Veneta	170.43
39-15	7	Boswell Springs	166.42
40-15	7	Davis Slough	187.25
41-15	7	Glendale (I-5 MP 83.29, Barton Rd.) (Shady)	172.1
42-15	7	Port Orford	176.85
43-15	7	Reedsport	159.15
44-15	7	Shady (Roseburg)	179.2
45-15	8	Ashland	188.63
46-15	8	Cave Junction	172.76
47-15	8	Central Point	188.39
48-15	8	Grants Pass	186.08
49-15	8	Hugo (MP 67 on I-5) (Grants Pass)	162.47
50-15	8	Lemolo (MP 73) (Prospect)	188.88
51-15	8	Lincoln (Ashland)	175.51
52-15	8	Prospect	191.35
53-15	8	Siskiyou (Upper Shed) (Ashland)	182.97
54-15	8	Slide Creek (MP 55) (Prospect)	172.4
55-15	9	Arlington	165.6
56-15	9	Condon	151.52
57-15	9	Maupin	145.01
58-15	9	Moro	160.05
59-15	9	Rufus (I-84, MP 109) (The Dalles)	147.43
60-15	9	Shaniko (Moro)	149.79
61-15	9	The Dalles	157.45
62-15	9	Warm Springs	163.47
63-15	10	Bend	171.98
64-15	10	Brothers	179.45
65-15	10	Chemult	159.15
66-15	10	LaPine	168.38
67-15	10	Madras	174.98
68-15	10	Mitchell	171.43
69-15	10	Prineville	174.98
70-15	10	Sisters	174.98
71-15	11	Chiloquin	159.25
72-15	11	Klamath Falls	187.02
73-15	11	Lake-of-the-Woods	176.8
74-15	11	Lakeview	184.82

75-15	12	Hepner	160.49
76-15	12	Hermiston	157.33
77-15	12	Meacham	145.07
78-15	12	Mission Sand Shed (Pendleton)	149.34
79-15	12	Poverty Flats (Meacham)	138.01
80-15	12	Spray	146.53
81-15	12	Ukiah	145.22
82-15	13	Baker City	140.55
83-15	13	Elgin	147.07
84-15	13	Enterprise	152.97
85-15	13	LaGrande	144.1
86-15	13	Richland (Baker City)	123.86
87-15	14	Basque	143.44
88-15	14	Burns	131.99
89-15	14	Canyon City	134.74
90-15	14	Jordan Valley	131.65
91-15	14	Juntura	137.55
92-15	14	Ontario	128.37
93-15	14	Vale	123.19

6.3 Contractor Storage Locations

Current Oregon Storage/Rail Sidings

City	Rail Siding	Railcar Storage	Storage
Woodburn, OR	Willamette Valley RR	12 Cars	350,000 gallons
Clackamas, OR	Top Tier	8 Cars	
Clackamas, OR	Wymore	22 Cars	
Culver City, OR	Round Butte Seed	6 Cars	
Redmond, OR	Prineville City RR	8-10 Cars	
Junction City, OR	Sure Crop	6 Cars	100,000 gallons
Rupert, ID	Road Solutions		100,000 gallons

EXHIBIT B – PURCHASE ORDER

PURCHASE ORDER		
Corrosion-Inhibited Magnesium Chloride Deicer		
Product Name:		Contractor Name:
Price Agreement No. 2595		Order Date:
Delivery Destination:		Bill To:
AUTHORIZED PURCHASER (AP) NAME Delivery Address City, State, Zip		AUTHORIZED PURCHASER(AP) NAME Billing Address City, State, Zip
Ordered By:	Name:	Title:
Phone:	Email:	Fax:
Order Quantity # _____ Tons	Order No.	Delivery Schedule Day: _____ Date: _____
Net Price:	(Assigned by Contractor)	3-day order _____ initials 6-day order _____ initials 15-day order _____ initials Day _____ _____/_____/20____
Special Delivery Instructions:		
Weekend/Holiday Delivery:		
This order form, in addition to any exhibits or addenda attached, is placed against State of Oregon Price Agreement #2595. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representatives, oral or written, not specified herein.		
AP Authorized Representative (type/print) _____ AP Signature: _____ Date: _____		
Contractor's Authorized Representative (type/print) _____ Contractor's Signature: _____ Date: _____		
FOR CONTRACTOR USE		
ORDER IS SCHEDULED TO BE DELIVERED ON		
Day	Date	Approximate Time ____ □ AM ____ □ PM
Order Number and Quantity (Tons)	Dispatched To	Confirmed By/Date
Comments:		
Fax Order to (XXX) XXX-XXXX or e-mail XXXXXXX@XXXX.XXX For delivery or billing inquiries please contact First and Last Name at (XXX) XXX-XXXX		

Exhibit C

1) VCAF

- a) Contractor shall remit to PS a Vendor Collected Administrative Fee ("VCAF") no later than forty-five (45) calendar days after the end of each calendar quarter.
- b) Contractor shall not reflect the VCAF as a separate line item charge to Authorized Purchasers.
- c) Contractor shall keep records showing the sales of Goods pursuant to this Agreement in sufficient detail to enable the PS to determine the VCAF payable by Contractor and further agrees to permit its books and records to be examined from time to time to the extent necessary to verify the Volume Sales Reports. Such examination is to be made at the expense of PS by any auditor appointed by PS who is reasonably acceptable to Contractor, or, at the option and expense of Contractor, by a certified public accountant appointed by Contractor.
- d) In the event that such examination reveals underpayment of the VCAF, Contractor shall immediately pay to PS the amount of deficiency, together with interest thereon at the rate provided in subsection f below. If the examination reveals an underpayment of 5% or more, Contractor shall reimburse PS for the cost of the audit.
- e) The VCAF is a charge equal to 0.25% of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter. For purposes of this Agreement, "credits" includes refunds.
- f) Contractor late payments of the VCAF accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full.
- g) Contractor shall make VCAF payments by Automated Clearing House (ACH) transactions. Contractor may elect to make payments by ACH Debit or ACH Credit.
 - ACH Debit transactions will be initiated by the PS through the Oregon State Treasurer's ACH Network. These payment transactions will occur from a bank account of Contractor's choosing no less than one (1) and no more than five (5) business days following the sixtieth (60th) calendar day after the end of a calendar quarter. Contractor shall submit a signed electronic debit authorization to PS upon request and shall otherwise comply with PS's reasonable instructions to facilitate this method of payment; or
 - X ACH Credit transactions will be initiated by Contractor to initiate transfer of funds from a bank account of Contractor's choosing to the bank for PS after Contractor receives from PS a completed authorization agreement for ACH Credits. These payment transactions must occur no later than the forty fifth (45th) day after the end of a calendar quarter. Contractor shall comply with PS's reasonable instructions to facilitate this method of payment.

2) VSR

- a) Contractor shall submit a Volume Sales Report ("VSR") to PS no later than thirty (30) calendar days after the end of each calendar quarter. For the purposes of this Agreement, calendar quarters end March 31, June 30, September 30, and December 31.
- b) The VSR must contain:
 - i) Complete and accurate details of all receipts (for both sales and refunds) for the reported period;
 - ii) The information identified in document titled Volume Sales Report Template - Data Requirement, Format and Layout (to be supplied to Contractor by PS) and

- iii) Such other information as PS may reasonably request in writing. Contractor shall send a VSR to PS each quarter, whether or not there are sales or credits. When no sales or credits have been recorded for the quarter a report must be submitted stating "No Sales or credits for the Quarter." This report indicating no sales or credits may be sent by e-mail without any attachment provided the subject title clearly identifies Contractor's company name, the relevant Agreement Number, and the reporting period for the VSR.
- c) Contractor shall provide the VSR in MS Excel (.xls, .xlsx) format. The VSR must be submitted by e-mail unless the size of the file precludes transmission by email. VSR may be submitted by CD if the file precludes transmission by email. CDs must be delivered to the PS Contract Administrator. Delivered print outs of VSRs or faxed VSRs are not acceptable.
- d) Contractor shall submit the first VSR to the PS Contract Administrator for review and approval. The approved first VSR and subsequent VSRs must be submitted to ycaf.reporting@state.or.us.

Exhibit D INSURANCE REQUIREMENTS

1 REQUIRED INSURANCE: Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit prior to performing under any Contract and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to PS.

1.1 WORKERS COMPENSATION:

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

1.2 EMPLOYERS' LIABILITY:

Required by PS Not required by PS.

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage. Contractor shall provide proof of insurance of not less than the following amounts as determined by the PS:

\$500,000 Per occurrence limit for any single claimant; and
\$1,000,000 Per occurrence limit for multiple claimants.

1.3 PROFESSIONAL LIABILITY:

Required by PS Not required by PS.

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under a Contract under this Agreement. Contractor shall provide proof of insurance of not less than the following amounts as determined by the PS:

\$ Per occurrence limit for any single claimant; and
\$ Per occurrence limit for multiple claimants.

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2012: \$1,700,000.

July 1, 2012 to June 30, 2013: \$1,800,000.

July 1, 2013 to June 30, 2014: \$1,900,000.

July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2012: \$3,400,000.

July 1, 2012 to June 30, 2013: \$3,600,000.

July 1, 2013 to June 30, 2014: \$3,800,000.

July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Link to the judicial system and to find the current property damage limits.
http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

1.4 COMMERCIAL GENERAL LIABILITY:

Required by PS Not required by PS.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the PS:

Bodily Injury/Death:

\$ Per occurrence limit for any single claimant; and
\$ Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Link to the judicial system and to find the current property damage limits.
http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

AND

Property Damage:

\$ Per occurrence limit for any single claimant; and
\$ Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2013: \$104,300 and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2013: \$521,400.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to ORS 30.271."

Link to the judicial system and to find the current property damage limits.
http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

1.5 AUTOMOBILE LIABILITY:

Required by PS Not required by PS.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the PS:

Bodily Injury/Death:

\$ Per occurrence limit for any single claimant; and
\$ Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2012: \$1,700,000.
July 1, 2012 to June 30, 2013: \$1,800,000.
July 1, 2013 to June 30, 2014: \$1,900,000.
July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2012: \$3,400,000.
July 1, 2012 to June 30, 2013: \$3,600,000.
July 1, 2013 to June 30, 2014: \$3,800,000.
July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271.

AND

Property Damage:

\$ Per occurrence limit for any single claimant; and
\$ Per occurrence limit for multiple claimants

OR

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2013: \$104,300, and

Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2013: \$521,400.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to ORS 30.271.

Link to the judicial system and to find the current property damage limits.
http://courts.oregon.gov/OJD/courts/circuit/tort_claims_act.page

1.6 POLLUTION LIABILITY:

Required by PS Not required by PS.

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract.

Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$4,000,000.

1.7 EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance is acceptable. If Contractor is using excess/umbrella insurance to meet the minimum insurance requirement, Contractor's certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

2 ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

3 "TAIL" COVERAGE:

If any of the required professional liability insurance is on a "claims made" basis, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and PS's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to PS, upon PS's request, certification of the coverage required under this section.

4 CERTIFICATE(S) OF INSURANCE:

Contractor shall provide to PS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any. The Contractor shall immediately notify PS of any change in insurance coverage.