AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Food and Beverage/Retail Lease Agreement; KRN Ente

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County Board of County Commissioners and KRN Enterprise LLC dba Niky's

Term Begins: 1/1/2016 **Term Ends:** 4/8/2016 **Grant Contract #:**

Summary:

Niky's Donuts to provide a one-term seasonal Food and Beverage service at the Gunnison Crested Butte Regional Airport

Fiscal Impact: $600 for entire term plus 5% of gross

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 1/15/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 1/13/2016 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\khaase Discharge Date: 1/15/2016

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

Agenda Date: 1/19/2016

Revised April 2015

FOOD AND BEVERAGE/RETAIL
LEASE AGREEMENT

This Lease Agreement is made and entered into on this 1st day of January, 2016 by and between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, 200 East Virginia, Gunnison, CO 81230, a political subdivision of the State of Colorado, hereinafter referred to as the "County", and KRN Enterprise LLC dba Niky's, hereinafter referred to as the "Lessee".

WHEREAS, the County, owns and operates the Gunnison-Crested Butte Regional Airport ("the Airport") located within and adjacent to the City of Gunnison, including the Air Carrier Terminal building; and

WHEREAS, the County has determined that the convenience and interests of air travelers and members of the public would best be served if prepared food and beverages on the leased premises, were offered for sale in a restaurant or by mobile food service at such Terminal during regular business hours; and

WHEREAS, the Lessee is willing to operate a mobile food service at the Terminal under the terms and conditions of this agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the County and the Lessee do hereby agree as follows:

1. TERM

The term of this lease agreement shall commence on January 1st, 2016, and continue until April 8th, 2016 unless sooner terminated under the terms hereof. During the term the Lessee will operate January 1st, 2016, through April 8th, 2016 with the purpose of providing food and beverage service that best serves the airline operating schedule at the Gunnison-Crested Butte Regional Airport.

2. GRANT OF LEASE

The County hereby grants to the Lessee the right to occupy and use, together with necessary rights of ingress and egress, those premises more particularly identified in **Exhibit A**, attached hereto and by reference incorporated herein.

3. USE OF LEASED PREMISES

The Lessee hereby agrees to use the airport restaurant facilities only for the purpose of food and beverage preparation for consumption in the leased area of the terminal

departure lounge. Such use shall be conducted in accordance with the laws of the State of Colorado governing the sale and preparation of food and beverages. The above uses are to serve airline passengers who are utilizing the Airport Terminal for air travel. Such use shall at all times be conducted in a manner consistent with the terms of this agreement, in accordance with applicable federal, state and local laws, rules and regulations and in accordance with any rule, manual or program adopted for the operation of the Gunnison Crested Butte Regional Airport.

No amusement or vending machines shall be installed or maintained in or upon the Lessee's leased premises without prior written approval of the County.

The Lessee, its employees, passengers, guests, patrons and invitees shall have the right to use all public areas and facilities in the Terminal including, but not limited to, waiting rooms, restrooms, vehicle parking areas and vehicle loading and unloading areas adjacent to the Terminal building. Nothing contained in this paragraph shall prevent the County from enforcing the provisions of ordinances, resolutions or regulations relating to the control of parking at the Gunnison-Crested Butte Regional Airport or the collection of fees and fines for such parking.

Neither the Lessee, its employees, passengers, guests, patrons nor invitees shall be allowed to bring or keep animals or pets on the leased premises.

The Lessee shall ensure that no use of the leased premises interferes with the quiet use of the Airport Terminal by the County, public or other tenants at the Airport Terminal.

4. COMPENSATION

For and in consideration of the rights granted herein, the Lessee will compensate the airport:-

- A total rental fee of $600 (six hundred dollars) for space and facilities for the entire term payable monthly.
- 5% of its gross revenue earned during the term payable at the end of each month.

All compensation to be paid to Lessee pursuant to this Section 4. shall be delinquent if not received on the 30th day of each month for the then-current month. Payments to the County are due on the 30th day of each month following the subject month and made payable to the "Gunnison County Treasurer". Payments should be mailed or delivered to the Gunnison County Finance Office at 200 East Virginia Avenue, Gunnison, CO, 81230.

5. OPERATIONS

The Lessee agrees to secure all necessary sales tax licenses, business permits and other approval required by the City of Gunnison and the State of Colorado. Such licenses shall be separate and apart from licenses and permits relating to any other retail location operated by the Lessee.

The Airport Manager/or designated representative shall have the right to make reasonable objections to the food service menu items and pricing at the airport. Such items will be subject to discussion with the ultimate decision to be made, following the discussion, by the County.

The Lessee or a member of their staff will handle deliveries of food and beverage or merchandise.

No trash or supplies associated with the agreement will be allowed in the front of the air carrier terminal, (i.e. carbon cartridges, beer kegs, food packaging, merchandise packaging, trash etc.)

The Airport Manager/or designated representative shall have the right to make reasonable objections to or require the immediate removal from sale or display of any materials, which in the sole discretion of the County are objectionable for any reason whatsoever. The Lessee shall promptly comply or such failure shall constitute a material breach of this agreement.

The Lessee may place signage as approved by the Airport Manager or their designee. Any sign must receive prior approval from the Airport and displayed or be attached to or hung upon the wall/area designated by the Airport.

The Lessee specifically recognizes and agrees that the leased premises are part of the Terminal, which is closed during certain hours of the day and evening and is utilized expressly for purposes relating to members of the public traveling to and from Gunnison County by commercial airlines. The Lessee hereby agrees that the use proposed for the leased premises is consistent with the use of the Terminal for the intended purpose and accepts the closure of the Terminal during those times identified by the County. The Lessee agrees to close the business on the leased premises no earlier than 15 (fifteen) minutes after the last departure of a commercial airline or as deemed necessary by passenger loads. This paragraph shall not be considered to prevent the County from granting approval of later hours for special purposes, if requested.

The Lessee agrees to conduct its business hereunder for the accommodation of the public using the Airport and to furnish good, prompt and efficient service. The Lessee agrees to provide service on a fair, equal and non-discriminatory basis to all air travelers and to charge fair, reasonable and non-discriminatory prices for merchandise and service. The Lessee, its agents and employees, will not discriminate against any

person or class of person by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public in any manner prohibited by Part 21 of the regulations of the office of the Secretary of Transportation.

The County has, at its own expense, brought certain public utility services to the Terminal building and the premises leased hereunder. Within the limits of capacity and without charge the Lessee shall have the right to use and make connection therewith. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right, except insofar as this Lease grants an exclusive right to occupy the leased premises in accordance with its terms.

6. MAINTENANCE, REPAIRS AND IMPROVEMENTS

During the term of this agreement, the Lessee shall provide its own janitorial services and shall at all times keep its leased premises, including the restrooms in the restaurant area, in a neat and clean condition and in good repair (ordinary wear and tear, unavoidable accident and fire excepted). The County shall operate, maintain and keep in good repair the Terminal building and Airport facilities.

The County and its authorized officers, employees, agents and other representatives shall have the right (at such times as may be reasonable under the circumstances) to enter upon the Lessee's leased premises to inspect the premises at reasonable business hours or in case of emergency, to perform necessary maintenance and repairs in order to preserve the structural safety of such premises or the Terminal building or to correct dangerous conditions, or in the exercise of the County's police power. No such entry by or on behalf of the County upon such leased premises shall, in and of itself, cause or constitute a termination of letting thereof or be deemed to constitute an interference with the possession thereby by the Lessee.

All equipment and property placed by the County at its expense in, on or about the leased premises shall remain the property of the County. The County shall be responsible for maintenance and repair of all County owned equipment used in the provision of these services, up to fifty percent (50%) of the current depreciated value. All property placed by the Lessee at its expense in, on or about the premises and affixed to the premises so that the same may not be removed without damage thereto, shall become the property of the County and shall not be removed by the Lessee at any time.

Gunnison County owns the majority of the furniture and fixtures associated with the restaurant. Requests to purchase additional kitchen fixtures and equipment must be in writing to the Airport Administration prior to purchasing the items, and must include the equipment, quantity, price, supplier and reasoning for additional fixtures/equipment. The County will decide if the fixtures or equipment shall be County owned and

purchased or lessee owned and purchased. The approval will be based on need and the restaurant equipment replacement budget, within the Airport Operating Budget

The Lessee shall keep the premises maintained in a clean condition at all times and shall at a minimum:

a. Provide a trash containers lined with disposable plastic trash bags for the disposal of trash, including paper, plastic and styro-foam cups, plates, glasses and utensils.

b. No trash or supplies associated with the Lessee's product (papers, napkins, cups, plates, utensils are left at tables, counters, bar or other locations within the restaurant and/or departure lounge, such items shall be picked up by the Lessee's personnel and disposed of in the trash container provided.

c. Spilled food and beverages shall be cleaned up immediately, including messes made by the removal of trash, liquids or debris through the main terminal.

d. The floor of the leased premises, including the stairs leading to the main area shall be vacuumed at least daily after the close of business or before the business opens the following morning. Vacuuming shall cover all carpeted areas including those under benches, chairs, tables and other movable furniture.

e. Hard surfaces such as wood, metal and laminates shall be cleaned regularly whether such surfaces are on appliances, bar furniture or affixed to the building.

f. Liquid waste shall not be disposed of by dumping, or other disposal, on Airport premises including the metal dumpster provided for non-liquid wastes at the Airport Terminal. Only those approved disposal containers designed for liquid/oil waste shall be used.

7. INDEMNIFICATION AND INSURANCE

The Lessee agrees to hold the County harmless, to release and indemnify the County from and against any and all claims, demands, damages and liabilities (including costs and expenses incurred in the defense thereof including reasonable attorney's fees) for injury to persons or damage to property arising from the Lessee's operations or the activities of any officer, agent or employee of the Lessee. 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. The Lessee agrees to

indemnify, release and hold harmless the County from and against any and all claims, demands, damages and liabilities including costs and expenses incurred in the defense thereof due to theft, vandalism or unexplained loss of alcoholic beverages stored on the leased premises.

The County agrees that the Lessee need not release, save harmless or indemnify the County against damages or injuries caused solely by the negligence of the County, its agents, officers or employees.

The Lessee agrees to obtain and keep in force, throughout the term of this lease agreement, comprehensive general liability insurance including at a minimum, commercial general liability coverage per occurrence with a general aggregate of $2,000,000, products of $2,000,000, personal injury of $1,000,000, fire damage of $100,000, and medical expense (per any one person) of $5,000. The Lessee shall also maintain and keep in force at such times adequate Workers' Compensation insurance, including occupational disease hazards, for all of its employees. The County shall be named as an insured in any insurance policy required hereunder, and said policies shall contain a provision insuring contractual liability of the Lessee to the County. The Lessee shall furnish, at the County's request, current certificates of insurance to the County, which shall include a provision that the policies will not be canceled without ten days' prior notice to the County.

The Lessee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operation of said business on the leased premises and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon.

Neither the existence of the insurance required hereunder nor the naming of the County as an 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.

8. DAMAGE TO OR DESTRUCTION OF PREMISES

In the event that the premises leased hereunder, or any portion thereof, shall be destroyed or damaged by fire or otherwise to an extent which renders them untenable, the County may rebuild or repair such destroyed or damaged portions, and the obligation of the Lessee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they shall be untenable. In the event that the County shall elect not to proceed with the rebuilding or repair of the major portion of the premises (if so destroyed or damaged) within a period of 90 days after the destruction or damage, the Lessee may, it its option, cancel and terminate this lease. In the event that the County shall elect to rebuild, the Lessee must replace all of its personal property at its sole cost.

The County shall not be liable for any loss of property by theft or burglary from the Airport or Terminal or for any damage to persons or property on said Airport or Terminal resulting from the electric lighting or water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof.

9. ASSIGNMENT

The Lessee covenants and agrees not to assign, sublet, pledge or transfer any of its rights granted in this agreement, in whole or in part, nor grant any license or concession hereunder, without first obtaining the written consent of the County, which consent may be reasonably withheld by the County. Any attempt by the Lessee to assign, sublet or in any way transfer its interest hereunder without such prior written consent shall, at the County's option, automatically terminate this agreement and the Lessee's rights hereunder.

10. DEFAULT

The Lessee shall be considered to be in default of this agreement upon or after any one of the following:

a. the Lessee fails to pay the compensation required hereunder when due; or

b. the Lessee fails to pay each and every late charge and interest payment within thirty (30) days of its being due; or

c. the Lessee files a voluntary bankruptcy petition or makes a general assignment for the benefit of creditors or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

d. the Lessee transfers its interest under this agreement without the approval of the County by reason of death, operation of law, assignment, sublease or otherwise, to any other person, firm or corporation; or

e. the Lessee voluntarily abandons, deserts or vacates the leased premises; or

f. any lien is filed against the leased premises because of any act or omission of the Lessee and shall not be discharged or contested by the Lessee in good faith by proper legal proceedings within 20 days after receipt of notice thereof by the Lessee; or

g. the Lessee fails to keep, perform and observe each and every promise, covenant and agreement set forth in this lease agreement which failure continues for a period of more than 30 days after written notice from the County of such breach or default; or

h. the Lessee uses or gives its permission to any person to use any portion of the Airport, Terminal or leased premises for any illegal purpose; or

i. the Lessee fails to fully and timely provide restaurant, bar and gift shop services, satisfactory to the County, at all times required by this Agreement.

If the Lessee defaults in any of the covenants, terms and conditions herein contained, the County may proceed in either of the following manners. The County may elect to allow this agreement to continue in full force and effect and to enforce all of the County's rights and remedies hereunder, including without limitation, the right to collect monthly lease payments as they become due together delinquent payments and interest as set forth herein. The County may, at its sole option, cancel and terminate this agreement upon 30 days' written notice to the Lessee and may repossess the premises without liability for so doing, in the event of any breach of the covenants contained herein, unless such default has been cured within such 30 days. The County may also elect to collect liquated damages in the amount of five thousand dollars ($5,000.00) per month of each month from notice of the breach to the end of the lease term or end of each winter season, whichever is earlier.

No waiver of a 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.

11. LESSEE'S RIGHT TO TERMINATE

Lessee shall have the right to terminate this Agreement by giving 60 days advanced written notice to the County.

12. AMERICANS WITH DISABILITIES ACT

Lessee is not responsible to make any structural changes to the Airport Terminal building to meet the requirements of the American's With Disabilities Act; however, Lessee is responsible to meet all other relevant provisions of the American's With Disabilities Act, including but not limited to reasonable accommodations to the public and employees.

13. IMMIGRATION COMPLIANCE CERTIFICATION.

Contractor certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this contract. Contractor further certifies that it has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this contract. Finally, Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program (operated by the Department of Homeland Security).

14. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which such party is not responsible or which is not in its power to control.

15. AGREEMENT WITH THE UNITED STATES

This lease 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 the expenditure of federal funds for the extension, expansion or development of the Gunnison County Airport.

16. NOTICES

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

Airport Administration Office
519 West Rio Grande
Gunnison, CO 81230

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

KRN Enterprises LLC
PO Box 2203
Crested Butte, CO 81224

17. SEVERABILITY

In the event any covenant, condition or provision contained in this lease 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 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.

18. GOVERNING LAW - BINDING AGREEMENT

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

19. ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by all the parties within the same formality as this agreement.

20. VENUE

Venue for any and all legal actions regarding this Retail Lease Agreement shall lie in the District Court in and for the County of Gunnison and State of Colorado.

21. GROSS REVENUES

In order to facilitate County compliance with federal requirements, in addition to the requirements of paragraph 4. hereof, the Lessee shall submit to the County by the 30th of each month a written report of gross revenues generated by the Lessee at the Gunnison Crested Butte Regional Airport during the preceding month. The County shall have the right at its own expense to audit the Lessee's books and records and any portions thereof.

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

_____
Johnathan Houck, Commissioner

Attest:

_____

_____
Richard Machemehl

Attest:

_____

Exhibit A