Board of County Commissioners - Staff Report

Meeting Date: 11-1-2016

Submitting Dept: JHF/EMS

Presenter: Willy Watsabaugh, Chief Jackson Hole Fire/EMS

Subject: Consideration of amendment of existing contract for additional work for Fuels Reduction - Hidden Hills Subdivision

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Statement / Purpose:
Consideration of amendment of existing contract for additional work for Fuels Reduction within Hidden Hills Subdivision.
Request to have contractor perform additional fuels reduction and maximize total grant funding available.
The additional grant funds available are $31,050.00

Background / Description (Pros & Cons):
Current contract is for $255,950.00
Grant funding available $287,000.00
There has been additional fuels reduction identified that could be done and utilize the total grant funding available for this project. There is opportunity while the contractor is on-site to remove additional hazard fuels and provide additional protection from unwanted fire in the Wild-land Urban Interface.

Should this request be denied the only negative impact will be, grant funds were underutilized, and less fuels would be removed.

Stakeholder Analysis & Involvement:
Homeowners: will have a slightly higher threshold of protection on each property, which will reduce risk.
Teton County: more reduction of hazard fuels in the Wild-land Urban Interface.
JHF/EMS and other firefighters: safer fire environment should suppression effort be needed.

Fiscal Impact: There will be no fiscal impact. The grant awarded is for $287,000.00 and no additional funding is being requested.
There is no matching of funds needed for this grant.

Staff Impact: No additional staff impact

Legal Review: Gingery

Staff Input / Recommendation: Jackson Hole Fire/EMS & Wyoming State Forestry recommend adding this additional work. The extra work will remove several tons of unwanted fuels while maintaining the forest environment.

Attachments:
Note any attachments such as contracts or agreements.

Suggested Motion: I move to amend the current contract with Westwood Curtis from $255,950.00 to $287,000.00 to remove additional hazard fuels in accordance with current contract specification.

CONTRACT FOR SERVICES BETWEEN TETON COUNTY AND WESTWOOD CURTIS

1. **Parties.** The parties to this Contract are Teton County, Wyoming whose address is P.0. Box 1727, Jackson, WY 83001 [Agency] and Westwood Curtis [Contractor], whose address is P.O. Box 904, Jackson, WY 83001.

2. **Purpose of Contract.** The purpose of this Contract is to reduce fuels on defensible space and roadways within the Hidden Hills subdivision, Teton County, WY. All fuels reduction shall be performed within these lands. Access to these lands shall be either by the West Elk Trail Road, Moose Trail Road, West Willow Road, Bronco Road or Silver Spur Road, and a private road easement extending therefrom or by accessing these lands directly from the Fall Creek County Road. All equipment using the access roads shall be limited to normal highway loading limits.

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. The term of this Contract is from the effective date through September 1, 2017. All services shall be completed during this term.

4. **Payment.** Agency agrees to pay the Contractor for the services for defensible space and roadways outlined in the scope of work. Payment shall be made monthly upon inspection of work completed and receipt of the Contractor's invoice.

   A. Copies of receipt(s) or invoice(s) from Contractor, or otherwise, for completed project work, must include the following information:

      a. Project name- description of project area (landowners name, address, etc.)
      b. Reference to bid number or contract, if applicable
      c. Dates the work occurred and date project was completed
      d. Total hours billed, by project or treatment within contract, if applicable
      e. Scope of the work – what was completed by the contractor
      f. Amount billed to the sub-recipient
      g. Proof of payment that the sub-recipient has paid for service- statement of check number or paid in cash is acceptable.
      h. Receipt is signed and dated by the contractor and sub-recipient

   The total payment under this Contract shall not exceed $255,950. No payment shall be made to the Contractor for services not specifically directed by Agency.

   B. A performance surety, in the form of a performance bond or a letter of credit equal to 125% of the contract bid amount will be required. The surety shall be required prior to the execution of the Contract. The surety bond may be reduced as the project is completed, to no less than 50% of the original amount, by agreement of Teton County, the HOA representative and the Landowners, until the project is completed and the roads are fully restored, via agreement of the HOA representative ("Road Acceptance") and Landowners

("Driveway Acceptance"), at which time it shall be released upon final project payment to the Contractor.

5. **Insurance.** The successful contractor shall maintain a general liability policy with minimum policy limits of two million dollars per incident and four million dollars on the aggregate for the entire duration of the project. Said policy certification shall be submitted as part of the bid submittal.

6. **Responsibilities of Contractor.** The services to be provided by Contractor are described in Attachment B, which is attached hereto and made a part of this Contract.

7. **Special Provisions.**

   A. **Monitor Activities.** The Agency shall have the right to monitor all Contract-related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time; to bring experts, consultants, and landowners on site to examine or evaluate completed work or work in progress; and to observe all Contractor personnel in every phase of performance of Contract related-work.

8. **General Provisions.**

   A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed, and signed by all parties to this Contract.

   B. **Americans with Disabilities Act.** The Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

   C. **Applicable Law Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the 9th Judicial District, Teton County, Wyoming.

   D. **Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise, transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.

   E. **Assumption of Risk.** The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.

F. **Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Contractor, this Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Contract to acquire similar services from another party.

G. **Award of Related Contracts.** The Agency may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.

H. **Compliance with Law.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

I. **Entirety of Contract.** This Contract, consisting of Exhibit A, Attachment B and Scope of Work represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

J. **Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.),* and any and all ethical standards governing Contractor's profession.

K. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

L. **Indemnification.** The Contractor shall indemnify, defend, and hold harmless the Agency, Hidden Hills Homeowners Association, Individual land owners, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, lawsuits, losses, or liability arising out of Contractor's ·malpractice.

M. Independent Contractor. The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Agency for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the Agency or to incur any obligation of any kind on behalf of the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Agency employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

N. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Agency may, at its discretion, terminate this Contract without liability to the Agency, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

O. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

P. Sovereign Immunity. The Agency does not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat.§ 1-39-104(a) and all other state law.

Q. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

R. Termination of Contract. This Contract may be terminated without cause by either party upon fifteen (15) days written notice to the other party or immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

S. Third Party Beneficiary Rights. Except for the indemnity provided in Section 8.L, the parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties under this Contract, except for the indemnity provided in Section 8.L. Except with respect to the indemnity provided in Section 8.L., the parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or

failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

T. **Time is of the Essence.** Time is of the essence in all provisions of this Contract.

U. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.

V. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

X. **Wyoming Preference.** Unless otherwise provided in this Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent. The Contractor shall comply with all resident and other preference requirements, including, but not limited to, those applicable to labor, materials, and subcontractors.

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9. **Signatures.** By signing this Contract, the parties certify that they have read and understood it, that they agree to be bound by the terms of this Contract, and that they have the authority to sign it.

The effective date of this Contract is the date of the last signature affixed to this page.
Approval and Execution

IN WITNESS WHEREOF the parties have executed this agreement on this _____ day of July, 2016.

TETON COUNTY, STATE OF WYOMING

_____
Barbara Allen, Chair
Teton County Board of Commissioners

STATE OF WYOMING COUNTY CLERK TETON COUNTY

Attest:

_____
Sherry L. Daigle, Teton County Clerk

Contractor:

_____

EXHIBIT A
LEGAL DESCRIPTION OF
PROPERTIES SUBJECT TO
COMMUNITY WILD-FIRE PROTECTION PROGRAM AGREEMENT By & Between Teton County, Wyoming & Hidden Hills HOA.

To Wit:

The following parcels of land located within Teton County, Wyoming:

1. Hidden Hills subdivision defensible space and roadway easements: Lot 2 Michael Brennan, Lot 3 David Quellhorst Revocable Trust, Lot 5 Lambright Family Trust, Lot 7 Gregory Nelson, Trustee, Lot 8 Sven J & Heidi M. Roehrig, Lot 10 Steven, Anderson & Timothy Harris, Lot 12 Kelvin & Elli Bemis, Lot 13 Charles & Ragazzi, Anita Yates, Lot 14 Katherine & Mark Dowson, Lot 15 JMS Trust, Lot 16 Christoph Mehring, Lot 17 Robert & Sara Henderson, Lot 18 James Sergio Reed, Lindsey Elizabeth Cominguez, Lot 19 Kenneth & Maruta Litus, Trustees, Lot 21 Glen Morlock & Suzanne Messersmith, Lot 22 Nancy Niemann Living Trust and two lots marked Lessic.

ATTACHMENT B

CONTRACTOR RESPONSIBILITIES

1. Contractor shall furnish all labor, equipment, supplies, and materials necessary to accomplish the work as described below.

A. Contractor shall not assign its rights or obligations under this Contract without Agency's prior written approval.

B. Contractor shall keep closed all gates in all fences in which openings are, or may be made, and shall fully respect all rights of any of the Agency's other authorized users. Any damage to fences and/or gates caused by Contractor and/or his employees shall be repaired immediately by Contractor, with the cost of repairs to be paid by Contractor.

C. Contractor shall protect all known monuments, witness comers, reference monuments, and bearing trees against avoidable destruction, obliteration, or damage during Contractor's operations. If any known monuments, witness comers, or accessories are destroyed, obliterated, or damaged by Contractor's operations, Contractor shall hire the appropriate county surveyor or registered land surveyor to re-establish or restore the monuments, witness comers, or

accessories, with the cost to be paid by Contractor.

D. Contractor shall notify the Agency before commencing any activity on the project area.

E. The contractor shall adhere to the Forest Treatment Specifications as defined herein. Forest Treatment Specifications are determined based on the cover type in which the timber or fuel currently exists, whether it is standing or down.

SCOPE OF WORK

The Project shall include:

1. A survey of existing common road and driveway conditions within Hidden Hills Ranches shall be prepared by County Engineering and Road and Levee personnel prior to the start of the project and shall include a survey of the existing condition of Elk Trail from its intersection with Fall Creek Road, and any other roads utilized to access Hidden Hills Ranches properties from either Fall Creek Road or Elk Trail. Such survey shall serve to document pre-Project road conditions for the purpose of ensuring Hidden Hills Ranches roads and driveways are restored to their pre-Project condition upon completion of fuels reduction efforts.

2. Fuels reduction efforts shall be performed consistent with the requirements in "Method of Completion" below.

3. Following completion of the fuels reduction efforts, the common roads and driveways within or pertinent to Hidden Hills Ranches shall be restored to their pre-Project condition as documented in the pre-Project survey described in (1.) above.

4. Trees shall only be removed upon receiving a Landowner's approval of the marked trees and upon the HOA approving the marked trees.

5. No Landowner is allowed to ask to have the Contractor remove any trees during the Project that are in addition to trees that have been marked pursuant to the "Method of Completion" set forth below.

Method of completion

The following shall be adhered to by the contractor when performing the Fuels Treatment Specifications:

a. Remove only, all red or blue marked trees from the property, as also agreed to by the Landowner and the HOA Representative. Notwithstanding the preceding sentence, remove all standing dead and down material (66% sound and 8ft in length) regardless of species. Trees will be limbed in the woods or where designated by the Landowner, with consent of the HOA and Teton County. All limbs and smaller trees shall be chipped and removed. Chipping area locations shall be pre-determined by Landowners, the HOA and Teton County Representatives. No burning shall be allowed. No trees shall be dragged out without express Landowner approval. Trees shall be cut into suitable sizes for removal by rubber tire machinery or hand removal.

b. Defensible space thinning and spacing shall remove only approved and marked trees that adhere to Firewise recommendations for Zones 1, 2 and 3 as specified below. Specific trees for removal shall be defined and agreed to by Teton County, the Landowner, and the HOA. All trees to be removed no matter the location, shall be visibly marked with red paint prior to start of the Project. This will primarily involve removal of select conifers so that the canopies of tall tree clusters are not touching and removal of select smaller conifers that are growing between select taller trees. Contractor shall only remove the following:

- All fallen dead and red or blue marked standing dead trees, no matter where located on any lot, as approved by the Landowner;
- Zone 1 (30 foot area around any residential structure, including decks, garages, outbuildings) with Landowner approval: remove only, any red marked vegetation and prune all trees up to 6 to 10 feet from the ground;
- Zone 2 (30 to 100 feet from any residential structure or outbuildings) remove only red marked trees, that have been approved for removal by the HOA representative and Landowner, Contractor shall only remove trees in Zone 2 that also meet one of the following criteria (and no other trees shall be removed in zone 2):
  - Clusters of trees so as to leave 30 feet between clusters;
  - For single trees: any tree that is less than 20 feet from the closest tree; or
  - Upon receipt of owner approval, prune trees up 6 to 10 feet from the ground.
- Zone 3 (100 to 200 feet from any residential structure or outbuilding):
  - Thin young conifers (that are less than 30 feet in height) as marked and approved by the Landowner and the HOA Representative, growing between conifers over 30 feet in height.
  - Reduce the density of tall trees so canopies are not touching as approved by the Landowner and HOA Representative.
  - Remove heavy accumulation of fallen woody debris.
- Remove only blue marked trees located further than 200' from any residential structure or outbuilding. Landowner will need to obtain the written consent of the HOA Architectural Committee and HOA Board. Such prior approval will also be required prior to tree removal on undeveloped lots and the Common Area.

c. Pruning of limbs shall occur within the defensible space area (Up to 100 feet from home) on conifers up 6 to 10 feet from the ground or 25% of total tree height, whichever is less. Landowner approval is required prior to commencing such pruning.

d. Care shall be taken to minimize damage to residual trees, including root systems, and the ground. Every possible effort shall be made to protect remaining trees not removed. The Contractor will refrain from "tank turning" and other operating maneuvers that increase the chance or magnitude of ground disturbance. Contractor shall operate only on designated paths. No tree removal or use of mechanical equipment shall be allowed off of any paved road for forty eight hours after any significant rain event or until conditions allow for it.

e. Contractor shall be held liable for immediate repair to private property including but not limited to houses, fences, landscaping, rods and public utilities (above or below ground) damaged during the completion of contractual duties in regards to the Project.

e. Contractor shall protect all known monuments, witness corners, reference monuments, and bearing trees against avoidable destruction, obliteration, or damage during Contractor's operations. If any known monuments, witness corners, or accessories are destroyed, obliterated, or damaged by Contractor's operations, Contractor shall hire the appropriate county surveyor or registered land surveyor to re-establish or restore the monuments, witness corners, or accessories, with the cost to be paid by Contractor.

f. Contractor will fall and work trees on the property where such trees are located. Contractor will not fall trees onto or work trees on neighboring properties without explicit written consent of neighboring property owners and the Teton County representative.

g. Contractor shall notify Teton County before commencing any activity on the Project area. Daily work will be completed within the hours of 7:00 am and 7:00 pm Monday through Saturday.

h. The Contractor shall chip or remove all down trees, chips, slash, underbrush and down fall within two (2) weeks of starting work on each lot.

i. The Contractor shall inform Teton County whenever traffic control is required while removing trees. The Contractor shall provide traffic control.

j. The Contractor shall keep all roads and trails clear of slash and open to travel when not working in that area. Access to and from homes in the subdivision shall be maintained through project completion.

k. Contractor shall furnish all labor, equipment, supplies, and material necessary to complete the project. Sub-contracting of work by Contractor will not occur without the express written consent of Teton County and the HOA.

l. Branches and tops (slash) must be removed from the site either whole or chipped and hauled.

m. Stumps of severed trees shall be no higher than 4" as measured from the uphill side of the ground.

n. The vegetation in pre-determined areas along roads will be cut – areas to be removed and trees to be removed will be marked with red paint, generally within ten (10') feet of the roads. The Contractor shall treat the cut stumps of Chokecherry with Garlon herbicide immediately after cutting. For conifers limbs overhanging the road will be cut up to a height of 10 feet or 25% of the tree height, whichever is less.

o. All trees, logs, limbs, tops, chips, or any wood product must be removed from all participating properties before the project is considered completed.

p. The severing of trees may be undertaken at any time of year. The removal of trees shall not take place between the times of April 1 and June 15 or when wet conditions would cause unacceptable soil disturbance. If conditions allow for removal during this time, this condition may be amended in the sole discretion of the Landowners upon whose lands such removal would occur. Teton County and HOA representatives shall be consulted prior to any such amendment.

q. All roads and access trails shall be predetermined by Teton County Representatives and Contractor, and approved by the Landowners upon whose lands the roads and trails are located. Other than maintaining or repairing the existing roads and driveways, no additional blading or grading (cut and fill) shall be permitted without the specific approval of the Landowner, the HOA Representative, and Teton County. All roads and access trails shall be rehabilitated to pre-Project conditions. No skidding of timber shall be permitted on any road or driveway.

r. Following cessation of the majority of tree, log, limb, top, chips, or wood product removal, areas of exposed bare ground shall be graded if needed, ripped, and seeded with a seed mix that matches existing grasses as determined as best suited for on the site and may also contain seeds selected to out compete noxious weeds. If necessary, upon request, for up to 12 months following completion of the entire project, weeds shall be controlled chemically or mechanically. If necessary, in the judgment and at the discretion of the Landowner, HOA Representative, or Teton County, these areas shall be seeded a second time with further weed control. The determination of a particular seed mixture will come from input from Teton County Conservation District specialists.

s. Wyoming State Forestry Best Management Practices shall be followed at all times.

t. Every reasonable effort shall be made to protect remaining trees.

u. Contractor shall be required to thoroughly power-wash all equipment and vehicles to be used on the Project before work is to commence to reduce the possible exposure of the community to outside noxious weeds entry.

v. Any Stop work order to the contractor shall come through the Teton County Representative. The Landowner may only request that contractor stop work in the event of a safety matter, and in the event that a Landowner stops work on his/her property; Teton County will be promptly notified.

Teton County reserves the right to reject any and all bids.

Fire Criteria

1. Contractor shall use caution when working in the forests, have spark arrestors on equipment, have fire suppression tools available, and take immediate action to extinguish any fires that occur in the vicinity.

2. Contractor shall have within a 3-minute round-trip of each saw: 1 round pointed #0 to #2long-handled shovel with serviceable handle and 1 6BC rated fire extinguisher.

3. Agency shall allow Contractor to continue to operate in a manner that does not constitute an unusual fire threat. If local and site specific conditions warrant, additional restrictions will be placed on the Contractor. The indicator for the required level of protection and or operations will be the National Fire Danger rating system as shown below:

Fire Danger Rating	*Operational Requirement*
Low through High	Normal operations and administration as specified in contract.
Very High	In addition to normal requirements the operator will be required to: Fuel chainsaws and equipment on an area that has been cleared of all vegetation for a radius of three feet beyond the reach of the equipment. (Landings and roads will meet this requirement) Have a minimum of a ten (10) pound BC rated fire extinguisher at the fueling site and any maintenance sites

	Have fire hand tools on site for each employee on site.
Extreme	In addition to the "Normal" and "Very High" requirements, the Contractor will be required to: Operate only between the hours of 5:00 PM and 10:00 AM. Remain in the area for one hour following the shutdown of harvesting and cutting to insure there is no smoke in the area and that no fires have ignited.

AGENCY RESPONSIBILITIES

1. The Agency shall provide the Contractor with access to the project area seven (7) days a week.

2. The agency shall provide a map of the project area with designated roads and landing areas.

3. Upon completion of a twenty (20) acre block, the agency will inspect it for compliance with the specifications of the contract.

4. Decisions of the Agency are final in the interpretation of the terms of this Contract.