

Agenda Item No: CA-c

Meeting Date: August 14, 2023

Subject: Approval of Resolution 23-73, approving an Agreement with Envirotech Services, Inc. to provide a Magnesium Chloride (MgCl) dust suppression product, DuraBlend, for use on unpaved county roads. The application requires a mixture of DuraBlend and water. The unit costs proposed includes all materials, labor and equipment required to complete the task.

The cost of this project is not to exceed \$65,000.

Background: In an effort to improve air quality and mitigate dust pollution along unpaved county roads, Magnesium Chloride products are generally applied as a suppressant.

The City has received a multitude of complaints regarding the dust along several of our unpaved roadways. One of those complaints was generated by Weld County Environmental Health. We strive to stay in compliance with air quality initiatives and to alleviate the possibility of receiving citations for policy violations.

Envirotech Services, Inc. is the only provider, that the City is aware of, that can provide material, labor and equipment for this type of work, therefore, we were not able to solicit any other competitive bids.

This product has been used successfully in the past to mitigate dust concerns on Grandview Blvd, York St & WCR 8.

Recommended Action: Staff is recommending approval of Resolution 23-73.

RESOLUTION NO. 23-73

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH ENVIROTECH SERVICES, INC FOR DUST
CONTROL (MgCl) SERVICES**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,
COLORADO:**

Section 1. The Professional Services Agreement by and between the City of Dacono and Envirotech Services, Inc. is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to execute the Agreement. The City Council further authorizes the Mayor to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor and City Attorney's Office determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 14th day of August, 2023.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

**AN AGREEMENT BY AND BETWEEN THE CITY OF DACONO,
AND ENVIROTECH SERVICES, INC.
FOR DUST CONTROL (MgCl) SERVICES**

1.0 PARTIES

The parties to this Agreement are the City of Dacono, a Colorado home rule municipal corporation, hereinafter referred to as the "City," and Envirotech Services, hereinafter referred to as the "Consultant."

2.0 RECITALS AND PURPOSE

2.1 The City desires to engage the Consultant for the purpose of providing DUST CONTROL services related to ROAD MAINTENANCE.

2.2 The Consultant represents that it has the background, experience, equipment and facilities necessary to provide the City with the services.

3.0 SCOPE OF SERVICES

The Consultant agrees to provide the City with the specific professional services as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

4.0 COMPENSATION

4.1 The City shall pay the Consultant for services under this agreement the amounts set forth in Exhibit "B" attached hereto and incorporated herein by this reference. Such amounts shall be inclusive of all costs of whatsoever nature associated with the Consultant's efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No hourly rates or other charges shall exceed those identified in Exhibit "B," except as may be authorized by the City in advance. The scope of services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

4.2 The Consultant shall submit monthly a detailed invoice to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

5.1 The City designates **BOBBY REDD**, as the responsible City staff member(s) to provide direction to the Consultant during the conduct of the project. The Consultant shall comply with the directions given by the designated staff members.

5.2 The Consultant designates **Al Roys** as its project manager. The City may rely upon the guidance, opinions, and recommendations provided by the Consultant and its representatives. Should any of the representatives be replaced, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

6.0 TERM

The Consultant's services under this Agreement shall commence on ***August 14, 2023***.

7.0 INSURANCE

7.1 The Consultant agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.1.1 Consultant shall procure and maintain, and shall cause each Sub-consultant of the Consultant to procure and maintain or insure the activity of Consultant's Sub-consultants in Consultant's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

7.1.1.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for

any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

7.1.1.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultants, products, and completed operations. The policy shall contain a severability of interests provision.

7.1.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

7.1.1.4 Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000)

7.1.2 The policies required above, except for the Workers' Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

7.1.3 Certificates of insurance shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed

until at least 30 days prior written notice has been given to the City. If the words “endeavor to” appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

- 7.1.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the Owner.
- 7.1.5 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, ' 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Consultant or any sub-consultant of the Consultant, or any officer, employee, or agent of the Consultant or any sub-consultant, or any other person for whom Consultant is responsible. The Consultant shall, at its sole expense, timely investigate and respond to the City regarding any such liability, claims and demands. To the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Consultant or the Consultant's agents, representatives, sub-consultants, or suppliers, Consultant shall be solely responsible to bear all costs and expenses, including court costs and attorney fees, for any such injury, loss, or damage, or portion thereof, caused by or claimed to be caused by Consultant's negligent acts, errors, or omissions relating to the professional work or services in the performance of this Agreement. The Consultant's indemnification and defense obligations shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City or any other party that is not a sub-consultant or other person for whom Consultant is responsible. The extent of the Consultant's obligation to defend, indemnify, or hold harmless the City shall be determined only after the Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the City and the Consultant; however, the Consultant's duty to investigate and respond to the City

regarding any claims or demands shall immediately arise upon the receipt by the City or Consultant of any claims or demands.

9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

Consultant and any persons employed by Consultant for the performance of work hereunder shall be independent Consultants and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Consultant as to details of doing work or to exercise a measure of control over the work mean that Consultant shall follow the direction of the City as to end results of the work only. **As an independent contractor, Consultant is not entitled to workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Consultant is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

11.0 ASSIGNMENT

Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in Exhibit B, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 ENFORCEMENT

- 15.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.
- 15.2 Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

16.0 COMPLIANCE WITH LAWS

Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

17.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

18.0 EQUAL OPPORTUNITY EMPLOYER

- 18.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

- 18.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

19.0 PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

- 19.1 Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract.
- 19.2 Consultant will participate in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Consultant is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.
- 19.3 If Consultant obtains actual knowledge that a sub-consultant performing work under this contract for services knowingly employs or contracts with an illegal alien, Consultant shall:
- a. Notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the sub-consultant if within three days of receiving the notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.
- 19.4 Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 19.5 If Consultant violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, City may terminate the contract for breach of contract. If the contract is so terminated, the Consultant shall be liable for actual and consequential damages to the City.

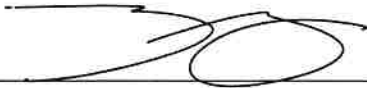
DATED: _____, 20__

CITY OF DACONO,

By: _____
Mayor

Attest: _____
City Clerk

CONSULTANT:

By:  _____

Name: Tim Pike

Title: Rocky Mountain Regional Manager

WITNESS:

By:  _____

Name: Shane Danhoff

Title: RM Operations Mgr

Exhibit "A"
[Scope of Services]

Envirotech Services, Inc. shall supply and apply DuraBlend for the City of Dacono.

The cost for application shall be included in the Unit Price.

DuraBlend®

A FULL CHLORIDE PRODUCT MOST PROMINENT FOR DUST CONTROL AND ROAD STABILIZATION IN NORTH AMERICA

DuraBlend achieves the same performance as a typical magnesium chloride treatment, but can require half the amount of product per application. DuraBlend's enhanced polymer blend helps it bond to the aggregate, lowering migration of chloride from the road to improve friction in moisture situations and provide for safer driving surfaces.

With more scrutiny coming from local municipalities and concerns of neighbors makes products that reduce chlorides advantageous in managing these relationships.

Road preparation for DuraBlend application is the same as for a typical chloride product, including rolling after grading is finished. This process provides for optimal surface penetration of DuraBlend into the top half inch of the road and improves fleet efficiency. When a pad or site is being set up, the application of DuraBlend can greatly ease dust management, once operations begin.

DuraBlend is applied to roads using the standard spray system, but can cover twice as much area per truck load than full chloride products. It does not require blade mixing to extend performance. Continual use reduces road base loss and improves the efficiency of the fleet, reducing man hours.

Exhibit "B"
[Fee Schedule]

<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
Durablend shot rate .35 app by ESI	gal	\$ 1.51
Water supplied by ESI shot rate at .30	gal	\$ 0.25