# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**AgendaTitle:**
Operating Agreement, Key Lime Air; Air Passenger, Cargo and Mail Transport Services to/from Gunnison-Crested Butte Regional Airport; 11/1/13 thru 10/31/14

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

**Parties to the Agreement:** Gunnison County & Key Lime Air

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

**Summary:**
Operating agreement for Key Lime Air to provide air passenger, cargo & mail transport services to/from Gunnison-CB Regional airport. Contract expired 12/31/2008

**Fiscal Impact:** ?

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

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

Comments:

2012 landing fee revenue from Key Lime was $17,456.53, billed from the annual rate resolution. According to J. DeVore, Key Lime would not sign the agreement. The rate is correct since Key Lime aircraft are Part 135 (not requiring ARFF coverage). The fee is only for support of the runway and grounds activity.

Reviewed by: GUNCOUNTY1\BCOWAN Discharge Date: 10/22/2013

**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:

Reviewed by: GUNCOUNTY1\MBIRNIE Discharge Date: 10/29/2013

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5

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

*Revised April 2013*

# OPERATING AGREEMENT
# KEY LIME AIR

This operating agreement made and entered into this 1st day of November 2013, is between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, herein called the "County" and KEY LIME AIR, herein called the "Airline".

WHEREAS, the County, a political subdivision of the State of Colorado, owns and operates the Gunnison-Crested Butte Regional Airport located within and adjacent to the City of Gunnison (which Airport and any additions, changes or improvements thereto are collectively called the "Airport"); and

WHEREAS, the airline is engaged in the business of transporting persons, property, cargo and mail by aircraft; and

WHEREAS, the County is willing to enter into an operating agreement with the Airline and the Airline is willing to enter into an operating agreement and obtain from the County the ability to conduct operations at the Airport;

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

## 1. TERM

Unless sooner terminated, as provided herein, the term of this operating agreement shall be for the period November 1, 2013 and ending October 31, 2014 and landing fees shall be subject to adjustment in accordance with the procedure outlined in Exhibit A, attached hereto and made a part hereof. The Airline has the option to terminate the agreement by providing the County 60 days notice. The County has the option to terminate the agreement by providing the Airline 60 days notice.

## 2. ACCESS TO AIRPORT PREMISES

The Airline, agents, servants, invitees, employees and furnishers of goods or services shall have an unimpeded and unobstructed right of ingress to and egress from the General Aviation Airport terminal building and ramp by a means of access located outside the boundaries of such premises, whether by roadways, taxiways, sidewalks, hallways or other means of access. The use of the means of such access shall, without exception, be in common with such other persons (including, at the option of the County, the general public) as the County may authorize or permit; and 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.

Moreover, the terms hereof shall not be construed to prevent the County from charging the operators of vehicles carrying passengers and property for the privilege of entering upon Airport property or using the roadways in or on the Airport, parking vehicles on Airport property, soliciting passengers upon the Airport, or otherwise operating on the Airport, and notwithstanding any other provision of this operating agreement. Provided, however, that the County may allocate parking spaces on Airport property for the exclusive use of Airline's employees, at no charge to Airline or its employees, and the County's failure to charge fees for such parking areas shall not affect its ability to charge and collect fees from other users.

## 3. SECURITY

It is understood and agreed by the Airline that at any time during the term hereof, if the Transportation Security Administration (TSA) raises the Civil Aviation Security Level above Alert Level III, as defined in the Gunnison-Crested Butte Regional Airport Security Program, the Airline shall pay the cost of any additional requirements of the TSA as provided in Exhibit A, Section 1(g). The security cost for each month will be divided among the Airlines based on their percentage of the total number of enplaned passengers for the month. Notwithstanding the above, should any TSA requirement cause the County to create a capital project of any size, the County will consult with the Airline and other air carriers at the Airport within 30 days to determine need, scope and funding of said TSA required capital project.

## 4. INDEMNIFICATION

The Airline agrees to hold the County harmless, to agreement and indemnify the County and any of its Commissioners, Officers, Agents or Employees from and against any and all claims, demands, damages and liabilities (including reasonable costs and expenses incurred in the defense thereof) for injury to persons or damage to property arising from the Airline's operations including but not limited to any injury to persons or damage to property resulting from use by Airline officer(s), agent(s), or employee(s) of equipment, baggage belt, baggage slide(s), gate(s) or passenger boarding bridges; or the activities of any officer, agent or employee of the Airline. For the purposes of this paragraph, "operations" shall include, but not be limited to, those activities and services required or permitted under the terms of this agreement.

## 5. INSURANCE

Subject to Airlines' right to self-insure and maintain reasonable deductibles, at all times during the term of this operating agreement, unless otherwise required by law, the Airline shall, at its own expense, secure and keep in force liability insurance including contractual liability with limits sufficient to meet the exposure of the Airline, but such limits shall never be less than twenty five million ($25,000,000) per occurrence for bodily injury and property damage arising from the Airline's use and operations at the Gunnison/Crested Butte Regional Airport. Such policies shall name the County as an additional insured to the extent of the Airline's agreement to indemnify the County under the terms of this agreement.

Each policy shall contain a provision prohibiting the cancellation of such policy without first giving 30 days' written notice (7 days as respects war related perils) to the County. Policies shall be issued by insurors recognized to do business in Colorado, and the Airline shall provide, or cause to be provided, to the County certificates of insurance evidencing the existence of such policies.

Neither the existence of the insurance required hereunder nor the naming of the County as additional insured shall be deemed a waiver by the County of any defense or claim of sovereign immunity, nor a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

## 6. NO PERSONAL LIABILITY

No director, officer, official or employee of either party shall be held personally liable under the terms of this agreement.

## 7. LAWS, REGULATIONS AND AGREEMENTS TO BE OBSERVED

a. The Airline shall not use or permit (as to those over whom it has control) the use of the commercial Airport terminal building or any part thereof, or any part of the Airport to which it is granted a right of use or occupancy by this operating agreement agreement, for any purpose or use other than those authorized by the operating agreement, or hereafter authorized in writing by the airport manager.

b. The Airline shall comply with and shall cause its officers, employees and any other persons over whom it has control, to comply with such reasonable rules and regulations governing the use of the Passenger Terminal Premises and any other portion of the Airport as may from time to time be adopted and promulgated by the County for the management, operation and control of the Airport and pertaining to the operation of automobile and vehicular traffic and parking facilities thereon, and with such reasonable amendments, revisions, additions and extensions thereof as may from time to time be adopted and promulgated; provided, however, that such rules and regulations shall not be inconsistent with the rights herein granted to the Airline; and provided further, that nothing herein shall be considered to restrict the police power of the County.

c. The Airline shall, at all times, faithfully obey and comply with all existing and future laws, rules and regulations adopted by federal, state, local or other governmental bodies and applicable to or affecting the Airline and its operations and activities in and at the Airport.

d. The Airline, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that:

    (1) No person, on the grounds of race, color or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

(2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person, on the grounds of race, color or national origin, shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination;

(3) That the Airline shall use the premises 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, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

(4) Each party hereto will comply with all applicable federal, state and local laws and executive orders and regulations issued pursuant thereto, including without limitation, and to the extent applicable to this Agreement, the provisions contained within Section 202 of Executive Order 11246, as amended, and the implementing regulations of the Office of Federal Contract Compliance Programs, 41 CFR Parts 60-1, *et seq.*, which provisions are incorporated herein by reference as if set forth in full.

(5) Each party hereto will comply with the Drug Free Workplace Act of 1988, 41 U.S.C. 701 *et seq.*, as amended, and all applicable state and local laws and executive orders and regulations pertaining thereto, which are incorporated herein by reference as if set forth in full.

e. The Airline shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Airline shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

f. The Airline shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, color, sex, age, national origin or handicap.

g. Non-compliance with sections 16.d, 16.e or 16.f above, after written findings, shall constitute a material breach hereof and, in the event of such non-compliance, the County shall have the right to terminate this operating agreement and the estate hereby created without liability therefor or, at the election of the County or the United States, either or both said governments shall have the right to judicially enforce said sections 16.d, 16.e and 16.f. The Airline shall be given written notice of such noncompliance and shall have no more than thirty (30) days to cure such noncompliance before the County may terminate this Operating Agreement and the estate hereby created.

h. This operating agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the County and the United States relative to the development, operation or maintenance of the Airport.

i. The Airline assures that it will undertake an affirmative action program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in said 14 CFR Part 152, Subpart E. The Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Airline assures that it will require that its covered suborganizations provide assurances to the Airline that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

j. The Airline, by accepting the operating agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the premises in any manner which might interfere with the landing and taking off of aircraft from the Gunnison/Crested Butte Regional Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the County reserves the right to enter upon the premises hereby agreement and cause the abatement of such interference at the expense of the Airline.

## 8. AGREEMENT WITH THE UNITED STATES

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

## 9. CANCELLATION BY THE COUNTY

In addition to any other rights of cancellation given herein or by law, the County may cancel this agreement upon 30 days' written notice to the Airline upon or after:

a. The filing by the Airline of a voluntary bankruptcy petition; adjudication of the Airline as bankruptcy pursuant to involuntary proceedings; the appointment of a receiver of the Airline's assets who is not empowered to continue the Airline's business; or, the divestiture of the Airline's estate herein by other operation of law.

b. The default by the Airline in the performance of any covenant or agreement herein required to be performed by the Airline including any reduction in services provided to the airport pursuant to the contact for air service, and the failure by the Airline to remedy such default for a period of 30 days

after receipt from the County of written notice to remedy the same; provided, however, that no notice of cancellation, as provided above, shall be of any force or effect if the Airline has remedied the default prior to receipt of the County's notice of cancellation.

## 10. CANCELLATION BY THE AIRLINE

The Airline, in addition to any other rights of cancellation given herein or by law, may cancel this agreement, in whole or in part, and terminate all or any of its obligations hereunder at any time that the Airline is not in default in its payments to the County hereunder, by giving the County forty-five sixty (45) days' advance written notice, upon or after the happening of any one of the following events:

a. The suspension or termination of the Airline's service at Gunnison, Colorado, in accordance with the Federal Aviation Act of 1958 as amended or authorized by the United States Department of Transportation.

b. Issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of the Airport or any part thereof for airport purposes and the remaining in force of such injunction for a period of at least 30 days.

c. Any government action refusing to permit the Airline to operate into, from or through the Airport such aircraft as the Airline may reasonably desire to operate thereon.

d. The breach by the County of any of the covenants or agreements herein contained and the failure of the County to remedy such breach for a period of 30 days after receipt of written notice of the existence of such breach.

e. The inability of the Airline to use said premises and facilities, continuing for a period of longer than 30 days, due to any deficiency of the Airport or unsafe condition for operating at the Airport of the type of aircraft then-being flown by the Airline.

f. Any law, order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the Airline or due to war or other casualty.

g. The assumption by the United States government, or any authorized agency thereof, of control of said Airport and facilities or any substantial part or parts thereof.

h. The erection of any obstacle on or in the vicinity of the Airport which would occasion a modification of the Airline's air carrier operating certificate or similar authorization establishing minimum safety standards for the operation of the Airline.

## 11. FORCE MAJEURE

Neither the County nor the Airline shall be deemed to be in breach of this agreement by reason of failure to perform any of its obligations hereunder to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of a superior governmental authority, sabotage, strikes, boycotts, labor disputes, weather conditions, riots, rebellion and any circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to failures by the Airline to pay rents, fees or other charges, or to make any other money payments of any nature required by this agreement, except in those cases where provision is made herein for the abatement of such rents, fees, charges or payments under specified circumstances. This provision shall not prevent either party from exercising its rights of termination herein granted.

## 12. WAIVER

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 of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

## 13. SEVERABILITY

In the event any covenant, condition or provision contained in this agreement and agreement is held by any court of competent jurisdiction to be invalid, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of any such covenant, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this agreement, then, at the option of such party, this agreement may be declared to be terminated.

## 14. NOTICES

Notice to the County provided for herein shall be sufficient if sent by registered mail addressed to:

Gunnison-Crested Butte Regional Airport
Mathew Birnie, County Manager
200 E. Virginia
Gunnison, Colorado 81230

and notices to the Airline, if sent by registered mail, addressed to:

Key Lime Air
13252 E. Control Tower Rd
Englewood, Colorado 80112

or to such other respective addresses as the parties may designate to each other in writing from time to time.

## 15. GOVERNING LAW - BINDING AGREEMENT

This agreement and agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and, subject to the provisions of sections 16, 17 and 18, be binding upon the parties hereto and their successors and assigns.

## 16. COVENTANT NOT TO GRANT MORE FAVORABLE TERMS

The County covenants and agrees not to enter into any airport terminal agreement with any other air transportation company containing substantially more favorable terms than this agreement, or to grant to any airport terminal tenant engaged in airport transportation, substantially more favorable rights or privileges with respect to the Gunnison-Crested Butte Regional Airport that are not accorded the Airline hereunder, unless the same terms, rights and privileges are concurrently made available to the Airline

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

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

_____
Paula Swenson, Chairperson

_____
Phil Chamberland, Commissioner

_____ Attest:_____
Jonathan Houck, Commissioner Katherine Haase, Deputy County Clerk

KEY LIME AIR

_____ **Attest:**_____

# EXHIBIT A

Referred the foregoing Airline Operating Agreement between the Board of County Commissioners of Gunnison County (the County) and Key Lime Airlines (the Airline).

1. Rates, Fees and Charges. The rates and charges for the operating agreement are effective as of December 1, 2012 and shall be calculated as follows.

   a. A fee for each landing of an aircraft operated by the Airline at the Gunnison County Airport which fee shall be computed at the rate of $2.72 per thousand pounds of maximum allowable gross landing weight of such aircraft.

   **b. The landing fees in effect as of December 1, 2012 shall be subject to adjustment on December 1st of each year by the Gunnison County Board of Commissioners.**

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

2. Place and Manner of Payments. In all cases where the Airline is required by this agreement to pay any rentals, fees or other charges, such payments shall be made to the Gunnison County Finance Office, 200 E. Virginia, Gunnison, CO 81230, and should be made payable to "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.

   a. Payments for space rentals which are due monthly shall be due by the last day of each month. Payment of such amount shall be made from invoice or other such notice sent from the County.

   b. Payment for landing fees shall be based upon landings during each calendar month and shall be paid by the last day of the following month. The number and type of aircraft landed by the Airline during the month must be reported by the Airline on forms provided by the Airport Administration by the first working day of the following month. Payment of such amount shall be made from invoice or other such notice sent from the County. The Airport Administration must be apprised of the Airline's landing schedule and all changes to the landing schedule.

c. Payment for cost reimbursement shall be made by the last day of the month following receipt by the Airline of a statement or invoice itemizing such costs unless else Airline elects to carry forward.

d. All payments to be made pursuant to paragraphs 2.a. and 2.b. shall be considered delinquent if not received by the last day of the month in which the payment became due. In addition to such delinquent payment, interest shall accrue on the delinquent payment at the rate of one percent (1%) per month on all material delinquent balances that are not reasonably disputed.

3. Adjustment of Rates. The landing rates set forth herein shall be in effect until November 30, 2014.