AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Business Lease; RV Commercial Rentals, LLC; 725 South 10th Street, Unit B, Gunnison, CO 81230; 10/1/13 thru 9/30/14; $7,929

Action Requested: County Manager Signature

Parties to the Agreement: Nesbitt & Company (RV Commercial Rentals) and Gunnison County

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Gunnison County has been leasing the space across from the Recycing Center for the past year. It serves as an office, storage space and a place to park the Bobcat loader. The attached document is an extension of the lease for another year.

Fiscal Impact: $7,929

Submitted by: Marlene Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

This rental has been budgeted and represents an increase of 2% or $120 per year increase from the prior lease agreement expiring September 30, 2013.

Reviewed by: Discharge Date: 9/10/2013

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

Comments:

Reviewed by: Discharge Date: 9/10/2013

Certificate of Insurance Required
Yes (●) No ( )

County Manager Review:

Comments:
Please ensure that the address is changeds per the attorney's comments above.

Reviewed by: Discharge Date: 9/10/2013

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

Agenda Date: 9/17/2013 Follow Up Agenda Date: n/a

Revised April 2013

BUSINESS LEASE

THIS LEASE, made and entered into this 28th day of September, 2013, at Gunnison, Gunnison County, Colorado, between:

RV COMMERCIAL RENTALS, LLC, whose address is 1708 California Street NE, Albuquerque, New Mexico 87110 ("LESSOR"), by its appointed agent, Nesbitt & Company, LLC; and

GUNNISON COUNTY, Colorado, 811 Rio Grande, Gunnison, CO 81230, ("LESSEE").

FOR AND IN CONSIDERATION of payment of rent and the timely keeping and performance of the covenants and agreements by the said LESSEE, the LESSOR does grant, demise, and lease unto the LESSEE, and the LESSEE does lease from the LESSOR the following described real property, together with the improvements situate thereon, in the County of Gunnison and State of Colorado, to-wit:

725 South 10th Street, Unit B, Gunnison CO 81230

TO HAVE AND TO HOLD the same with all the appurtenances unto the said LESSEE from the 1st day of October, 2012, until the 30th day of September, 2013, at and for a rental for the full term aforesaid of Seven Thousand, Nine Hundred Twenty Dollars and no/100 ($7,920.00), payable in monthly installments of $660.00, in advance, on or before the first day of each calendar month during said term at Nesbitt & Company LLC, 104 East Tomichi Avenue, Gunnison, Colorado 81230, or at such other location as shall be specified in writing, without prior notice.

ARTICLE 1

THE LESSEE HEREBY COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1.1. Rental Payments. To pay, without prior notice, the monthly rental payments as hereinabove set forth; and further, to pay a late charge equal to ten (10) percent of any rental installment not paid with in 10 days of the due date thereof.

1.2. Deposits. To pay, upon the execution of this lease, rent for the first month of the primary term hereunder, together with a security deposit of $650.00, which security deposit, less any expenses required to restore the premises to the same condition as at the inception hereof, reasonable wear and tear excepted, shall be returned to LESSEE within thirty days after the expiration of this lease. The security deposit shall be held by the LESSOR'S agent, Nesbitt & Company, LLC, which shall not be permitted to co-mingle said deposit with other security deposits in an interest-bearing escrow account. All of the interest accrued on such account will become the property of Nesbitt & Company, LLC.

1.3. Utilities. To pay all prorata charges for utilities, including, without limitation, heating, electricity, and trash removal.

1.4. Taxes. To pay all personal property taxes due on the personal property situate on the premises and to pay any sales taxes as may be required by the laws of the State of Colorado, the County of Gunnison, and/or the City of Gunnison.

1-5. Insurance. The LESSEE will indemnify and save harmless the LESSOR from and against any and all claims, suits, actions, damages, and/or causes of action arising during the terms of this Lease from any personal injury, loss of life and/or damage to property sustained in and about the leased premises; and from and against any orders, judgments, and/or decrees which may be entered thereon resulting from such occupancy; and from and against all costs, attorney's fees, expenses, and liabilities incurred in and about the defense of any such claim and the investigation thereof, unless caused by the negligence of intentional actions or inactions of the LESSOR or its agents. In conjunction herewith, the LESSEE agrees to maintain at his own cost of specific types of policies of insurance hereinafter set forth; although the maintenance of said policies of insurance shall not alone be deemed to release the LESSEE of his liabilities and obligations set forth herein. The LESSEE hereby agrees to maintain at his own cost "Owners, Landlord, and Tenants Liability Insurance" in minimum amounts of $100,000 per person and $300,000 per accident limits. The LESSOR hereunder shall be named and an insured in each of said policies, and a copy of said policies shall be submitted to LESSOR prior to the commencement of the term of this lease. Said policies are to be maintained with a company or companies to be approved by the LESSOR. All of the aforementioned policies of insurance must specifically provide therein that the said policies cannot be cancelled without prior written notification by the insurer unto the LESSOR. If any insurer shall give such notice of cancellation until the LESSOR, then the LESSEE covenants that he will, within 24 hours after the LESSOR shall have notified the LESSEE of the receipt by the LESSOR or said notice of cancellation, obtain new insurance coverage to take the place of the policy to which the notice of cancellation shall have been given.

1-6. Use of Premises. To occupy and use the leased premises solely as an office and records/equipment storage and not to occupy or use the said premises, or permit the same to be occupied or used, for any purposes deemed extra-hazardous on account of fire, without the prior written permission of the LESSOR, or in any manner which would tend to disturb or annoy any person occupying adjacent premises.

1-7. Remodeling. To make no remodeling change or alteration, nor paint or change the decoration of the premises in any respect without the prior written consent of the LESSOR, which consent shall not be unreasonably withheld, and further, at his own cost, to do all remodeling necessary for the business operation to be conducted on the leased premises. All permanent additions and fixtures shall become the property of the LESSOR. It is further understood and agreed between the parties hereto that any charge against the LESSEE by the LESSOR for service or for work done on the premises by order of the LESSEE or otherwise accruing under this contract shall be considered as rent due and shall be included in any lien for rent due and unpaid.

1-8. Maintenance. To make all day-to-day repairs to the leased premises as may be necessary to keep the same in as good as condition as when received, normal wear and tear excepted.

1-9. Liens. To keep the leased premises free and clear of all liens of any kind.

1-10. Inspection of Premises. To allow LESSOR or its authorized representatives to enter upon the leased premises at any reasonable hour to inspect the said premises, and within sixty days of the expiration of this

lease, to place a "For Rent" sign on the premises.

1-11. Property Loss and Damage. LESSOR shall not be liable in any way or to any extent for or on account of any damage, injury, or theft or any property at any time in the demised premises or belonging to the LESSEE or otherwise, unless caused by the negligence or intentional actions or inactions of the LESSOR or his agents.

1-12. Assignment. To not assign, sell or encumber this lease, nor sublet the premises, in whole or in part, directly or indirectly, without the prior written consent of the LESSOR, which consent shall not be unreasonably withheld. No consent to any assignment, encumbrance or subletting of this lease shall constitute a waiver or discharge or the provisions of this paragraph, except as to the specific instance covered thereby. Neither this lease nor any interest herein shall be assignable or transferrable by operation of law, and in the event of any proceeding under the Bankruptcy Act, involving LESSEE, or in the event LESSEE should be adjudged insolvent or make an assignment for the benefit of creditors, or if a writ of attachment or execution be levied on the leasehold estate created by hereby, or if a receiver be appointed in any proceeding or action to which LESSEE is a party, with authority to take possession or control of the leased premises or the business conducted therein by LESSEE, this lease, at the option of the LESSOR, shall terminate immediately and shall not be treated as an asset of the LESSEE after the exercise of said option by the LESSOR. LESSOR shall have the right, after the exercise of said option, forthwith to re-enter and to re-possess the premises.

1-13. Surrender of Premises. To quit and surrender the leased premises upon the expiration of the term of this lease, or any extension hereof, in as good a state and condition as when received, reasonable wear and tear excepted.

ARTICLE 2

THE LESSOR HEREBY COVENANTS AND AGREES WITH THE LESSEE AS FOLLOWS:

2-1. Ownership of Premises. That LESSOR is the sole owner, in fee simple, of the leased premises, and has the full right and power to lease the same for the term aforesaid.

2-2. Taxes. To pay all real property taxes and special assessments levied on the premises.

2-3. Insurance. To maintain in force fire and extended coverage only on the structure of the premises in an amount equal to the fair market value thereof, together with public liability insurance covering the exterior and public access portions of the structure of the premises.

ARTICLE 3

THE LESSOR AND THE LESSEE HEREBY MUTUALLY COVENANT AND AGREE AS FOLLOWS:

3-1. Default.

A. The following shall constitute default by LESSEE under this lease:

(1) LESSEE'S failure to pay any installment of rent, other charge or money obligation hereunder if such failure continues for a period of ten (10) days.

(2) LESSEE'S failure to comply with any term, provision, or covenant of this lease which continues for a period of ten (10) days after written notice thereof to LESSEE.

(3) LESSEE'S insolvency or LESSEE'S transfer in fraud of creditors, or LESSEE'S assignment for the benefit of creditors.

(4) LESSEE'S filing of a petition under the Bankruptcy Acts.

(5) The appointment of a receiver or trustee for the premises or for all or substantially all of the assets of the LESSEE.

(6) LESSEE'S abandonment or vacation of any substantial portion of leased premises.

(7)The filing or creation of a lien on the leased premises as a result of LESSEE'S action or inaction.

B. In the event of any default by either party under this lease, the innocent party shall have the right to cancel this lease in the following manner.

(1) The non-defaulting party shall give to the defaulting party written notice of such default.

(2) The defaulting party shall have ten (10) days from the date of such notice to correct said default, and if said default remains uncured for ten (10) days after the date of said notice, this lease shall be fully terminated.

(3) In the event of such default by LESSEE, the LESSOR, in addition to other rights and remedies it may have, shall have the immediate right to re-enter upon the leased premises and may remove all persons and property from said premises and no such re-entry shall be considered or construed to be forcible entry upon such property.

3-2. Right to Retake Possession. In the event that the leased premises are left vacant or if there should be a default in the rental payment as herein set forth, the LESSOR may, without terminating this lease, retake possession of the premises and rent the same for such rental payments and upon such conditions as the LESSOR may deem best, making such repairs and alterations to the premises as may be required, giving credit for the amount of rental payments so received, less all expenses incurred, to the LESSEE, and the LESSEE shall be liable for the balance of the rental payments herein specified until the expiration of the term of this lease.

3-3. LESSEE'S Property. All trade or business property and equipment which may be placed in or upon the leased premises by the LESSEE are to remain LESSEE'S sole and separate property, and the LESSEE shall have the right to remove the same upon termination of this lease, or any extension hereof. Said right of removal shall be subject to the following express conditions;

A. LESSEE shall not then be in default in the performance of any of the terms and conditions of this lease.

B. That such property shall not be removed prior to the expiration of the term of this lease or any extension thereof, unless the prior written approval of the LESSOR has been obtained, which approval shall not be withheld without good and sufficient cause.

C. That no personal property shall be removed which shall have become permanently affixed to the real property and/or which cannot be removed without causing damage or injury to the building of any kind.

3-4. Destruction of Premises. In the event the premises shall be destroyed or so damaged by or injured by fire or other casualty during the life of this agreement, whereby the same shall be rendered untenantable, then the LESSOR shall have the right to render said premises tenantable by repairs within ninety (90) days therefrom. Rental shall abate during the said period of untenantability of the demised premises. If said premises are not rendered tenantable within said time, it shall be optional with either party hereto to cancel this Lease, and in the event of such cancellation, the rental shall be paid only to the date of such fire or casualty. The cancellation herein mentioned shall be evidenced in writing. In the event damage to the premises is caused by an act of the LESSEE, or of his employees or patrons, then and in that event, there shall be no abatement of rent hereunder.

3-5. Rights are Cumulative. All rights and remedies hereby created for the benefit of the LESSOR are cumulative and the exercise of any one remedy shall not be taken to exclude or waive the right of the LESSOR to make use of any other remedy.

3-6. Termination in Event of Sale. LESSOR may, in the future, attempt to sell the premises covered by this lease. In the event of such a sale during the term of this lease, LESSOR may terminate this lease upon 60 days written notice to LESSEE.

3-7. Knowledge of Contents. The parties to this lease by the execution hereof acknowledge that they have read the same and every section hereof, and have expressed an explicit knowledge and understanding of all matters, things, conditions, stipulations, promises, covenants and agreements herein set forth.

3-8. Notices. Notice when required hereunder shall be deemed given when deposited in the United States registered or certified mails, return receipt requested, or when hand delivered to the following addresses:

A. As to LESSOR: Nesbitt & Company, LLC, P.O. Box 1450, Gunnison, CO 81230.

B. As to LESSEE: 811 Rio Grande Ave., Gunnison, CO 81230.

3-9. Applicable Law. This lease is entered into at Gunnison, Gunnison County, Colorado, and it is agreed that the property jurisdiction and venue of any action pertaining to the interpretation or enforcement of this lease shall be in the District Court of Gunnison County, Colorado. If this lease, any of the rules and regulations or application, or any other instruments by way of reference incorporated herein shall contain any term or provisions which shall be invalid or unenforceable, the remainder of the lease, the application, the rules or regulations, and other instruments, as the case

may be, shall not be affected thereby, and each and every term and provision otherwise value shall remain valid and be enforced to the fullest extent permitted by law.

3-10. Attorney's Fees. It is agreed that if any action is brought in a court of law by either party to this lease as to the enforcement, interpretation, or construction of this lease or any document provided herein, the prevailing party in such action shall be entitled to reasonable attorney's fees, as well as all costs incurred in the prosecution or defense of such action. In the event that LESSOR retains an attorney to collect rent or enforce any other provision hereof, and suit is not brought, LESSEE agrees to pay all reasonable attorney's fees in connection therewith upon presentation of a statement therefor.

3-11. Binding Agreement. It is understood and agreed that this lease shall be binding upon the heirs, executors, administrators, and assigns of the parties hereto.

3-12. Additional Provisions.

A. Landlord/Agent will provide interior paint for painting of offices. Lessee will provide labor and miscellaneous supplies for painting the office. Lessor shall have the carpets professionally cleaned before occupancy. All work to be completed in a neat, workmanlike, and professional manner.

B. Lessee to professionally clean carpets at termination of lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

RV COMMERCIAL RENTALS, LLC, by
Nesbitt & Company, LLC

BY: _____
LESSOR - Wm J Nesbitt, II

BY: _____
LESSEE - Matthew Birnie
County Manager