AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement Collateralizing Letter of Credit with Ce

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached contract.

Fiscal Impact:

Submitted by: Katherine Haase for CAO **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No fiscal impact to RTA as costs are being reimbursed by CBMR. No concerns.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/29/2015

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 10/27/2015 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/30/2015

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

Agenda Date: 11/3/2015

Revised April 2015

AGREEMENT COLLATERALIZING LETTER OF CREDIT WITH CERTIFICATE OF DEPOSIT AND GUARANTEEING PAYMENT

This Agreement Collateralizing Letter of Credit With Certificate Of Deposit And Guaranteeing Payment (this "Agreement") is entered into this ___ day of October, 2015 between Gunnison Savings and Loan Association ("GS&L") on the one hand and the Board of County Commissioners of the County of Gunnison, Colorado and Debbie Dunbar as the Gunnison County Treasurer (collectively, "Gunnison County") and the Gunnison Valley Transportation Authority ("RTA"), on the other hand.

I. RECITALS

A. Alaska Airlines, Inc., an Alaska corporation entered into that certain Gunnison/Crested Butte – Los Angeles Air Service Agreement (2015-2016 Winter Season) with Crested Butte, LLC dba Crested Butte Mountain Resort, a Colorado limited liability company ("CBMR") dated June 1, 2015 (the "Air Service Agreement") wherein, among other things, CBMR agreed to guarantee certain revenue and other amounts to Alaska Airlines, Inc. and agreed to do so by obtaining a letter of credit in order to induce Alaska Airlines, Inc. to make certain flights to Gunnison County, Colorado.

B. The RTA entered into that certain agreement with CBMR dated June 29, 2015 (the "Security Agreement") wherein, among other things, the RTA agreed to obtain the irrevocable letter of credit contemplated under the Air Service Agreement to secure certain obligations of CBMR under the Air Service Agreement.

C. To assist the RTA with the performance of its obligations, Gunnison County agreed to obtain a certificate of deposit to as collateral for GS&L to issue the requested letter of credit under the Air Service Agreement. On October 15, 2015, GS&L issued a Certificate of Deposit to the Gunnison County Treasurer with Account Number 01-196866-17 in the deposit amount of $400,000.00 (the "CD").

D. Gunnison County and the RTA desire for the flights contracted for under the Air Service Agreement to occur in order to increase tourism, which is beneficial for the economy in Gunnison County. In furtherance of this public purpose, they have requested that GS&L issue a letter of credit substantially in the form of the Irrevocable Letter of Credit attached hereto as **Exhibit 1**.

E. GS&L desires to issue the Irrevocable Letter of Credit attached hereto as **Exhibit 1**, but will only do so upon adequate collateralization with the CD and guaranty of payment of any draws thereunder.

II. AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including the recitals above, which are incorporated herein by this reference, and

the mutual promises and agreements set forth herein, GS&L, Gunnison County, and the RTA agree as follows:

A. Issuance Of Letter Of Credit. Upon the complete execution hereof by all parties, GS&L will issue a letter of credit substantially in the form attached hereto as **Exhibit 1** (as issued, the "Letter of Credit").

B. Collateralization Of Letter Of Credit With The CD. Gunnison County hereby grants and conveys to GS&L a security interest in the CD to secure the immediate reimbursement to GS&L of any payments made by GS&L under the Letter of Credit. Upon the payment of any draft upon the Letter of Credit, GS&L shall be entitled to immediate set off and reimbursement from the CD of the full amount of any such draft. GS&L may exercise its right to set off and obtain reimbursement without providing prior notice to Gunnison County.

C. Promise To Pay. Gunnison County and the RTA, jointly and severally, hereby agree and promise to pay to GS&L all amounts paid by GS&L under the Letter of Credit to the extent GS&L has not already received reimbursement from the CD such that GS&L will be fully reimbursed for all payments made by GS&L under the Letter of Credit. Such payment(s) shall be made immediately upon written demand by GS&L. This promise and agreement to pay is a joint and several obligation of Gunnison County and the RTA.

D. No Notice Prior To Payment Of Drafts. Gunnison County and the RTA recognize and agree that they shall not receive any notice prior to the payment of drafts upon the Letter of Credit. Gunnison County and the RTA shall not have any defense to their promise to pay under paragraph II. C. above because of lack of notice prior to such payment(s) and hereby waive any right to notice or claims or defenses that may arise because of the lack of such notice.

E. No Defense Because Of Invalid Or Improper Draft. GS&L shall have no obligation to confirm the accuracy of any draft, the appropriateness of any draft, the existence of any breach or failure to make payment under the Air Services Agreement, or the existence of any defense to payment by CBMR or the RTA under the Air Services Agreement or the Security Agreement. Gunnison County and the RTA shall have no defense, reduction or delay in their payment and reimbursement obligations set forth in paragraph II. B. and II. C. above arising out of or relating to the inaccuracy of any draft, the inappropriateness of any draft, the existence of any breach by Alaska Airlines, Inc. under the Air Services Agreement, or the existence of any breach by CBMR under the Security Agreement. Gunnison County and the RTA shall have no claim, counterclaim, cross claim against GS&L because of GS&L's reimbursement from the CD pursuant to paragraph II. B. above arising out of or relating to the inaccuracy of any draft, the inappropriateness of any draft, the existence of any breach by

Alaska Airlines, Inc. under the Air Services Agreement, or the existence of any breach by CBMR under the Security Agreement.

F. Attorney's Fees; Venue. In the event of any legal action arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all of its attorney's fees and costs from the non-prevailing party or parties. GS&L, Gunnison County, and the RTA agree that the Gunnison County, Colorado District Court shall be the sole and exclusive venue for any legal action arising out of or relating to this Agreement.

IN WITNESS WHEREOF, GS&L, Gunnison County, and the RTA have executed this Agreement as of the day and year first above written.

Gunnison Savings & Loan Association

By: _____
J. Craig Bryant, as Executive Vice President, COO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

By: _____

ATTEST:

_____
Deputy County Clerk

Gunnison Valley Transportation Authority

By: PAULA SWENSON
Its: BOARD CHAIR

The Gunnison County Treasurer

_____
Debbie Dunbar as Gunnison County Treasurer

EXHIBIT 1

IRREVOCABLE LETTER OF CREDIT

Bank: Gunnison Savings & Loan Association

Address: 303 N. Main Street

Gunnison, Colorado 81230

Telephone: (970) 642-4643

Beneficiary:
Alaska Airlines, Inc., an Alaska Corporation

LETTER OF CREDIT NUMBER: 2015-0002
Amount U.S. $400,000.00
Date of Issuance: October 30, 2015
Initial Expiration Date: June 26, 2016

Applicant: Gunnison Valley Transportation Authority

Address: P.O. Box 39

Crested Butte, CO 81224

Telephone: (970) 275-0111

We hereby issue and establish our irrevocable letter of credit, the amount of which is available by beneficiary's draft or drafts upon us substantially in the form provided herewith as Exhibit A, which shall be paid at sight, up to the amount stated therein, but not to exceed an aggregate sum of $400,000.00 under this letter of credit. Each sight draft so drawn and presented shall be honored by us only if presented prior to the close of business on the expiration date of this letter of credit. Notwithstanding the foregoing, each draft shall be presented no later than 1:00 p.m. (Mountain Time) to be paid on the day of presentment and any draft presented after 1:00 p.m. (Mountain Time) will be paid on the next business day.

The original signed letter of credit will be presented to the Bank by the Beneficiary along with any draft presented pursuant to this letter of credit, and will be surrendered to the Bank with any draft which draws the full amount, or the balance remaining available, under this letter of credit.

If any expiration date specified herein shall fall upon a day other than a regular business day of the Bank, the expiration date shall automatically be extended to the close of business on the next successive business day of the Bank.

This Letter of Credit is subject to and governed by the law of the State of Colorado and in the event of any conflict, the law of the State of Colorado shall control. Any legal action involving or relating to this Letter of Credit must be brought in the state courts located in Gunnison County, Colorado, which shall be the exclusive venue for any dispute regarding this Letter of Credit.

This Letter of Credit shall not be transferred or assigned by the Beneficiary or Applicant.

Gunnison Savings & Loan Association

By: _____
J. Craig Bryant, Executive Vice President, COO

EXHIBIT A
To
Irrevocable Letter of Credit

PAYMENT CERTIFICATE AND DRAFT

To: Gunnison Savings & Loan Association
303 N. Main Street
Gunnison, Colorado 81230

RE: Irrevocable Letter of Credit No. 2015-0002; Applicant Gunnison Valley Transportation Authority; Beneficiary Alaska Airlines, Inc., an Alaska corporation

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies and represents to Gunnison Savings & Loan Association ("GS&L"), with respect to the letter of credit identified above (the "Letter of Credit") issued by GS&L in favor of Beneficiary that: (1) Crested Butte, LLC d/b/a Crested Butte Mountain Resort ("CBMR") has failed to pay when due the amount certified herein as required by that certain Gunnison/Crested Butte – Los Angeles Air Service Agreement entered into as of June 1, 2015 between Alaska Airlines, Inc., an Alaska Corporation and CBMR (the "Air Services Agreement"), (2) Beneficiary provided prior written notice of its intent to make this draw to CBMR, and (3) it is undisputed by CBMR that the amount certified below is due and owing Beneficiary under the Air Services Agreement and has been unpaid for more than sixty (60) days.

The amount certified and for which Beneficiary is making a draw under the Letter of Credit is _____. Upon payment, the amount so certified shall be deducted from the total amount available under the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Payment Certificate and Draft as of the _____ day of _____.

ALASKA AIRLINES, INC.

By: _____
Its: _____