

**RESOLUTION NO. 2020-01**

**RESOLUTION AUTHORIZING THE DISTRICT PRESIDENT TO EXECUTE AN AGREEMENT WITH  
MIDWEST SALT, LLC FOR THE PURCHASE OF POTASSIUM CHLORIDE**

WHEREAS, the Mill Creek Water Reclamation District ("District") desires to enter an agreement with Midwest Salt, LLC for the purchase of potassium chloride for period beginning February 29, 2020 through February 28, 2021;

WHEREAS, the District has determined that Midwest Salt, LLC is a sole source provider for the aforementioned product;

BE IT RESOLVED BY THE BOARD OF TRUSTEES, MILL CREEK WATER RECLAMATION DISTRICT, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: That the President is hereby authorized and directed to execute an agreement with Midwest Salt, LLC for the purchase of potassium chloride for period beginning February 29, 2020 and ending February 28, 2021.

SECTION 2: The District recognizes that the Midwest Salt, LLC is a sole source provider of the potassium chloride and therefore, the Board of Trustees authorizes the waiving of the bidding process for this product.

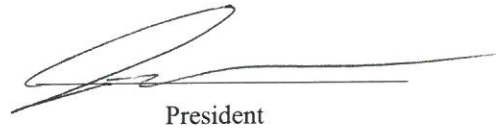
SECTION 3: This Resolution shall become effective from and after its passage as in accordance with law.

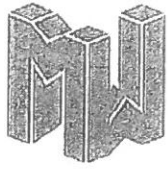
PASSED by the Board of Trustees of the Mill Creek Water Reclamation District, Kane County, Illinois, this 28<sup>TH</sup> day of January, 2020.

AYES: 3 NAYS: 0 ABSENT: 0 ABSTAINING: 0 HOLDING OFFICE: 3

ATTEST:

  
Secretary

  
President



# Midwest Salt

*We Deliver More than Salt!*

This Agreement (this "Agreement") is made effective as of February 29<sup>th</sup>, 2020 between Midwest Salt, LLC, of 1300 W. Washington Street, West Chicago, IL 60185 ("Seller"), and Mill Creek Water Reclamation District, an Illinois Special District, of P.O. Box 229, Geneva, Illinois 60134 ("Buyer").

**Upon execution of this Agreement the Product Sale Agreement between Seller and Buyer dated February 29<sup>th</sup> 2020 would terminate effective February 28, 2021.**

- 1. TERM.** The Term of this Agreement is twelve (12) months from the Effective Date of this Agreement.
- 2. ITEMS PURCHASED.** Seller agrees to sell, and Buyer agrees to buy during the term of this agreement, the following products (the "Goods") in accordance with the terms and conditions of this Agreement:

<u>Description</u>	<u>Quantity/Units</u>	<u>Unit Price</u>	<u>Total Price</u>
Potassium Chloride – Bulk form	125 tons	\$1,088.00	\$136,000

Upon a Unit Price increase greater than or equal to three percent (3%) from the Seller's provider(s), the Buyer would agree to pay the new Unit Price for Goods.

Transportation:

Seller would invoice sixteen hundred dollars (\$1,600.00) per delivery for special unloading equipment, fuel surcharge and up to four (4) hours of driver unload time as a separate line item. Any increases in fuel surcharges and transportation services shall not exceed 1.5% of the invoice total.

- 3. PRODUCT STANDARDS.** The product is National Sanitation Foundation (hereafter referred to as "NSF") certified.
- 4. TITLE/RISK OF LOSS.** The Goods shall be delivered F.O.B. destination point.
- 5. DELIVERY.** Time is of the essence in the performance of this Agreement. Seller will arrange for and commercially ship the Goods for delivery by common carrier chosen by Seller. Each delivery would consist of between twenty-one (21) and twenty-five (25) tons of Goods.
- 6. PAYMENT.** Payment shall be made to Midwest Salt, LLC, 1300 W. Washington St, West Chicago, Illinois 60185, on or before 30 days after delivery of the Goods. If any invoice is not paid when due, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made.
- 7. WARRANTIES.** Seller warrants that the Goods shall be free of material defects in material and workmanship.

The Seller makes no warranties, expressed or implied, except as specifically stated above. SUCH WARRANTIES, IF ANY, ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.



**8. INSPECTION.** The Buyer, upon arrival shall have opportunity to inspect Goods to determine if Goods conform to the requirements of this Agreement. If Buyer, in good faith, determines all or a portion of the Goods are non-conforming, Buyer may decline delivery at Seller's expense. Buyer must notify a manager level employee from Seller within one (1) hour of the arrival of Goods with reason for rejecting the Goods.

**9. DEFAULT.** The occurrence of any of the following shall constitute a material default under this Agreement:

- The failure to make a required payment when due.
- The insolvency or bankruptcy of either party.
- The subjecting of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- The failure to make available or deliver the Goods in the time and manner provided for in this Agreement.
- The failure to purchase and receive the Goods in the time and manner provided for in this Agreement.

**10. REMEDIES ON DEFAULT.** In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may elect to cancel this Agreement if the default is not cured within ten (10) business days after providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default.

**11. EARLY CANCELLATION AND REMEDY.** Upon **Thirty (30) days prior written notice**, Buyer has right to terminate this Agreement upon a) Buyer not appropriating funds through its annual budget process or b) Product Unit Price increases more than Fifty (50%) percent, cumulatively, over the term of this Agreement. Buyer may terminate this Agreement under the provisions of this Paragraph 11, in which Buyer shall pay a cancellation fee based on the following early cancellation schedule:

<u># of Units</u> <u>("Tons") Received</u>	<u>Cancellation</u> <u>Fee</u>
0	\$6,000
1-100	\$5,000
101-200	\$3,500

The same schedule would be used upon buyer purchasing fewer than contracted units under the provisions of Paragraph 2.

## **12. INTENTIONALLY DELETED**

**13. NOTICES.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

**14. ASSIGNMENT.** Neither party may assign or transfer this Agreement without prior written consent of the other party, which consent shall not be unreasonably withheld.



**15. ENTIRE CONTRACT.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written.

**16. AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.

**17. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**18. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**19. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Illinois.

Buyer:  
Mill Creek Water Reclamation District

By: 

Print: James Dougherty Trustee/President  
President Board of Trustees

Seller:  
Midwest Salt, LLC

By:   
Tony Johnson - President