# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**AgendaTitle:**
Baggage Delivery Service Agreement, Gunnison-Crested Butte Regional Airport; Patrick McKee and Adam McKee, Individually and d/b/a The Delivery Company; 11/1/13 thru 10/31/14

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

**Parties to the Agreement:** The Delivery Company & Gunnison County

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

**Summary:**
The Delivery Company provide lost/delayed baggage delivery for passengers flying into Gunnison.

**Fiscal Impact:** ?

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

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

Comments:

Total revenue from this agreement for 2012 was $2,203.

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

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

Comments:

ok db 10/31/13

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

Certificate of Insurance Required

Yes (●) No ( )

**County Manager Review:**

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

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

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

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

*Revised April 2013*

# BAGGAGE DELIVERY SERVICE AGREEMENT
## Gunnison-Crested Butte Regional Airport

THIS BAGGAGE DELIVERY SERVICE AGREEMENT regarding baggage delivery service at the Gunnison-Crested Butte Regional Airport (hereinafter "Agreement") made as of _____, 2013, is by and between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO (hereinafter "County") and PATRICK McKEE and ADAM McKEE, individually and d/b/a THE DELIVERY COMPANY, PO Box 375, Gunnison, CO 81230 (hereinafter "Company").

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

WHEREAS, the County has authority to regulate activities on Airport property, to enforce these regulations and to set and collect fees for these commercial activities, pursuant to, *inter alia*, C.R.S. 41-4-101, *et seq*.

WHEREAS, the County has in effect Resolution NO. 9 Series 1982, A Resolution Prohibiting the Conduct of Any Private Business Enterprise at the Gunnison-Crested Butte Regional Airport without prior approval of the Gunnison County Board of County Commissioners, attached hereto and incorporated herein by reference; and

WHEREAS, the Company desires to non-exclusively engage in commercial baggage delivery service at the Airport;

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions herein, the County and the Company do mutually undertake and agree as follows:

### 1. TERM

1.1 Subject to earlier suspension or termination as hereafter provided, the term of this Agreement (the "Term") shall be the period commencing on November 1, 2013 at 12:01 a.m. and ending October 31, 2014.

### 2. TERMINATION, SURRENDER AND DAMAGES

2.1 Termination by Company. Company may terminate this Agreement, with or without cause, by providing sixty (60) days written notice to the County. Termination shall not entitle Company to a refund of fees paid in advance.

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

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

Notwithstanding the provisions of the paragraph above, if Company fails to observe its obligations under this Agreement or any predecessor Agreement between the parties, the County, through the Airport Manager (hereinafter "Manager") may:

A. Issue written warnings to the Company;

B. Suspend, by written order, the Company's authority under this Agreement to operate to, from and upon the Airport for any period of up to thirty (30) days for each such violation, or;

C. Terminate by written order, the Company's authority under this Agreement to operate from and upon the Airport for multiple violations within the same calendar year, which year is agreed to be December 1 through November 30.

## 3. USE OF THE AIRPORT

3.1 The operations which shall be performed by the Company pursuant to this Agreement at the Airport are expressly limited only to the following:

Baggage Pick up and Drop Off. The Company shall be permitted to pick up and drop off baggage for customers flying in or out of the Airport Terminal. Pick up shall be solely by means of a commercial auto, van or bus clearly marked on the exterior with the Company's name and/or logo.

## 4. RESTRICTIONS UPON THE COMPANY

4.1 Operations which shall not be permitted by the Company include specifically, but are not limited to the following:

A. Solicitation. Solicitation, either in person or by written materials, of customers in the Terminal or anywhere on the Airport premises unless such

activity is carried out pursuant to a further written agreement approved by the County pursuant to Gunnison County Resolution NO. 9, Series 1982.

B. Vehicle Storage. Storage of vehicles anywhere on the Airport premises unless such activity is carried out pursuant to a further written agreement approved by the County.

C. Offering Goods or Services. Offer of goods or services for sale or rent in the Terminal or on the Airport premises unless such activity is carried out pursuant to a further written agreement approved by the County.

D. Conduct of Commercial Business. Conduct of any commercial business or any part thereof at, in, or on the Terminal or Airport unless such activity is carried out pursuant to a further written agreement approved by the County.

E. Parking or Stopping Vehicles. Parking or stopping any vehicle at the Terminal or on the Airport premises for any period of time other then to pick up or drop off baggage except that such parking or stopping shall be permitted in areas available to the public for such activities pursuant to applicable ordinances, regulations and laws.

F. Commercial Use or Occupancy of Airport. Any commercial use of or occupancy of the Terminal or Airport not expressly permitted by this Agreement is prohibited, except by separate, prior written permission from the County and under such terms and conditions as the County may require.

## 5. OBLIGATIONS OF THE COMPANY

5.1 Obligations of the Company include, but may not be limited to:

A. Wages. Company agrees to pay all wages, all applicable Federal and State withholding taxes, Social Security payments (FICA), Unemployment and Worker's Compensation for all its employees. Any breach of these provisions shall be deemed a material breach of this Agreement.

B. Compliance with Airport Standards. Comply with all Gunnison/Crested Butte Regional Airport Minimum Standards of 2007, all City of Gunnison and County regulations and ordinances, all State and Federal regulations and laws, and all applicable sales and use tax requirements, effective at the time of and for the duration of this Agreement. A copy of the Company's Business License(s) shall be submitted to the Airport contemporaneous with execution of this Agreement, and Company shall notify County immediately of any suspension, revocation or expiration of term of such license(s).

C. Employment and Termination of Employees. Company shall have the discretion, subject to the provisions of this Agreement, to employ and terminate personnel assisting Company under this Agreement, provided that Company shall always maintain an adequate number of employees to fulfill the obligations hereunder.

D. Employee Appearance. Employees shall at all times have a neat, clear and modest appearance. Clothing shall include shoes and shirts and may bear reasonable insignia indicating affiliation with Company. Personnel must demonstrate professional and courteous conduct at all times while on the Airport property.

E. Orientation. Company shall ensure that all Employees attend orientation sessions which the Manager may schedule from time to time.

## 6. PAYMENT OF FEES AND DISADVANTAGE BUSINESS ENTERPRISE (DBE) REQUIREMENTS

6.1 The Company shall pay a fee for each period of operation beginning November 1, 2013 and the fee shall be:

A. Fees. The fee required to be paid pursuant to this Agreement is a minimum guarantee of one thousand five hundred dollars ($1,500) per year, or eight percent (8%) of actual gross annual revenue, whichever is greater.

B. Calculation. In all events, if at the end of the term pursuant to this Agreement, the total percentage of gross revenue does not equal the minimum guaranteed payment of one thousand five hundred dollars ($1,500), then the Company shall pay to the County the difference between the amount paid and the minimum payment required by this paragraph.

C. Payments Due. Fee payments from Company are due to the County no later than thirty (30) days after the end of each month in the amount of eight percent (8%) of the actual gross revenue for that month, per paragraph 6.1A above.

## 7. COMPANY ACCOUNTING

7.1 At the end of each period of operation, the Company shall provide to the County:

A. Accounting. An accounting of the actual gross revenues for the just-ended period.

B. No Reimbursement. The Company shall be entitled to no credit, consideration or reimbursement whatsoever if eight percent (8%) of the actual gross revenues is a negative number.

C. Reporting. Annually, within thirty (30) days after the end of every operations year, at the expiration of the Company's term and upon assignment of Company's rights hereunder, Company 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 the Company.

D. Bookkeeping. Company shall maintain true, full and accurate books of account and records from which can be determined and verified:

a. "Gross revenue" and "gross receipts";

b. The amount and nature of all business transacted on or through the Airport; and

c. The amount of percentage owed the County hereunder, particularly as it relates to all revenues or receipts attributable to Company's business conducted at the Gunnison-Crested Butte Regional Airport;

according to standard and accepted accounting and auditing practices.

E. Records. The books of account and records that Company 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 Company's business, including, without limitation:

a. All baggage delivery contracts;

b. Sales receipts;

c. Cash register tapes;

d. Credit card invoices;

e. Monthly sales tax returns;

f. Sales and disbursement journals;

g. General ledgers;

h. Bank statements;

i. Bank books;

j. Bank deposit slips;

k. Annual federal income tax returns;

l. State sales tax returns; and

m. All Airport-related revenue reports.

These books and records shall be maintained on a current basis and shall be stored in Gunnison, Colorado 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.

## 8. RESERVED RIGHTS OF THE COUNTY

8.1 County reserves, for the use and benefit of the public, the right of flight for the passage of aircraft in the air space above any portion of the surface of the Airport in which Company has been granted rights hereunder, together with the right to cause in and around said air space such noise as may be inherent in the operation of aircraft utilizing the Airport.

8.2 County reserves the right to direct, in its sole discretion, all activities of the Company at the Airport in the event of an emergency.

8.3 County reserves the right to grant leases, licenses, uses, permits or right to other parties to operate on the Airport so long as such other grants do not unreasonably interfere with Company's operations.

## 9. COUNTY AUDITS

9.1 The County reserves the right to conduct audits of Company's books of account and records, which audits may be conducted upon reasonable notice to Company and during Company's normal weekday business hours. For purposes of this Agreement the annual audit period shall be determined to commence on January 1 of each year the Agreement is in effect, and to conclude December 31 of that year. In performing said audits, County shall be entitled to review, and the Company shall be obligated to provide the County, all of the books of account and records that Company is obligated to maintain pursuant hereto, as well as other documents and files in Company's possession, custody or control at the time County advises Company of its desire to audit Company'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 Company, and the correct amount of percentage fee owed by Company to the County, for the period involved.

9.2 Should Company fail to maintain the books of account and records required to be maintained pursuant hereto, or should Company fail to permit County or its auditor to review Company'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 Company agrees to pay, as liquidated damages for such breach, an additional amount equal to fifty percent (50%) of the verifiable costs, fees and charges due from Company hereunder for the period in question.

9.3 If any audit shows percentage rentals and other charges that should have been paid to County by the Company pursuant to this Agreement were understated or underpaid for any period involved, Company 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.

9.4 Should the amount of underpayment exceed exactly one percent (1.0%) of the total annual percentage fee that was owed by Company to the County for the audit period involved, Company, 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 one thousand five hundred dollars ($1,500).

9.5 Should the audit disclose overpayment of the percentage fees paid to the County by Company, the County shall refund the amount of overpayment to Company within thirty (30) days of said audit.

9.6 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, any legal requirements or Court Order to disclose said information.

## 10. COUNTY RESERVATIONS

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

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

10.3 The County reserves the right to prohibit any commercial or non-commercial activity by Company, its agents and employees on the Airport, which activity is not expressly permitted herein.

10.4 The County reserves the right to establish and enforce rules and regulations for the conduct of activities and uses permitted herein and also to promulgate minimum standards for conduct of commercial activities related hereto including, without limitations, minimum hours of operation.

## 11. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

11.1 In connection with its use of the Terminal and/or Airport and the conduct of its operations thereon, the Company shall:

A. Comply with Laws. Comply with all applicable laws, rules and regulations of the City of Gunnison, County of Gunnison, the State of Colorado and the United States of America and any and all departments and agencies thereof, as the same may now exist or may be hereafter promulgated or amended from time to time.

B. Not Discriminate. Not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Company shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Company shall comply with such enforcement procedures as any governmental authority might demand that the County take for the purpose of complying with any such laws and regulations.

C. Pay Taxes. Timely pay all taxes lawfully assessed against Company relating to its use and occupancy of the Airport in the conduct of Company's business thereon.

D. Comply with Immigration Regulations. Company certifies its compliance with immigration regulations as specifically stated in Section 15 below.

## 12. INDEMNITY AND INSURANCE

12.1 Indemnification. The Company agrees to defend, indemnify and hold harmless the County, its elected and appointed officials and the employees and agents of Gunnison County, from and against all liability losses, charges, penalties, obligations, expenses, attorney fees, litigations, judgments, damages, claims and demands of any

kind whatsoever (collectively "Claims"); in connection with, arising out of, or by any reason related to Company's business or its actions pursuant to this Agreement.

12.2 Insurance. Company agrees that at all times during the Term of this Agreement that Company shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Company will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(A) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Consultant during the term of this Agreement.

(B) Comprehensive General Liability Insurance or the equivalent in an amount not less than one million dollars ($1,000,000) each occurrence and two million dollars ($2,000,000) aggregate for Bodily Injury Liability and five hundred thousand dollars ($500,000) for Property Damage Liability.

(C) Comprehensive automobile liability insurance on all vehicles used in the services, in an amount no less than one hundred fifty thousand dollars ($150,000) for any injury to one person in any single occurrence and in an amount no less than six hundred thousand dollars ($600,000) for any injury to two or more persons in any single occurrence.

12.3 Evidence of Coverage. To provide evidence of the required insurance coverages, Company shall file copies of Certificates of Insurance, in a form acceptable to the County, with the County (through the Airport Manager) no later than ten (10) calendar days prior to commencement of operations affecting the County. Failure to file or maintain acceptable Certificates of Insurance with the County is agreed to be a material breach of this Agreement and grounds for termination. These Certificates of Insurance shall contain a provision that coverage afforded under the policies will not be cancelled or materially altered unless at least thirty (30) calendar days prior written notice by certified mail, return receipt requested (effective upon proper mailing), has been sent to the County (through the Airport Manager). For purposes of this provision, "materially altered" shall include, but not be limited to any change affecting the declarations page. Simultaneously with the Certificates of Insurance, Company shall file and update as necessary a certified statement as to claims pending against required coverages, reserves established on account of such claims, defense costs expended and amounts remaining in policy limits.

## 13. GOVERNMENTAL IMMUNITY

13.1 Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or in part, by Gunnison County of all or any portion of the Colorado Governmental Immunity Act or otherwise.

## 14. ASSIGNMENT

14.1 Company shall not at any time assign its rights under this Agreement or any part thereof without the written consent of the County; provided, however, that the foregoing shall not prevent the assignment of such rights to any corporation with which Company may merge or consolidate, or which may succeed to the business of Company. No such assignment shall release Company from its obligations set forth herein.

## 15. INDEPENDENT CONTRACTOR

15.1 It is the intent and agreement of the County and the Company that Company shall perform its obligations hereunder as an independent contractor:

A. Relationship. Nothing contained herein shall be deemed or construed to constitute the parties as partners or joint venturers. Further, Company is not acting as an agent, partner, or employee of Gunnison County.

B. Liability. In no event shall County be liable for any loss which may result from operations of Company upon the Airport premises, for:

a. Any indebtedness incurred by Company in the operation of its business on the Airport and/or Terminal premises; or

b. Claims of third parties against Company in the conduct of its business.

C. Authority. Company does not have any authority to bind County in any manner whatsoever.

D. Benefits. Company acknowledges and agrees that it is not entitled to unemployment insurance benefits or Workers Compensation coverage from County.

E. Taxes. Company is obligated to pay federal and state income tax on any moneys paid it related to services provided.

## 16. IMMIGRATION COMPLIANCE CERTIFICATION.

16.1 Certification. By its signature on this Agreement, Company certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States, the Company has participated or attempted to participate in the E-Verify program (hereinafter "E-Verify Program") created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security, and the Social Security Administration or the Department Program (hereinafter "Department Program") established pursuant to §8-17.5-102(5)(c), C.R.S.

16.2 Employment. Company agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the Company that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

16.3 Confirmation. Company has confirmed or attempted to confirm through participation in the E-Verify or Department Program the employment eligibility of all employees who are newly hired for employment in the United States.

16.4 Pre-employment Screening. Company shall not use E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while work under this Agreement is being performed.

16.5 Employment by Subcontractor. If the Company obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Company shall:

A. Notify the subcontractor and the County within three (3) days that the Company has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

16.6 Compliance. The Company shall comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter "Department") made in the

course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Section 8-17.5-101(5).

16.7 Violation. If the Company violates a provision of this Section 15, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Company shall be liable for actual and consequential damages to the County and the Airport. Company understands that, in the event of such a termination, the County is required to notify the office of the Colorado Secretary of State.

## 17. NON-LIABILITY OF COUNTY'S AGENTS AND EMPLOYEES

17.1 No official, agent or employee of County shall be personally liable to Company in the event of any default or breach hereunder by County.

## 18. NOTICES

18.1 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 the County: Airport Manager
Gunnison-Crested Butte Regional Airport
519 W. Rio Grande
Gunnison, CO 81230

If to the Company: The Delivery Company
Patrick McKee
Adam McKee
PO Box 375
33 Willow Trail
Gunnison, CO 81230

## 19. UNCONTROLLABLE CIRCUMSTANCES

19.1 Neither party shall be in violation of this Agreement for failure to perform any of its obligations by reason of strikes, boycotts, embargoes, acts of God, acts of public enemy, substantial non-temporary flight restrictions, extraordinarily unforeseeable weather conditions, riots, rebellion, sabotage or any other circumstances which are not within its control and were not reasonably foreseeable.

## 20. SECURITY

20.1 Secured Area. It is understood and agreed by the Company that it shall keep the baggage storage area secured from unauthorized intrusions.

20.2 Procedures. When requested in writing by the Airport Manager at any time during the term hereof, the Company shall submit to the Airport a written description of the security procedures that are used by Company at the Airport.

20.3 Compliance. Company shall comply with any security regulations, security directives in place, modified, or instated at any time during the term hereof, upon notification from the Airport Security Coordinator.

20.4 Discrepancies Considered Breach. Any security discrepancies that are noted, investigated or for which fines are issued by the Department of Homeland Security and/or Transportation Security Administration in connection with any luggage in the Company's possession shall be considered a breach of this Agreement and the Agreement is subject to immediate termination.

20.5 Fines. Any security-related fine levied against County on behalf of actions of the Company shall be paid by the Company.

20.6 Access. The baggage room is accessed by electronic access. Keys will be issued in the form of electronic access cards, which only the person to whom the access has been given may use. Anyone utilizing another's access will be cause for both parties to be deleted from the system. Access cards must be returned to the Airport Administration Office when an employee no longer works for the Company.

## 21. GENERAL PROVISIONS

21.1 Entire Agreement. This Agreement contains the entire agreement of the parties and there have been no promise(s), representation(s) or agreement(s), either express or implied, except as expressly set forth herein. Any and all prior agreement(s) or understanding(s) between the parties expressly agreed to have been merged herein.

21.2 Severability. The provisions of this Agreement shall be severable and the invalidity of any provision hereof shall not affect the validity of any other provision hereof.

21.3 Modification. This Agreement may be modified, amended or supplemented by an instrument in writing, signed by the parties hereto. The County's representative for the administration of the Agreement shall be the Airport Manager or his/her designee in writing; provided, however, that all matters affecting material terms of this Agreement, including term, fees and charges and use of Airport premises by Company, shall only be amended by a writing approved by the Board of Gunnison County Commissioners at a duly-noticed public meeting.

21.4 Waiver of Rights or Remedies. The failure of either party hereto to exercise any right or remedy hereunder shall not be deemed a waiver thereof or a waiver of any other right or remedy hereunder. No waiver by either party of any right or remedy hereunder shall be effective unless in writing signed by the party.

21.5 Negotiation and Writing of Agreement. The parties agree that this Agreement was negotiated and drafted by the mutual efforts of the parties hereto and agree that no legal presumption shall arise as a result of the identity of the drafter of this Agreement or any presumed unequal status arising therefrom.

21.6 Recovery of Legal Fees and Costs. If either party hereto shall institute legal proceedings to protect or enforce any of its rights or remedies hereunder, then the party prevailing in such legal proceedings shall be entitled to recover all of its costs in connection therewith, including reasonable attorneys' fees.

21.7 Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and venue is agreed to be exclusively in the courts of Gunnison County, Colorado.

21.8 Binding. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as permitted herein.

21.9 Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

21.10 Headings. Section headings are inserted for the convenience of reference only.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

BOARD OF COUNTY COMMISSIONERS
GUNNISON COUNTY, COLORADO

Date:_____

_____
Paula Swenson, Chairperson

_____
Phil Chamberland, Commissioner

_____
Jonathan Houck, Commissioner

Attest:

_____

PATRICK W. McKEE
ADAM M. McKEE
d/b/a THE DELIVERY COMPANY

Date:_____

_____
Patrick W. McKee

_____
Adam M. McKee

Attest:

_____