AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Consultant and Professional Services Agreement; Jviation, Inc.; GUC AIP 048 Master Plan Study

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Jviation and County of Gunnison

Term Begins: August 19th 2014 **Term Ends:** 8/18/2015 **Grant Contract #:**

Summary:
Airport Master Plan Consultant

Fiscal Impact:

Submitted by: Rick Lamport **Submitter's Email Address:** rlamport@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Work performed under this agreement will likely be 20% complete at the end of this year. Sufficient budget is available for the total expense as well as provision of local match at 5%.

Reviewed by: GUNCOUNTY1\bcowan Discharge Date: 8/15/2014

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

Comments:

Reviewed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/29/2014 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\khaase Discharge Date: 8/29/2014

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

Agenda Date: 9/2/2014 Follow Up Agenda Date:

Revised April 2013

JVIATION®

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is entered into on August 7, 2014 by and between Gunnison-Crested Butte Regional Airport (hereinafter "CLIENT") and Jviation, Inc. (hereinafter "Jviation"), a Colorado corporation with offices located at 900 S. Broadway, Suite 350, Denver, CO 80209, to furnish certain professional consulting services upon the following terms and conditions:

SECTION 1 – SCOPE OF SERVICES: The Scope of Services for this Project are detailed in Exhibit A, Scope of Services, attached hereto and by this reference made a part of this Agreement. Jviation shall furnish all services, labor, and related equipment necessary to conduct and complete the work as described in this Agreement, or as amended.

SECTION 2 - INDEPENDENT CONTRACTOR: JVIATION is retained as an individual independent contractor, and is not an employee or agent of CLIENT, and shall be responsible for its own work. The employees furnished by JVIATION to perform the work shall be deemed to be JVIATION employees exclusively and said employees shall be paid by JVIATION for all services in this connection, and JVIATION shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workers' Compensation, Income Tax, and other reports and deductions required by any applicable State or Federal law. No term or provision of this Agreement, or act of JVIATION in the performance Services, shall be construed as making JVIATION the agent, servant, or employee of CLIENT.

SECTION 3 – PROFESSIONAL STANDARDS: JVIATION shall perform the services, within the limits prescribed by the CLIENT, in a manner consistent with the level of care and skill ordinarily exercised by other professional consultants performing similar services in the same locality under similar circumstances at the time the services are performed. CLIENT agrees that no other representation, express or implied, and no warranty or guaranty, express or implied, is provided by JVIATION.

SECTION 4 - TERM OF AGREEMENT: This Agreement shall be effective upon execution and continue for a term of 24 months, unless terminated sooner in accordance with the applicable provisions of this Agreement. This Agreement shall be renewable by mutual agreement of both parties.

SECTION 5 - COMPENSATION AND PAYMENT:

A. Total Compensation: Total compensation under this Agreement shall not exceed $_____ unless authorized in writing by CLIENT. A copy of the fee proposal, Exhibit B, is attached hereto and by this reference made a part of this Agreement.

B. Invoices: JVIATION will issue monthly invoices based on the percentage of work expensed for that billing period. The final billing will be for the balance of the lump sum and any additional expenses that were not previously billed.

C. Payment: CLIENT will pay JVIATION in accordance with the terms of this Agreement. Invoices are due and payable within thirty days. In the event that CLIENT does not agree with any portion of an invoice, CLIENT shall pay undisputed amount and provide a written explanation of any deduction. Interest at the rate of 1% per month will be charged on all undisputed past-due amounts.

SECTION 6 - INDEMNIFICATION:

A. JVIATION agrees to indemnify, and hold CLIENT and its officers, agents, and employees, harmless against any and all claims, lawsuits, judgments, costs and expense for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that arise out of or result from the negligent

acts or omissions of JVIATION in performing the services under this Agreement, but excluding consequential damages of any description. The total liability of JVIATION arising by reason of this indemnity for losses that are not insured shall not exceed the amount of the total compensation actually paid to JVIATION by the CLIENT pursuant to this Agreement.

B. General Liability Indemnification. Jviation (the "Indemnifying Party") to the fullest extent permitted by law, shall indemnify, defend, and hold harmless the Client from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Indemnifying Party, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

C. Professional Liability Indemnification. To the fullest extent permitted by applicable law, JVIATION agrees to indemnify and hold the CLIENT harmless from and against any liabilities, claims, damages and costs (including reasonable attorney's fees) to the extent caused by the negligence of JVIATION in performance of professional services under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations

SECTION 7 - SUBCONTRACTING: JVIATION shall use the following approved subconsultants to complete the Scope of Work:

Mead & Hunt
Woolpert

JVIATION shall not further assign nor subcontract any interest in this Agreement without the prior written consent of CLIENT.

SECTION 8 - INSURANCE:

A. During the entire term of this Agreement, JVIATION shall maintain the following insurance:
   a. Commercial General Liability: $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury, and property damage;
   b. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage;
   c. Worker's Compensation: As required by the applicable State law.
   d. Professional Liability: $1,000,000 each occurrence and aggregate.

B. Certification of Insurance: The insurance shall be evidenced by delivery to CLIENT of certificates of insurance, executed by the insurer or agent, listing coverage and limits, expiration date and term of policy. The insurance requirements shall remain in effect at or above the stated levels throughout the term of this Agreement.

C. Endorsements: Each insurance policy shall include the following conditions by endorsement to the policy:

General Liability, Automobile Liability, and Professional Liability policies shall be endorsed to name CLIENT, its officers, employees, and agents as Additional Insureds as respects operations performed by or on behalf of JVIATION in the performance of this Agreement. Coverage shall be continuous (by renewal or extended reporting period) until completion of all Services hereunder, and acceptance by CLIENT.

SECTION 9 - TERMINATION:

FOR CONVENIENCE
The performance of the services under the Agreement may be terminated at any time, in whole or in part, as determined by CLIENT in its sole discretion. Such termination will be accomplished by delivery of a Notice of Termination to JVIATION, specifying the extent to which performance of the services under the Agreement shall be terminated and the date upon which such termination shall become effective.

If the termination is for the convenience of CLIENT, JVIATION shall submit a final invoice within 60 days of termination and upon approval by CLIENT, CLIENT shall pay JVIATION a percentage of the total Agreement price based on the percentage of the services completed prior to the effective date of termination and other costs reasonably incurred by JVIATION to implement the termination.

FOR CAUSE
If CLIENT determines JVIATION is in default of the Agreement, CLIENT will so notify JVIATION by issuing a Cure Notice describing the default. If JVIATION fails to commence to cure the default within ten (10) days after receipt of such Cure Notice, CLIENT, may, by written notice, terminate JVIATION. In event of such termination, CLIENT may proceed with the work. The additional cost (the difference between the original contract cost and the cost to complete the work by a third party) to CLIENT may be deducted from any sum due to JVIATION and the balance, if any, shall be paid to JVIATION.

IF CLIENT fails to make a payment when due, JVIATION may give CLIENT written notice of JVIATION's intention to terminate this Agreement. If JVIATION does not receive such payment within ten (10) days after the date such notice is given, JVIATION may, by written notice, terminate this Agreement. In the event of such termination, JVIATION may recover from CLIENT payment for all services provided under this Agreement and for proven losses sustained on expenses advanced by JVIATION including, without limitation, a payment for reasonable profit.

SECTION 10 - CONFIDENTIALITY: JVIATION shall not disclose or permit the disclosure of any confidential information, except to its agents, employees, and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

SECTION 11 - OWNERSHIP OF DOCUMENTS: JVIATION agrees that all documents, reports, materials, or other subject matter prepared, procured, or produced in the rendition of the services under this Agreement shall become the property of CLIENT upon completion of Project, and all such documents, reports, materials, or other subject matter shall be delivered to CLIENT as specified in this Agreement or upon any termination thereof. Any reuse of such documents for purposes other than their specific intended purpose shall be at the sole risk of CLIENT and without liability or legal exposure to JVIATION. JVIATION may retain a record copy of all documentation.

SECTION 12 - INSPECTION AND AUDIT OF RECORDS:

A. JVIATION shall provide and/or permit CLIENT to access and inspect all technical documentation prepared by JVIATION under this Agreement.

B. JVIATION shall comply with any financial audit obligations imposed by CLIENT under the AGREEMENT.

SECTION 13 - DELAYS AND CONSEQUENTIAL DAMAGES: In no event shall either party be liable to the other or to a third party for consequential damages in any form whatsoever or for delays in the project, which are caused by occurrences, which are beyond the control of the parties. Furthermore, neither party to this Contract shall be liable to the other for any indirect, incidental, consequential, exemplary, punitive or special damages or loss of income, profit or savings of any party, including third parties, arising directly or indirectly from the parties' relationship under this Contract or applicable law, including claims based on contract, equity, negligence, intended conduct, tort, or otherwise (including breach of warranty, negligence, and strict liability in tort).

SECTION 14 - GOVERNING LAW: The laws of the State of Colorado and applicable Federal, State and local laws regulations and guidelines shall govern hereunder.

SECTION 15 - NO WAIVER: None of the provisions of this Agreement shall be considered waived by either party thereto unless such waiver is reduced to writing and signed by the party to be charged. No such waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

SECTION 16 - EXTENT OF AGREEMENT: This Agreement, including any appendices, exhibits, and attachments hereto, embodies the complete agreement between CLIENT and JVIATION and supersedes all prior oral or written agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement signed by both CLIENT and JVIATION and made a part of this Agreement.

SECTION 17 - DISPUTES: In the event of any dispute, controversy or claim between CLIENT and JVIATION in connection with or relating to this Agreement ("Disputes"), the parties shall make good faith efforts to resolve the Disputes through negotiation and, if the parties so elect, non-binding mediation

Unless otherwise agreed in writing, JVIATION shall continue to carry out its responsibilities under this Agreement during any dispute, and CLIENT shall continue to make payments in accordance with this Agreement.

SECTION 18 - SEVERABILITY: In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 19 – SUCCESSORS AND ASSIGNS: CLIENT and JVIATION each binds itself, its successors, assigns and legal representative to the other party of this Agreement and to the successors, assigns and legal representative of such other party with respect to all provisions of this Agreement.

Neither CLIENT, nor JVIATION shall assign, set over or transfer its interest, in whole or in part, in this Agreement without the prior written consent of the other.

SECTION 20 - NOTICES: All notices or other communications to either party by the other shall be deemed given when made in writing and personally delivered or mailed, postage paid, to:

For CLIENT: Rick Lamport, AAE, Airport Manager
Gunnison-Crested Butte Regional Airport
Administrative Offices, 519 Rio Grande Blvd.
Gunnison, CO 81230

For JVIATION: Stephen Berardo, C.M., Project Manager
Jviation, Inc.
900 S. Broadway, Suite 350
Denver, CO 80209

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written.

GUNNISON BOARD OF COUNTY COMMISSIONERS		**JVIATION, INC.**	
By		By	
Name	Paula Swenson	Name	Jim Fluhr
Title	Commissioner Chairperson	Title	Principal
Date		Date	
		Federal ID No.	26-1584377

JVIATION℠

EXHBIT A

SCOPE OF SERVICES

JVIATION

EXHIBIT B

FEE PROPOSAL