AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement; Airport Advertising Media Management

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and Gunnison Country Publications dba Gunnison Crested Butte Airport Media

Term Begins: 11/1/2018 **Term Ends:** 10/31/2020 **Grant Contract #:**

Summary:

The Airport no longer has an active advertising agreement in play. This is a new agreement between Gunnison County and the Gunnison Crested Butte Airport Media to conduct sale of commercial advertising operations at the Airport. Initial term is two (2) years with the option to extend for an

Fiscal Impact: 25% of the Annual Gross Revenue paid to the Airport

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/10/2018

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

Comments:
ok db 10/10/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/10/2018 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/10/2018

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/16/2018

Revised April 2015

GUNNISON-CRESTED BUTTE REGIONAL AIRPORT
AIRPORT ADVERTISING MEDIA MANAGEMENT AGREEMENT

This Agreement, made and entered into this _____ day of _____, 2018, by and between the Board of County Commissioners of Gunnison County, 200 E. Virginia, Gunnison, Colorado, herein called the "County" and Gunnison Country Publications, 218 N. Wisconsin, Gunnison, Colorado, D.B.A. Gunnison-Crested Butte Airport Media, herein called the "Operator."

WHEREAS:

The County owns and operates the Gunnison-Crested Butte Regional Airport (hereinafter "Airport") which includes the Airport Terminal building complex (hereinafter "Terminal") and does maintain various spaces for the use of the public, and from time to time does and shall license and/or lease and/or permit and/or contract for the use of parts of these areas to various individuals, partnerships, corporations or entities to serve the users of the Airport; and

Gunnison County, a political subdivision of the State of Colorado, is the owner of that real property more fully described on Exhibit A, attached hereto and incorporated herein; and

Operator is engaged in the commercial business of sale of commercial advertising and commercial advertising space at the Airport Terminal; and

County and Operator desire to enter into a written agreement establishing and specifying the conditions under which Operator may conduct sale of commercial advertising operations 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, to successors and assigns, as follows:

The County hereby grants unto Operator under the terms, limitations and conditions herein, the non-exclusive right and privilege for the solicitation and sale of commercial advertising and commercial advertising space on all Terminal advertising structures as identified in **Exhibit A. Terminal Area and Leased Premises.**

1. Obligations of the Operator

1.1 The Operator is solely responsible for all costs incurred in connection with this concession, including but not limited to solicitation, design, preparation, installation, and maintenance of commercial advertising and shall be paid by Operator without contribution whatsoever by the County.

1.2 All advertising proposed to be installed by Operator must be approved by the County before installation with respect to location, subject, character, size and style. The County shall have the right to reject and prohibit the installation of or compel the removal of any advertising material deemed by the County, in the County's absolute discretion, not suitable by location, character, size or style for display on County property.

1.3 Other Requirements of Operator

a. Operator will endeavor to secure at least 85% of displays from local area advertisers;
b. Operator will provide a local sales force;
c. Conduct all installations with qualified staff and complete them in a professional manner including the provision of sufficient personnel for display case relocation at Airport request with 21 days' notice;
d. Operator will provide timely responses and continuous responsibility to Airport and County, Customers or Advertisers, including having a maintenance staff with on-site availability within 48 hours upon request;
e. Operator will provide graphic guidance to Advertisers and obtain written approval by Airport Manager of all graphic renditions prior to install;
f. Operator will assist Airport in public relations efforts including media release support; and provide complimentary monthly advertising space in the Gunnison Country Times for general or specific airport promotions and marketing;
g. Maintenance of Displays: - Operator shall be responsible for cleanliness of all of the displays, including dusting of exposed displays and washing of all glass of enclosed displays. All displays must be maintained by Operator in good condition and in complete repair.
h. Advertising Hardware: - Operator shall provide advertising cards, springs, hooks and other material necessary for proper positioning of advertising media. Frames and other such hardware shall be supplied and installed in the terminal by the Operator and shall remain the property of the Operator during the term of this Agreement. At the conclusion of the term of this agreement the County shall have the option to purchase all advertising cards, springs, hooks, frames, mounts and displays that are not Operator's specialty/trade equipment and displays, including, but not limited to wall and backlit displays, telephone reservation centers, technology displays and other displays that the Operator has exclusive vendor agreements to use, at a mutually agreeable price. Operator shall execute such reasonable document (e.g. bill of sale) as necessary for purchase.
i. Provide all financial reports and payments in a timely manner;

2. Term

2.1 The term of this Agreement shall be for a period of 2 years commencing November 1st, 2018 through October 31st, 2020 ("Initial Term"). The term may, at the option of the County, be extended for two additional terms of one year (1) year each.

3. Payment

3.1 Throughout the term of this agreement and in consideration of said agreement, the Operator agrees to pay to the County **twenty-five percent (25%)** of the Annual Gross Revenue derived from the sale of airport terminal advertising space (hereinafter referred to as the "Airport Percentage Fee") per year.

3.2 Such payments shall be made by the 20th day of the month following each calendar quarter and shall be based on the gross revenues of the immediate preceding quarter.

3.3 Operator shall furnish the County with each quarterly payment, a verified statement of its "gross revenue" for the quarter for which payment is made, for the purpose of determining the amount due to the County.

3.4 The term "gross revenues" shall mean the sum of the gross receipts the Operator is entitled to receive and has received from advertisers for the display of their advertisements on the space and locations in the airport terminal covered by this Agreement.

3.5 Gross revenues to the Operator shall be deemed received at the time the sales, lease or service 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.

3.6 Immediately upon Operator's receipt of monies from its operations hereunder, the percentage of said monies belonging to the County under the terms of this Agreement shall immediately be vested in and become the property of the County. The Operator shall be responsible for said monies until the same are delivered to the County

3.7 Gross revenues or gross receipts <u>shall not include</u>:

a. Federal, state or local sales taxes separately stated and collected from customers.

b. The amount of any and all sales, use, gross receipts occupational license and similar taxes imposed upon Operator in respect to the business conducted by the Operator under and in accordance with this Agreement.

3.8 Operator shall have full control of the rates and charges to be charged for advertising and the terms, conditions and manner of payment by advertisers to Operator.

3.9 Operator shall take all legal and reasonable steps necessary to collect any monies due to Operator associated with terminal advertising. All costs of collection shall be borne by Operator

3.10 Operator shall not be responsible to the County for the failure or default of any person, firm or corporation to whom space shall have been sold as herein set forth but uncollected however Operator shall remove without delay from such space any media that may have been installed.

4. Obligations of the County

4.1 The County shall have the right, at its sole discretion, and without compensation to Operator, and without any deduction from gross revenues due to the County, to display any public welfare, educational advertisement and such other advertisements as the County shall deem proper for the purpose of avoiding unfilled Operator spaces or locations, or at any other locations the County shall deem proper at the Airport.

4.2 The County shall have the right, at its sole discretion, and without compensation to Operator, and without any deduction from gross revenues due to the County, to advertise special events that the Gunnison Board of County Commissioners deems appropriate.

4.3 The County shall be responsible for providing electrical power in the terminal which will be used by the Operator as necessary to power/activate advertising media.

4.4 Additional electrical outlets, not present or available but desired by the Operator and approved by the Airport Manager, will be the responsibility of the Operator.

4.5 The Airport Fee shall be:

a. subject to reduction equal to Operator's share of actual and prospective advertising revenues lost and unearnable where the County requires any removal or relocation of an advertising location (without the contemporaneous assignment to Operator of a replacement location of at least equal passenger exposure and commercial advertising value) that results in five percent (5%) or more of potential advertising revenues (based on Operator's rate card) of the Assigned Areas shown in Exhibit "A", as may be amended by the parties, being eliminated at any time. Where a display case or other display advertisement in an Assigned Area was visually obstructed, subject to the re-routing of passenger traffic away from the Assigned Area so as to materially affect exposure, or subject to electric supply failure, for more than three (3) days without fault to Operator, any amounts refunded to or withheld by affected advertisers shall not count towards Gross Revenues and Operator's share of such lost revenues shall be deducted from the fee payment to the County.

b. subject to a reduction equal to Operator's share of actual and prospective advertising revenues lost and unearnable during any period where there is a forced closure of the Airport for three (3) or more days due to circumstances beyond Operator's control, including a national emergency.

5. Payment Upon Completion Of Term

5.1 Within thirty (30) days of the completion of the Term of the Agreement, including any extensions thereof, or the cancellation or termination of this Agreement for any reason whatsoever, the Operator shall pay the full amount due of twenty-five (25) percent of its total gross revenue for the term of this Agreement.

6. Books of Accounting And Audit

6.1 Annually, within ninety (90) days after the end of every calendar year, at the expiration of the Operator's term and upon assignment of Operator's rights hereunder, Operator shall file a statement of gross revenues or gross receipts reportable under this Agreement, which report shall be prepared, signed and certified as correct by a corporate officer of Operator.

6.2 Operator shall maintain full and accurate books of account and records from which "gross revenue" and “gross receipts" as defined herein, the amount and nature of all business transacted on or through the Airport and the amount of percentage payment owed the County hereunder, particularly as it relates to all revenues or receipts attributable to Operator's business conducted at the Gunnison-Crested Butte Regional 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 Airport-related federal income tax returns, state sales tax returns and all Airport-related revenue reports submitted by Operator. These books and records shall be maintained on a current basis and shall be stored at Operator's principal location 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.

7. Audit

7.1 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. For purposes of this Agreement, the annual audit period shall be deemed to commence January 1 of each year the Agreement is in effect and to conclude December 31 of the ensuing year. In performing said audits, County shall be entitled to review, and Operator shall be obligated to provide to the County, all of the books of account and records that Operator is obligated to maintain pursuant hereto, as well as other documents and files, including but not limited to any sales tax report or return, and accompanying schedules or data, which Operator may file

with the Stale of Colorado or United States, 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 payment 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 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 payments 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, Licensee 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 payment 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 payments paid to the County by Operator, the County shall refund the amount of overpayment to Licensee within thirty (30) days of said audit. The County shall hold all information obtained from 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 such information. In the event the County must conduct such an audit at any location other than the Airport, Operator shall reimburse the County the County's actual cost incurred in sending County auditors to such location.

8. No Notice Required For Payment

8.1 All payments due or becoming due pursuant to the provision of the Agreement shall be due and payable without notice. In all instances where Operator is required by this Agreement to make any payments to the County, such payments shall be made at or at such place as the County may designate by notice in writing to the Operator. Any check given to the County shall be received by it, subject to collection, and Operator agrees to pay any charge incurred by the County for such collection.

9. Notices

All notices required to be given hereunder shall be by certified mail, return receipt requested, addressed to:

As to the County:
Airport Manager
Gunnison-Crested Butte Regional Airport
519 Rio Grande Ave.
Gunnison, CO 81230

As to the Operator:
Gunnison Country Publications d.b.a. Gunnison-Crested Butte Airport Media
218 N. Wisconsin St.
Gunnison, CO 81230

The effective date of service of such notice shall be the date such notice bearing sufficient postage is deposited in a United States Post Office.

10. Other Agreements

a. Airport Rules and Regulations. Operator agrees to observe and obey Airport rules and regulations that may be adopted or amended by Gunnison County from time to time respecting the use of the Airport.

b. Agreement Subordinate. This license 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 Gunnison-Crested Butte Regional Airport.

c. Non-discrimination. 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.

d. Uncontrollable Circumstances. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortages 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.

e. The County reserves the right to direct, in its reasonable discretion, Operator's operations in the event that Operator's 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.

f. 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 the County deems appropriate, without interference or hindrance by the Operator, and the County shall have no liability hereunder to Operator by reason of interruption to Operator's operations in the Assigned Areas occasioned by such County activities.

11. Taxes, Compensation Insurance, Licenses

11.1 Operator agrees to pay promptly all taxes, license fees and permit fees of whatever nature, applicable to its operation hereunder, and to take out and keep current all licenses, municipal, County, State or Federal, required for the conduct of its business hereunder, and further agrees not to permit the same to become delinquent or to suffer any lien, mortgage, judgement, execution or adjudication in bankruptcy which will in any way impair the rights of the County under the Agreement.

12. General Indemnity

12.1 As further consideration hereunder, Operator hereby agrees to release and to indemnify, to defend, and to save and hold harmless the County, its employees, agents and representatives from and against any and all loss of, or damage to, property or injuries to, or death of, any person or persons, officials, officers, employees, agents and representatives from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, including acts and omissions to the owners, officers, employees, agents, representative, suppliers, invitees and contractors of Operator.

13. Patents and Trademarks

13.1 Specific Indemnity: Operator represents that it is now or prior to use shall be the owner of or fully authorized to use any or all words, designs, marks, names and slogans used by it in its operations hereunder or in any way connected with this Agreement. Operator agrees to save and hold the County, its officials, officers, employees, agents and representatives, free and harmless of and from any loss, liability, cost, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright, or claim of unfair competition, or any other claim arising out of the operations of Operator hereunder of in any way connected with this Agreement.

14. Waivers

14.1 No waiver of default by either party of any of the terms, covenants or conditions hereof to be performed, kept, and observed by the other party shall be construed as or operate as a waiver by either of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

15. Assignment

15.1 Operator covenants and agrees not to assign, sublet, pledge or transfer its rights in this Agreement, in whole or in part, not grant any license of concession hereunder, without obtaining the prior written approval of the County.

16. No Personal Civil Liability

16.1 No official, officer or employee of either party shall be held personally liable from the civil standpoint under this Agreement or because of its execution except as provided by Law.

17. Not Partnerships

17.1 Notwithstanding the provision herein contained for the payment of fees or charges by Operator to the County, it is expressly understood and agreed that the County may not be construed or held to be a partner, associate or joint venture of Operator in the conduct of its business, but Operator shall at all times have the status of an independent contractor, without the power, right or authority to impose contractual, tort or the liability upon the County.

18. Agreement Binding

18.1 This agreement shall be binding on and extended to the successors and assigns of the parties hereto.

19. Miscellaneous Provisions

a. Headings. 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.

b. Time of essence. Time is of the essence in this agreement.

c. Non-Waiver. Waiver by either party of or the failure of either 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.

d. Limit of Benefit. 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.

e. Governmental Immunity. Nothing in this Agreement is or shall be construed to be a waiver by Gunnison County of governmental immunity.

f. Advice of Independent Counsel. 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.

g. Severability. 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 Board or Operator in their rights and obligations contained in valid covenants, conditions or provisions.

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

i. Notices. Notices provided for herein shall be sufficient if sent be Certified Mail, Return Receipt Requested, postage prepaid, to the addresses set forth above or to such other addresses as the parties may from time to time designate in writing.

j. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

k. Entire Agreement. 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.

l. Modification of Agreement. This agreement may not be altered, modified or changes in any manner whatsoever except by a writing signed by all parties hereto.

m. Modification of Assigned Areas. The Operator shall not modify, alter, construct or reconstruct the Assigned Areas and shall obtain proper written approval for the installation of any electrical wiring or other utilities except telephone. The method of installation of all utilities, including telephones, shall be approved by the County.

20. Enforcement

20.1 It is agreed that if any action is brought in a court of law by either party to this Agreement as to the enforcement or interpretation or construction of this Agreement or any payment or document provided for herein, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.

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
Gunnison County, Colorado

By:_____
Phil Chamberland, Chairperson

By:_____
Jonathan Houck, Commissioner

By:_____
John Messner, Commissioner

Attest:

_____ , Deputy County Clerk

Gunnison-Crested Butte Airport Media

_____
Chris Dickey, Chair

Attest:

_____
Secretary

Attachments:

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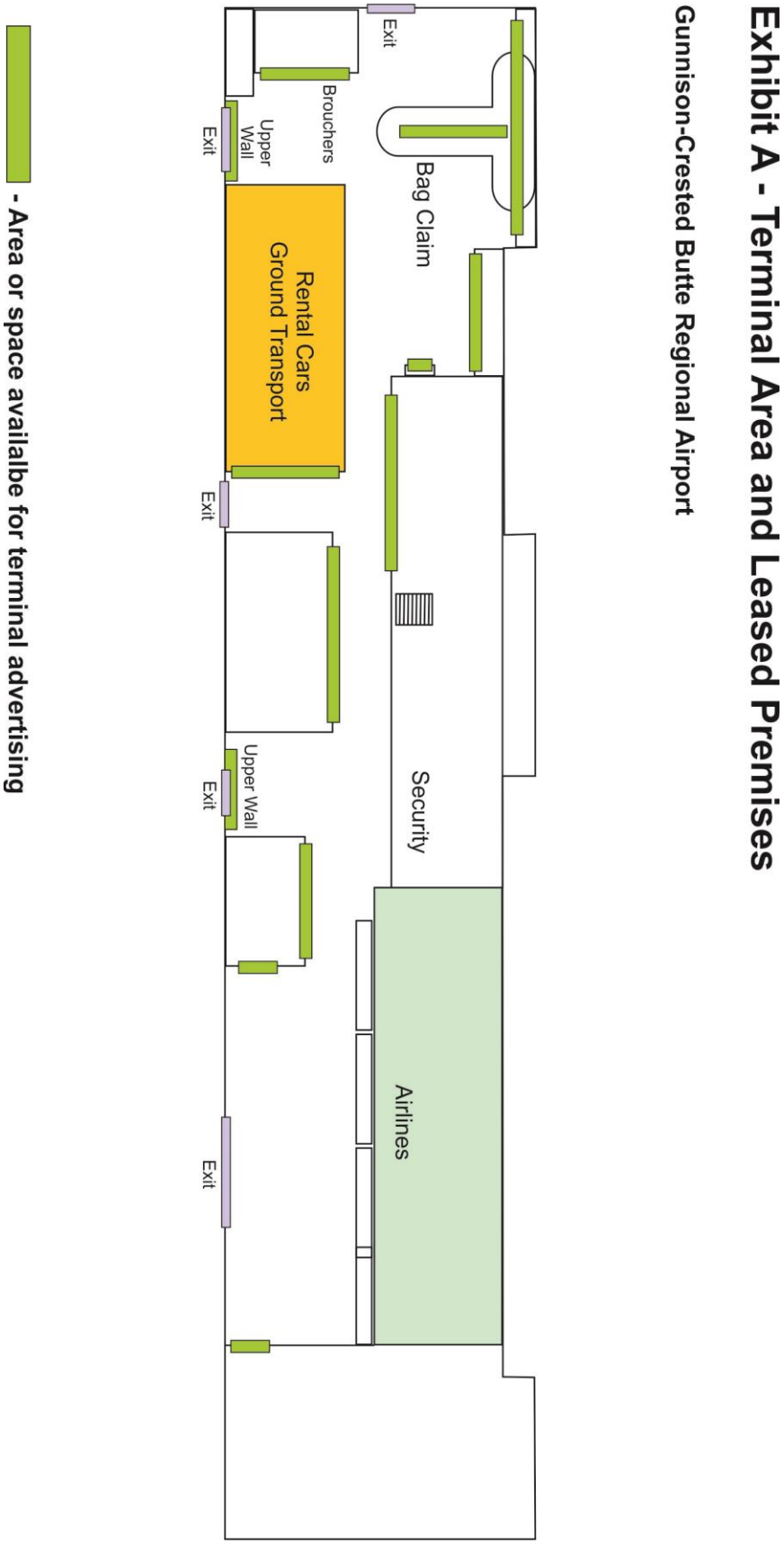
Exhibit A
Terminal Area and Leased Premises