AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Ground Transportation Agreement, Gunnison-Crested

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Alpine Express, BOCC of Gunnison County, Gunn-CB Reg Airport

Term Begins: 8/1/2015 **Term Ends:** 7/31/2018 **Grant Contract #:**

Summary:

PUC Passenger Carrier Concession agreement with the BOCC of Gunnison County to operate out of the Gunnison Crested Butte Regional Airport

Fiscal Impact:

Submitted by: Stephanie Williams **Submitter's Email Address:** swilliams@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Looks good from our perspective.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/27/2015

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 8/31/2015 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/3/2015

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

Agenda Date: 9/15/2015

Revised April 2015

GROUND TRANSPORTATION AGREEMENT
Gunnison-Crested Butte Regional Airport

THIS GROUND TRANSPORTATION AGREEMENT, is made as of _____, 2015 between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, a political subdivision of the State of Colorado (the "County"), and **AEX, Inc, dba Alpine Express** (the "Operator") witnesses:

RECITALS

A. The County owns and operates the Gunnison Crested Butte Regional Airport (the "Airport), including the Airport building complex (hereinafter "Terminal"), maintains various spaces for the use of the public, and from time to time licenses and/or leases parts of the Airport and Terminal to individuals and entities to serve the users of the Airport;

B. Operator is engaged in the commercial business of a Public Utilities Commission (PUC) Passenger Carrier Concession operator and desires to use a portion of the Airport more fully described on the annexed Exhibits A; and

C. County and Operator desire to enter into this Agreement establishing and specifying the conditions under which Operator may conduct a PUC Passenger Carrier Concession operation at the Airport.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and the Operator do hereby mutually undertake, promise and agree, each for itself, its successors and assigns, as follows:

1. DEFINITIONS.

1.1 "Commercial Vehicle" means any vehicle which provides for the carriage of persons or property to and from the Airport for which the passenger, either directly or indirectly, pays a charge.

1.2 "Manager" shall mean the Airport Manager employed by the County to manage the Airport, and any individual designated by the Manager to act in his or her behalf.

1.3 "Employee" shall mean any employee, officer, or director of Operator, or any other individual who operates a Commercial Vehicle or provides other service at the Airport for Operator, and includes an individual Operator.

1.4 "Operator" shall mean the above-named entity which is designated as the Operator. The actions and omissions of all employees, officers, directors, and agents of Operator shall be deemed to be the acts or omissions of Operator. Whenever an obligation, condition or requirement applies to Operator, it shall apply equally to Operator's employees, officers, directors, and agents.

1.5 "Solicitation" shall mean communication or attempt communication for the purpose of encouraging a potential customer to conduct business with Operator. Solicitation includes, but is not limited to, distribution of hand bills, mime and oral communication, the display of signs, other than those connected with pre-arranged reservations.

1.6 "Gross Revenues and/or Annual Gross Revenues" shall mean the aggregate gross sales price received by Operator, or which Operator is entitled to receive by virtue of its provision of transportation **to, from or on** the Airport.

1.6.1 Gross revenues to the Operator shall be deemed received at the time the transaction occurs giving rise to Operator's right to collect said monies, regardless of whether said transaction was conducted in person, by telephone, by wire (FAX, telex, etc.), by mail or by any other method of information transmission, whether the transaction was for cash or credit.

1.6.2 Gross revenues shall not include: (1) federal, state or municipal sales taxes separately stated and collected from customers; or (2) amounts Operator receives, or is entitled to receive, for charges for insurance coverage.

2. USE OF AIRPORT FACILITIES.

2.1 Grant of Use Rights

2.1.1 Operator is granted the non-exclusive right to load and unload passengers at the Airport, and to use for its Commercial Vehicles certain loading and parking areas at the Airport as assigned by the Airport Manager or their designee pursuant to the terms of this Agreement and in common with others similarly authorized. Operator, its Employees and customers shall have the right of ingress to and egress from the spaces designated for Operator's use, over the access routes set forth by the Airport Manager.

2.1.2 Operator is also granted the right to use the space within the Terminal described in the annexed Exhibit A (the "Leased Premises"), for use as a counter space and office to provide services to the public with respect to activities authorized in this Agreement.

2.1.3 Operator shall be assigned the exclusive use of assigned parking at the east side of the terminal building for loading/unloading of passengers. Portions of the County's gravel parking lot shall be available for overnight and long term parking, on a non-exclusive basis, for parking of Operator's passenger carrier vehicles only, at locations and under policies and limitations established from time to time by the Manager.

2.2 Limitations on Use

2.2.1 Operator's use of the Airport authorized and granted herein shall be limited to the operation of a ground transportation service to and from the Airport for the carriage of persons and property. Operator's use of all or any portion of the Airport authorized in this Agreement may be temporarily restricted by the Manager or his/her designee, to the extent the Manager deems necessary to protect or enhance public health or safety, in the event of an emergency or as necessary for security.

2.2.2 Operator recognizes and agrees that the Leased Premises are part of the Terminal, which is closed during certain hours of the day and evening. Operator agrees to accept the closure of the Terminal during hours when it is not required by the County to be open, in the exercise of the County's sole discretion. If Operator unlocks the Terminal during closed periods, it shall do so, unless in an emergency, with the prior approval of Airport

Operations and be responsible for re-locking the Terminal and assuring that only its Employees and/or customers enter the Terminal.

2.2.3 Operator recognizes and agrees that the Terminal is regularly utilized by members of the public traveling to and from Gunnison County by commercial airlines. Operator agrees that its use proposed for the Leased Premises is consistent with the use of the Terminal by the public for the Terminal' intended purpose.

3. OBLIGATIONS OF OPERATOR.

3.1 Payment of Fees.

Operator shall pay the County fees for the uses, services and privileges granted hereunder, according to the following schedule:

3.1.1 **Concession Privilege Fee**

Operator will pay to the County **the larger of either**:

A progressive Concession Privilege Fee calculated as follows:

Year 1 Eight and one half percent **(8.5%)** of the Operator's Annual Gross Revenue Receipts in first license year (August 1 2015 thru July 31 2016);
Year 2 Nine percent **(9%)** of the Operator's Annual Gross Revenue Receipts in second license year (August 1 2016 thru July 31 2017)
Year 3 Ten percent **(10%)** of the Operator's Annual Gross Revenue Receipts in third and final license year (August 1 2017 thru July 31 2018);

or:

A Minimum Annual Guarantee (MAG) for each License Year as follows:

The MAG **must be not less than** the Licensee's minimum **Annual Guaranteed Terminal Rent** per year (para 3.1.2) as follows:

Year 1 - $24,069.48
Year 2 - $24,971.56
Year 3 - $25,535.31

Total 3 year full term minimum guaranteed rent = **$74,369.35**

3.1.2 **Terminal Rent**

3.1.2.1 Exclusive use space rental of Terminal Premises, payable monthly, calculated on a per square foot basis as follows for the **first year**:

529 sq/ft. Counter/Office

$35.00 sq/ft = $18,515 yr. = $1,542.92/month.

Common area of Terminal Premises, payable monthly, calculated at 30% of the exclusive use space as follows for

158.7 sq/ft common area (30% of Exclusive)

$35.00 sq/ft = $5,554.50 yr. = $462.87/month.

Total first year rent $2,005.79/month = $24,069.48/year

Such rental rate shall be automatically increased as of each August 1st during the term of this Agreement by **three percent (3%)** over such rental due in the prior year.

The Airport terminal utilities provided by the Gunnison Crested Butte Regional Airport include heat and terminal electricity.

3.1.3 **Other**

3.1.3.1 If required, for each assigned parking space rented by the Operator, the Operator shall pay an additional **$162.50 per space per year**; such rate shall be changed to be fifty percent of the public annual price, as may be set from time to time by resolution of the County. Operator will restrict use of parking to company-owned or leased vehicles. Electricity in the gravel parking area is paid by the Lessee.

3.1.3.2 Operator shall be responsible for the installation and all costs of any telephone or fax services, high speed internet, etc., required by Operator, and shall pay for such service and installation. Operator shall also be responsible for its use of all electric utilities in the parking area of the Airport.

3.1.3.3 All payments to be made pursuant to this Agreement shall be considered delinquent if not received by the last day of the month in which the payment became due. In addition to such delinquent payment, a late charge of $200.00 will be assessed on each delinquent payment and interest will accrue on the delinquent payment at a rate of one percent (1%) per month on all delinquent balances.

3.1.3.4 All payments shall be made payable to "Gunnison County." Payments shall be sent or delivered to the Finance Office, 200 East Virginia Avenue, Gunnison, CO 81230.

3.2 Provision of Information and Audit.

3.2.1 Annually, within ninety (90) days after the end of every year of the term of this Agreement, at the expiration of the Operator's term and upon assignment of Operator's

rights hereunder, Operator shall file a statement of Annual Gross Revenues reportable under this Agreement, which report shall be prepared, signed and certified as correct by an officer of Operator.

3.2.2 Operator shall maintain true, full and accurate books of account and records from which "Gross Revenue" as defined herein, the amount and nature of all business transacted on or through the Airport and the amount of percentage rental owed the County hereunder, particularly as it relates to all revenues or receipts attributable to Operator's business conducted at the Airport, can be determined and verified, according to standard and accepted accounting and auditing practices. The books of account and records that Operator must maintain, must include, but need not be limited to, legible, true and accurate copies of all written and electronic records and reports kept in the normal course of Operator's business including, without limitation, sales slips, cash register tapes, credit card invoices, monthly sales tax returns, sales and disbursement journals, general ledgers, bank statements, bank books, bank deposit slips, annual federal income tax returns, state sales tax returns and all Airport-related revenue reports submitted by Operator to its franchiser, if any. These books and records shall be maintained on a current basis and shall be stored at a location in Gunnison County for a period of at least thirty-six (36) months from the end of each monthly period, or for such longer period of time as County reasonably may direct in writing.

3.2.3 The County reserves the right to conduct audits of Operator's books of account and records, which audits may be conducted upon reasonable notice to Operator and during Operator's normal weekday business hours. In performing said audits, County shall be entitled to review, and Operator shall be obligated to provide the County, all of the books of account and records that Operator obligated to maintain pursuant hereto, as well as other documents and files in Operator's possession, custody or control at the time County advises Operator of its desire to audit Operator's records, that the County, or its auditor, believe, in their sole discretion, are useful, relevant or necessary to determine or verify the correct amount of gross revenues enjoyed by Operator, and the correct amount of percentage rental owed by Operator to the County, for the period involved. Should Operator fail to maintain the books of account and records required to be maintained pursuant hereto, or should Operator fail to permit County or its auditor to review Operator's books and records, and other documents and files, as required by this subparagraph, said default is agreed by the parties to be a material breach of this Agreement and Operator agrees to pay, as liquidated damages for such breach, an additional amount equal to fifty (50%) percent of the verifiable costs, fees and charges due from Operator hereunder for the period in question. If any audit shows percentage rentals and other charges that should have been paid to the County by the Operator pursuant to this Agreement were understated or underpaid for any period involved, Operator shall, within thirty (30) days notice of any such deficiency, pay to the County the full amount underpaid, plus eighteen percent (18%) interest, on such underpayment from the time said underpayment should have been paid to the time said underpayment is fully paid. In addition, if the amount of underpayment exceeds exactly one (1.0%) percent of the total annual percentage rental that was owed by Operator to the County for the audit period involved, Operator, in addition to paying the County the underpayment owed and interest accrued thereon, shall within thirty (30) days' notice reimburse the County for the cost of the audit not to exceed Fifteen Hundred Dollars ($1,500.00). If the audit discloses overpayment of the percentage rentals paid to the County by Operator, the County shall refund the amount of overpayment to Operator within thirty (30) days of said audit. The

County shall hold all information obtained from any such audit in confidence, except as may be necessary to enforce the County's rights under this Agreement, except with respect to tax proceedings, and except with respect to any legal requirements or Court Order to disclose said information.

3.3 Parking and Operation of Vehicles.

Operator agrees to observe the following requirements with respect to parking and operation of Commercial Vehicles at the Airport:

3.3.1 If Operator is granted exclusive use of parking spaces in this Agreement, it shall utilize such space(s) for loading prior to utilizing nonexclusive spaces.

3.3.2 Operator shall adhere to traffic laws, posted signs and pavement markings.

3.3.3 Vehicles shall not be left unattended in loading and unloading spaces. If a vehicle is left unattended, it may be removed by the County to a holding area.

3.3.4 In the Parking area of the Airport, Operator is responsible for signage, snow removal between vehicles, and towing of any vehicles that do not belong in its assigned area. County will provide snow removal in the driving lanes. Operator acknowledges that this area's snow removal is secondary to movement areas, ramps in the Air Operations Area and streets and sidewalks in front of the Terminal.

3.3.5 Operator shall assure that spaces assigned to it are utilized properly, and all vehicles in such assigned spaces remain operational at all times.

3.3.6 No vehicle cleaning, accumulated snow removal or maintenance of vehicles shall be allowed on the Airport.

3.4 Conduct and Qualification of Operator and Employees.

3.4.1 Operator shall make all Employees aware of Operator's responsibilities under this Agreement.

3.4.2 Operator shall have the discretion, subject to the provisions of this Agreement, to employ and terminate personnel assisting Operator under this Agreement, provided that Operator shall always maintain an adequate number of Employees to fulfill the obligations herein. Employees must demonstrate professional and courteous conduct at all times while on the Airport.

3.4.3 Operator agrees to pay all wages, all applicable federal and state withholding taxes, Social Security payments (FICA) unemployment and worker's compensation for all of its Employees. Any breach of these provisions shall be deemed a material breach of this Agreement.

3.4.4 Employees shall at all times have a neat, clean and modest appearance. Clothing shall include shoes and shirts and may bear reasonable insignia indicating affiliation with

Operator.

3.4.5 Operator shall ensure that all Employees attend orientation sessions which the Manager may schedule from time to time.

3.4.6 Operator certifies that it does not and will not knowingly contract with, employ or utilize any illegal aliens to perform any work or services authorized under this Agreement, and it has and will require its subcontractors, if any, to certify that they do not knowingly contract with, employ or utilize illegal aliens in performing any work or services authorized under this Agreement. Operator agrees that it shall attempted to verify the eligibility of its Employees and subcontractors performing work or services authorized under this Agreement through the E-Verify Program, operated by the Department of Homeland Security.

3.5 Insurance.

3.5.1 Operator shall obtain and maintain in force the following insurance at all times during the term of this Agreement. A Certificate of Insurance listing the following coverage's, including Workers Compensation, must be provided to County upon signing of this Agreement:

Comprehensive General	$1,000,000 combined single limit (Public) Liability for bodily injury and property damage (other than automobile)
Automobile Bodily Injury	$1,000,000 per individual
Automobile Property Damage Liability	$1,000,000 per occurrence
Workers Comprehensive Liability	As required by the State of Colorado

3.5.2 A copy of the policy be provided to Gunnison County within 30 days of execution of the lease; and The policy will include a provision that it will not be terminated without 30 days prior written notice to the County.

3.5.3 Without limiting its liability, Operator agrees to carry and keep in force a policy naming the County as an additional insured on the certificates of insurance, with respect to its operations on, from or to the Airport.

3.6 Indemnification of County.

3.6.1 Operator agrees to defend, indemnify, and hold harmless the County, the elected and appointed officials and the employees and agents from and against all liability losses, costs, charges, penalties obligations, expenses, attorney fees, litigations, judgments, damages, claims and demands of any kind what so ever; collectively "Claims" in connection with arising out of, or by any reason related to Operator's business or its actions pursuant to this Agreement.

3.7 Signage.

The Operator agrees to the following:

3.7.1 Operator must receive prior written approval from the Manager of all signage it installs at the Airport. Operator's request must include the area to be displayed, color and size. Any signage displayed without written approval will be removed and may be discarded.

3.7.2 Total signage on the Leased Premises shall not exceed fifteen (15) square feet. An additional removable sign giving customers instructions or information when the counter space is not manned may also be utilized. Operator may also place one sign per parking space in the paved lot no larger than 18" x 16" square for one space or 18" x 24" square for two space sign. Operator may also place one sign in the gravel/overflow lot no larger than a 12" x 18," at a location and under policies and limitations established from time to time by the Manager.

3.8 Compliance with Rule, Ordinance and Laws.

3.8.1 In its conduct of business on and use of the Airport under this Agreement, Operator agrees to comply with (a) all applicable statutes, rules and regulations respecting the conduct of its business, (b) all conditions and requirements of any permit, license, certificate or other authority issued by any government entity with respect to the conduct of its business, and (c) all applicable rules and standards adopted by the County, (d) the Airport Rules and Regulations annexed to this agreement as Exhibit B) all as they now exist or may be hereafter amended.

3.9 Permits, Licenses, Payments and Liens.

3.9.1 Operator shall acquire and maintain throughout the term all necessary permits and licenses associated with the lawful operation on its business upon the Airport and in the Leased Premises. Operator shall discharge and timely pay all of its financial obligations associated with its operations at the Airport and shall not permit any lien to be placed on the Leased Premises or its property located on the Leased Premises.

3.10 Substitute Space.

3.10.1 If County elects to expand or remodel the Terminal in such a way that the Leased Premises will be affected, the County reserves the right, to assign other or different office/counter space in the Terminal to the Operator, and to assign temporary space inside or outside the Terminal during construction, if necessary. The reasonable third party costs of any such move shall be paid by the County, but in no event shall the County be liable for any consequential or other damages suffered by Operator as a result of relocation.

3.11 Discrimination and Fair Trade.

3.11.1 Operator shall not make any false or misleading statement of fact to any customer or potential customer concerning the services to be provided, or amounts to be paid by the customers. If Operator separately states, invoices or collects, any fee, whether the same is related to the fees paid under this Agreement or otherwise, such fee shall be disclosed to the customer at the earliest opportunity. Operator shall not represent or characterize any fee associated with fees collected by the County from the Operator under this Agreement as a tax, facility charge or fee imposed by the County on customers or individual transactions with customers at the Airport.

4. TERM.

4.1 Subject to earlier suspension or termination as hereinafter provided, the term of this Agreement (the "Term") shall be the period of **three (3) years** commencing on **August 1st, 2015**, and ending **July 31st, 2018**. The Airport reserves the right to extend this agreement for an additional two years under the same terms. If this agreement is extended for an addition two years the percent of gross, minimum guarantees, space rental and parking fees will be renegotiated at that time. Holding over by Operator or failure to vacate the Leased Premises at the end of the term shall not be construed to be the granting or exercise of an additional term, but shall create only a month to month tenancy which may be terminated by either party upon 30 days notice to the other.

5. AGREEMENTS REGARDING LEASED PREMISES.

5.1 Modifications of Premises.

5.1.1 Operator shall not modify, alter, construct or reconstruct the Leased Premises and shall obtain prior written approval for the installation of any electrical wiring or other utilities except telephone. Operator shall be responsible for wallboard, signage, décor, equipment and industry trade fixtures installation. Any permanent fixtures attached to the Leased Premises shall become the property of the County at the termination of this Agreement unless the Manager determines that such can be removed without damage to the Leased Premises. Any other fixtures, improvement or equipment installed, erected, purchases or placed by Operator in the Leased Premises will be considered personal property and shall remain the property of the Operator. Any changes in décor shall be in keeping with the general décor of the Terminal. Existing wood surfaces shall not be painted, stained, or otherwise covered in a permanent manner. All work must be completed in accordance with the County's Airport Construction Regulations, and with prior approval of the Manager.

5.2 Destruction of Leased Premises.

5.2.1 If by reason of any cause the Leased Premises are damaged to such an extent that in the sole discretion of the Manager such Leased Premises are un-tenantable in whole or in substantial part, or to such an extent that it cannot be used to substantially perform the operations provided for herein, then the space shall be surrender to the County and a decision shall be made to repair and rebuild as necessary. Should the Operator or its employees be knowingly responsible for such destruction, the County at its option may require Operator to be financially responsible for all costs incurred in returning the space

to a usable condition.

5.2.2 At the end of the term of this Agreement, the Operator shall leave the Leased Premises in good condition with the exception of reasonable wear and tear, shall remove trade fixtures and equipment and other personal property at its expense, in, on, or about the Terminal and the parking lot. Operator shall not abandon any of its property on the Leased Premises without the written consent of County. Abandoned property may at the option of the County, thereupon become the property of the County to use or dispose of as the County sees fit and title thereto shall thereupon vest in the County. County shall have the right to require that Operator pay to the County all reasonable costs of such disposal, and all costs necessary to bring the Leased Premises to the condition existing prior to such damage by Operator.

5.3 Office Storage.

5.3.1 No objects or material of any kind whatsoever shall be stored on the top of or outside of the Leased Premise. Operator shall not store, use or maintain on the Leased Premises any motor oil, grease, gasoline or other flammable or hazardous material.

6. TERMINATION, SURRENDER AND DAMAGES.

6.1 Termination by Operator.

6.1.1 Operator may terminate this Agreement, by providing 60 day written notice to the County. Termination shall not entitle Operator to a refund of fees paid in advance.

6.2 Termination or Suspension by County.

6.2.1 If Operator fails to make any payment due hereunder within ten (10) days after notice of the overdue payment is sent to Operator at the address set forth for Operator herein, County may, at its option, and in addition to other remedies, terminate this Agreement.

6.2.2 The County shall also have the right to terminate this Agreement in the event of the appointment of receiver of Operator's assets or the default by Operator in the performance of any covenant or agreement herein required to be performed by Operator other than the payment of money, and the failure of Operator to remedy such default for a period of twenty (20) days after receipt from County of written notice to remedy the same.

6.2.3 In addition to termination, County shall have the right to bring an action against Operator for damages, and shall have all other remedies available to it at law and/or equity, all of which may be exercised by the County together or sequentially in any order chosen by the County.

7. ASSIGNMENT.

7.1 Assignment.

7.1.1 Operator shall not at any time assign its rights under this Agreement or any part thereof without the written consent of County; provided, however, that the foregoing shall not prevent the assignment of such rights to any entity with which Operator may merge or consolidate, or which may succeed to the business of Operator. No such assignment shall release Operator from its obligations to pay any and all of the rentals and charges and to otherwise perform Operator's obligations set forth herein.

7.2 Successors to County.

7.2.1 The rights and obligations of County under this Agreement may be assigned by the County, at the option of the County, and without the necessity for the concurrence of the Operator in any such assignment.

8. OTHER AGREEMENTS.

8.1 Agreement Subordinate.

8.1.1 This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the County and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the County for Airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport.

8.2 Non-Discrimination.

8.2.1 The Operator, in operations at and use of the Airport, shall not, on the grounds of race, color, national origin or sex, discriminate or permit discrimination against any person or group of persons in any manner prohibited by applicable law. The Operator shall abide by the provisions of Part 21 of the Rules and Regulations of the Office of the Secretary of Transportation effectuating Title VI of the Civil Rights Act of 1964.

8.3 Uncontrollable Circumstances.

8.3.1 Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of these terms, covenants or conditions of this Agreement, due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which such party is not responsible or which it is not in its power to control. Provided, however, that if Operator claims that any such an event of force majeure prevents the performance of any of its obligations under this Agreement it shall provide County with written notice of such event within thirty (30) days of becoming aware of the commencement of such event, describing such event and providing an estimate of when such event began; shall continue to perform all obligations under this Agreement which are not prevent by such event; and to the extent reasonably possible,

shall work promptly and with reasonable diligence to remove the event.

8.4 Reserved Rights.

8.4.1 The County reserves the right to direct, in its reasonable discretion, Operator's operations in the event such operations are unreasonably interfering with the use by others of the Airport; *e.g.*, to restrict the use of "public" areas of the Terminal and public-access curbs, sidewalks and roadways in favor of the traveling public.

8.4.2 The County reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, and/or terminal including existing vehicle and pedestrian traffic patterns, as County deems appropriate, without interference or hindrance by the Operator, and County shall have no liability hereunder to Operator by reason of any interruption to Operator's operations on the Leased Premises occasioned by such County activities.

8.5 No Exclusive Rights.

8.5.1 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right.

9. MISCELLANEOUS PROVISIONS.

9.1 Headings.

9.1.1 The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

9.2 Time of Essence.

9.2.1 Time is of the essence in this Agreement.

9.3 Non-Waiver.

9.3.1 Waiver by either party of or the failure of wither party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.

9.4 Limitation of Benefit.

9.4.1 This Agreement does not create in or bestow upon any other person or entity not a party to this Agreement any right, privilege or benefit unless expressly provided in this Agreement. This Agreement does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not a party.

9.5 Governmental Immunity.

9.5.1 Nothing in this Agreement is or shall be construed to be a waiver by the County of governmental immunity.

9.6 Advice of Independent Counsel.

9.6.1 Each party to this Agreement has sought and obtained, to the degree it has deemed necessary and beneficial, the advice of independent legal counsel regarding this Agreement.

9.7 Severability.

9.7.1 Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice the County or Operator in their rights and obligations contained in valid covenants, conditions or provisions.

9.8 Effect of Agreement.

9.8.1 All covenants, conditions and provisions in this Agreement shall extend to and bind the successors of the parties hereto, the assigns of County and to the permitted assigns of Operator.

9.9 Governing Law.

9.9.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action to enforce or interpret this Agreement shall only be brought in a court of competent jurisdiction in and for Gunnison County, Colorado.

9.10 Entire Agreement.

9.10.1 This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral.

9.11 Right of Inspection.

9.11.1 County reserves and retains for its officials, employees and representatives the right to enter the Leased Premises during reasonable business hours after giving prior verbal notice, if reasonably feasible, and at such other times as may be necessary in the event of an emergency with or without notice for the purpose of inspecting and protecting the concession space.

9.12 Modification of Agreement.

9.12.1 This Agreement may not be altered, modified or changed in any manner whatsoever except by a writing signed by all parties hereto.

9.13 Notices.

9.13.1 All notices or other written correspondence desired or required to be sent pursuant to this Agreement shall be sent to the respective parties as follows:

If to County: Airport Manager
Gunnison-Crested Butte Regional Airport
519 West Rio Grande
Gunnison, CO 81230

If to Operator:

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

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO

By:_____
Paula Swenson, Chairperson

By:_____
Phil Chamberland, Commissioner

By:_____
Jonathan Houck, Commissioner
ATTEST:

_____

(OPERATOR)

By:_____

Title: President ABC, Inc

ATTEST:

_____

Attachments:

Exhibit A - Terminal Area and Leased Premises
Exhibit B - Airport Rules and Regulations