# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**AgendaTitle:**
Affiliate Airline Operating Agreement, Gunnison-Crested Butte Regional Airport, Gunnison, Colorado; Express Jet Airlines; 11/1/13 thru 10/31/14

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison County & Express Jet, Inc.

**Term Begins:** 11/1/2013 **Term Ends:** 10/31/2014 **Grant Contract #:**

**Summary:**
Operating agreement for Express Jet Inc to provide air carrier transport services to/from Gunnison-CB Regional airport.

**Fiscal Impact:** ?

**Submitted by:** R. Lamport **Submitter's Email Address:** Rlamport@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:

Rate is not proposed to increase from previous year. Total revenue from Express Jet for 2012 was $105,402.42.

Reviewed by: GUNCOUNTY1\BCOWAN Discharge Date: 10/30/2013

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

Comments:

Reviewed by: GUNCOUNTY1\ATREZISE Discharge Date: 10/22/2013 Certificate of Insurance Required Yes (●) No ( )

**County Manager Review:**

Comments:
Contract language has been changed to reflect Ben's comments.

Reviewed by: GUNCOUNTY1\MBIRNIE Discharge Date: 10/31/2013

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 10

Agenda Date: 11/5/2013 Follow Up Agenda Date:

*Revised April 2013*

# AFFILIATE AIRLINE OPERATING AGREEMENT

**GUNNISON-CRESTED BUTTE REGIONAL AIRPORT**
**Gunnison, Colorado**

Lessor: **BOARD OF COUNTY COMMISSIONS**
**OF GUNNISION COUNTY, COLORADO**
200 East Virginia
Gunnison, Colorado 81230
Facsimile: (970) 641-3061

Lessee: **EXPRESS JET AIRLINES**
900 Toffie Terrace
Atlanta, GA 30354

Dated: November 1, 2013

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**EXHIBIT 2:** Rules and Regulations

# AFFILIATE AIRLINE OPERATING AGREEMENT
## GUNNISON-CRESTED BUTTE REGIONAL AIRPORT
### Gunnison, Colorado

THIS AFFILIATE AIRLINE OPERATING AGREEMENT is made effective as of November 1, 2013, between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, herein called the "County," having an address of 200 Virginia Avenue, Gunnison, Colorado 81230, and Express Jet Airlines, herein called the "Airline", having an address of 900 Toffie Terrace, Atlanta, GA 30354-1363.

## RECITALS

The parties recite and declare that:

A. The County is a political subdivision of the State of Colorado which owns and operates the Gunnison-Crested Butte Regional Airport, located within and adjacent to the City of Gunnison, Colorado;

B. Airline is an Affiliate of an airline which has entered into a Airline Operating Agreement and Lease of Airport Facilities with the County, and such airline will provide all terminal and ground handling services for Airline at the Airport; and

C. Airline is engaged in the business of a public air carrier transporting persons, property, cargo and mail, and in which service and business it desires to use the public airfield facilities of the Airport and common use areas of the terminal building, in accordance with the terms hereinafter set out.

**NOW, THEREFORE,** the County and the Airline hereby agree, each for itself and its successors and assigns, as follows:

## 1. DEFINITIONS

As used in this Agreement, defined words and terms shall have the following meanings:

1.1 "Affiliate" means a domestic air transportation company, that (i) is designated as an Affiliate by a Tenant Airline and, (ii) has executed an Affiliated Airline Operating Agreement with the County; and either (a) is controlled by, controlling, or under common control with Tenant-Airline; or, (b) if operating under its own livery, is not selling any seats on an aircraft in its own name and all seats on such aircraft are being sold in the name of Tenant-Airline; or, (c) is operating at the Airport under a shared International Air Transport Association ("IATA") flight designator code with Tenant-Airline at the Airport. No "major" airline, as such term is defined by the U.S. Department of Transportation, and as measured on the date of designation hereunder, may be designated as an Affiliate of a Tenant-Airline, unless such Affiliate is a subsidiary of the same corporate parent as Tenant-Airline."

1.2 “Airport” is the Gunnison-Crested Butte Regional Airport located within and adjacent to the City of Gunnison, Gunnison County, Colorado, including the Terminal and other public improvements and facilities located thereon.

1.3 “Manager” is the Airport Manager of the Airport as may be designated from time to time by the County, regardless of the title which he or she may be assigned from time to time by the County.

1.4 “Air Operations Area” is any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft.

1.5 “Employees” means Airline’s officers, employees, contractors and/or agents performing activities at the Airport.

1.6 “Agreement” is this Affiliate Airline Operating Agreement.

1.7 “Ramp” is that portion of the aircraft ramp/apron at the Airport designated by the Manager from time to time for use by air carrier aircraft.

1.8 "Tenant Airline" is United Airlines, which has entered into a currently effective Airline Operating Agreement and Lease of Airport Facilities with the County

1.9 “Terminal” is the existing Passenger Terminal Building at the Airport.

1.10 “Weight” shall mean the maximum gross certified landing weight of an aircraft as designated by the Federal Aviation Administration.

## 2. USE OF AIRPORT FACILITIES

Subject to the terms, conditions and covenants of this Agreement, Airline is granted the following:

2.1 Grant of Airport Use. Airline is granted the use of public areas of the Airport, in common with others similarly authorized, together with all public facilities, improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, sewage and water facilities, floodlights, landing lights, beacons, control tower, signals, radio aids and all other conveniences for flying, landings and takeoffs.

2.2 Terminal Building and Adjacent Space. Airline is also granted the use of the following space in and adjacent to the Terminal:

2.2.1 In common with others, use of the security holding area, baggage claim area, baggage make-up areas. aircraft loading bridges and waiting areas and security screening areas;

2.2.2 In common with others, use of portions of the Ramp to permit the taxiing, servicing, loading and unloading of Airline's aircraft, provided, however, that the Airport Manager shall at all times have the right to establish and enforce such non-discriminatory policies or rules as he reasonably deems necessary to control the parking and movement of aircraft on the common aircraft areas. Such rules may prohibit the long-term parking or storage of aircraft, including disabled aircraft, on ramp and apron areas. Long-term parking on a ramp or apron area is hereby defined as parking that exceeds forty-eight (48) consecutive hours. If Airline works in good faith to repair and/or remove a disabled aircraft from a ramp or apron area, but is unable to do so within forty-eight (48) hours, Airline shall not be deemed to have breached the terms of this Section; and

2.2.3 In common with others, the use of all public space in the Terminal for Airline, its employees, customers, guests and other invitees, subject to such reasonable policies or rules as the County may establish.

2.3 Access to Airport.

2.3.1 Airline, its passengers, invitees, Employees and furnishers of goods or services shall have an unimpeded and unobstructed right of ingress to and egress from Airport. Such access shall be in common with such other persons (including, at the option of the County, the general public) as the County may authorize or permit. The County may, at any time or times, close, relocate, reconstruct, change, alter or modify such means of access, either temporarily or permanently, provided that another reasonably convenient and adequate means of ingress and egress is available for the same purposes.

2.3.2 The County may charge the operators of vehicles carrying passengers and property for the privilege of entering Airport property or using the roadways in or on the Airport, parking vehicles on the Airport, soliciting passengers on the Airport, or otherwise operating on the Airport.

2.4 Limitation on Use. Airline's use of the Airport authorized and granted herein shall be limited to the operation of a transportation system by aircraft for the carriage of persons, property, cargo and mail as an Affiliate, as defined in paragraph 1.1 above, of Tenant-Airline, as defined in paragraph 1.8 above, including without limitation, the landing, take-off, parking, servicing, repairing, storing and testing of Airline's aircraft.

2.5 Acceptance by Airline. Airline has inspected the Airport and is fully aware of the equipment, location and condition thereof. Airline acknowledges that the Airport is fit for Airline's use and enjoyment of the rights granted hereunder, and accepts the same in their present "as is" condition.

## 3. OBLIGATIONS OF AIRLINE

3.1 Fees and Charges. Airline agrees to pay the County fees and charges for its of use of the Airport, and the services and privileges granted hereunder, according to the following schedule:

3.1.1 For Airport services connected with its operations actually landed at the Airport, Airline shall pay a landing fee based on the Weight of the aircraft landed, which landing fee shall be $5.35 per 1,000 pounds of Weight.

3.1.2 For the use of the Terminal boarding bridges, Airline shall pay $100.00 for each operation, which shall be defined as a single landing and take-off combined.

3.1.3 Airline shall pay for any identification badges required for its or its assigns or subtenants' employees, at a rate established by the County from time to time, and the cost of finger print based FBI background checks in addition to any other requirements of the TSA. The initial badge rate currently charged by the County is $75.00 per badge. Airline shall also pay fees as established by the County from time to time for the replacement of said badges. When requested by Airline, the County shall issue keys to Airline employees, to provide access to those areas of the Terminal which the County in its discretion deems necessary or appropriate for Airline's activities. Airline agrees to pay the County $10.00 for each such key issued. If any such key is lost or stolen, Airline agrees to pay the County $100, plus the actual cost incurred by the County for re-keying the affected locks and producing replacement keys**.** Airline acknowledges that, depending on the key lost, the cost incurred for re-keying locks and providing replacement keys may be significant.

3.2 Miscellaneous Other Fees, Charges and Reimbursements. Airline agrees to pay to, and/or collect for the County, the following additional fees and charges in connection with the rights and privileges granted hereunder:

3.2.1 Such additional fees or charges as are necessary to reimburse the County for its expenditures required to comply with standards, regulations, orders or directives from the Federal Aviation Administration and/or Transportation Security Administration concerning security, and the

County's approved Airport Security Program, to the extent that the federal government is not obligated to provide such reimbursement. To the extent that the Airline provides such services at its own expense, it shall be relieved of any obligation to reimburse the County under this section.

3.2.2 Airline agrees to faithfully collect and promptly remit to County (without notice or demand by County and in accordance with FAR Part 158) the proceeds of the County's Passenger Facility Charge ("PFC"), so long as the County has an FAA approved PFC in effect. Except to the extent preempted by FAA regulations, Airline shall pay the County interest for late payment of PFC proceeds to County in accordance with Section 3.3 below. Both Airline and County hereby covenant to fulfill their responsibilities under the terms of FAR Part 158. If legislation and regulations in effect on the date of this Agreement, governing PFCs, use fees, or similar charges on Airline's passengers using the Airport are amended, changed, or eliminated during the term of this Agreement, the County reserves the right to appropriately adjust such charges, levy new charges, revise charges, or implement additional charges as determined by the County to be necessary.

3.2.3 Airline shall pay such fuel flow taxes and fees on fuel it purchases from itself or from authorized vendors on the Airport as may be established from time to time by the County, in accordance with payment procedures established by the County.

3.2.4 Airline, on behalf of itself and its assigns and subtenants, shall pay its pro rata share of the County's expenses incurred in draining and cleaning the Airport's deicing holding tank. The present manner of allocating the costs involved is to pro rate the expenses by the percentage of de-icing fluid sprayed onto the Airlines aircraft during the cleaning period involved. After consultation with airlines serving the Airport the County may alter the formula for allocating the expenses involved, as the County deems appropriate, provided that the allocation formula pro-rates the expenses on a non-discriminatory basis amongst the various users thereof.

3.3 Terms and Conditions of Payment.

3.3.1 Payment of fees and charges due under this Agreement shall be the primary responsibility of Tenant-Airline, and to the extent invoices are required, they shall be sent by the County to Tenant-Airline. If Tenant-Airline fails or refuses to timely pay any amount due under this Agreement, for any reason whatsoever, then Airline agrees that promptly upon receiving notice from the County it shall pay such amount due.

3.3.2 Airline shall provide to the County information required in calculating fees due under paragraphs 3.1.1, 3.1.2, and 3.2.4 of this Agreement, and warrants that all information contained in these reports shall be true and accurate as of the date the same is given. By the fifth (5th) business day of each month during the Agreement term, Airline shall deliver to the County, on a form to be provided by the County, all information required by paragraph 3.11 below, for the previous calendar month. The County will thereafter invoice Airline and Tenant-Airline the appropriate fee for the previous month, which amount shall be paid within twenty (20) days following billing by the County.

3.3.3 If the County incurs costs or other amounts which must be reimbursed by Airline, or if any other amounts become due to County under this Agreement, Airline shall pay or reimburse such amounts by the last day of the month following receipt by the Airline of a statement or invoice itemizing such costs.

3.3.4 Payments shall be made to the Gunnison County Finance Office, 200 East Virginia, Gunnison, Colorado 81230, and shall be made payable to the "Gunnison County Treasurer." Any check or other order shall be accepted subject to collection and the Airline agrees to pay any bank charges made for the collection of any such check.

3.3.5 In the event that any rental, fee or charge set forth in this Agreement shall not be paid to the County within the calendar month of the due date, Airline agrees to pay a late charge equal to one percent (1%) per month on the unpaid balance, accruing from the due date until paid.

3.4 Airline's Operations as Affiliate.

3.4.1 Airline is operating at the Airport as an Affiliate of Tenant-Airline. Notwithstanding any other provision herein to the contrary, this Agreement shall terminate and be of no further force or effect upon the expiration or sooner termination of Tenant-Airline's lease with the County.

3.4.2 Unless Airline has entered into and is operating at the Airport under a separate Airline Operating Agreement and Lease of Airport Facilities with the County, Tenant-Airline has agreed (A) to be primarily responsible for and timely pay any and all rentals, charges and fees incurred by Airline in connections with its operations at the Airport; (B) to be primarily responsible to file any reports required by this Agreement with respect to the operations of Airline at the Airport, and (C) to indemnify and hold the County harmless against all claims,

demands, suits and liability for injuries to persons or damage to property (including attorney fees and costs incurred by the County) which are caused in whole or part by Airline's intentional and/or negligent operations at or upon, or use of the Airport, except to the extent that such injuries or damage are caused by the negligence or misconduct of the County. Notwithstanding the above, Airline shall be jointly and severally liable to the County for all obligations under this Agreement, including but not limited to those set forth above.

3.4.3 Airline is not granted any rights to occupy any exclusive or preferential premises in the Terminal. Airline shall enter into an agreement with Tenant-Airline for Airline's operations in the Terminal, and the existence of such an agreement shall be a prerequisite to the County's performance under this Agreement.

3.5 Insurance. Airline shall have the obligation to maintain, during the Term of this Lease and at Airline's expense, aircraft liability insurance and comprehensive general form liability insurance , covering bodily injury, personal injury, property damage, products/completed operations liability, premises liability and contractual liability, with liability limits of at least those set forth in the County's Minimum Standards and Requirements of Commercial Aeronautical Activities (the "Minimum Standards") at the Airport, as the same now exist or as they may be hereafter amended after notice to Airline. A copy of the Minimum Standards is annexed to this Lease at **Exhibit 1**. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft, and aircraft operations at or upon the Airport. Said policy shall include an endorsement covering the indemnity owed by Airline to the County under this Lease. Airline may insure in such amounts as Airline shall deem appropriate with respect to any other risk. Airline shall also maintain worker's compensation insurance or evidence of self-insurance, in accordance with the laws of the State of Colorado, covering all its employees who may from time to time be at the Airport in such capacity. Airline shall furnish current certificates of insurance to the County within 30 days of executing this agreement.

3.6 Indemnification of the County. Airline agrees to indemnify the County against all liability for injuries to persons, fines, penalties or damages caused by Airline's intentional and/or negligent operations at or upon the Airport, or violation of, or failure to perform, any term or condition of this Agreement, except to the extent that such injuries or damage are caused by the negligence or willful misconduct of the County or third parties not contractually related to Airline or related to conditions existing prior to Airline's occupancy of the Airport.

3.7 Security Requirements. Airline shall comply with applicable provisions of the County's Airport Security Program.

3.8 Records and Reports. Airline agrees that it shall keep or cause to be kept true, accurate and complete records of Airline's activity conducted at the Airport upon which reports required below and in Subparagraph 3.3.2 above are based for a period of three (3) years after the activity conducted, and shall permit the County to inspect the same at all reasonable times. In order to assist the County in determining the monthly landing and other fees owed to the County by Airline, Airline hereby agrees to provide, to the best of the Airline's ability to do so, in writing, to the County, on or before the fifth (5th) day of each month, the following information:

3.8.1 Aircraft landing reports listing by date or dates the number and kind of aircraft landed by the Airline at the Airport during the preceding month, and showing the Weight of each such aircraft, and the calculation of landing fees due the County for said month;

3.8.2 Enplaned passenger report showing the monthly total of revenue passengers enplaned on the Airline's aircraft at the Airport each month;

3.8.3 Enplaned and deplaned freight report showing separately the monthly total weight in pounds of freight enplaned and deplaned on the Airline's aircraft at the Airport each month;

3.8.4 Gallons of de-icing fluid dispensed onto aircraft owned and/or operated by it, its subtenants, Affiliates or assigns at the Airport during the preceding month; and

3.8.5 Such other information as may be reasonably requested from time to time by the County in writing, to enable the County to compute the various fees and charges owed hereunder and to manage and market the Airport.

3.9 Removal of Disabled Aircraft. Airline shall promptly remove any of its disabled aircraft from any part of the Airport, including, without limitation, runways, taxiways, aprons and gate positions, but excluding storage areas designated by the Manager, and place any such disabled aircraft in such storage areas as may be designated by Manager. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by the Manager. If Airline fails to remove any of its disabled aircraft promptly, County may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with federal and state laws and regulations. Airline agrees to reimburse County for all costs of such removal. Airline further releases County from any and all claims for damage to such

disabled aircraft or otherwise arising from or in any way connected with such removal by the County.

3.10 Reporting of Delays. Airline shall promptly notify the County of any anticipated delays on arrivals or departures greater than one-half hour. Failure to so notify the County of any delays shall result in additional rent payable by Airline in the amount of $250 per hour, pro-rated on 15-minutes intervals. Such additional rent is not a penalty, but is the agreed estimated value of additional County services provided with respect to scheduled arrivals and/or departures should the County not be informed of delayed.

## 4. OBLIGATIONS OF THE COUNTY

4.1 Quiet Enjoyment. The County covenants that on paying the fees and charges and performing the covenants herein contained, Airline shall peacefully and quietly have, hold and enjoy the rights granted herein for the agreed Term.

4.2 Airport Security. The County shall provide special security in the Air Operations Area necessary or reasonably appropriate to meet the obligations of the County, if any, in accordance with the provisions of applicable federal regulations as they exist on the date of this Agreement. Subject to recovery of costs, as set forth in this Agreement, the County shall provide such additional security measures as are imposed upon it by future federal regulations.

## 5. TERM

5.1 Term. Subject to earlier termination as hereinafter provided, the term of this Agreement shall be for a period commencing November 1, 2013 and ending October 31, 2014 (the "Term").

5.2 Holding Over. Holding over 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 term, under the other terms and conditions of this Agreement, which may be terminated by either party upon 30-days notice to the other. During any such month-to-month term the fees and charges payable by Airline shall be at rates that are then being paid by other air carriers operating at the Airport under then current Agreements, or if no such Agreements are in effect, at rates set forth in the County's then-current Rate Resolution.

## 6. TERMINATION, SURRENDER AND DAMAGES

6.1 Termination by Airline. Airline may terminate this Agreement at any time a written notice specifying an early termination date, which date shall not be less than thirty (30) days from the date of delivery of said notice to the County. In such event, this Agreement shall terminate on the date specified in the notice,

provided that Airline is not then in default under the terms of this Agreement and all amounts due and owing to the County are fully paid on and to the termination date specified. If Airline continues to provide service after the date specified, is in default hereunder or otherwise continues to owe monetary obligations to the County on said date, Airline's obligations under this Agreement shall not terminate, but shall continue during the term.

6.2 Airline's Default and County Remedies.

6.2.1 The County shall have the right to terminate if the Airline is in default under this Agreement in the event of any of the following:

6.2.1.1 appointment of a receiver or trustee of Airline's assets;

6.2.1.2 default by Airline in the performance of any covenant or agreement herein required to be performed by Airline, other than the payment of money or the occurrence of the events described in this paragraph, and failure of Airline to remedy such default for a period of thirty (30) days after delivery of written notice to remedy the same; or

6.2.1.3 default by Airline in the performance of any covenant or agreement herein required to be performed by Airline, other than the payment of money or the occurrence of the events described in this paragraph, and failure of Airline to remedy such default for a period of thirty (30) days after delivery of written notice to remedy the same, or for matters that cannot reasonably be remedied within that time, failure of Airline to commence within thirty (30) days actions to remedy such default; or

6.2.2 In the event of default, the County may, at its option, in addition to other remedies, and with or without terminating this Agreement, take possession of so much of Airline's personal property located on the Airport as is reasonably necessary to secure payments of the amounts due and unpaid, to the extent that no other creditor has a senior perfected lien in such property. The County shall be entitled to such other and further relief as may be available at law or equity. In the event of Airline's default, the County need not elect remedies, but may pursue any combination of remedies available to it at law or equity.

## 7. ASSIGNMENTS AND SUBLETTING

7.1 Assignments and Subletting. Airline shall not at any time assign its rights under this Agreement.

7.2 Successors to the County. The rights and obligations of the County under this Agreement may be assigned by the County at its option, and without the necessity for the concurrence of the Airline in any such assignment.

## 8. OTHER AGREEMENTS

8.1 Compliance with Laws, Rules and Regulations.

8.1.1 Airline shall obtain and pay for all licenses, fees, permits or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder. Airline shall also pay all taxes lawfully imposed upon it with respect to its property or operations on the Airport.

8.1.2 "Airline shall, at all times, obey and comply with all applicable existing and future laws, rules and regulations and binding directives adopted by federal, state, local and other governmental bodies and applicable to Airline and/or its operations and/or activities on or from the Airport. Airline agrees to abide by and be subject to reasonable and nondiscriminatory requirements in (a) Sections 1.1 through 1.3, 1.7 *(with the exception of subsection 1.7.4)*, 1.10 and 1.11 of the Minimum Standards, and (b) rules and regulations which are now, or may from time to time be, lawfully promulgated by the County and/or other agencies with authority concerning management, operation or use of the Airport, provided that such Minimum Standards and County rules and regulations do not conflict with this Agreement or with applicable federal or state laws or regulations. Further, County agrees to give Airline written notice of any amendments to such Minimum Standards or County rules and regulations in order to provide Airline with a reasonable opportunity to comment on such amendments prior to adoption. A copy of the County's existing rules and regulations relating to operations at the Airport are annexed to this Lease as **Exhibit 2.**"

8.1.3 Without limiting the foregoing, Airline agrees to utilize the Airport, and all improvements thereon, in compliance with applicable regulations of the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA), the Occupational Health and Safety Administration (OSHA), and the Transportation Security Administration (TSA), including those embodied in 49 CFR Part 1542, as they now exists or as they may

hereafter be amended, which regulations are specifically incorporated and made a part of this Agreement, and the County's minimum fuel standards, air operations area safety procedures, and operational rules, as the same now exist or may be amended from time to time. If there is any inconsistency between the terms of this Agreement, and the terms of such procedures, standards or rules, the terms of this Agreement shall control. Notwithstanding the foregoing, under no circumstances shall Airline be required to comply with any requirements that conflict with applicable federal or state laws or regulations.

8.1.4 Airline agrees to comply with all verbal and written directives of the Manager regarding Airline's use of the Airport's airfields and ramps, and other common areas on the Airport, provided, however, that an such directive shall not be inconsistent with any express provision of this Agreement. Airline hereby agrees to only use propylene glycol as a deicing agent, or such other deicing agent as may be authorized by the County in the future, which authorization will not be unreasonably withheld.

8.1.5 Nothing herein shall limit the right of Airline to challenge any rule, regulation, or standard, or the application of such rule or regulation to Airline, or to seek any legal or equitable remedy.

8.2 Agreement Subordinate. This Agreement shall be subordinate to any existing or future agreement between the County and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for development of the Airport. If such an agreement is entered into between the County and the United States, the parties agree to execute an amendment to this Agreement so as to remove any material inconsistencies between this document and any agreement with the United States.

8.3 Non-Discrimination.

8.3.1 Airline agrees that in its operations under this Agreement (1) no person on the grounds of race, color, religion, sex, age, handicap, disability or national origin shall be unlawfully excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport; or excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in services at the Airport; and (2) Airline shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of

the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations now exist may be amended.

8.3.2 Airline shall furnish its services on a fair, equal, and not unjustly discriminatory basis to all users thereof without unjust discrimination on the basis of race, creed, color, religion, sex, age, national origin, or handicap, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

8.3.3 Non-compliance with subparagraphs 8.3.1 or 8.3.2 above, after written finding, shall constitute a material breach of this Agreement, and in the event of such non-compliance, the County shall have the right to terminate this Agreement without liability, or at the election of the County or the United States, either shall have the right to judicially enforce said subparagraphs.

8.3.4 Airline agrees that it shall undertake an affirmative action program, if and as may be required by 14 CFR Part 152, Subpart E, to insure that no person shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E on the grounds of race, creed, color, religion, national origin, age, handicap, or sex. Airline assures that it shall require that its covered sub-organizations provide assurances to Airline that they similarly shall undertake affirmative action programs and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

8.3.5 This Agreement is also subject to the requirements of the US Department of Transportation's regulations, 49 CFR Part 23, subpart F. Airline agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, age, religion, sex or handicap, in connection with the award or performance of any operating agreement covered by 49 CFR Part 23, subpart F. Airline further agrees to include the preceding statements in any subcontracts at the Airport that it enters into and to cause those businesses to similarly include the statements in further sub-agreements, as required by FAA rules, regulations and directives.

8.4 Availability of Governmental Facilities. In the event that air navigation aids or other facilities now or hereafter supplied by the United States and needed for Airline's operation at the Airport are discontinued, the County shall have no obligation to furnish such aids or facilities.

8.5 Force Majeure. Neither the County nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of aircraft or fuel or tires as the direct result of governmental decree, acts of God, acts of the public enemy, acts of superior governmental authority, weather condition, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which is not under its control. Provided, however, that nothing in this paragraph shall relieve Airline of the obligation to timely pay all fees and charges due under this Agreement.

8.6 Reservation of County Rights. Notwithstanding anything herein to the contrary, the County reserves the following rights:

8.6.1 The right to protect the aerial approaches of the Airport against obstruction, including the right to prohibit Airline from erecting, or permitting to be erected, any building or other structure which would, in the reasonable judgment of the County, constitute a hazard to aviation.

8.6.2 During time of war or national emergency, the right to lease the Airport or any part thereof, to the United States Government for military purposes, and in the event of such lease to the United States for military purposes, the provisions of this Agreement shall be suspended insofar as such provisions may be inconsistent with the provisions of the Agreement to the United States.

8.6.3 The right to utilize all or a portion of public airfield and any other parts of the Airport, should an emergency or other unforeseen circumstance arise at the Airport, and should the County determine, in its sole but reasonable discretion, that the County needs to utilize all or a portion of the same, or other areas of the Airport, for media, communications, first aid, or other purposes, during the pendency of said emergency or other unforeseen circumstance. Airline shall not be entitled to any damages, including lost profits or revenues from the County, as a result of the County's utilization of any areas of the Airport during the emergency or unforeseen circumstances, and Airline shall continue to owe the County all landing fees and other fees and charges that accrue during said period.

8.6.4 The right to grant other Agreements, licenses, permits or rights to occupancy or use of the Airport so long as such other grants do not unreasonably interfere with or impair Airline's rights hereunder. The right to direct changes in the way Airline conducts its Airport operations in the event that the County determines, in the exercise of its reasonable judgment, that one or more aspects of Airline’s method of operation is unreasonably interfering with the lawful and proper occupancy or use by others of the Airport.

8.6.5 The right to further develop and/or improve the Airport as the County deems appropriate, without interference or hindrance by Airline, and the County shall have no liability hereunder to Airline by reason of the same.

8.6.6 Prior to taking any such action which would adversely affect the operations of the Airline, the County agrees to consult with the Airline's local and/or designated representative; provided, however, that this shall not preclude the County from taking any action it deems necessary for the immediate protection of persons or property or which is necessitated by circumstances which the Manager or other authorized person reasonably believes to be a threat to the general welfare.

## 9. MISCELLANEOUS PROVISIONS

9.1 No Personal Liability. No director, officer or employee of either party shall be held personally liable under the terms of this Agreement.

9.2 No Exclusive Right. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the County reserves the right to grant to others the privilege and right of conducting any one or all of the aeronautical activities specified herein, or any other activities of an aeronautical nature.

9.3 Airline's Subcontracts. The requirements of this Lease shall apply to Airline's approved subcontractors hereunder, and Airline shall ensure that such subcontractors agree to and comply with the obligations of these enumerated paragraphs to the same extent required of Airline.

9.4 Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

9.5 Time of Essence. Time is of the essence in this Lease.

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

9.7 Limitation of Benefit and Liability. This Lease does not create in or bestow upon any other person or entity not a party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease 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. No director, officer, official or employee of either party shall be held personally liable under the terms of this Lease.

9.8 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 Lease, 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 Airline in their rights and obligations contained in valid covenants, conditions or provisions.

9.9 Effect of Lease. All covenants, conditions and provisions in this Lease shall extend to and bind the successors of the parties hereto, the assigns of the County and the permitted assigns of Airline.

9.10 Notices. Notices provided for in this Lease shall be sufficient if sent by First Class Mail and Certified Mail, Return Receipt Requested, postage prepaid, to a party at its address set forth above or to such other addresses as the parties may from time to time designate to the other in writing. Notices sent in such manner shall be deemed to have been delivered on the date of mailing.

9.11 Governing Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Any action to enforce or interpret this Lease shall be brought in a court in and for Gunnison County, Colorado, or in the United States District Court for the District of Colorado.

9.12 Entire Lease. This Lease 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.

9.13 Attorneys' Fees. In any action to enforce or interpret the provisions of this Lease, the court may award reasonable attorney fees and costs to the prevailing party.

9.14 Modification of Lease. This Lease may not be altered, modified or changed in any manner whatsoever except by a writing signed by all parties hereto.

9.15 Capacity to Execute. The County and Airline each warrant and represent to one another that this Lease constitutes the legal, valid and binding obligation of that party.

**IN WITNESS WHEREOF**, the parties have executed this Lease effective as of the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS**
**OF GUNNISON COUNTY, COLORADO**

By:_____

Paula Swenson, Chairperson

_____

Phil Chamberland, Commissioner

_____

Jonathan Houck, Commissioner

Attest:

_____

Katherine Haase
Deputy Clerk

Attest:

_____

_____

Express Jet, Inc