AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Fourth Amendment to the FBO Master Operating Agree

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Board of County Commissioners of Gunnison and AvFlight Gunnison Corporation

Term Begins: Extension of Primary Term: **Term Ends:** 5/31/2038 **Grant Contract #:**

Summary:

The current operator, Gunnison Valley Aviation, is requesting a fourth amendment to and consideration of the FBO Master Agreement dated 2003, for reassignment to AvFlight Gunnison Corporation

Fiscal Impact: Expected to be a net-positive impact to the Airport.

Submitted by: Stephanie Williams **Submitter's Email Address:** swilliams@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Have reviewed documents and discussed with Rick. No concerns.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/13/2015

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 11/12/2015 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/13/2015

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

Agenda Date: 11/17/2015

Revised April 2015

FIRST AMENDMENT
TO THE
AGREEMENT REGARDING GROUND LEASE, CONSTRUCTION, OWNERSHIP AND OPERATION OF A HANGAR

Between the
Board of County Commissioners of Gunnison County
and
Avflight Gunnison Corporation

THIS FIRST AMENDMENT is to the Agreement Regarding Ground Lease, Construction, Ownership and Operation of a Hangar, dated January 1, 1995 (the "Agreement"), between the Board of County Commissioners of Gunnison County, Colorado (the "County") and Mid-States Millwork, Inc. ("Mid-States"), K-Hangar, LLC ("K-Hangar") and its successor in interest Avflight Gunnison Corporation ("Avflight").

RECITALS

WHEREAS, the County and Mid-States entered into the Agreement in 1995, and a Request for Sublease of the Agreement was granted in 2002, which granted K-Hangar lease rights to a hangar on the Gunnison/Crested Butte Regional Airport (the "Airport");

WHEREAS, (A) K-Hangar desires to assign to Avflight and Avflight desires to assume all of its rights and duties under the Agreement and have requested that the County consent to that assignment and assumption and (B) Avflight desires to extend the term of the Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Avflight hereby agree as follows:

1. **Relationship to Agreement.** Upon execution by duly authorized representatives of the County and Avflight, this Amendment shall become a part of the Agreement and shall be binding upon the parties. The definitions, terms, covenants and conditions of the Agreement, including the default and remedy provisions thereof, are hereby incorporated by reference and made a part of this Amendment, as if they were fully set forth herein, and references herein to this Amendment shall include the provisions of the Agreement. If any definition, term, covenant or condition of this Amendment shall be in conflict with any provision of the Agreement, the definition, term, covenant or condition of this Amendment shall prevail.

2. **Consent to Assignment.** The County hereby consents to K-Hangar's assignment and delegation and Avflight's acceptance and assumption of all rights and obligations under the Agreement effective as of 12:01 a.m. on the effective date of this Amendment.

3. **Extension of Term.** The Agreement is amended to replace paragraph 1.1 with the following:

> "The term of this Agreement shall be coterminous with the FBO Master Operating Agreement and Lease, dated June 1, 2003, between the Lessor and Avflight Gunnison Corporation, unless earlier terminated under the provisions of this Agreement."

IN WITNESS WHEREOF, the parties have executed this Amendment as of the ___ day of November, 2015.

Attest:

_____

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY

By: _____

AVFLIGHT GUNNISON CORPORATION
A Colorado corporation

By: _____

FOURTH AMENDMENT
TO THE
FBO MASTER OPERATING AGREEMENT AND LEASE

Between the
Board of County Commissioners of Gunnison County
and
Avflight Gunnison Corporation

THIS FOURTH AMENDMENT is to the FBO Master Operating Agreement and Lease, dated June 1, 2003, as amended (the "Master Agreement"), between the Board of County Commissioners of Gunnison County, Colorado (the "County") and Gunnison Valley Aviation, LLC ("GVA") and its successor in interest Avflight Gunnison Corporation ("Avflight").

RECITALS

WHEREAS, the County and GVA entered into the Master Agreement in 2003, and a First Amendment to the Master Agreement in 2004, which together granted GVA certain rights to operate a fixed based operation on the Gunnison/Crested Butte Regional Airport (the "Airport");

WHEREAS, the County and GVA have entered into several addenda to the Master Agreement relating to particular facilities on the Airport: Addendum #1 relating to the fuel facility; Addendum #2 relating to Hangars Now. 1, 2, 3, and 4; Addendum #3 relating to Hangar No. 6; Addendum #4 relating to T-hangars collectively known as Hangars No. 7 and 8; Addendum #5 and Second Amendment relating to Hangar No. 4; Third Amendment relating to the modification of the aircraft maintenance and repair requirements; and

WHEREAS, (A) GVA desires to assign to Avflight and Avflight desires to assume all of its rights and duties under the Master Agreement and have requested that the County consent to that assignment and assumption and (B) Avflight desires to exercise the right granted to GVA in Addendum # 5 to extend the term of the Master Agreement and, in connection with that extension has requested that the County consent to limited amendments to the Master Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Avflight hereby agree as follows:

1. <u>Relationship to Master Agreement</u>. Upon execution by duly authorized representatives of the County and Avflight, this Amendment shall become a part of the Master Agreement and shall be binding upon the parties. The definitions, terms, covenants and conditions of the Master Agreement, including the default and remedy provisions thereof, are hereby incorporated by reference and made a part of this Amendment, as if they were fully set forth herein, and references herein to this Amendment shall include the provisions of the Master Agreement. If any definition, term, covenant or condition of this Amendment shall be in conflict with any provision of the Master Agreement, the definition, term, covenant or condition of this Amendment shall prevail.

2. <u>Consent to Assignment</u>. The County hereby consents to GVA's assignment and delegation and Avflight's acceptance and assumption of all rights and obligations under the Master Agreement effective as of 12:01 a.m. on the effective date of this Amendment.

3. <u>Extension of Term</u>. The Master Agreement is amended to replace paragraph 5.1 with the following:

"Term. Subject to earlier termination as hereinafter provided, the primary term of this Agreement shall be the thirty-five (35) year period commencing on June 1, 2003, and ending May 31, 2038."

4. Elimination of Option to Renew. As a consequence of the amendment to Section 5.1, the Master Agreement is amended to omit paragraph 5.2.

5. Minimum Services Provided by Operator. Pursuant to Section 2 of the Third Amendment to the Master Agreement dated September 12, 2011, as direct revenues from aircraft maintenance and repair services have not equaled or exceeded direct expenses for those services, the Master Agreement is amended to replace paragraph 3.2.5 with the following:

"Operator is permitted but shall not be required to provide aircraft maintenance and repair services for general aviation aircraft utilizing the Premises and to provide such equipment, tools and spare parts inventory as may be reasonably required for those services."

6. Subordination. This Amendment and the Master Agreement shall both be subject and subordinate to the provisions of any exiting or future agreement between the County and the United States, or any agency thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport; provided, however, that the County shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Avflight in and to the Premises, and to compensation for taking thereof, interference therewith and damage thereto, caused by such agreement or by actions of the County or the United States pursuant thereto.

7. Uses of Premises and Improvements. Subject to the terms and conditions hereof and of the Master Agreement, the County authorizes Operator to utilize and operate the Premises and Improvements depicted on **Exhibit 1** hereto, and generally known as the FBO Parking Lot (the "Parking Lot").

8. Rent Payments by Operator. For the use of the Parking Lot, in addition to any use fee under the Master Agreement or any rental due under any other Addendum, Operator shall pay the County an annual rental of $600.00 payable in advance in monthly installments of $50.00. If this Amendment shall commence or expire by its terms at the middle of any month or year, amounts due for such month and year shall be prorated. This amount shall be added to the Base Rental and adjusted annually in accordance with Section 3.1.2 of the Master Agreement.

9. Fuel Flowage and General Aviation Aircraft Parking Fees. The Master Agreement is amended to replace paragraph 3.1.3 with the following:

"Fuel Flowage and General Aviation Aircraft Parking Fees. Operator shall pay to the County, as additional rental:

(1) a fuel flowage fee on all gasoline and aviation fuel, including Jet A and Avgas, dispensed by it (the "Fuel Fee"). As of the date of this Amendment, Fuel Fee is established by the County at $0.12 per gallon for all fuel dispensed. County shall have the right to adjust the Fuel Fee from time to time, either by increase or decrease, by written notice to Operator, provided, that in no event shall the Fuel Fee under this paragraph charged to Operator be more than the Fuel Fee charged by the County to any other entity selling fuel at the Airport; and

(2) an aircraft parking fee for all general aviation aircraft parking at the airport for one hour or more (the "Parking Fee"). As of the date of this Amendment, Parking Fee is established by the County as defined on **Exhibit 2** hereto. County shall have the right to adjust the Parking Fee from time to time, either by increase or decrease, by written notice to Operator, provided, that in no event shall the Parking Fee under this paragraph required to be collected by Operator be more than the Parking Fee charged by the County to any other entity collecting parking fees at the Airport. Operator's obligation to collect the Parking Fee shall commence on January 1, 2016. The Parking Fee collected shall be divided as follows: (1) for the first $62,857.14 of the Parking Fee collected in each calendar year, 70% shall be paid to the County and 30% shall be retained by the Operator; (2) for the Parking Fee collected in excess of $62,857.14 in each calendar year, 50% shall be paid to the County and 50% shall be retained by the Operator.

Additional rent under this paragraph 3.1.3 shall be payable on or before the tenth day of the month following the month in which the fuel was dispensed and the general aviation aircraft were parked at the Airport. Such payment shall be accompanied by a report, certified by an authorized representative of Operator, setting forth the aviation fuel sales for such month and the computation of the Fuel Fee and the general aviation aircraft parked at the airport in such month and the computation of the Parking Fee, all in such form and detail as County may reasonably request."

10. **Fuel Farm.** As a clarification of intent, Addendum #1 to the Master Agreement is amended to replace paragraph 2 with the following:

"Subject particularly to reserved rights of the County in Sections 6, 7.1 and 7.2 hereof and subject generally to the other terms and conditions hereof and of the Master Agreement, the County authorizes and grants to the Operator the right to utilize the Premises and operate the Improvements depicted on **Exhibit 1** hereto, and generally known as the Gunnison Airport Fuel Facility (the "Fuel Facility")" and County shall not authorize or grant to any other tenant or user at the Airport the right to use the Fuel Facility.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the ___ day of November, 2015.

Attest:

_____

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY

By: _____

AVFLIGHT GUNNISON CORPORATION
A Colorado corporation

By: _____