

LEASE AGREEMENT

THIS LEASE is entered into this ____ day of _____, 2016, between the Town of Milliken, Colorado, a statutory town ("Owner" or "Town") and The Tree Guys LLC, a limited liability company ("Tree Guys" or "Tenant") whose address is 90 E. Holly Street, Milliken CO. 80543 together herein referred to as the ("Parties").

WHEREAS, the Town owns property at its Public Works Facility located at 2951 Ash Street, Milliken, Colorado, which includes an area designated for the operation of yard waste disposal, as depicted in **Exhibit A** attached hereto and incorporated herein (the "Property"); and

WHEREAS, Milliken residents are allowed to dispose of tree limbs and large shrubbery at the Property during certain times of the year, including the first and third Saturdays of each month from March 1st through October 1st, and also for two weeks following the Christmas holiday; and

WHEREAS, in addition to the regularly scheduled hours of operation, residents may come to the Property during weekday business hours and request access for tree limb disposal, subject to available staffing; and

WHEREAS, the Town must pay overtime to employees assigned to open, close, and monitor the waste disposal operations on weekends; and

WHEREAS, there is no charge for residents to dispose of these materials, however, residents are required to purchase an annual permit for \$25.00, which must be presented at the time of disposal to verify their residency to the attendant on hand; and

WHEREAS, as the volume of the material accumulates, the Town periodically rents equipment to grind up the materials into mulch, which is made available to residents at no cost. The Town has also burned excess material when it has not been practical or economically feasible to rent the chipping/grinding equipment; and

WHEREAS, the Tenant desires to assume all responsibility for the continuation of the operations of the yard waste disposal service in exchange for allowance of the Tenant to expand such service to include additional yard waste and organic materials and for allowance of Tenant to retain any fees collected for such services from non-residents and commercial use customers; and

WHEREAS, the Town desires to enter into a lease agreement for the Property with Tenant for the operation of yard waste disposal.

NOW THEREFORE, the Parties agree as follows:

1. **Yard Waste Disposal.** Tenant agrees to use the Property, for the operation of organic yard waste disposal service to allow for the disposal of yard waste including grass clippings, tree limbs, shrubs and the like in conformance with the Town's standards, guidelines and directions.
2. **Rent.** On or before January 1st of each year, Tenant shall pay the Owner rent in the

amount of One Dollar (\$1.00) per year, for the use of the Property as an organic waste disposal site.

3. **Term.** The Term of this Agreement shall be for a one year term, from the date first written above, and shall be automatically renewed annually thereafter for a maximum of four annual renewals subject to termination by either Party as set forth in paragraph 7, or extension of the Term by written agreement between the Parties.

4. **Income and Expenses.** Tenant shall receive 100% of the fees collected from the operation of the facility. Tenant shall be solely responsible for any and all costs and taxes associated with its operations, including but not limited to materials, labor, sanitation, waste removal, insect control, herbicides, pesticides, and weed control.

5. **Obligations of Tenant.** Tenant shall provide the following services:

- a. Determine the types of materials allowed to include yard waste and organic materials of all sizes.
- b. Install an entrance booth to control access to the Property, pre-inspect the materials being dumped to ensure that no hazardous materials or other waste, trash or garbage are deposited, collect fees and review permits.
- c. Clearly post and fulfill consistent hours of operation with availability at least as frequent as the Town currently provides, which is the first and third Saturday of each month and for two weeks following Christmas Day.
- d. Provide employees to staff and operate the Tree Limb Area at its own expense.
- e. Honor all Milliken permits allowing residents to dispose of material at no charge.
- f. Issue permits to Milliken residents who have not first come to Town Hall during business hours.
- g. Grind and/or chip the organic materials on a regular basis to prevent excess accumulation.
- h. Provide free mulch to Milliken residents, as available.
- i. In coordination with Town, provide two clean-up days per year to Milliken residents for free drop-off at no charge of household materials at the Property.
- j. Haul off excess processed materials to maintain a clean and orderly facility and prevent hazardous materials or buildup.
- k. Maintain the Property in satisfactory and safe condition.
- l. Maintain property and liability insurance which names the Town as an additional insured satisfactory to the Town.

6. **Obligations of the Town.** The Town agrees to the following obligations:

- a. Clear the Property prior to the commencement of operations. This includes reinforcing the entrance with recycled asphalt or road base, and installing any additional fencing required to clearly define the Property.
- b. Administration of annual permits for residents.
- c. General oversight to ensure that the Town's interests are being served.

7. **Termination.** It is understood and agreed that the either party shall have the right to terminate this Lease, in whole or in part, by giving the other party thirty (30) days prior written notice of such termination. Receipt of notice of termination shall be the date of personal delivery to either party, or the date of the receipt as shown by certified mail receipt. Upon termination of this Agreement, Tenant shall return the Property to the Landlord in substantially similar condition as of the date of commencement of this Lease Agreement, ordinary wear and tear excepted. In the event Tenant installs or constructs improvements to the Property, subject to the Landlord's prior written approval of such improvement, upon termination of the Lease Agreement the Landlord shall either: (1) require the Tenant to remove such improvements; or (2) retain the improvements and pay the Tenant the depreciated value of such improvements as determined by the Landlord in its sole discretion.

8. **Default.** If any party shall at any time fail, neglect, or refuse to carry out any substantial provision of this Lease, the other party shall be entitled to terminate this agreement and recover its damages to the end of the thirty days.

9. **Assignment and Subletting.** Tenant shall not assign any portion of this Lease nor sublet any portion of the Property without the prior written approval of the Owner. This Lease shall bind all successors and any permitted assigns of the Parties.

10. **Insurance.** Tenant shall be responsible to maintain and pay for its own insurance. Tenant shall pay and maintain liability insurance in accordance with the requirements set forth on the attached **Exhibit B** and list the Owner as an additional insured. Tenant shall also maintain workers compensation insurance if required by law, or shall provide Owner with a waiver of insurance requirement as provided in **Exhibit C** attached hereto and made a part hereof. Tenant understands that **Tenant is not a Town employee and is not entitled to workers' compensation benefits from the Town.** All insurance requirements must be met and copies of such coverage shall be provided to the Town in conjunction with execution of this Lease Agreement.

11. **Indemnity.** Tenant shall indemnify and hold the Town harmless from any and all liability, loss, expense, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by any reason of any injury to any person or persons or to property of any kind whatsoever and to whomever belonging or from any cause or causes whatsoever arising out of any activity performed by Tenant pursuant to this Lease or on the Property.

12. **Waiver.** Tenant hereby WAIVES any claim for personal injury or property damage suffered by Tenant as a result of any negligence by the Town which occurs on the Property or with respect to this Lease Agreement.

13. **Abandonment.** If, at any time during the term of this Agreement, Tenant abandons the Premises or any part thereof, Town may, at the Town's option, obtain possession of the Property in the manner provided by law, and without becoming liable to Tenant for damage or for any payment of any kind whatever. If the Town's right of reentry is exercised following abandonment of the Property by Tenant, then Town shall consider any personal property belonging to Tenant and left on the Property to also have been abandoned, in which case Town may dispose of all such personal property in any manner Town shall deem proper and Town is hereby relieved of all liability for doing so.

14. **Attorneys' Fees.** Should it become necessary for the Town to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of Rents or gaining possession of the Property, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee. For any other dispute arising under this Lease, the prevailing party shall be entitled to an award of its reasonable costs including but not limited to reasonable attorneys' fees.

15. **Governing Law.** This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Colorado.

16. **Tabor.** The Parties understand and agree that the Town is subject to Article X, Section 20 of the Colorado Constitution and the Parties do not intend to violate the terms of this constitutional provision by the execution of this Agreement and this Agreement does not in any way constitute a multiple fiscal year obligation of the Town.

17. **Governmental Immunity.** Nothing in this Agreement is intended to waive any protection afforded the Town by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, or any other applicable law providing immunity to the Town, its officials or employees.

18. **Severability.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

19. **Notices.** Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to Town:

Town of Milliken: Town Administrator
Town of Milliken
1101 Broad Street
Milliken, Colorado 80543

If to Tenant:

David Starr
The Tree Guys LLC
80 E. Holly Street
Milliken, Colorado 80543

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

TENANT: The Tree Guys LLC

By: _____
David Starr

Its: _____

OWNER:

TOWN OF MILLIKEN

ATTEST:

Town Clerk

Beau Woodcock, Mayor

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A
DESCRIPTION OF LEASED PROPERTY

EXHIBIT B
Insurance Requirements

Tenant, at its sole cost and expense, shall, during the term of this Lease, procure, pay for, and keep in full force and effect workers compensation insurance for each occurrence, for all of its employees to be engaged in work on the Leased Property under this Lease.

Tenant, at its sole cost and expense, shall, during the term of this Lease, procure, pay for, and keep in full force and effect a commercial general liability insurance policy in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence with a One Million Dollar (\$1,000,000) aggregate covering the Property and insuring the Tenant covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, the insured's liability for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the Property (including acts or omissions of the Tenant or of its officers, employees, or agents), liability arising out of lawsuits related to employment contracts of the Tenant, and protection against liability for non-owned and hired automobiles. Such coverage shall also include comprehensive automobile liability insurance and coverage for such other risks as shall customarily be required by private institutional mortgage lenders with regard to property similar in construction, location, and use as the Property under this Lease Agreement.

All policies of insurance carried by the Tenant shall name the Tenant as an insured and shall name the Owner as an additional insured on the policy. The policy or policies shall contain a provision that the policy or policies cannot be canceled or materially altered either by the insured or the insurance company until fifteen (15) days prior written notice thereof is given to the Owner. Upon issuance or renewal of any such insurance policy, Tenant shall furnish a certified copy or duplicate original of such policy or renewal thereof with proof of premium payment to the Owner. Any such policy shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any act or omission of any assignees or sub lessees of the Tenant.

Any insurance policy purchased by the Tenant must be written by an insurance carrier which has a current rating by Best's Insurance Reports of "A" (Excellent) or better and a financial rating of "X" or better or such equivalent classification as may hereinafter be required customarily for properties similarly situated and it must be approved by the Tenant and the insurance carrier must be authorized by law to do business in the State of Colorado. Tenant shall not obtain any policy which, under the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members. All insurance policies carried by the Tenant may be reviewed at least annually by the Owner to ascertain that the coverage provided by such policy adequately covers those risks required by this Article VIII to be insured by the Tenant.

In case of the breach of any provision of this Article VIII, the Owner, at its option, may take out and maintain, at the expense of the Tenant, such insurance as the Owner may deem proper and may bill the

costs for such insurance directly to the Tenant. When so billed, the Tenant shall reimburse the Owner for the costs of such insurance within thirty (30) days of being billed.

