TOWN OF MILLIKEN
TOWN BOARD OF TRUSTEES
AGENDA MEMORANDUM

To: Mayor Tokunaga and Town Board of Trustees From: Kent Brown, Town Administrator and Bill Landwehr, Public Works Director	Meeting Date: Wednesday, September 9, 2015

Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: Lease Agreement with Colorado Greenbelt Management for the use of Tree Limb Center located at the Public Works Facility, 2951 Ash Street			
Attachments: Lease Agreement			

PURPOSE

To approve a lease agreement for the use of and the operation of the Tree Limb/Yard Waste Center located at the Public Works Facility, 2951 Ash Street, Milliken, CO.

BACKGROUND

In order to provide Colorado Greenbelt Management an area to expand the operation of the Town's Tree Limb Center to include additional yard waste and organic materials. Colorado Greenbelt will operate the facility and will receive 100% of the fees collected from the operation of the facility. They will also 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. Currently the Town only allows tree limbs to be disposed of at this facility and the town's staff monitors and staffs the facility. Please refer to Exhibit A regarding insurance requirements.

BUDGET IMPLICATIONS

The tenant, Colorado Greenbelt Management will pay rent of one dollar ($1.00) per year, for the use of the property as an organic waste disposal site. Currently, the Town pays overtime to staff assigned to open, close, and monitor the facility on weekends. This agreement will have a positive effect on the budget by reducing overtime and will reduce or eliminate staff time that is spent chipping the limbs/branches or the expense of renting a tub grinder.

RECOMMENDATION

Staff recommends the Board of Trustees approve the Lease Agreement with Colorado Greenbelt Management.

Review of Board questions from previous meeting:

Question 1: How will Resident Permits be handled at the yard waste disposal area?

Answer Q1: Colorado Greenbelt Management will pre-purchase Resident Permits from the Town for $25.00 each and keep these permits at the yard waste disposal area for Residents that need one.

Question 2: How will fees be collected for Non-Residents and Commercial use customers?

Answer Q2: Permits will not be issued for Non-Residents and Commercial use customers, they will pay by the yard to dispose of materials. Colorado Greenbelt Management will keep the revenue from non-resident and commercial permits.

Question 3: How will the Tenant maintain the property in satisfactory condition?

Answer Q3: The property will be fenced and have a guard building at the entrance. These measures will prevent people from having free access to the disposal area and dumping non-approved items and trash. Collection piles of tree limbs, grass, etc., are to be no more than 50 feet wide and 14 feet high. Collection piles will be burned, grinded or removed from the disposal site as needed by the Tenant.

Question 4: How often will the Town's front-end loader and the Town's operator be needed by the Tenant?

Answer Q4: Colorado Greenbelt Management thinks that the Town's front-end loader and the Town's operator will be needed every couple of weeks for 1 to 2 hours a time. Colorado Greenbelt Management was advised that this would depend on availability and the priority of other Town functions/projects.

Question 5: If this agreement is terminated what damages would the Tenant seek to recover?

Answer Q5: The Tenant would not seek to recover damages from the Town if the agreement is terminated. The Tenant would like the Town to reimburse Colorado Greenbelt Management for investments or improvements made to the disposal area if the Town decides to take over operations from the Tenant in the future. Additional improvements besides the guard shack would need to be approved by the Town.

Question 6: When will the Tenant open the waste disposal area?

Answer Q6: The Tenant wants to open the waste disposal area to Residents only, during the Winter season of 2015, on the 1st & 3rd Saturdays of the month from 8 a.m. to 12 p.m. The Tenant would like to officially open the disposal area to Residents, Non-Residents and Commercial customers in March of 2016.

SUGGESTED MOTION

"I move to approve the Lease Agreement with Colorado Greenbelt Management for the lease of the Tree Limb/Yard Waste Disposal Facility located at 2951 Ash Street, Milliken, CO and authorize the Town Administrator to sign on behalf of the Town."

LEASE AGREEMENT

THIS LEASE is entered into this ___ day of _____, 2015, between the Town of Milliken, Colorado, a statutory town ("Owner" or "Town") and Colorado Greenbelt Management ("CGM" or "Tenant") whose address is _____, 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 (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 Public Works Facility during weekday business hours and ask a staff member to open the Area, if someone is available; 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 subject to up to four one year renewal terms from the date first written above.

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 agrees to the following obligations:

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. Retain all fees collected.
d. Clearly post and fulfill consistent hours of operation with availability at least as frequent as the Town currently provides.
e. Provide employees to staff and operate the Tree Limb Area at its own expense.
f. Honor all Milliken Permits allowing residents to dispose of material at no charge.
g. Issue Milliken Permits for residents who have not first come to Town Hall during business hours.
h. Grind and/or chip the organic materials on a regular basis to prevent excess accumulation.
i. Provide free mulch to Milliken residents.
j. Haul off excess processed materials to maintain a clean and orderly facility and prevent hazardous buildup.
k. Maintain the Property in satisfactory 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. Town shall 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. Continue the issuance and administration of annual permits for residents.
c. Provide occasional use to Tenant of the Town's front-end loader and the Town's operator unless other arrangements satisfactory to the Town are made for moving materials.
d. 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.

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 A** 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 B** 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. **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: Tom Sage
Colorado Greenbelt Management

_____

_____

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

TENANT: Colorado Greenbelt Management

By: _____
Tom Sage

Its:_____

OWNER:

TOWN OF MILLIKEN

ATTEST:

_____
Town Clerk

_____
Milt Tokunaga, Mayor

APPROVED AS TO FORM:

_____
Town Attorney

EXHIBIT A
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 Premises 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 Leased Premises 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 Leased Premises (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.

EXHIBIT B – CERTIFICATE OF EXEMPTION AND WAIVER

DIRECTIONS:

- ✓ If the Tenant is NOT required under Colorado law to carry workers' compensation insurance and DOES NOT carry it, this exhibit MUST be completed and attached to the Contract.
- ✓ If the Tenant IS required under Colorado law to carry workers' compensation insurance and DOES carry it, this exhibit IS NOT REQUIRED and may be discarded.

The Tenant certifies to the Town that it is not required to carry workers' compensation insurance under the Colorado Workers' Compensation Act. The Tenant acknowledges that it will be engaging in activities that may expose it to risk of bodily injury. The Tenant affirms that it is physically capable of performing the activities and that all necessary precautions to prevent injury to the Tenant and others will be taken. The Tenant shall not hold the Town liable for any injuries that may arise during or resulting from the work performed under the Contract, and the Tenant shall defend, indemnify, and hold harmless the Town from all such claims.

Tenant

By: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20____
by _____.
(Insert name of individual signing on behalf of the Contractor)

_____
Notary's official signature

S E A L

_____
Commission expiration date