AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Provider Agreement; Mark Wright dba Horizon Vegetation Management; 5/6/14 thru 10/30/14; $12,500

Action Requested: Other Board Approval of the Documents to be returned to vendor for signature

Parties to the Agreement: Gunnison County and Horizon Vegetation Managment

Term Begins: May 20, 2014 **Term Ends:** 10/30/2014 **Grant Contract #:**

Summary:
Contract weed spraying on Highway 114 and Highway 50.

Fiscal Impact: $12,500

Submitted by: Jon Mugglestone **Submitter's Email Address:** jmugglestone@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

This service agreement will be paid out of the approved current Weed Management Activity budget. The total budget for these services is $22,452 and the maximum compensation under today's submitted agreements is over budget by $2,048. Savings must be realized in other line items to accommodate the overall Weed Management budget.

Reviewed by: GUNCOUNTY1\bcowan Discharge Date: 5/1/2014

County Attorney Review: (●) Required ( ) Not Required

Comments:

ok db 4/29/14

Reviewed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/29/2014 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:
If this agreement is approved, please go ahead and sign it so it doesn't need to come back on another agenda.

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 5/2/2014

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 5/6/2014 Follow Up Agenda Date:

Revised April 2013

PROVIDER AGREEMENT

This Provider Agreement ("Agreement") made effective the _____ day of _____, 2014, is by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 ("Gunnison County") and Mark Wright d/b/a Horizon Vegetation Management ("Provider").

RECITALS

Provider provides professional services regarding application of herbicide to control noxious weeds mandated for control within the Gunnison River Watershed. Gunnison County desires to engage Provider to provide Services according to this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on October 30, 2014, unless sooner terminated or replaced as provided herein.

2. SCOPE OF SERVICES.

Provider shall furnish all labor, supervision, supplies and equipment to commence, diligently pursue, and complete the services as more specifically set forth on Exhibit A, attached hereto and incorporated herein by this reference, regarding application of herbicide to control noxious weeds mandated for control within the Gunnison River Watershed . All Services shall be performed in a timely manner and in accordance with generally accepted standards for Provider's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Provider acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

3. COMPENSATION, BONUS AND EXPENSES.

(a) In exchange for Providers performance of the Services, during the Term, Gunnison County shall pay Provider a rate of $100.00 per acre for weed treatment using a ROW Weed Truck, for application of herbicides only. In areas where smaller equipment needs to be used to apply herbicides, the rate

will be $125.00 per acre. Weed treatments will occur on 100 acres in mid- to late July, 2014.

Rights of way to be treated will include:

1. Highway 50, beginning at the border of the City of Gunnison east to the top of Monarch Pass
2. Highway 114, from the intersection with Highway 50 to the top of North Cochetopa Pass

(b) The Compensation shall compensate Provider for all charges, expenses, overhead, payroll costs, employee benefits, insurance, subsistence, and profits, except as specifically set forth herein.

4. INDEMNIFICATION.

(a) Provider agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Provider or its employees, sub-Providers or agents in connection with this Agreement.

(b) This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

5. INSURANCE.

Provider agrees that at all times during the Term of this Agreement that Provider shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Provider has provided insurance certificates to Gunnison County (Exhibit B attached hereto and incorporated herein by this reference), listing Gunnison County as an additional insured, for the coverages required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Provider during the term of this Agreement.

(b) Comprehensive General Liability Insurance or the equivalent in an amount not less than $1,000,000 each occurrence and $2,000,000 aggregate for Bodily Injury Liability and $500,000 for Property Damage Liability.

(c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $150,000 for any injury to one person in any single occurrence and in an amount no less than $600,000 for any injury to two or more persons in any single occurrence.

6. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Provider shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in Exhibit A.

7. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Provider and, therefore, Provider shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

8. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230
Phone: 970-641-0248

With a copy to: Board of County Commissioners
of the County of Gunnison, Colorado
200 E. Virginia
Gunnison, Colorado 81230

Provider: Horizon Lawn and Tree Care
DBA Horizon Vegetation Management, Inc.
4400 Harback Rd.
Bennett, CO 80102

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

9. INDEPENDENT CONTRACTOR.

(a) In carrying out its obligations and activities under this Agreement, Provider is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Provider does not have any authority to bind Gunnison County in any manner whatsoever.

(b) Provider acknowledges and agrees that Provider is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Provider is obligated to pay federal and state income tax on any moneys paid it related to the services.

10. SOLE SOURCE CONTRACTS.

If the Provider has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of $100,000, then the following provisions apply:

(a) Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Provider, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the Provider, and the Provider's officers, directors and trustees (collectively, the "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

(b) The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

(c) The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

(d) These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

11. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

12. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

13. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party, in addition to all court costs and disbursements, such sum as the court may adjudge to be reasonable attorneys fees and expert witness fees.

14. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the state District Court governing Gunnison, Colorado.

15. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) Provider certifies that Provider does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

(b) Provider certifies that Provider has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

(c) Provider certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

(d) Provider agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

(e) Provider agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

16. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below to be effective as of the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF GUNNISON, COLORADO

Date: _____ By: _____
Marlene D. Crosby
Deputy County Manager

PROVIDER: Horizon Vegetation Management

Date: _____ By: _____

Mark Wright

EXHIBIT A

SCOPE OF SERVICES

Provider shall perform and provide the following services:

RESPONSIBILITIES OF HORIZON VEGETATION MANAGEMENT, INC.

The application of herbicides in Gunnison County, Colorado, as more specifically directed by the Gunnison County Weed District and/or the Gunnison County Public Works Department.

EXHIBIT B

HORILAW-01 MSWAIM

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/25/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Forsberg Engerman Co
3575 S Sherman St
Englewood, CO 80113

CONTACT NAME:
PHONE (A/C, No, Ext): (303) 762-1717 FAX (A/C, No): (303) 762-1733
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : EMC Insurance Companies	21415
INSURER B : Pinnacol Assurance	41190
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Horizon Lawn & Tree Care Inc
Attn: Mark Wright
PO Box 111152
Aurora, CO 80042

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC			3D73997	6/25/2013	6/25/2014	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	1,000,000 100,000 5,000 1,000,000 2,000,000 2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			3E73997	6/25/2013	6/25/2014	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	1,000,000
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		4081868	6/1/2013	6/1/2014	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	100,000 100,000 500,000
A	Equipment Floater			3C73997	6/25/2013	6/25/2014	Scheduled Equipment		125,057
A	Equipment Floater			3C73997	6/25/2013	6/25/2014	Leasded/Rented		25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

Gunnison County, Colorado
200 East Virginia
Gunnison, CO 81230

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Colorado Department of Agriculture
Division of Plant Industry
700 Kipling Street, Suite 4000
Lakewood, Colorado 80215-8000
Phone: (303) 239-4146

COMMERCIAL APPLICATOR ENDORSEMENT

License Number: 10247
Date Issued: 12/21/2011

Effective Date: 01/01/2012
Good Through: 12/31/2012

Mailing Address:
HORIZON LAWN AND TREE CARE, INC.
P.O. BOX 111152
AURORA, CO 80042

Home/Records Address:

4400 HARBACK RD.
BENNETT, CO 80102

Doing-Business-As Name(s) (DBA)
HORIZON LAWN AND TREE CARE, INC.
HORIZON VEGETATION MANAGEMENT

Contact: MARK WRIGHT
Insurance Expires: 06/25/2012

Phone: (303) 644-5370
Aerial: N

This endorsement is valid for the following categories ONLY:

Agricultural:	103, 106, 107, 108, 109
Ornamental:	206, 207
Structural:	

Qualified Supervisors

Lic. #	Last Name	First Name	MI	Lic. Expires
04073	WRIGHT	MARK	C	12/09/2014

License Categories: 103 106 107 108 109 206 207

Certified Operators

Lic. #	Last Name	First Name	MI	Lic. Expires