

HUERFANO COUNTY GENERAL SERVICES CONTRACT: RFP 17-002

THIS CONTRACT is made and entered into by and between the Parties set forth in section I below, effective as of the Effective Date set forth in section 2 below.

PARTIES:

HUERFANO COUNTY	Contractor
Board of County Commissioners-Huerfano County	
401 Main Street	
Suite 201	
Walsenburg, CO 81089-2045	
719-738-2370	
Contractual Contact: John Galusha Huerfano County Administrator (719) 738-3485 john@huerfano.us Project Contact: Paul Branson Wildfire Mitigation Program Manager (719) 742-6207 pbranson@huerfano.us	

WHEREAS, HUERFANO COUNTY has received grants to fund the work specified in the Scope of Work; and

WHEREAS, the Contractor was selected in accordance with the law and Huerfano County policies; and

WHEREAS, the Contractor wishes to complete the work;

NOW, THEREFORE, the Parties above-named, in consideration of the mutual promises contained herein and other good and valuable consideration, hereby agree as follows.

I. TERMS AND CONDITIONS OF THE CONTRACT

- 1. INDEPENDENT CONTRACTOR; RELATIONSHIP OF THE PARTIES.** The parties aver that:
 - a. The Contractor is not subject to Huerfano County control as to the means and methods of accomplishing the work to be performed hereunder, but Huerfano County and/or project supervisors may specify and control the result to be accomplished including any specifications, standards, requirements and deliverables;
 - b. The Contractor may still select its own customers or clients and Contract with others during the term of this Contract;
 - c. This Contract shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. Contractor and its employees shall not be considered employees of Huerfano County for any purpose whatsoever, and are not entitled or eligible for any employment benefit or compensation from Huerfano County, for example, medical benefits, retirement benefits, or worker's compensation coverage. Contractor is solely responsible for all taxes, including, but not limited to, payroll, unemployment, and income taxes, arising out of or in connection with this Contract.

- 2. SUBCONTRACTING and SUBCONTRACTORS.** Contractor agrees that if any work under this Contract is going to be subcontracted to other firms, individuals, or entities:
 - a. Huerfano County has the right to review qualifications of Subcontractor, and if in Huerfano County's sole discretion, said Subcontractor does not have the necessary qualifications to complete work, Huerfano County may preclude Contractor from using said Subcontractor.
 - b. All subcontracting entities must comply with terms of this Contract.
 - c. Use of subcontractors must be approved by Huerfano County before commencement of any work under this Contract.
 - d. Contractor will comply with and adopt as necessary any and all applicable procurement standards that may be required due to the acquisition of subcontractor services.

- 3. TERM.**
 - a. This Contract shall commence on the Effective Date, which shall be the later of the date it is signed by Huerfano County's authorized representative; or a separate date as specified here: _____ . This Agreement shall terminate unless sooner terminated as provided herein. **If performance begins prior to the Effective Date without written authorization from the Huerfano County Administrator or authorized representative, Huerfano County shall not be obligated to pay for the goods and/or services provided prior to such date.**
 - b. **Option to Renew.** *If checked:* _____. Huerfano County may require continued performance for up to two successive one-year term(s) (each, a "Renewal Term") for the services to continue at the rates and terms specified in the Contract. Huerfano County may exercise the option by written notice to the Contractor within 30 days prior to the end of the current Contract term in a form substantially equivalent to (RFP?-Scope of Work). If Huerfano County exercises this option, the extended Contract will be considered to include this option provision. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed two years.
 - c. This Agreement shall terminate on the Completion Date, with all contracted work completed, which is: December 31, 2017. **If performance extends after the Completion Date, including closeout paperwork or similar documentation, Huerfano County shall not be obligated to pay for the goods and/or services provided after this date.**

4. **SCOPE OF WORK.** In consideration of the payments and other promises and benefits contained herein, the Contractor shall timely and competently perform the services described in the Statement of Work as defined in the Request for Proposals associated with this Contract.

5. **PAYMENT AND ASSURANCE TERMS.**

- a. **This is a fixed-price Contract.** Payment for all services under this Contract shall not exceed the total fixed sum of \$_____. Payment shall occur only after completion of the work and the award of a "Certificate of Completion" by the Project Supervisor. The contractor shall be paid on a per acre basis at \$_____ per acre for a total of ____acres. The basis for all charges shall be clearly identified on the Contractor's invoice(s), documenting acres treated, parcel locations, and all work completed.
- b. **Method of Payment.** Huerfano County will remit payment to the Contractor via check, delivered by USPS to the address provided above. Huerfano County will endeavor to make payments between 30 and 60 days after receipt of such invoice(s) for approved work.
- c. **Inspection and Acceptance of Services.** Huerfano County reserves the right to inspect the services provided under this Contract at all reasonable times and places during the term of the Contract. "Services" as used in this clause includes the works and any tangible things produced or delivered in the performance of services, whether or not complete. If any of the services do not conform to the Contract requirements, Huerfano County may require the Contractor to perform the services again in conformity with Contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, Huerfano County may (1) require the Contractor to take necessary action to ensure that the future performance conforms to Contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to Huerfano County in the termination provisions of this Contract, or remedies otherwise available at law.
- d. **Bid Guarantee.** Required if checked here__X__ Contractor will be required to furnish a Bid Guarantee equivalent to five percent (5%) of the bid price and consisting of a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual ground work and documents as may be required within the time specified.
- e. **Performance Bond.** Required if checked here__X__ Contractor will be required to furnish a Performance Bond executed by a corporate Surety authorized to do business in the State of Colorado and in the sum of one hundred percent (100%) of the amount of the contract price to secure fulfillment of all the contractor's obligations under the contract. The expense of this bond shall be borne by the Contractor and the bond shall be filed with Huerfano County and the State of Colorado Department of Public Safety Division of Homeland Security and Emergency Management if applicable.
- f. **Payment Bond.** Required if checked here__X__ Contractor will be required to furnish a Payment Bond executed by a corporate Surety authorized to do business in the State of Colorado and in the sum of one hundred percent (100%) of the amount of the contract price to assure payment as required by law of all persons supplying labor or materials in the execution of the work provided for in the contract.
- g. **Damage Deposit.** Required if checked here____ A damage deposit in the amount of \$_____ shall be deposited by the Contractor upon signing of this contract. The deposit shall be in the form of cash or certified check. A damage penalty will be charged, as described below, for damage to trees, soil, or unsuccessful project completion by the project completion deadline.
- h. **Bond Release.** Any remaining bond and/or deposit balances will be released to Contractor promptly upon satisfactory completion of this contract agreement.

6. INSURANCE REQUIREMENTS

A. The Contractor shall obtain, and maintain at all times during the term of this Contract, insurance in the following kinds and amounts:

- 1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Contractor's employees acting within the course and scope of their employment.
- 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - a. \$1,000,000 each occurrence;
 - b. \$1,000,000 general aggregate;
 - c. \$1,000,000 products and completed operations aggregate; and
 - d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

4) (only if checked) Professional liability insurance with minimum limits of liability of not less than \$1,000,000.

B. (only if checked) Huerfano County and the State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to Huerfano County by certified mail (10 days for nonpayment of premium).

D. The Contractor will require all insurance policies in any way related to the Contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against Huerfano County or the State of Colorado, its officers, agents, employees and volunteers.

E. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Huerfano county's insurers.

F. The Contractor shall provide certificates showing insurance coverage required by this Contract to Huerfano County upon execution of this Contract. No work shall be performed until such certificates are provided. No later than 15 days prior to the expiration date of any such coverage, the Contractor shall deliver certificates of insurance evidencing renewals thereof. At any time during the term of this Agreement, Huerfano County may request in writing, and the Contractor shall thereupon within 10 days supply, evidence satisfactory to Huerfano County of compliance with the provisions of this section.

G Insurance coverage required of the Contractor shall be primary over any insurance or self-insurance program carried by Huerfano County or the State of Colorado.

7. **TIME IS OF THE ESSENCE.** All time limits, time periods, milestones and completion dates stated in the Request for Proposals are of the essence of this Contract. The Contractor shall conduct all operations in a timely manner and in accordance with the proposal. All work must be completed by December 31, 2017.

8. **CONTRACT PERIOD.** Contractor may operate Monday through Friday, between the hours of 7:00 am and 6:00 pm. Operations may commence on the date of the last signature on this agreement. For the purposes of this contract, all work must be completed by December 31, 2017 including any follow up seeding or rehab work.

9. **FORCE MAJEURE.** Neither the Contractor nor Huerfano County shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this Contract "force majeure" means acts of God; acts of the public enemy; acts of any governmental entity in its sovereign or Contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Notwithstanding the foregoing, in the event of a delay or failure of performance by the Contractor under this section exists for a period of 30 days, or for a shorter period if such delay or failure is not reasonably capable of being remedied within 30 days, Huerfano County shall have the right to terminate this Contract without further obligation.

10. DEFAULT. A party will be considered in default of its obligations under this Agreement if such party should substantially fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Contract and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as provided herein below.

11. REMEDIES. In addition to any other remedies provided for in this Contract, and without limiting its remedies otherwise available at law, Huerfano County may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this Contract:

- a. Suspend the Contractor's performance pending necessary corrective action as specified by Huerfano County without the Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed and/or acceptable goods are provided; and/or
- c. Request the removal from work on this Contract of employees or agents of the Contractor whom Huerfano County justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this Contract Huerfano County deems to be contrary to the its interest; and/or
- d. Deny payment for those services or obligations which have not been performed and/or for goods that have not been provided and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to Huerfano County. Denial of the amount of payment must be reasonably related to the value of work or performance lost to Huerfano County; and/or
- e. Terminate this Contract for default. The above remedies are cumulative and Huerfano County, in its sole discretion, may exercise any or all of them individually or simultaneously.

12. TERMINATION FOR CONVENIENCE. Huerfano County may terminate this Contract at any time it determines that the purposes of the distribution of moneys under the Contract would no longer be served by completion of the project. Huerfano County shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon receipt of such notice:

- a. All finished or unfinished projects started by the Contractor under this Contract shall, at the option of Huerfano County, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services delivered.
- b. Contractor's Termination Claim: The Contractor's sole and exclusive remedy will be to submit a claim for payment in an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. In no event shall reimbursement under this clause exceed the Contract amount, nor shall Huerfano County be liable for any other costs, damages, expenses, fees, or other amounts claimed or incurred by Contractor.

13. REPRESENTATIVES AND NOTICE.

- a. Representatives. For the purpose of this Contract, the individuals identified in Section I, PARTIES, herein above are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives. With respect to the representative(s) of Huerfano County, the Signatory and Contractual Contact shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise for Huerfano County with regard to all legal matters and negotiations; the Project Contact (if listed) is able to answer questions regarding Scope of Work, suitability of work, and other programmatic questions.
- b. Notice. All notices required to be given under this Contract shall be deemed given when actually delivered to the designated representative(s) of the party to be given notice by (i) certified mail, return receipt; or (ii) by hand delivery or courier service, if a signed receipt is obtained upon delivery; or (iii) by facsimile transmission, if confirmation of receipt of the transmission is obtained,. A party may change its designated representative(s) or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties shall be the persons whose names and addresses are set forth in Article I, Parties, herein above.

- 14. LEGAL AUTHORITY.** The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.
- 15. NON-ASSIGNMENT.** Contractor shall not assign or subcontract any of its obligations under this Contract without the advance written consent of Huerfano County. Any unauthorized assignment shall be void. Huerfano County shall have the right, but not the obligation to terminate this Contract, without waiver of any other right or remedy, upon notice of Contractor's assignment or sub Contract in violation of this section.
- 16. BINDING EFFECT; THIRD PARTY BENEFICIARIES.** This Contract is binding upon the heirs, personal representatives, successors, and permitted assigns of both parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to Huerfano County and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Huerfano County and the Contractor that any such person or entity, other than Huerfano County or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
- 17. ENTIRE AGREEMENT.** This Contract, including the exhibits incorporated herein by reference, constitutes the entire Contract between the parties, and supersedes any previous Contracts, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Contract.
- 18. AMENDMENT.** No modification or amendment to this Contract shall be valid unless it is made in writing signed by the authorized representatives of the parties.
- 19. SURVIVAL OF CERTAIN CONTRACT TERMS.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of this Contract shall survive such termination date and shall be enforceable as provided herein in the event of such failure to perform or comply by the Contractor.
- 20. WAIVER.** The waiver by either party of a breach or violation of any provision of this Contract shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
- 21. SEVERABILITY.** In the event that any provision of this Contract is held unenforceable for any reason, the remaining provisions of this Contract shall remain in full force and effect.
- 22. INDEMNIFICATION.** Contractor agrees to protect, defend, indemnify and hold harmless Huerfano County, its divisions, boards, agencies, institutions and departments, the State of Colorado, and each of their officers, officials, employees, representatives, agents, successors, property owner(s) and assigns against any and all losses, penalties, injuries, claims, fines, legal actions, damages, settlements, costs, charges, professional fees, attorney's fees or other expenses or liabilities of every kind and character incurred by said listed parties and/or arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character, in connection with, or arising directly or indirectly out of Contractor's negligence, intentional act, professional error, mistake, omission, performance or failure to perform and/or default or breach under the terms of this Contract, or fault of Contractor during the performance of this Agreement. Without limiting the generality of this Section, in any and all such claims or actions relating to personal injury, or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order or directive, order, rule or regulation, Contractor shall respond to and defend any such claims or actions at its sole expense with counsel approved by the Huerfano County and agrees to bear all other costs and expense related thereto, and attorney's fees, even if such claim is groundless, false or fraudulent.
- 23. COUNTERPARTS:** This Contract may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.

24. PRIORITY OF INTERPRETATION: The provisions of this Contract shall govern the relationship of Huerfano County and the Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, the Special Provisions incorporated within this Contract, second, the terms and provisions of this Contract; third, the exhibits or attachments incorporated within this Contract.

II. COLORADO SPECIAL PROVISIONS

These Special Provisions are incorporated into all contracts without limitation:

1. FUND AVAILABILITY. Huerfano County depends on grant funds to perform work. If grant agreements are cancelled for any reason, this Contract will terminate. As most grants require Huerfano County to invoice for documentable work and expenses completed to date, Huerfano County will not submit reimbursement requests until such time as the Contractor has provided suitable documentation of expenses, including but not limited to labor, materials, services, and other expenses; documentation of work completed, such as acres, miles, reports, etc. and a copy of any or all "Certificates of Completion" awarded by the LVFPD Project Supervisor. Payments to Contractor are contingent upon reimbursement of grants, and may take as long as 60 days. Huerfano County shall not be considered in arrears, and no interest or penalties shall be added to invoices until they are 60 days past receipt and approval by Huerfano County.

2. GOVERNMENT IMMUNITY. No term or conditions of this grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act CRS24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq., as applicable now or hereafter amended.

3. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of Huerfano County. Contractor and its employees and agents are not entitled to unemployment insurance benefits through Huerfano County and the County shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party.. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind Huerfano County to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by Huerfano County, and (c) be solely responsible for its acts and those of its employees and agents.

4. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, those laws applicable to discrimination or unfair employment practices and Affirmative Action.

5. CHOICE OF LAW. The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

6. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. The signatories aver that to their knowledge, no employee of Huerfano County, nor any other Huerfano County official, including members of the Huerfano County Board of Commissioners, nor any employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

7. PUBLIC CONTRACTS FOR SERVICES. Contractor certifies, warrants, and agrees that it does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract; shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract; shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice; and shall comply with reasonable requests made in the course of an investigation, undertaken pursuant by the Colorado Department of Labor and Employment. If Contractor or any subcontractor is in breach of this paragraph, the Agreement will be terminated, and the Contractor shall be liable for damages.

8. PUBLIC CONTRACTS WITH NATURAL PERSONS. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law.

9. SUBCONTRACTING. Huerfano County reserves the right to pre-approve sub-contractors. All subcontractors must meet all required terms stated herein this contract for independent services.

III. EXHIBITS INCORPORATED BY REFERENCE

If checked, the following exhibits are attached and hereby made a part of this Contract:

Exhibit A: Original "Request for Proposals" X (See RFP 17-002)

Exhibit B: Price, Cost and Payment Provisions _____

Exhibit C: Environmental, Cultural and Conservation Guidelines X (See RFP 17-002)

Exhibit D: Federal Funds Disbarment X (See RFP 17-002 Exhibit B)

Other Exhibits (Please specify):

Exhibit E: Timeline and Log _____

Exhibit F: Original Contractor Bid _____

*The Request for Proposals document is incorporated by reference. Work scope is as outlined in the Request For Proposals and per instruction of Huerfano County project manager. Please seek clarification prior to initiating work if you are unsure of expected outcomes

IV. ACCEPTANCE OF CONTRACT

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the last written date below.

HUERFANO COUNTY

DATE

CONTRACTOR
