AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Agreement; Jim Lewis dba Eco-Right Solutions; Undesireable Plant Management; 5/6/14 thru 10/30/14; $12,000

Action Requested: Other Review and approval of documents for return to vendors for signature

Parties to the Agreement: Gunnison County and Eco-Right Solutions

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

Summary:
Contract weed spraying on road in the Marble area and Highway 133

Fiscal Impact: $12,000

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

AGREEMENT

This 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 Jim Lewis d/b/a Eco-Right Solutions ("Contractor").

RECITALS

Contractor provides professional services regarding application of herbicide to control noxious weeds mandated for control within Gunnison County. Gunnison County desires to engage Contractor 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. SCOPE OF SERVICES.

Contractor 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 Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other Contractors able to furnish the same or similar services as it deems appropriate to do so.

2. 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.

3. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its noxious weed management strategy, as outlined in the Gunnison County Strategic Plan.

4. COMPENSATION, BONUS AND EXPENSES.

(a) In exchange for Contractors performance of the Services, during the Term, Gunnison County shall pay Contractor a rate of $75.00 per linear mile for weed treatment in road rights of way. Specific rights of way to be treated are:

1. Marble-area roads: Gunnison County Road 3 from the intersection with Highway 133 to the western border of the Town of Marble, Gunnison County Road 3 from the eastern border of the Town of Marble to the Intersection with USFS Rods 314 & 315, Serpentine Trail, Crystalline Drive, Prospector Trail, Daniels Hill Road, Marble Village Drive and Marble Quarry Road to the USFS Boundary.
2. Colorado Highway 133 from the Gunnison-Pitkin County Line to the Gunnison-Delta County Line

As funding allows, each of these rights of way shall be treated twice during the 2014 season, including once in early summer and once in late summer or early fall. Total compensation for work must not exceed $12,000.

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

(c) This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to Contractor pursuant to paragraph 11 of this Agreement.

5. INDEMNIFICATION.

Contractor 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 Contractor or its employees, subcontractors or agents in connection with this Agreement.

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

6. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Contractor 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 Contractor 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.

7. INDEPENDENT CONTRACTOR.

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

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

8. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor 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.

9. 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

Contractor: Eco-Right Solutions
167 Redstone Blvd.
Redstone, CO 81623

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.

10. IMMIGRATION COMPLIANCE CERTIFICATION.

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

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

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

11. 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, Contractor shall be entitled to compensation for Services performed prior to the date of termination as outlined in Section 4 of this Agreement.

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. 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.

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: Eco-Right Solutions

Date: _____ By: _____
Jim Lewis

EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform and provide the following services:

RESPONSIBILITIES OF ECO-RIGHT SOLUTIONS.

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

EXHIBIT B

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/04/2014

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

STACY J FORSTER
204 PARK AVENUE, SUITE 2E

BASALT CO 81621

CONTACT NAME: STACY FORSTER
PHONE (A/C, No, Ext): 970-963-7277 FAX (A/C, No): 970-279-5390
E-MAIL ADDRESS: sforster@farmersagent.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Truck Insurance Exchange	21709
INSURER B : Farmers Insurance Exchange	21652
INSURER C : Mid Century Insurance Company	21687
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

ECO RIGHT SOLUTIONS
167 REDSTONE BLVD

REDSTONE CO 81623

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	
B	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC			604793576	01/08/2014	01/08/2015	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB [ ] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	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					[ ] WC STATU-TORY LIMITS [ ] OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

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

167 REDSTONE BLVD, REDSTONE, CO 81623

CERTIFICATE HOLDER

GUNNISON COUNTY
200 E VIRGINIA AVE

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

ACORD 25 (2010/05)

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