AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement; Flight Testing - BLR Aerospace

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and BLR Aerospace, LLC

Term Begins: 7/1/20 **Term Ends:** 6/30/2021 **Grant Contract #:**

Summary:

Authorizing BLR Aerospace to perform flight testing activities and usage of the helicopter tether pad under the conditions of this agreement. If requested, ARFF services can be provided during the period of the testing program.

Fiscal Impact: $2,000 paid to the Airport for the duration of the term; standby compensation

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 7/1/2020

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

Comments:
ok db 7/2/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 7/2/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 7/2/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 7/7/2020

Revised April 2015

AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO AND BLR AEROSPACE, LLC FOR THE AUTHORIZATION OF FLIGHT TESTING ACTIVITIES, THE USE OF THE HELICOPTER TETHER TEST PAD AND PROVISION OF ARFF AND OTHER AIRPORT SERVICES

THIS AGREEMENT regarding the authorization to conduct flight testing activities, the use of the Helicopter Tether Test Pad and the provision of ARFF services at the Gunnison-Crested Butte Regional Airport ("Agreement") made as of _____, 2020 is by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO ("County") and BLR Aerospace, LLC (Company).

WHEREAS, the County owns and operates the Gunnison-Crested Butte Regional Airport ("Airport") and with the operation of the Airport provides a helicopter tether test pad and the capability of providing Index B ARFF services; and

WHEREAS, the Company desires to conduct High Altitude flight testing of the BLR Aerospace Product line and

WHEREAS, the Company has requested the use of the helicopter tether test pad and the provision of ARFF services as defined herein during the period of the test program.

NOW, THEREFORE, the County has agreed to the use of the helicopter tether test pad and to provide ARFF and other services as defined herein during the period of the flight testing and in consideration of the mutual covenants, terms and conditions herein, the County and the Company do mutually undertake and agree as follows:

1. DEFINITIONS

As used in this Agreement, defined words and terms shall have the following meanings:

1.1 "Agreement" is this Operating Agreement and use of Airport Facilities and/or Services.

1.2 "Airport" is the Gunnison-Crested Butte Regional Airport located within and adjacent to the City of Gunnison, Gunnison County, Colorado, whose address is 519 Rio Grande Avenue, Gunnison, Colorado 81230.

1.3 “Airport Facilities” include the Terminal and other public improvements and aeronautical facilities located at the Airport.

1.4 “Airport Manager” is the manager of the Airport as may be designated from time to time by the County.

1.5 “ARFF” is Aircraft Rescue Fire Fighting as defined under FAR Part 139.

1.6 “Employees” means Airline’s officers, employees, contractors and/or agents performing activities at the Airport.

1.7 “Services” means any services, materials, articles, services or work (including any part or parts of them) to be supplied to the Company by the County.

1.8 “Company” means BLR Aerospace, LLC.

1.9 “The County” means the Board of County Commissioners of the County of Gunnison, Colorado, 200 W. Virginia Gunnison, Colorado 81230.

1.10 “Ramp” is that portion of the aircraft ramp/apron at the Airport for use by air aircraft.

1.11 “Weight” shall mean the maximum certified landing weight (MLW) of an aircraft as designated by the Federal Aviation Administration.

2. TERM

The term of this Agreement shall be the period commencing on July 1, 2020 and ending June 30, 2021 - (the “Term”).

3. USE OF THE AIRPORT FACILITIES

The Company shall use the Airport Facilities to conduct High Altitude Flight Testing of the BLR Aerospace Product Line as follows:

a. Type of Testing – Low Altitude over Runway 06/24 and load testing on the helicopter tether test pad.
b. Hours of Operation – Testing, including main engine and auxiliary power unit (APU) run-up which involves the helicopter remaining within the airfield boundary, will take place not before 6:00am local time and will terminate at or before 5.00pm local time.
c. Days of Operation – Monday through Saturday with no testing on Sundays and Public Holidays for load testing on the helicopter tether test pad.

4. DESCRIPTIONS OF AIRPORT PROVIDED SERVICES

4.1 The availability to the Company of the airport's helicopter tether test pad facility together with any Company requested routine daily maintenance of the test pad i.e. dust control.

4.2 As requested by the Company, the Load Testing of the helicopter test pad anchor point to at least 45,000lbs by the Airport prior to the beginning of the test program.

4.3 The County, provided airport staffing is available, agrees to provide and at Company's sole request and discretion, on call ARFF services as follows;

a. During Low Altitude testing, one certified ARFF Officer and one ARFF Index B Truck will be available on station standby during the duration of the test.
b. During helicopter tether pad testing, one suited up certified ARFF Officer and one ARFF Index B Truck stationed at a location within the Airport determined by the Company during the duration of the test ("Services").
c. It is recognized and understood between the Company and County, that if an aircraft emergency occurs involving an aircraft other than the Company's aircraft during the times of testing, ARFF coverage will be discontinued for the duration of that emergency.

4.4 NOTAM dissemination as required.

4.5 Storage space and ground handling support (security/AOA) for any Company equipment required, in support of Company's test program to include security and AOA escort of transport vehicles and provision of available County loading vehicles.

5. COMPENSATION

5.1 In exchange for the use of the Airport facilities and provision of the Services as defined above, the Company shall reimburse the County as follows:

a. Use of the helicopter tether test pad - $2,000 for the entire duration of the term.
b. On request "station standby" ARFF Services for Low Altitude Testing - $200 per hour.
c. On request "on-site" Tether Pad Testing ARFF Services - $500 per hour.

5.2 Cost of the use of the helicopter tether test pad includes any Company requested surface preparation by Airport employees and equipment. i.e. watering down to minimize dust.

5.3 Cost of a Certified ARFF Officer and ARFF Index B Truck will be applied in 15 minute segments – i.e. $50.00 for low altitude testing and $125.00 for tether testing.

5.4 Company shall reimburse the County cost for stress and strength testing of the tether pad anchor point. The amount of reimbursement from Company to County shall be actual cost and shared cost if used with other test organizations within the same time frame.

5.5 If requested by the Company, the Airport shall for duration of the term, prepare and provide space, assist with loading/off-loading if passible and AOA/security escort for delivery and storage of any Company materials, ballast etc at helicopter tether pad site - $1,000.

5.6 If airport badging is required, the cost per badge per individual is $30.00 for AOA.

6. PAYMENT

6.1 Invoices for payment will be submitted monthly.

6.2 The Company shall pay all valid invoices for payment within 30 days of receipt.

7. CONDITIONS OF AGREEMENT

This Agreement is subject to the following conditions:

7.1 APPLICABLE LAW

a. The Agreement shall be governed by and interpreted in accordance with Colorado Law. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the state of Colorado District Court governing Gunnison County, Colorado.

b. Each party hereby warrants to each other that entry into the Agreement does not and performance thereof will not in any way violate or conflict with any provision of federal or state law, statute, rule, regulation, judgment, writ, injunction, decree or order applicable to it; and that the Agreement does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, Agreement or other liability, charge or encumbrance upon any of its properties or other assets.

8. **DURATION**

8.1 Agreement shall be operative for the period stated under **2. TERM**. If the program cannot be completed during the stated term, the Parties shall endeavor to agree to revised dates and the Agreement may be amended accordingly.

9. **INDEMNITY**

9.1 The Company will indemnify the County, its employees and Agents from and against any direct expense, liability, direct loss and claims in respect of death or injury to any person, loss of or damage to property and any other loss, damage, cost or expense which may arise out of or in consequence of any negligence, willful or wanton act of the Company or its personnel in the performance or non-performance of the Agreement.

10. **INSURANCE**

10.1 The Company agrees that at all times during the Term of this Agreement, the Company shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies with Gunnison County listed as an additional insured (but the Company's insurance will not be required to pay damages for the portion of any loss caused by negligence or willful misconduct of County, its officers, employees, agents, or contractors). Within thirty (30) days of execution of this Agreement, the Company will provide insurance certificates to the County for coverages required herein which shall state that such policies shall not be materially changed or cancelled without (14) days prior notice to the Board. (If the insurance certificate fails to include such statement, then the Company agrees that it will promptly notify the County of such material change or cancellation. A "material change" is a reduction in coverage below that required by this Section 10.1) If coverage is cancelled or terminated for any reason, the County shall have no further obligation to provide services under this Agreement. Furthermore, the County will provide copies of insurance certificates to the Company for the coverages it has in place.

a. If applicable, workers compensation insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Company during the term of this Agreement.
b. Comprehensive General Liability Insurance or the equivalent in an amount not less than $1,000,000 each occurrence and $2,000,000 aggregate of Bodily Injury Liability and $500,000 for Property Damage Liability.
c. If applicable, comprehensive automobile liability insurance on all vehicles owned or brought to the premises by the Company, in an amount no less than one hundred fifty thousand dollars for any injury to one person in any

single occurrence, and in an amount no less than six hundred thousand dollars for any injury to two or more persons in any single occurrence.

10.2 NO WAIVER OF GOVERNMENTAL IMMUNITY. Notwithstanding any other provision to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, in whole or part, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as now or hereafter amended, or as otherwise provided. The parties understand and agree that liability for claims for injuries to persons or property arising out of conduct of Gunnison County, its boards, officials and employees is controlled and limited by the provisions of section 24-10-101 et seq., C.R.S., as now or hereafter amended.

11. TERMINATION

11.1 The Company shall have the right to terminate the Agreement in whole or in part at the conclusion of the flight test program by giving the County or Company 7 days written notice whereupon all work on the Agreement shall be discontinued and the Company shall pay to the County fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any indirect or consequential loss. Furthermore, in the event of termination by County, County shall pay to Company fair and reasonable compensation for on-site work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any indirect or consequential loss

11.2 The Company or County shall have the right at any time by giving the County or Company written notice to terminate the Agreement immediate if:

a. The County cannot in the reasonable opinion of the Company adequately fulfill its obligations under the Agreement.

b. The Company violates the conditions of the ARFF services as requested.

c. The termination of the Agreement, however arising, will be without prejudice to the rights and obligations of the Parties, which have accrued prior to termination. The Conditions, which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination.

12. WAIVER

12.1 Failure or delay by the Company or the County in enforcing or partially enforcing any provision of the Conditions will not be construed as a waiver of any of the Company's or County's rights under the Agreement.

12.2 Any waiver by the Company or the County of any breach of, or any default under, any provision of the Agreement by the County or the Company will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

13. SEVERABILITY

13.1 If any provision of these Conditions is held by any competent authority to be illegal, void, voidable, invalid, unenforceable or unreasonable in whole or in part it shall, to the extent of such illegality, invalidity, voidness, voidablity, unenforceability or unreasonableness be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14. DISPUTE RESOLUTION

14.1 If any dispute arises out of or in connection with this Agreement ("Dispute") the Parties may seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either party will be entitled to initiate the process by written notice to the other. Any such procedure shall be held in Gunnison County, Colorado, and the laws of the state of Colorado shall apply to such Dispute.

15. ASSIGNMENT AND SUB-CONTRCTING

15.1 Neither the County nor the Company shall be entitled to assign the Agreement or any part of it without the prior written consent of the Company and County.

15.2 Sub-contracting by the County or Company shall not in any way relieve the County or Company of any of its responsibilities under the Agreement.

16. NOTICES

16.1 A notice given under, or in connection with, the Agreement must be in writing and delivered by hand or sent by first class post or by facsimile or electronic communication to the address of the Company or County.

16.2 Notice shall be deemed given:

a. if sent by post Air mail - seven business days, after posting exclusive of the day of posting)

b. if sent by facsimile or electronic communication: at the time of transmission.

17. OTHER AGREEMENTS

17.1 Company agrees to abide by and be subject to all airport (a) Minimum Standards, and (b) Rules and Regulations which are now, or may from time to time be, lawfully promulgated by the County and/or other agencies with authority concerning management, operation or use of the Airport. A copy of the County's existing rules and regulations relating to operations at the Airport are annexed to this Agreement as Exhibit 1.

18. CHANGES TO THE AGREEMENT

18.1 In the event that either Party requires a change to the Agreement, the Party requiring the change shall immediately inform the other Party in writing. Such a change shall not come into effect until a written acceptance of the proposed change, detailing any consequential amendments, is issued by one Party and accepted by the other Party by persons authorized to agree to such changes.

19. FEDERAL REQUIRMENTS, NONDISCRIMINATION.

a. The Company and County agree that in conducting its operations under this Agreement it shall maintain and operate its facilities and services in compliance with all requirements imposed pursuant to the Airport and Airway Improvement Act of 1982, as amended, and any regulations issued there under, as well as all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

b. The Company and County agree: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any premises and facilities of County at the Airport, (2) that in the construction of any improvements on, over, or under such premises and facilities and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination, (3) that Company shall use any such premises and facilities in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

c. The Company and County agree that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, Nondiscrimination in Airport Aid Program, or otherwise approved by the FAA, 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 14 CFR Part 152, Subpart E. Company 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. Company assures that it will require that its covered sub-organizations provide assurances to Company that they similarly will undertake affirmative action programs and that they will require assurance from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

d. The Company and County agree that it shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Company may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

e. The Company and County agree that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in the performance of this Agreement on the grounds of race, color, national origin or sex, as provided in 49 CFR Part 23, Participation of Minority Business Enterprise in Department of Transportation Programs, or parallel regulations issued by the FAA.

f. Noncompliance with these nondiscrimination provisions after timely notice of noncompliance is provided to Company by either the County or the U.S. Government, and Company's failure to substantially remedy such noncompliance within a reasonable period, shall constitute a material breach of these provisions and this Agreement. In the event of such noncompliance, the County shall have the right to terminate this Agreement and any estate created hereunder, without liability therefore, or at the election of the County or the United States, either or both shall have the right to judicially enforce such provisions.

20. CONFIDENTIALITY

20.1 Save for information which is in the public domain (otherwise than by a breach of this Condition), or that is required to be produced under the Colorado Open Records Act or other applicable law, the County shall keep secret and not disclose any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the County by the Company or its agents and any other confidential information concerning the Company's business or its products which the County may obtain and the County shall restrict disclosure of such confidential material to such of the County's employees, agents or sub-contractors on an as need to know basis, the same for the purpose of discharging the County's obligations to the Company, and

shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Company.

21. FORCE MAJEURE

21.1 Neither Party shall be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its control, including but not limited to, act of God or Governmental act, flood, fire, explosion, accident, act of terrorism, civil commotion, industrial dispute, or transportation or communications problem, or impossibility of obtaining materials. For the avoidance of doubt, the Parties' indemnity obligations are not excused by this Section 21.1.

21.2 Each Party hereto agrees to give forthwith to the other on becoming aware of an event of Force Majeure such notice to contain details of the circumstances giving rise to the event of Force Majeure.

22. INDEPENDENT CONTRACTOR

a. In carrying out its obligations and activities under this Agreement, Company is acting as an independent Contractor and not as an agent, partner, joint venture or employee of Gunnison County. Company does not have any authority to bind Gunnison County in any manner whatsoever.

b. Company acknowledges and agrees that it is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Company is obligated to pay federal and state income tax on any moneys paid it related to the services.

23. IMMIGRATION COMPLIANCE CERTIFICATION

Company certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this Agreement. Company 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 Agreement. Finally, Company 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).

24. METHOD OF NOTICES

All notices or other written correspondence desired or required to be sent pursuant to this Agreement shall be sent to the respective parties as follows:

If to the County: County Manager
Gunnison County

200 W. Virginia
Gunnison, CO 81230

If to the Company: BLR Aerospace, LLC
11002 29th Ave W, Building C19
Everett, WA 98204

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

BOARD OF COUNTY COMMISSIONERS
GUNNISON COUNTY, COLORADO

Date: _____ _____
Jonathan Houck, Chairperson

_____
John Messner, Commissioner

_____
Roland Mason, Commissioner

Attest:

_____

Date: _____ _____
Daniel A. Smith, Director of Helicopter Programs

Attest:

_____

Exhibit 1

Gunnison-Crested Butte Regional Airport
Minimum Standards &
Rules and Regulations