

ROAD DUST SUPPRESSION AGREEMENT (#CM17101)

Between

LARAMIE COUNTY and DUSTBUSTERS, INC.

THIS AGREEMENT is made and entered into by and between the LARAMIE COUNTY BOARD OF COMMISSIONERS, 310 W. 19th St., Suite 300, Cheyenne, Wyoming ("COUNTY"), and DUSTBUSTERS, INC, P.O. BOX 15 EVANSTON, WYOMING 82931-0015, ("CONTRACTOR").

WITNESSETH that for and in consideration of the payments, covenants, and agreements hereinafter mentioned to be made and performed by the parties hereto, that said parties hereby covenant and agree as follows:

I. PURPOSE

Contractor is required to furnish and apply liquid magnesium chloride on Laramie County roads as directed by the County. Roads to be treated are shown in Figure 1 and listed in Table 1. Only liquid magnesium chloride will be considered. Road surface grading, compaction and watering will be performed by Laramie County. The delivery and application of materials must be coordinated and scheduled with Laramie County in such a way as to maximize the efficiency and life of the treatment. Contractor will provide all other equipment, operators, operating supplies, supervision and support necessary to complete the project to the County's expectations.

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 completion of the work described herein.

III. PAYMENT

COUNTY shall pay CONTRACTOR an amount not to exceed One Hundred Twenty-Five Thousand, Eight Hundred Forty Dollars and Twenty-Two Cents (\$125, 840.22) for the services described in this Agreement and the bid documents. The above amount covers compensation for items furnished and services rendered by CONTRACTOR under this Agreement. The payment amount also includes all loss or damages arising out of the nature of the Work, the action of the elements, or from any unforeseen contingencies or difficulties encountered in the course of performance of the work.

Monthly payments based on approximate estimates of the amount of and value to the COUNTY of expenses incurred during the preceding month, as approved by the COUNTY

shall be made to the CONTRACTOR during the progress of the Work on or before the 20th day of each calendar month. Ten percent (10%) of the amount of the estimated value of the Work done shall be retained until the Work is fully completed and accepted by the COUNTY. The making of said monthly payments by the COUNTY shall not be construed as an acceptance on the part of the COUNTY of any part of the Work done or materials furnished under this Agreement but simply as payments on account. Such monthly estimates will not be paid unless CONTRACTOR furnishes COUNTY with an affidavit showing a complete list of all debts incurred, the amounts paid thereon and the amount owing by the CONTRACTOR on such debts, including labor, sub-contractors, materials, and fuel bills contracted or incurred in the performance of this Agreement. Within a reasonable time after the acceptance of the Work, according to the Agreement, COUNTY shall certify a final estimate based upon measured quantities, and payment in full shall be made to the CONTRACTOR, provided that before such final payment is made by COUNTY, COUNTY may require CONTRACTOR to show to its satisfaction that all just debts to all laborers, mechanics, material men and other persons who have supplied CONTRACTOR, or any sub-contractor working under this Agreement with materials or goods of any kind for the Work, including labor, materials, and fuel bills, have been paid. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

CONTRACTOR shall bill COUNTY by detailed monthly invoice submitted to the Laramie County Clerk, Finance Office. Payments shall be made in accordance with Wyo. Stat. § 16-6-602, as amended. No payment shall be made before the last signature is affixed to this Agreement.

IV. LABOR, MATERIALS, AND EQUIPMENT

CONTRACTOR, at his own cost and expense, shall do all the Work and furnish all labor, materials, equipment, and tools necessary to construct in good workmanlike and substantial manner and to the satisfaction of COUNTY, all items of the Bid. CONTRACTOR shall perform the Work in strict conformity with the Project Drawing, Project Manual and Contract Documents on file at the **offices of the Laramie County Public Works Department, 13797 Prairie Center Circle, Cheyenne, WY 82009**, all of which are hereby incorporated by reference as part of the agreement.

CONTRACTOR shall provide competent, suitably qualified personnel to lay out the Work and perform construction as required by the Contract Documents, and shall at all times maintain good discipline and order at the Site.

CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuels, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the WORK.

All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

CONTRACTOR shall provide a project superintendent on-site at all times during construction activities. The superintendent shall be responsible for tasks that include, but are not limited to the following:

1. Must be knowledgeable and familiar with plans, specs, addendums, and shop drawings.
2. Must review and approve shop drawings with signature.
3. Manage and oversee the construction activities of all sub-contractors.
4. Review and approve shop drawings of sub-contractors.
5. Review stakeout data, survey stakes and verify against the design plans prior to, and during, and during, associated construction activity.
6. Obtain approval from the owner/engineer prior to beginning any force account efforts.
7. Provide an accurate weekly construction schedule.
8. Available during non-working hours for emergencies and storm water management erosion control.

V. CONTRACT TIME

Time shall be of the essence under this Agreement on the part of CONTRACTOR, and it is hereby agreed by the parties that in case all of the Work called for under said Agreement is not completed within the required time frame, or by such other time to which the period of completion may be extended, damages will be sustained by COUNTY. Both parties agree that in case of any damages incurred by COUNTY as a result of a delay, CONTRACTOR shall pay to the COUNTY as liquidated damages and not as penalty, One Thousand Dollars (\$1000.00) per day for each day in excess of the Contract time limit and any granted extension thereof. The above amount shall be deducted from the amount due or to become due to CONTRACTOR. Such payments or deductions shall not in any way release CONTRACTOR from further obligations and penalties in respect to the fulfillment of the entire Contract, or any right which COUNTY may assert, sue for and recover as compensation and damages for non-performance of the Agreement.

The Work shall be completed within fourteen (14) days, of the starting date of each application which shall be between June and August of 2018. Should CONTRACTOR encounter any delay in performance as a result of any act of neglect or fault of COUNTY, or by any damages caused by fire, flood, or other casualty over which CONTRACTOR has no control, the time set for the completion of the Work may be extended without invalidating the Agreement.

VI. FEDERAL STANDARDIZED CHANGED CONDITION

1. Differing site conditions.

- a. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
 - b. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
 - c. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
 - d. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.
2. Suspensions of work ordered by the engineer.
 - a. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
 - b. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
 - c. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
 - d. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.
3. Significant changes in the character of work.
 - a. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees

- to perform the work as altered.
- b. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
 - c. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
 - d. The term "significant change" shall be construed to apply only to the following circumstances:
 - a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - b) When a major item of work, as defined elsewhere in the contract is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

VII. GENERAL PROVISIONS

1. 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.

2. 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.

3. 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) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

4. Entire Agreement: This Agreement (9 pages), the Invitation to Bid, Instructions for Bidders, all included requirements of the Bid, Project Drawing, and the Project Manual represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statement, representations and agreements, whether written or oral.

5. 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.

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

7. 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 the provisions of this Agreement are fully severable.

8. 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 provide in this Agreement.

9. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the aware of this Agreement.

10. 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.

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

12. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including WYO. STAT. ANN. §§ 1-39-101-121, as amended, 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.

13. 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 arising from or in connection with work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the sole 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.

14. 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 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.

15. 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.

16. 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, quarantine restriction, 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.

17. 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 (3) 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.

18. 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 who intended at such parties' address listed herein or when personally delivered to such party. A party may change its address for notice hereunder by giving written notice to the other party.

VIII. FINAL PAYMENT

Payment of the final estimate under this Agreement, including the ten percent (10%) of partial estimates retained, as provided herein shall not be due or payable until the Notice of Completion and Acceptance of the Work under this Contract Agreement have been given.

In Witness whereof, the Laramie County Board of Commissioners, Wyoming has caused this Contract Agreement to be executed and the **CONTRACTOR** has signed the same, the day and the year in this Contract Agreement first written above.

[The remainder of this page is intentionally left blank]

ROAD DUST SUPPRESSION AGREEMENT (#CM17101)

**Between
LARAMIE COUNTY and DUSTBUSTERS, INC.**

Signature Page

LARAMIE COUNTY COMMISSIONERS, COUNTY

By: _____ Date _____
K.N. Buck Holmes, Chairman, Laramie County Commissioners

CONTRACTOR: DUSTBUSTERS, INC.

By: E. Craig Pardo _____ Date 30 April 2018

Title: President _____

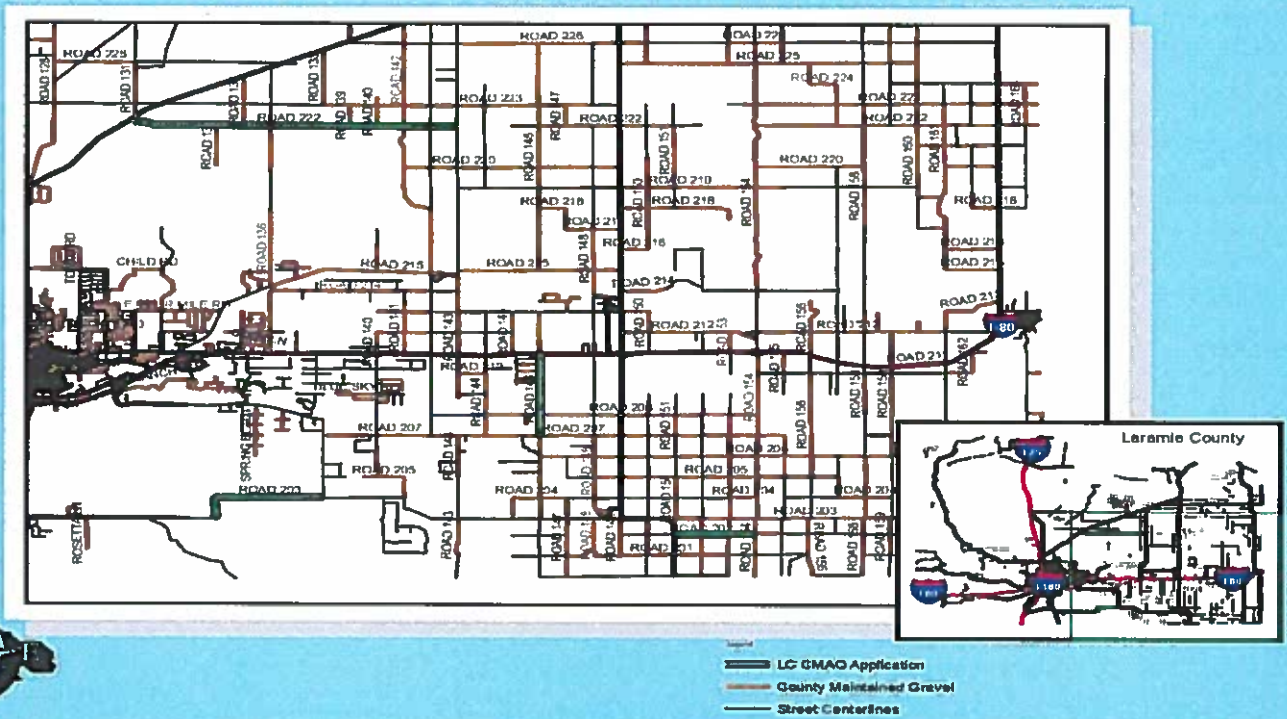
RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
DEPUTY LARAMIE COUNTY
ATTORNEY

[Signature]

Laramie County 2018 Dust Suppression Project

Figure 1: Map of County Roads to be Treated

LARAMIE COUNTY CMAQ APPLICATION DUST SUPPRESSANT



LARAMIE COUNTY 2018 DUST SUPPRESSION PROJECT

TABLE 1: Roads, Distances and Amounts of Material, per application

ROAD NAME	LENGTH (miles)	WIDTH (feet)	MAGNIESIEM CHLORIDE (gal)
County Road 146	4.0	25	29,333
County Road 202	5.0	25	36,667
County Road 203	5.0	25	36,667
County Road 222	12.0	25	88,000
Totals	26	25	190,667