

**AGREEMENT FOR PURCHASE OF SALT/SAND  
BETWEEN SIMON MATERIALS, and  
LARAMIE COUNTY, WYOMING**

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Simon Materials, PO Box 209, Cheyenne, Wyoming 82003 ("CONTRACTOR"). The parties agree as follows:

**I. PURPOSE**

The purpose of this Agreement is for the COUNTY to contract for the purchase of salt/sand from the CONTRACTOR as specified in the CONTRACTOR'S product quote attached hereto as Attachment A and fully incorporated herein (hereinafter "Agreement").

**II. TERM**

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties to this Agreement and shall remain in full force and effect until completely performed or otherwise terminated by the parties pursuant to Section V(D) or V(R).

**III. RESPONSIBILITIES OF COUNTY**

COUNTY shall pay CONTRACTOR for services upon receipt of the CONTRACTOR's invoice to the COUNTY as detailed in Attachment A. The total annual amount paid to the CONTRACTOR shall not exceed \$59,292.00, unless negotiated by both parties in writing. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. ' 16-6-602 (as amended).

**IV. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide and complete the services described in Attachment A, attached hereto and fully incorporated herein.

B. CONTRACTOR agrees to retain all required records for three (3) years after the County makes final payment and all other matters relating to the Agreement are concluded. CONTRACTOR agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, and transcriptions. It is agreed that finished or unfinished documents, data or reports, prepared by CONTRACTOR under this contract shall be considered the property of the COUNTY and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of the COUNTY, will be turned over to the COUNTY.

**V. GENERAL PROVISIONS**

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

B. Preference-Wyoming Labor Should the subject of this agreement constitute the construction, reconstruction, improvement, enlargement, alteration, or repair, of any public works project or improvement, by signature below CONTRACTOR acknowledges the requirement for the use of Wyoming labor pursuant to W.S.§16-6-203 as amended, except in circumstances as provided by law including, but not limited to W.S.§16-6-201 et seq.

C. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve CONTRACTOR of responsibility for the technical accuracy of the work. COUNTY approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

D. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) upon mutual written agreement by both parties.

E. Entire Agreement: This Agreement (5 pages) and Attachment A (1 page) represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

F. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

G. Modification: This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

H. Invalidity: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

I. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing this Agreement. This provision is not intended, nor shall it be construed

to waive COUNTY's governmental immunity as provided in this Agreement.

J. Contingencies: CONTRACTOR certifies and warrants no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.

K. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

L. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. ' 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

M. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. ' 1-39-101 *et seq.*, by entering into this Agreement. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

N. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees, and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses to the proportionate extent of work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the negligence or willful misconduct of COUNTY or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision and provide COUNTY with proof of such insurance.

O. Third Parties: The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement and shall inure solely to the benefit of the parties to this Agreement.

P. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

Q. Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, government regulations, material delays, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

R. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

S. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

T. Compliance with Laws: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

U. Controlling Authority: To this extent this agreement is inconsistent with the purchase order or its referenced documents, this agreement controls.

V. The parties waive recovery against each other of any special, indirect or consequential damages arising out of this Agreement.

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BETWEEN SIMON MATERIALS, and  
LARAMIE COUNTY, WYOMING

Signature Page

LARAMIE COUNTY, WYOMING

By:  Date 11-8-22  
Chairman, Laramie County Commissioners

ATTEST:

By:  Date 11-8-2022  
Laramie County Clerk

CONTRACTOR:

By:  Date 11-4-22

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  Date 11.8.22  
Laramie County Attorney's Office



SIMON CENTRAL REGION  
 Remit: Simon  
 PO Box 209  
 Cheyenne, WY 82003

Phone 307.632.7900 Fax 307.632.1088

Quote: MQ0000432\_0  
 Quote Date: Sep 23, 2022  
 Quote Expiration Date: Oct 28, 2022

Sales Representative: Derek Schueder  
 Cell: 307.343.0251  
 Email: dschueder@simonteam.com

#### Product Quote

#### Bill To:

LARAMIE CTY ROAD & BRIDGE  
 13797 Prairie Center Circle  
 CHEYENNE, WY 82009  
 Contact: John Poelma  
 Phone: 307-633-4690  
 Fax: Not on File  
 Email: jpoelma@laramiecounty.com

#### Ship To:

Laramie County Salt Sand  
 13797 Prairie Center Circle  
 Cheyenne WY 82009

Product ID	Product Description	Location	Quantity	UM	Unit Price	Total
352386	10% Salt Sand - Harriman	Harriman Quarry	1,800	Ton	\$32.94	\$59,292.00

#### Comments:

All Freight is quoted utilizing belly/side dumps.

#### Terms:

- Material price does not include any applicable taxes
- Simon is a material supplier and no retention shall be withheld
- Orders made without an active account shall be remitted upon delivery
- Testing of aggregates by a party other than Simon Quality Control will be the financial responsibility of the purchaser
- The quote is valid only if signed, accepted, and returned to Simon sales representative by the quote expiration
- Material is subject to availability
- Simon Materials assumes no responsibility for curb/gutter/sidewalk/concrete damage during delivery
- The terms of the Simon Credit Application supersede these terms where applicable

#### Acceptance of Proposal

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### Additional Terms:

A \$1.75 per minute fee will be charged to the customer for any trucks held longer than 30 minutes  
 After delivery and/or pickup, Simon Materials will not be held responsible for change of material properties due to environmental conditions or actions of others  
 Pricing and material shall only be used on above stated project, no other project shall apply  
 Simon Materials warrants conformance to the written specifications of the project referenced above. No other specifications will apply, including those relating to moisture

This Contract and all **TERMS AND CONDITIONS**, rights and remedies herein contained and set forth shall bind the parties hereto.

1. **Applicability.** The accompanying quotation/confirmation of sale/invoice and these terms (collectively, the "Order") comprise the entire agreement between the parties, and supersede all prior or contemporaneous communications, understandings, agreements, negotiations, representations and warranties. The terms and conditions herein supersede and nullify, and Seller hereby expressly rejects, any other terms or conditions found in any other agreements or documents, including but not limited to Buyer's website, Buyer's purchase order forms, and any contract between Buyer and any third party. All sales pursuant to this Order are subject to Seller's approval of Buyer's credit application and assignment to Buyer of a credit limit.
2. **Pricing and Payment.** Unless otherwise stated in this Order or the quote provided herewith, prices quoted shall be good for a period of 30 days. Prices are based upon estimated quantities. If actual quantities vary more than five percent (5%) from estimated quantities, prices are subject to adjustment corresponding with any resulting increase in Seller's costs. Seller reserves the right to adjust any prices for Orders that are not complete within one hundred eighty (180) days from the date of the Order. Payment terms are net 30 days from date of the Order or sooner as may be required by applicable law. Late payments shall accrue a finance charge of one and one-half percent (1½%) per month or the highest rate allowable by law, whichever is less. Seller shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, arising out of Buyer's failure to make all payments due under this Order in a timely manner.
3. **Taxes.** Buyer is responsible for payment of all taxes and duties of any nature whatsoever, including any local, state and federal taxes. Buyer agrees to indemnify and hold Seller harmless from any and all costs and expenses associated with any levy or attempted levy of any such taxes on Seller.
4. **Suspension; Termination.** In addition to any other remedies available to Seller, Seller may suspend or terminate this Order with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Order (or any other agreement Buyer has with Seller); (b) has not otherwise performed or complied with any of these terms (or complied with the terms of any other agreement Buyer has with Seller); (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (d) exhibits other adverse credit conditions that are unsatisfactory to Seller, as determined by Seller in its sole discretion.
5. **Shipment; Delivery Conditions.** Unless otherwise agreed in writing, all materials purchased by Buyer shall be FOB Seller's location sourcing the Order. Buyer shall cause its employees, agents, representatives and subcontractors, including drivers, to comply with Seller's safety policies and procedures when at Seller's facilities and to maintain proper insurance. If FOB Destination, the Buyer agrees to provide suitable roadways or approaches to points of delivery. Seller reserves the right to cease deliveries if Seller concludes, in its sole opinion, that the roadways or approaches are unsatisfactory. With respect to any delivery beyond Seller's curb line, Buyer assumes liability for damages to sidewalks, driveways or other property, and any other losses and expenses incurred as a result of such deliveries to the maximum extent allowed by law.
6. **Title and Risk of Loss.** Title and risk of loss passes to Buyer at the time the materials are loaded into Buyer's, or Buyer's agents', vehicles, barges or other modes of transport, in the case of FOB sales, or in the case of Seller's delivery, upon delivery of the materials at Buyer's location.
7. **Warranty.** Seller warrants that the goods herein will conform to the specifications provided to Seller prior to manufacture or shipment of the materials. Seller's obligation to meet the applicable specifications supersedes any and all other warranties. **THE EXPRESS WARRANTY PROVIDED IN THIS SECTION 7 IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY SELLER TO BUYER. SELLER DISCLAIMS AND BUYER WAIVES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE.** Buyer shall verify that Seller's materials comply with the plans and specifications prior to installation. The express limited warranty set forth herein shall be void if Buyer fails to pay Seller in full for the materials provided by Seller pursuant to this Order.
8. **Time.** If Seller agrees to deliver the materials, Seller shall make reasonable efforts to deliver the goods by the specified delivery date. Seller is not responsible for failure to supply materials due to labor disputes, pandemics, repairs to machinery, fire, flood, adverse weather conditions, inability to obtain transportation, fuel, electric power, or operating materials or machinery at reasonable cost, or by reason of any other cause beyond its control, including the inability to produce materials meeting any applicable specification or requirement.
9. **Modification.** No amendment or modification of this Order shall be valid or enforceable unless in writing and signed by the party sought to be charged, and no prior or current course of dealing between the parties, or any usage of trade or custom of the industry shall modify or supplement the terms and conditions of this Order.
10. **No Waiver.** The failure of Seller to exercise any right granted hereunder shall not impair or waive Seller's privilege of exercising such right to any subsequent time or times.
11. **Damages.** Seller's liability for any and all damages, including claims for damages by third parties, related to this Order shall be limited to replacement of materials sold hereunder. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WITH REGARD TO ANY CLAIM ARISING OUT OF OR RELATING TO THIS ORDER.**
12. **Indemnity.** To the fullest extent permitted by law, Buyer shall defend, indemnify and hold Seller, its officers, employees, agents, insurers, sureties, and affiliates, harmless from any and all losses, damages, costs, expenses (including attorneys' fees), claims, suits, liabilities, and fines arising out of or in any way related to: (i) Buyer's breach of this Order; (ii) any act or omission by or on behalf of Buyer, its employees, and agents; or (iii) the negligent or alleged wrongful installation of Seller's materials.
13. **Applicable Law.** This Order, and the rights, duties, obligations and remedies of the parties shall be governed by or construed in accordance with the laws of the state of Seller's location sourcing the Order and the Parties agree to submit to the exclusive jurisdiction of the courts of that state in connection with any controversy arising hereunder. In any litigation involving this Order, the prevailing party shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees, from the non-prevailing party.
14. **Miscellaneous.** (a) Buyer shall be fully responsible for confirming that the materials comply with Buyer's specifications after the materials are loaded into Buyer's or Buyer's agents' modes of transport, and Seller's obligations with respect thereto shall be limited to those in Section 7. (b) Safety Data Sheets (SDS) prepared in accordance with OSHA's Hazard Communication Standard are available to ensure chemical safety in the workplace. Please contact Seller at the phone number or address set forth on the attached page to obtain copies. All employers with hazardous chemicals in their workplaces must have labels and safety data sheets for their exposed workers, and train them to handle hazardous chemicals appropriately. Buyer agrees to draw to the attention of any persons handling or using the materials or having access to the materials while in Buyer's possession or to whom Buyer sells or provides the materials or any part thereof any warning, information or suggestions which are contained or referred to in the Safety Data sheets or label information, or any other literature or packaging relating to the materials.