# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Agreement for Consulting Services; Gunnison Conser

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison Conservation District

**Term Begins:** Jan 1, 2021 **Term Ends:** 12/31/2021 **Grant Contract #:**

**Summary:**

Contract for Wildlife Coordinator services for sage-grouse reviews

**Fiscal Impact:** 12,000

**Submitted by:** Cathie Pagano **Submitter's Email Address:** cpagano@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:
Included in 2021 Budget.

Reviewed by: GUNCOUNTY1\kweak Discharge Date: 12/30/2020

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

Comments:
ok db 12/18/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/18/2020 Certificate of Insurance Required Yes (●) No ( )

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/8/2021

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 1/12/2021

*Revised April 2015*

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is entered into this _____ day of _____ 2020 by and between the Board of Commissioners of the County of Gunnison, Colorado ("Gunnison County") and the Gunnison Conservation District ("GCD").

## A. RECITALS

This Agreement is entered into with respect to the following facts:

1. Gunnison County is a statutory county authorized and empowered by the Constitution of the State of Colorado, various state statutes, and the common law to, among other things, regulate land use and development and to provide for the protection of land, water, wildlife, and recreational resources within Gunnison County.

2. GCD is a conservation district duly organized under the Colorado Soil Conservation Act, C.R.S. §35-70-101, *et seq.,* authorized and empowered to undertake certain actions to prevent and remediate the loss of soil and water through wind and water erosion and depletion of subsurface water resources. The boundaries of GCD encompass a substantial portion of Gunnison County.

3. Gunnison County has expended substantial efforts developing and implementing strategies for the protection and conservation of the Gunnison Sage-grouse ("GuSG"). Among those efforts has been the development of the *Action Plan and Goals* ("Action Plan"), the *Gunnison County Sage-grouse Conservation Action Plan* ("Conservation Plan"), the *Gunnison Basin Sage-grouse Strategic Plan* ("Strategic Plan") and the *Gunnison Basin Gunnison Sage-grouse Habitat Prioritization Tool* ("HPT").

4. In addition, the Gunnison County Land Use Resolution contains numerous provisions for protection of the GuSG and their habitats including a requirement that anyone proposing any surface disturbing activity within GuSG Occupied Habitat must request a pre-application conference among the applicant, the Gunnison County Wildlife Conservation Coordinator, and Colorado Parks and Wildlife (if determined necessary) to identify issues related to the proposed development and Gunnison Sage-grouse habitat and to identify potential solutions.

5. The Gunnison Basin Sage-grouse Strategic Committee is a formal entity of Gunnison County. Administrative and professional support is provided to the Committee by Gunnison County.

6. GCD has worked closely with landowners, Gunnison County, the NRCS, and various partners to restore GuSG habitat and develop agricultural practices that foster the protection and conservation of the GuSG. In this connection, personnel at GCD have developed knowledge and expertise concerning the GuSG.

7. Because of GCD's knowledge and expertise of the GuSG, Gunnison County and GCD desire to enter into an agreement whereby GCD personnel will provide the services set forth below to Gunnison County in its ongoing effort regarding the GuSG.

## B. AGREEMENT

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

### 1. SCOPE OF SERVICES.

GCD shall provide a qualified and competent wildlife biologist ("Wildlife Biologist"), as determined by Gunnison County, to perform and complete the work as more specifically identified in the Scope of Work attached hereto and incorporated herein by reference as Appendix "A" ("Services"). The Wildlife Biologist and will become familiar and work in accordance with the Action Plan, Conservation Plan, Strategic Plan, the HPT and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Services shall be diligently pursued, in a professional, timely and complete manner. Services shall be performed under the technical and professional oversight of the Director of Community and Economic Development. GCD shall furnish all materials, supplies and equipment necessary for GCD's personnel to perform and complete said Services.

All Work Product generated from Services rendered shall be and remain the property of Gunnison County.

No Services shall be performed except with the authorization of Cathie Pagano, Director of the Gunnison County Community Development Department.

### 2. TERM.

The term of this Agreement shall commence on January 1, 2021 and shall terminate on December 31, 2021, unless sooner terminated as provided herein.

### 3. COMPENSATION AND EXPENSES.

In exchange for GCD's performance of the Services identified herein during the term of this Agreement, Gunnison County shall pay GCD $50.00 per hour of time spent by GCD employees on the Services identified herein ("Compensation"). The parties agree that Gunnison County will not request and GCD will not provide Services for which the total Compensation exceeds $12,000 per year without the prior written consent of both parties.

GCD shall provide Gunnison County with a statement of Services rendered on or before the last day of each month and Gunnison County shall pay the Compensation to GCD on or before the last day of the following month.

The Compensation is intended to be full and complete payment to GCD for performance of the Services; no other compensation, payment or benefit of any kind shall be due or paid by Gunnison County to GCD.

GCD shall be reimbursed for reasonable and typical out-of-pocket traveling expenses incurred by its employees, including but not limited to mileage, airline travel, hotel and meals, provided such are directly associated with performance of the Services and, provided further, that such expenses are incurred and submitted according to Gunnison County's standard policies and rates. Mileage shall be paid for GCD's travel from Gunnison County's facilities in Gunnison to and from site inspections at a rate equal to the *United States Internal Revenue Service Standard Mileage Rates for Business, Medical and Moving.*

Invoices including itemized reimbursable requests and hours work on this contract shall be submitted to the Community Development Director for Gunnison County on a monthly basis for review and approval for payment.

4. INSURANCE.

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

A. Worker's Compensation Insurance in accordance with Colorado and Federal law;

B. Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and for an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

C. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

Within thirty (30) days of the execution of this Agreement, GCD will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

5. STRATEGIC RESULT.

It is beneficial to engage GCD's Services for a collaborative effort to further the conservation of the GuSG.

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, GCD shall be entitled to compensation for Services performed prior to the date of termination, provided such Services are reasonably satisfactory to the Gunnison County. Upon termination or at the end of the term of this Agreement, GCD shall forthwith provide to Gunnison County all documents and other property used or generated as a result of this Agreement.

7. 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:

If to Gunnison County: Matthew Birnie, County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230

If to GCD: District Manager
Gunnison Conservation District
216 North Colorado St.
Gunnison, CO 81230

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.

8. STATUS OF GCD.

In carrying out its obligations and activities under this Agreement, GCD is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Neither GCD nor its employees have any authority to bind Gunnison County in any manner whatsoever.

GCD acknowledges and agrees that GCD is not entitled to: (i) unemployment insurance benefits; or (ii) workers compensation coverage; or (iii) any other benefit not specifically identified in this Agreement, from Gunnison County; or (iv) the provisions of the Gunnison County Personnel Policy.

9. NONEXCLUSIVE AGREEMENT.

GCD acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with other providers able to furnish the same or similar services, as it deems appropriate to do so.

10. DISCRIMINATION.

GCD agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. GCD shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, GCD shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

11. IMMIGRATION COMPLIANCE CERTIFICATION.

GCD certifies that GCD does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

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

GCD 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.

GCD 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.

GCD agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

12. ADA COMPLIANCE.

GCD assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by GCD, or be subjected to any discrimination by GCD upon which assurance Gunnison County relies.

13. 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.

14. COUNTERPARTS; EMAIL TRANSMISSION.

This Agreement may be executed by Email and/or in any number of counterparts, any or all of which may 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 email counterparts shall be promptly followed with delivery of original executed counterparts.

15. ENTIRE AGREEMENT; AMENDMENT.

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 and may not be amended except in writing signed by both parties.

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

By: _____
Jonathan Houck, Chairperson

ATTEST:

_____
Deputy County Clerk

GUNNISON CONSERVATION DISTRICT

By: Jan Coury
Jan Coury, President or Assignee

ATTEST: Rufus Wilder
Secretary

APPENDIX "A"

SCOPE OF WORK OF SERVICES

**Gunnison County**
**Gunnison sage-grouse**
**Land Use Permit Application Review Process;**
**Gunnison Basin Sage-grouse Strategic Committee Administration**

Services shall be limited to: 1) accomplishing reviews for proposed land use applications and pre-application conference requests referred to the GCD by the Gunnison County Community Development Department or the Gunnison County Public Works Department; 2) providing support for and participation in Gunnison Basin Sage-grouse Strategic Committee meetings, subcommittee meetings and associated activities.

Services shall performed according to the following:

Land Use Permit Applications

The Wildlife Biologist will make best efforts for reviews to be conducted and completed within five (5) business days of request.

1. Application for land use related activities within mapped GuSG occupied habitat referred from Community Development or Public Works Staff
    a. Building, OWTS
    b. Land Use Change (Planning Commission Action)
        i. Minor Impact
        ii. Major Impact
    c. Access
    d. Reclamation
    e. Pre-application Conference
        i. Required for minor or major impact project applications
        ii. Required for any surface disturbing activity within GuSG habitat
        iii. May be requested by the parcel owner
            1. For a specific project
            2. For assessment of GuSG habitat values on parcel without a specific project being proposed
        iv. May be combined with permit application review if the proposed activity is
            1. In a developed area (subdivision, developed parcel, etc.)
            2. An addition or modification to an existing structure or facility

2. Determine location of parcel (CD or PW staff will have determined if it is in GuSG occupied habitat) using the Habitat Prioritization Tool
    a. In Tier 1 habitat
        i. Requires consultation with Colorado Parks and Wildlife (CPW)
            1. Onsite if determined necessary
            2. By conference if onsite is determined not necessary
            3. Document results of consultation in Site Specific Analysis
        ii. Mandatory Reclamation Permit
        iii. Determine if an onsite assessment is necessary to assess GuSG habitat/impacts of project (if a project is proposed) on habitat/GuSG
            1. If onsite is necessary, determine if there is legal access to the parcel
                a. If not immediately apparent, notify applicant that proof of legal, physical access is required
            2. If onsite is necessary, schedule with
                a. CPW staff
                b. CD staff
                c. PW staff
                d. Parcel owner/representative
            3. Prepare HPT maps for site visit participants
                a. Tiered habitat map
                b. Lek proximity map
                c. Scored habitat map
            4. Conduct onsite assessment
    b. In Tier 2 habitat
        i. May require consultation with CPW based upon review
            1. Location of parcel
                a. Near Tier 1 habitat
                b. Near a lek
                c. Features potentially important to GuSG
            2. Nature of project proposed
                a. Impact important habitat outside parcel boundaries?
                b. Have attributes of concern to GuSG?
            3. Determine if an onsite is necessary
                a. If it is, follow onsite process for Tier 1 habitat
            4. Reclamation Permit may be required for activities <10,000sqft surface disturbance
                a. If activities may result in noxious weed transmission to Tier 1 habitat
                b. Other factors indicate that permitted reclamation would be advantageous to GuSG habitat

c. Notify the referring Department if the review/final analysis is going to take longer than 5 days.

3. Prepare a formal GuSG Site Specific Analysis
    a. Based upon information available is there or could there be an adverse impact to GuSG or their habitats by the proposed activity or if no activity is proposed, if activity were proposed in the future?
    b. Determine if the impacts to GuSG and/or their habitats can be
        i. Avoided
        ii. Minimized
        iii. Mitigated
    c. Propose permit conditions and or actions accordingly
    d. Circulate draft Analysis to CPW and County staff participating in the review for concurrence
    e. Finalize Site Specific Analysis
        i. Final to
            1. Community Development
            2. Public Works
            3. CPW staff that participated

<u>Strategic Committee</u>

1. Membership
    a. Maintain a current list of members
        i. "Rolodex" member list with contact information
        ii. Email distribution list
        iii. Coordinate with County Administration staff on public seats
        iv. Coordinate with Community Development administrative staff
    b. Subcommittees
        i. Track status
            1. Standing
            2. Project based
        ii. Maintain membership list
        iii. Participate as necessary

2. Meetings
    a. Meeting location (currently, Planning Commission meeting room)
    b. Meeting date/time (currently monthly, 10am to 2pm)
    c. Agenda
        i. Draft
        ii. Consult with Executive Subcommittee as necessary
        iii. Coordinate with outside entities for specific agenda items of interest to Committee

iv. Publish agenda in two local newspapers
v. Work with CD administrative staff to post agenda on website and at official posting location

d. Attend
    i. Participate in discussion as necessary
    ii. Take working notes
    iii. Follow-up on any action items