AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Agricultural Lease; Joe Schultheis; Parcel No. 2, Township 49 North, Range 1 West, NMPM; 1/1/14 thru 6/30/19

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Joe Schultheis/Gunnison County

Term Begins: 6/1/2014 **Term Ends:** 5/31/2019 **Grant Contract #:**

Summary:
Approval of ranch lease agreement with Joe Schultheis

Fiscal Impact: Generates 1000-2000 per year

Submitted by: Sarah Ross **Submitter's Email Address:** rlamport@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\bcowan Discharge Date: 7/25/2014

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

Comments:

ok db 7/28/14

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 7/23/2014 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:
Admin. Staff please confirm that the lease period reflects the comments from Finance.

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 7/25/2014

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

Agenda Date: 8/5/2014 Follow Up Agenda Date:

Revised April 2013

AGRICULTURAL LEASE

THIS AGRICULTURAL LEASE (herein "Lease") is entered into this ____ day of _____, 2014 by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO whose address is 200 East Virginia Avenue, Gunnison, Colorado 81230 (herein "Landlord") and JOE SCHULTHEIS whose address is 38105 Hwy 50, Gunnison, CO 81230 (herein "Tenant").

1. PROPERTY. The real property and water rights that are the subject of this Lease is only that real property and water rights historically used on the real property as described in Appendix "A" attached hereto and incorporated herein by reference that is south of the "UMPTRA haul road EXCEPT for the 5.5 acres reserved for the observatory site in the southwest corner (herein "Property").

2. LEASE. Pursuant to the terms and conditions below, Landlord agrees to lease the Property to Tenant, and Tenant agrees to lease the Property from Landlord.

3. TERM.

3.1 The "Lease Term" shall be from January 1, 2014 until June 30th, 2019, with an option to renew the lease by December 31st 2018, at renegotiated rates and charges, for an additional five (5) years ending June 30th 2024. That option may be denied in the sound discretion of Landlord based on performance, including but not limited to best management practices and good faith effort of land use, improvements to the property including fences, ditches, structures. At the end of each five (5) year term all rates and charges will be readdressed, unless sooner terminated, or unless extended, as set forth herein.

3.2 On the last day of the Lease Term, Tenant shall quit and surrender the Property to Landlord and remove all of Tenants' personal property from the Property. There shall be no holding over after the expiration of the Lease Term. If Tenant, after the expiration of the Lease Term, fails to quit and surrender the Property to Landlord and remove all of Tenant's personal property from the Property, Tenant shall be subject to eviction and shall be additionally liable to Landlord for payment of five hundred dollars ($500.00) per day from the date of the expiration of the Lease Term.

4. RENT.

4.1 Rent shall be the production based rental value which the parties agree is $25 per ton of hay produced;

$10 per AUM (Animal Units per Month) during summer dates of May 15th to August 31st; $5 per AUM during the fall dates of September 1st to November 31st. There will be no AUM equivalent assessed during winter dates of December 1st to May 14th with total payment due December 31st.

4.2 Rent not paid within 15 days of the due date shall bear interest at the statutory rate from the due date until paid.

4.3 In addition, Tenant shall pay the sum of metered utilities every month for the well; and shall pay all other utilities caused by their agricultural uses.

5. USES PERMITTED.

5.1 Tenant may use the Property for agricultural operations in accordance with the historical and traditional usage of the Property.

5.2 Tenant shall have the right to use the other agricultural structures on the Property as part of Tenant's agricultural use of the Property.

6. ACCESS. Tenant's primary access to the Property shall be from Gold Basin Road. Landlord shall have the right to install a gate on the road leading from Gold Basin Road to the Property and keep such gate locked at Landlord's discretion with a key given to Tenant.

7. QUIET ENJOYMENT.

7.1 At all times during the Lease Term, Tenant may peaceably and quietly hold and enjoy the Property free from disturbance from any person claiming by, through or under Landlord, subject to matters of record.

7.2 Notwithstanding the provisions of paragraph 7.1, during the Lease Term, Tenant's right to use the Property shall be subject to:

7.2.1 Landlord's right to fence the perimeter of the Gunnison-Crested Butte Regional Airport (the "Airport"), and/or to use other portions of the Property to address safety issues, construction needs, or other concerns affecting Airport and/or County operations;

7.2.2 Landlord's right to conduct ordinary Airport operations at the Airport;

7.2.3 The right of Landlord and/or third persons owning interests in ditches diverting on the Property for reasonable access to use, maintain and/or replace such ditches and headgates;

7.2.4 Landlords right to enter the Property at reasonable times to conduct

inspections, studies, surveys, or other tests, to collect water, soil, air or other samples, to conduct weed control operations, for emergencies, to control wildlife, to do repairs repairs, or to undertake other similar operations on the Property, provided that Landlord shall give Tenant reasonable prior notice of such operations, and shall conduct such operations to interfere as little as is reasonably possible with the Tenant's permitted use of the Property;

7.2.5 Such other easements and conveyances either in existence or that may be created and granted by Landlord.

7.2.6 Landlord's right to subject the Property or any portion of it to reasonable restrictions or uses regarding Gunnison Sage-grouse including but not limited to CCAA/CCI.

7.2.7 Landlord's right to contract, maintain or conduct improvements to the bed and banks of Tomichi Creek.

7.3 Notwithstanding the provisions of paragraph 7.1, in addition to the uses set forth in paragraph 7.2, Tenant's right to use the Property shall be subject to other uses of the Property by Landlord, and, upon ninety (90) days prior notice to Tenant, withdrawals of land and/or water from the Property by Landlord, and/or such other easements or conveyances as may be granted by Landlord provided such usage, easements or conveyances do not eliminate a reasonable economic return from the Property.

8. LANDLORD'S RESPONSIBILITY.

8.1 Landlord shall reasonably maintain and repair any damage or destruction of the Property solely caused by any acts or omissions of Landlord, or those persons claiming by, through or under Landlord in accordance with paragraph 8 above.

8.2 Except as set forth above, Landlord may, but shall have no obligation to make any improvements, alterations or repairs of any kind on or about the Property, any roadways, or passages upon, adjoining or appurtenant to the Property, or to any buildings, improvements, equipment or personal property in, upon or serving the Property.

8.3 Any capital improvement, approved in advance in writing by Gunnison County, during the initial lease term, shall be at Gunnison County's expense.

8.4 Any weed control required by Gunnison County shall be performed at Gunnison County's expense.

9. TENANT'S RESPONSIBILITIES.

Tenant shall:

9.1 Reasonably maintain and keep the Property, including all buildings, ditches, headgates, fences EXCEPT the Airport wildlife fence and the Airport perimeter fence and diversion structures, in good repair, ordinary wear and tear excepted.

9.2 Tenant must obtain Landlord's prior written consent to construct any new fence; Landlord can withhold its consent in Landlord's sole reasonable discretion. Costs for materials and labor shall be negotiated by Landlord and Tenant.

9.3 Tenant shall share the costs, equally with the Airport for secure fencing of pastures adjacent to the Airport Operating Area and along the perimeter road.

9.4 Tenant shall coordinate and must obtain consent of the Airport Manager or the Airport Manager's designee s prior to movement of any livestock along the Airport perimeter road and inside the Airport Operating Area; the Airport Manager may withhold such consent in Airport Manager's sole reasonable discretion.

9.5 Conduct grazing, irrigation and other agricultural operations on the Property in accordance with good management practices.

9.6 Annually, by December 31st, provide Landlord with agricultural production records including: any pesticide, herbicide, or fertilizer application location and amounts, hay production, and cattle inventories.

9.7 Use its best efforts to control undesirable plants on the Property;

9.8 Maintain and repair any damage to any fence, building or other improvements constructed on the Property caused by any acts or omissions of the Tenant, its agents, customers, employees, invitees, or livestock;

9.9 Keep the Property free from all liens that might attach to the Property on account of labor performed upon or for material furnished to the Property;

9.10 Obtain, place and install within the Property all furnishings, fixtures, equipment, appliances, and personal property necessary or desirable for its occupancy of the Property and the use thereof;

9.11 Timely pay all charges, statements or assessments for gas, heat, electricity, refuse, or telephone services used by Tenant or supplied to the Property;

9.12 Prepare all meadows prior to irrigation, including but not limited to dragging and ditch work;

9.13 Perform all irrigation in accordance with the historical and traditional usage of the Property;

9.14 Put up hay; ensure that all hay production is completed each year by October 30th, unless other arrangements are approved in advance in writing by Gunnison County;

9.15 Comply with all applicable laws, ordinances, regulations or orders;

9.16 Tenant must obtain Landlord's prior written consent to construct any new buildings or structures, and make improvements or install furnishings, fixtures, or equipment for historic use of property; this will be done at the Tenant's own expense;

9.17 Tenant must obtain Landlord's prior written consent to construct any new buildings or structures, make improvements or install furnishings, fixtures, or equipment for historic use of property; this will be done at the Tenant's own expense;

9.18 At no time shall the Tenant interfere or restrict, in any fashion whatsoever, the Landlord's conduct of Airport operations including but not limited to: Tenant shall not construct, occupy or maintain buildings, improvements, hay stacks or irrigation that interfere or restrict, in any fashion whatsoever, the Landlord's conduct of Airport operations.

10. <u>TENANT'S NEGATIVE COVENANTS</u>.

Tenant shall not:

10.1 Store, place or permit on the Property any hazardous wastes, hazardous substance, toxic chemicals, pollutants, or contaminants as those terms are defined pursuant to any applicable law, ordinance, regulation or administrative or judicial orders;

10.2 Store, place or permit on the Property any herbicides or pesticides except in strict compliance with all applicable laws, ordinances, regulations or administrative or judicial orders;

10.3 Without Landlord's prior written consent, construct or install in or on the Property any buildings, improvements, equipment, or other personal property;

10.4 Without Landlord's prior written consent, cut or construct any new roads on the Property provided, however, that Tenant may, upon Landlord's reasonable approval, cut or construct such roads as may be reasonably necessary to access any diversion structures, headgates, weirs, or ditches on the Property which access was previously provided any portion of County Road 49 that may have been closed by the Landlord;

10.5 Commit or permit the commission of waste upon the Property;

10.6 Use or permit the use of the Property or any buildings, improvements, equipment, or personal property situated on the Property in any manner which shall cause or permit any nuisance.

11. <u>NO REPRESENTATIONS BY LANDLORD</u>. Tenant accepts the Property AS IS, and in its existing condition and state of repair. Tenant acknowledges that Landlord has made no representations, statements, or warranties, express or implied, with respect to the condition of the Property, and Landlord shall not be liable for any defect on the Property, latent or otherwise.

12. <u>LIABILITY INSURANCE</u>. Tenant shall obtain and maintain a policy of comprehensive public liability insurance, including property damage, covering the Property and all use and occupancy thereof by Tenant in an amount of not less than $1,000,000 for any injury to one person in any single occurrence, and $2,000,000 for any single occurrence, except that, in such instance, no person may recover in excess of $1,000,000, and not less than $50,000.00 property damage limits with a reputable insurance company or companies licensed to do business in the State of Colorado. Such insurance policy or policies shall be endorsed to name Landlord as an additional insured and to state that the insuring company or companies will give not less than 10 days prior written notice to the Landlord and Tenant of any cancellation or reduction of insurance under such policy or policies of insurance, together with all endorsements pertaining thereto. A copy of such policy of insurance, together with all endorsements pertaining thereto, shall be furnished to Landlord on or before the commencement date of this Lease, together with any additional policies, endorsements or renewals as may be required during the term of this Lease.

13. <u>NOTICE.</u> Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing, unless otherwise noted in this Lease, and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class U.S. Mail, postage prepaid, addressed as follows:

13.1 Landlord:

Board of County Commissioners of the County
of Gunnison, Colorado
200 E. Virginia
Gunnison, CO 81230

13.2 Tenant:

Joe D. Schultheis
38105 Hwy 50
Gunnison, CO 81230.

13.3 Airport Manager:

Rick Lamport
519 Rio Grande Avenue
Gunnison, CO 81230

14. DEFAULT: If default shall occur in Tenant's due performance or observance of any covenant, condition or provision of this Lease and if Tenant shall not have taken and diligently pursued steps to remedy the same within 30 days after its receipt of Landlord's written notice specifying the default, then Landlord may (i) enforce any covenant herein by injunction, or specific performance; or (ii) sue for damages on account of such default; or (iii) enter and/or sublease the Property, perform and/or have performed the Tenants responsibilities as identified herein, have the financial benefit of the sale of the hay, and obtain from Tenant all costs and expenses incurred in the performance of the Tenant's responsibilities; or (iv) terminate the Lease, in which case Tenant shall pay to Landlord any rents then owing under this Lease, and any prepaid rents (pro rated for the length of occupancy) shall be remitted to Tenant, and Tenant's equipment or other personal property located on the Property shall be returned to Tenant at Tenant's cost. The remedies provided in this Lease are cumulative.

15. INDEMNIFICATION. Tenant shall defend, indemnify and hold harmless Landlord from any loss, liability, damage, claim or expenses (including, without limitation, attorneys' fees and costs of litigation) resulting from or in any way arising out of Tenant's operations, use or occupancy of the Property or the buildings, improvements, equipment, or personal property at any time situated thereon or the breach of any covenant or condition of this Lease.

16. ATTORNEYS' FEES. If either Landlord or Tenant brings any action against the other to enforce any provision of this Lease, the successful party shall be entitled to all costs and expenses of such action, including, without limitation, reasonable attorney's fees.

17. ENTIRE AGREEMENT. This document reflects the entire agreement between the parties relating to the lease of the Property by Landlord to Tenant, and there are no other agreements or understandings regarding such lease except as contained or specifically referred to in this document. No provision of this Lease can be amended, modified or added to except by written instrument signed by each of the parties.

18. RELATIONSHIP OF LANDLORD AND TENANT. No provision of this Lease nor any acts of the parties under this Lease shall be deemed or construed as creating any agency, partnership, joint venture, trust, fiduciary or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

19. NO IMPLIED WAIVER. No failure by Landlord to insist upon the strict performance of any term, covenant or condition of this Lease, no failure by Landlord to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any default under this Lease, shall constitute a waiver of any term, covenant or condition, right or remedy or default under this Lease.

20. ASSIGNMENT. Tenant may not assign this Lease or sublet any portion of the Property without the prior consent of the Landlord, which consent may be exercised in Landlord's sole discretion, provided, however so long as Tenant is otherwise in possession of the Property, Landlord shall give its reasonable consent to any proposal by Tenant to rent the pasture to others for summer or fall grazing purposes.

ACCORDINGLY, the parties have executed this Agreement as of the day and year first above written.

LANDLORD:

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy County Clerk

TENANT

By: _____
Joe Schultheis

Appendix "A"
to
Agricultural Lease
between
The Board of County Commissioners of the County of Gunnison, Colorado
and
Joe Schultheis

LEGAL DESCRIPTION

LAND

PARCEL NO. 2

Township 49 North, Range 1 West, N.M.P.M.

Section 14: SE1/4NE1/4, W1/2NE1/4, NE1/4SE1/4

WATER RIGHTS

All water and water rights, ditches and ditch rights, and well and well rights connected with or used in connection with the Property described above and irrigation purposes, including, without limitation the following:

An undivided 2/3 interest in the Pioneer Ditch, being Ditch No. 5, decreed for 400 statutory inches (approximately 10.4 c.f.s.) of water in Priority No. 5 and 46.9 c.f.s. of water in Priority No. 206,

In old Water District No. 28, Water Division 4, Gunnison County, Colorado

SCHUL-3 OP ID: CO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/11/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
GIA Group/Glenwood Ins. Agency
P O Box 1270
Glenwood Springs, CO 81602-1270
Nanette R. Avery

CONTACT NAME: Colleen Hause
PHONE (A/C, No, Ext): 970-384-8315 FAX (A/C, No): 970-945-6027
E-MAIL ADDRESS: colleenh@glenwoodins.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Liberty Mutual Insurance	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Joe Schultheis
38105 Highway 50
Gunnison, CO 81230

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	COMMERCIAL GENERAL LIABILITY	X					DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
	CLAIMS-MADE / OCCUR						MED EXP (Any one person)	$ 5,000
A	X Agri Liability			FM6583969	09/17/2013	09/17/2014	PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 1,000,000
	POLICY / PRO-JECT / LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (PER ACCIDENT)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Agri. Application Agri. Applicatio							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is listed as Additional Insured. 160 Acres, Leased Land, Gunnison County, Gunnison, CO 81230

to: rlamport@gunnisoncounty.org

CERTIFICATE HOLDER

Gunnison-Crested Butte
Regional Airport
Attn: Rick Lamport
519 Rio Grande
Gunnison, CO 81230

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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