AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Lease Agreement; Ray Trucking and Backhoe; W Mount

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Ramon Ray dba Ray Trucking and Backhoe and BOCC of Gunnison County

Term Begins: 11/1/16 **Term Ends:** 10/31/2017 **Grant Contract #:**

Summary:

Ramon Ray dba Ray Trucking and Backhoe to lease property from Gunnison County at the Gunnison Crested Butte Regional Airport for a single 12 month term. Renewal of one additional 12 month term may be approved.

Fiscal Impact: First term monthly rent for 2016-2017 to be $1,195.63; additional term, if renewed, will increase to $1,231.50

Submitted by: Stephanie Williams **Submitter's Email Address:** swilliams@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, represents a 3% increase over previous monthly rend amount, and an additional 3% increase if renewed for second year. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/5/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 11/7/2016 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/8/2016

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

Agenda Date: 11/15/2016

Revised April 2015

LEASE AGREEMENT

This Lease Agreement is made and entered into on this 21st day of September, 2016, by and between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, a political subdivision of the State of Colorado, hereinafter referred to as the "County", and Ramon Ray dba Ray Trucking and Backhoe hereinafter referred to as the "Lessee."

WHEREAS, the County, owns certain property, commonly known as the "W Mountain Ranch" adjacent to the Gunnison-Crested Butte Regional Airport located within and adjacent to the City of Gunnison, Gunnison County, and

WHEREAS, the Lessee desires to and is willing to operate a construction warehouse on a portion of the W Mountain Ranch, under the terms and conditions of this agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the County and the Lessee do hereby agree as follows:

1. TERM

The term of this lease agreement shall be 12 (twelve) months, commencing November 1st 2016 and ending on October 31st 2017 unless sooner terminated under the terms hereof. At the request of the lessee, a single 12 (twelve) month renewal of the lease may be approved at the sole discretion of the Gunnison County.

The lessee shall request in writing a renewal of the lease at least 60 days before the end of the original term.

2. GRANT OF LEASE

The County hereby grants to the Lessee the right to occupy and use, together with necessary rights of ingress and egress, those premises identified in Exhibit "A", the "Leased Premises" attached hereto and by reference incorporated herein. The premises are located on the W Mountain Ranch leasehold and consist of only the premises described in Exhibit "A" the Land Lease Area and Exhibit "B" the First Floor of the W Mountain Ranch Gray Shop Building.

3. USE OF LEASED PREMISES

The Lessee hereby agrees to use the subject premises for the purpose of storage and maintenance of construction equipment and materials, excluding, but not limited to, scrap metals

and vehicles, liquids, hazardous materials, used building materials, excavated soils and substances. Such use shall at all times be conducted in a manner consistent with the terms of this agreement, in accordance with applicable federal, state and local laws, rules and regulations and in accordance with any rule, manual or program adopted for the operation of the Gunnison-Crested Butte Regional Airport.

Neither the Lessee, its employees, guests, patrons nor invitees shall be allowed to bring or keep animals or pets on the leased premises.

Premises will be kept neat and tidy at all times.

Gunnison County makes no representations, no guarantees and assumes no obligation to provide or ensure any utilities.

4. COMPENSATION

For and in consideration of the rights granted herein, the Lessee agrees to pay monthly to the County the sum of $1,195.63 for each calendar month of the initial lease term, beginning November 1st 2016 and ending October 31st 2017.

If this lease is extended for a second term beginning November 1st 2017 and ending October 31st 2018, the Lessee agrees to pay the County a monthly sum of $1,231.50 for each month of the renewed term.

All compensation to be made pursuant to this Section 4 shall be delinquent if not received on the 30th day of each month for the then-current month. In addition to each such delinquent payment due, for each delinquent payment due, a late charge of two hundred dollars ($200.00) per month shall be assessed against Lessee and paid forthwith by Lessee for each calendar month or portion of a calendar month for which the payment remains delinquent; interest shall accrue against Lessee and shall be forthwith paid by Lessee at the rate of one percent (1%) per month on all delinquent balances.

Payments are due on the 30th day of each month for the then-current month and made payable to the "Gunnison County Treasurer". Payments should be mailed or delivered to:-

Gunnison County Finance Office
200 E. Virginia Avenue, Gunnison, CO, 81230.

5. OPERATIONS

The Lessee agrees to secure all necessary sales tax licenses, business permits and other approval except any land use change permit required by the City of Gunnison, Gunnison County and the State of Colorado. Such licenses shall be separate and apart from licenses and permits relating to any other retail location operated by the Lessee.

The Lessee may not place any sign or advertising whatsoever on or outside the leased premises.

The Lessee agrees to provide service on a fair, equal and non-discriminatory basis to all patrons and to charge fair, reasonable and non-discriminatory prices for service. The Lessee, its agents and employees, will not discriminate against any person or class of person by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public in any manner prohibited by Part 21 of the regulations of the office of the Secretary of Transportation.

The Lessee shall pay for utilities, including; electrical power, sewer and water. If additional or expanded utility services or lines are required by the Lessee's operations, the cost of such services and lines shall be paid by the Lessee.

6. MAINTENANCE, REPAIRS AND IMPROVEMENTS

During the term of this agreement, the Lessee shall provide its own janitorial services and shall at all times keep its leased premises in a neat and clean condition and in good repair (ordinary wear and tear, unavoidable accident and fire excepted).

The County and its authorized officers, employees, agents and other representatives shall have the right (at such times as may be reasonable under the circumstances) to enter upon the Lessee's leased premises to inspect the premises at reasonable business hours or in case of emergency, to perform necessary maintenance and repairs in order to preserve the structural safety of such premises or to correct dangerous conditions, or in the exercise of the County's police power. No such entry by or on behalf of the County upon such leased premises shall, in and of itself, cause or constitute a termination of letting thereof or be deemed to constitute an interference with the possession thereby by the Lessee.

The County reserves the right, at its sole cost and expense, to enlarge and improve the Airport facilities. The Lessee recognizes and accepts that during the term of this lease agreement such enlargement and improvements, together with some ordinary maintenance activities, may cause inconvenience for the Lessee. The Lessee agrees that no liability shall attach to the County or its agents or employees by reason of such inconvenience caused by such activities. Prior to taking any action, which would adversely affect the operations of the Lessee, the County agrees to consult with the Lessee; however, this shall not preclude the County from taking any action it deems necessary for the immediate protection of persons or property.

The Lessee shall not modify, alter, construct or reconstruct the leased premises and shall obtain prior written approval for the installation of any electrical wiring or other utilities except telephone. The method of installation of all utilities, including telephones, shall be approved by the County. Any changes in decor shall be in keeping with the general décor of the building and shall receive prior approval of the County's building & grounds supervisor.

All equipment and property placed by the Lessee at its expense in, on or about the leased premises, including all trade fixtures temporarily affixed to the leased premises but which may be removed without damage thereto, shall remain the property of the Lessee and the Lessee shall have the right at any time during the term hereof, when not in default hereunder, to remove all such equipment, property and trade fixtures. All property placed by the Lessee at its expense in, on or about the premises and affixed to the premises so that the same may not be removed without damage thereto, shall become the property of the County and shall not be removed by the Lessee at any time.

7. INDEMNIFICATIONS AND INSURANCE

The Lessee agrees to hold the County harmless, to release and indemnify the County from and against any and all claims, demands, damages and liabilities (including costs and expenses incurred in the defense thereof) for injury to persons or damage to property arising from the Lessee's operations or the activities of any officer, agent or employee of the Lessee. For the purposes of this paragraph, "operations" shall include, but not be limited to, those activities and services required or permitted under the terms of this agreement.

The Lessee need not release, save harmless or indemnify the County against damages or injuries caused solely by the negligence of the County, its agents, officers or employees.

The Lessee agrees to obtain and keep in force, throughout the term of this Lease Agreement, commercial general liability insurance, as follows:

a. For any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and

b. 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).

Lessee shall also maintain in effect personal property insurance for Lessee's personal property. Lessee shall include the County in said policy as an additional insured. Lessee shall provide to Lessor with copies of appropriate insurance policies, as described above, within ten (10) days after the execution of this Lease Agreement. The insurance coverage required pursuant to this paragraph shall remain enforce during the term of this Lease Agreement; no cancellation or reduction may be made without thirty (30) days written notice to Lessor. Lessee shall not allow the placement of any lien or other claim against the Property by reason of any improvements placed

upon the Property, and shall indemnify, hold harmless and defend Lessor against any claim upon the premises or whatsoever.

The Lessee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operation of said business on the leased premises and not permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon which will in any way impair the rights of the County under this agreement.

The existence of the insurance required hereunder shall not be deemed a waiver by the County of any defense or claim of sovereign immunity, nor a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

8. DAMAGE TO OR DESTRUCTION OF PREMISES

In the event that the premises leased hereunder, or any portion thereof, shall be destroyed or damaged by fire or otherwise to an extent which renders them untenable, the County may rebuild or repair such destroyed or damaged portions, and the obligation of the Lessee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they shall be untenable. In the event that the County shall elect not to proceed with the rebuilding or repair of the major portion of the premises (if so destroyed or damaged) within a period of 90 days after the destruction or damage, the Lessee may, it its option, cancel and terminate this lease. In the event that the County shall elect to rebuild, the Lessee must replace all personal property at its sole cost.

The County shall not be liable for any loss of property by theft or burglary from the Airport property or for any damage to persons or property on said Airport resulting from the electric lighting or water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof.

9. ASSIGNMENT

The Lessee covenants and agrees not to assign, sublet, pledge or transfer any of its rights granted in this agreement, in whole or in part, nor grant any license or concession hereunder, without first obtaining the written consent of the County, which consent may be withheld by the County for any reason whatsoever in the County's sole discretion. Any attempt by the Lessee to assign, sublet or in any way transfer its interest hereunder without such prior written consent shall, at the County's option, automatically terminate this agreement and the Lessee's rights hereunder.

10. DEFAULT

The Lessee shall be considered to be in default of this agreement upon or after any one of the following:

a. the Lessee fails to pay the compensation required hereunder when due; or

b. the Lessee fails to pay each and every late charge and interest payment within thirty (30) days of its being due; or

c. the Lessee files a voluntary bankruptcy petition or makes a general assignment for the benefit of creditors or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

d. the Lessee transfers its interest under this agreement without the approval of the County by reason of death, operation of law, assignment, sublease or otherwise, to any other person, firm or corporation; or

e. the Lessee voluntarily abandons, deserts or vacates the leased premises; or

f. any lien is filed against the leased premises because of any act or omission of the Lessee and shall not be discharged or contested by the Lessee in good faith by proper legal proceedings within 20 days after receipt of notice thereof by the Lessee; or

g. the Lessee fails to keep, perform and observe each and every other promise, covenant and agreement set forth in this lease agreement which failure continues for a period of more than 30 days after written notice from the County of such breach or default; or

h. the Lessee uses or gives its permission to any person to use any portion of the Airport, Terminal or leased premises for any illegal purpose.

i. The lessee occupies space other than that agreed to within this lease without prior Gunnison County approval.

If the Lessee defaults in any of the covenants, terms and conditions herein contained, the County may proceed in either of the following manners. The County may elect to allow this agreement to continue in full force and effect and to enforce all of the County's rights and remedies hereunder, including without limitation, the right to collect monthly lease payments as they become due together delinquent payments and interest as set forth herein. The County may, at its sole option, cancel and terminate this agreement upon 30 days' written notice to the Lessee and may repossess the premises without liability for so doing, in the event of any breach of the covenants contained herein, unless such default has been cured within such 30 days.

No waiver of default by either party any of the terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of

any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

11. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which such party is not responsible or which is not in its power to control.

12. AGREEMENT WITH THE UNITED STATES

This lease agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the County and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the County for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Gunnison-Crested Butte Regional Airport.

13. NOTICES

Notices to the County provided for herein shall be sufficient if sent by registered mail addressed to:

Gunnison-Crested Butte Regional Airport
519 Rio Grande Avenue
Gunnison, CO 81230

and notices to the Lessee, if sent by registered mail, addressed to:

Ramon Ray
Ray Trucking and Backhoe
901 Chekwa Trail
Gunnison, CO 81230

14. SEVERABILITY

In the event any covenant, condition or provision contained in this lease agreement is held by any court of competent jurisdiction to be invalid, the in validity of such covenant, condition or provision

shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such covenant, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this agreement, then at the option of such party, this agreement may be declared to be terminated.

15. GOVERNING LAW - BINDING AGREEMENT

This lease agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

16. ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by all the parties within the same formality as this agreement.

17. VENUE

Venue for any and all legal actions regarding this Lease Agreement shall lie in the District Court in and for the County of Gunnison and State of Colorado.

18. GROSS REVENUES

In order to facilitate County compliance with federal requirements, the Lessee shall submit to the County by October 30 of each year a written report of gross revenues generated by the Lessee at the Gunnison Crested Butte Regional Airport during the proceeding twelve (12) months. The County shall have the right at its own expense to audit the Lessee's book and records and any portions thereof.

19. LAND USE CHANGE

Not withstanding anything to the contrary herein, the parties acknowledge that the county shall be responsible to apply for and process any land use change request by the tenant and at the discretion of the county, as may be necessary with respect to the tenant's use of the Leased Premises.

In witness whereof, the parties hereto have set their hands and seals on the day and year first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

By _____
Chairman

Attest:

_____

RAMON RAY dba
RAY TRUCKING AND BACKHOE

By Ramon R
Owner