AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Agricultural Lease; Todd Shallbetter; Parcel No. 1, 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: Todd Shallbetter/Gunnison County

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

Summary:
Approval of lease agreement with Todd Shallbetter for ranch lease.

Fiscal Impact: generates 15,000-20,000 per year

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

Finance Review: (●) Required ( ) Not Required

Comments:

This lease resulted in $15,248.45 in Airport revenue during 2013.

Reviewed by: GUNCOUNTY1\bcowan Discharge Date: 7/30/2014

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:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 7/31/2014

(●) 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 TODD SHALLBETTER whose address is 49221 Highway 50, Gunnison, Colorado 81230 (herein "Tenant").

1. PROPERTY. The real property and water rights that are the subject of this Lease are located north of the "UMPTRA Haul Road" and are specifically described and identified in Appendix "A" attached hereto and incorporated herein by reference to this Lease .The water rights allowed are only those water rights historically used on that real property and use of the Agricultural Buildings and the Apartment above the (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 to Landlord the sum of metered utilities for the Apartment, and Agricultural Buildings.

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 residential use of the Apartment ; such uses shall be limited to Tenants and their employees employed directly for work on the Property. Tenant shall not charge any rent or fee for such uses.

5.3 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, 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. TENANT'S NEGATIVE COVENANTS.

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. NO REPRESENTATIONS BY LANDLORD. 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. LIABILITY INSURANCE. 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. NOTICE. 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:

Todd Shallbetter
49221 Highway 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:

_____
Todd Shallbetter

Appendix "A"
to
Agricultural Lease
between
Board of County Commissioners of the County of Gunnison, Colorado Gunnison County Board of Commissioners
and
Todd Shallbetter

LEGAL DESCRIPTION OF PROPERTY

LAND

PARCEL NO. 1

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

Section 1: S1/2SW1/4, W1/2NW1/4SW1/4

Section 2: The South 50 acres of the E1/2SE1/4, (formerly being Blocks 13 to 28, inclusive, of Kelly's Addition to the Town of Gunnison, said tract now being vacated)

Section 11: NE1/4, N1/2SE1/4, SW1/4SE1/4, and the following parcel in the SE1/4SE1/4, more particularly described as follows: Beginning at the Northwest corner of the SE1/4SE1/4, thence South on said section line 985 feet, thence North 38•30' East 320 feet, thence North 16•50' East 770 feet, thence West 425.8 feet to the place of beginning,

Section 12: W1/2

EXCEPTING THEREFROM all that property in Decree Quieting Title to the Board of County Commissioners of Gunnison County, Colorado recorded July 3, 1948 in Book 278 at page 225,

AND FURTHER EXCEPTING THEREFROM TRACT II in Quit Claim Deed to the County of Gunnison, a Municipal corporation of the State of Colorado recorded December 18, 1946 in Book 268 at page 317.

PARCEL NO. 3

Tract No. 1 which is a certain triangular tract of land lying South of the East-West runway and East of the North-South runway containing 1.105 acres, more or less, and more particularly described as follows: A tract of land lying in the NE1/4SE1/4, Section 2, Township 49 North, Range 1 West, N.M.P.M., containing 1.105 acres, more or less, and more particularly described as follows: Beginning at a point whence the East quarter corner of said Section 2 bears North 1•21 East 969.9 feet, and running thence North 88•39' West 567.4 feet, thence North 74•42' East 592.2 feet, thence South 1•21' West 169.7 feet, more or less, to the point of beginning; and

Tract No. 2: A certain tract of land lying in the W1/2SE1/4, Section 2, Township 49 North, Range 1 West, N.M.P.M., more particularly described as follows: Beginning at a point from which the Southeast corner of Section 2, Township 49 North Range 1 West, N.M.P.M. bears south 89•27' East 2,000 feet, thence South 89•27' East 690 feet, thence North 1•00' East 1,500 feet; thence South 74•42' West 717.27 feet, thence South 1•00' West 1,304.1 feet to the place of beginning, containing 22.21 acres, more or less;

FURTHER EXCEPTING from all of the subject property the following described land lying in the SW1/4NW1/4SW1/4, Section 1, Township 49 North, Range 1 West, N.M.P.M., more particularly described as follows: Beginning at the Southwest corner of said tract at a point from which the Southwest corner of Section 1, Township 49 North, Range 1 West, bears South 1,320 feet, thence East 617 feet to Corner No. 2; thence North 2• East 660 feet to Corner No. 3; thence South 74•42' West 678 feet to Corner No. 4; thence South 457 feet to Corner No. 1, the place of beginning, containing 7.82 acres, more or less;

EXCEPTING from said property above described a tract of land in Section 2, Township 49 North, Range 1 West, N.M.P.M., more particularly described as follows: Beginning at the Southeast corner of said Section 2; thence North 0•07' West 1,670.55 feet along the East side of said Section 2 to the true point of beginning; thence South 73•35'30" West 2,080.61 feet to a point; thence North 0•06' West 167.38 feet to a point; thence North 73•35'30" East 2,058.0 feet to a point; thence North 74•42' East 22.44 feet to a point; thence South 0•07' East 166.92 feet to the true point of beginning, containing 7.67 acres, more or less.

PARCEL NO. 4

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

Section 1: E1/2NE1/4
SE1/4

NE1/4SW1/4
E1/2NW1/4SW1/4

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

Section 6: NW1/4SW1/4
SE1/4NW1/4
W1/2NW1/4

EXCEPTING from PARCEL NO. 4 above, the following tracts of land:
12.6.1.1

a) That property conveyed to Gunnison County, a Municipal corporation of the State of Colorado in Quit Claim Deed recorded April 11, 1947 in Book 268 at page 346, and in Quit Claim Deed recorded April 13, 1948 in Book 268 at page 454.

b) That property to The Board of County Commissioners of Gunnison County, Colorado in Quiet Title Decree recorded July 3, 1948 in Book 278 at page 225.

c) That property conveyed to The Department of Highways, State of Colorado in Deed recorded March 2, 1960 in Book 345 at page 114.

d) That property conveyed to Pioneers' Society of Gunnison County, Colorado in Warranty Deed recorded December 30, 1965 in Book 385 at page 298.

e) That property conveyed to The County of Gunnison, a political subdivision in Warranty Deed recorded May 24, 1967 in Book 396 at page 179 and rerecorded August 11, 1969 in Book 411 at page 263.

f) That property conveyed to The County of Gunnison, a political subdivision in Warranty Deed recorded August 3, 1967 in Book 397 at page 298 and rerecorded August 3, 1967 in Book 411 at page 262.

g) That property conveyed to The County of Gunnison, Colorado in Warranty Deed recorded August 16, 1989 in Book 669 at page 229.

h) That property conveyed to Gunnison County, Colorado in Personal Representative's Deed recorded August 16, 1989 in Book 669 at page 237 and Book 669 at page 239.

i) That property conveyed to Garfield Investments, Inc., a Colorado corporation in Warranty Deed recorded June 20, 1997 as Reception No. 476319.

Section 12: NW1/4NE1/4

PARCEL NO. 5

Tract 2, WILSON #2 SUBDIVISION, according to the official Plat thereof recorded January 28, 1997, bearing Reception No. 473556,

EXCEPTING THEREFROM that property in PARCEL 2 of Warranty Deed to the Board of County Commissioners of Gunnison County, Colorado as recorded October 4, 1989 in Book 670 at page 841,

PARCEL NO. 6

A triangularly-shaped parcel of land located in the SW1/4NE1/4, Section 1, Township 49 North, Range 1 West, N.M.P.M., more particularly described as follows:

1. The southerly boundary of said parcel is the east-west centerline of said Section 1;

1. The easterly boundary of said parcel is the north-south centerline of the northeast 1/4 of said Section 1;

1. The northerly boundary of said parcel is the southerly line of Parcel 1 described in deed recorded in Book 669 at page 229, Gunnison County Recorder's Office.

EXCEPTING THEREFROM that property described as Parcel No. 4 in Deed recorded in Book 669 at page 229.

PARCEL NO. 7

A parcel of land located in Boutcher's Addition to Gunnison, in Lot 2, Section 1, Township 49 North, Range 1 West, N.M.P.M., more particularly described as follows:

1. The southerly boundary of said parcel is the northerly boundary of Wilson #2 Subdivision, recorded at Reception #473556, Gunnison County Recorder's Office;

2. The westerly boundary of said parcel is the easterly line of Parcel No. 7 described in Deed recorded in Book 669 at page 229;

3. The northerly boundary of said parcel is the southerly line of Parcel No. 6 descried in Deed recorded in Book 669 at page 229;

4. The easterly boundary of said parcel is the easterly boundary of Boutcher's Addition.

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 domestic 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,

Sellers' interest in the Hartman Ditches Nos. 1 and 2, being Ditch No. 10, decreed for 75 statutory inches (approximately 1.95 c.f.s.) of water in Priority No. 10 and 5 c.f.s. of water in Priority No. 330,

An undivided 1/2 interest in the Goodwin and Wright Ditch, being Ditch No. 309, decreed for 20 c.f.s. of water in Priority No. 395,

An undivided 7/8 interest in the Hartman Waste Water Irrigation Ditch, being Ditch No. 301, decreed for 2.29 c.f.s. of water in Priority No. 382 and 9.21 c.f.s. of water in Priority No. 388,

The Adams No. 1, being Ditch No. 57, decreed for 1.0 c.f.s. of water in Priority No. 48, 0.7 c.f.s. of water in Priority No. 121, 4.0 c.f.s. of water in Priority No. 216, 2.8 c.f.s. of water in Priority No. 272, and 5.5 c.f.s. of water in Priority No. 287, and

The Adams No. 2, being Ditch No. 112, decreed for 1.6 c.f.s. of water in Priority No. 85 and 10.4 c.f.s. of water in Priority No. 249,

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