

**COCHISE COUNTY
FIXED BASE OPERATOR AGREEMENT
CONTRACT NO. 11-40-FAC-04**

THIS AGREEMENT, entered into this _____ day of _____ 2011 by and between COCHISE COUNTY, a body politic, hereinafter called "COUNTY" and Walden Aviation, an Arizona Business, hereinafter called "CONTRACTOR".

RECITALS

WHEREAS, COUNTY, pursuant to A.R.S. 11-251(23), is empowered to establish, maintain and conduct public aviation fields; and

WHEREAS, COUNTY presently maintains a public aviation field in Willcox, Arizona (the Cochise County Airport); and

WHEREAS, COUNTY has determined that its interests might be best served by entering into an agreement with a independent contractor for management of the Cochise County Airport; and

WHEREAS, the COUNTY has solicited proposals from qualified operators for the operation of the Cochise County Airport; and

WHEREAS, this contract shall incorporate Request for Proposals No. 11-40-FAC-04 including Addendum No. 1, and CONTRACTOR'S response to Request for Proposals No. 11-40-FAC-04, as negotiated and incorporated herein, and

WHEREAS, the COUNTY has determined that CONTRACTOR is qualified to provide airport management services at the Cochise County Airport;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I.

DUTIES OF THE PARTIES

A. DUTIES OF CONTRACTOR

1. Sales and Dispensing of Aviation Fuel: Contractor shall sell Jet A and AVGAS aviation fuel to the public at whatever markup it decides is reasonable and pay COUNTY a flowage fee of \$.07 for each gallon of aircraft fuel dispensed.

2. Management of Airport: CONTRACTOR agrees to act as manager of the Cochise County Airport and, in that capacity to perform reasonable, necessary and customary duties attendant thereto including, but not limited to, the specific duties set forth in this agreement.

3. Minimum Scope of Services: CONTRACTOR expressly agrees to perform the following minimum services:

- Routine aircraft service and maintenance; single and twin engine aircraft
- Parts supply for aircraft normally using the airport
- Fueling of resident and transient aircraft
- Operate airport pilot lounge
- Sales of pilot supplies
- Operate airport Unicom
- Parking assistance to incoming aircraft
- Aircraft storage management to include tie down, storage and hanger rentals
- Information services to transient pilots
- Storage and utilization of APU battery cart
- Public contact at fuel desk
- Answering telephone
- Routine maintenance to include mowing and weed control
- Routine repairs costing less than \$100.00 per individual item
- Regular inspection of airport premises and notice to County regarding other repair and maintenance requirements

4. Facilities, Maintenance and Repair Standards: CONTRACTOR agrees that maintenance, repair and custodial services for which the CONTRACTOR is responsible pursuant to this agreement shall be performed in such a manner as to insure that the airport premises are maintained in a reasonably neat, clean, serviceable and safe condition at all times.

5. Airport Operating Hours and Service Standards: CONTRACTOR agrees that one of its employees will be physically present at the Cochise County Airport a minimum of 9 hours per day, between the hours of 8:00 a.m. and 5:00 p.m. 7 days per week, excluding Federal Holidays, during the effective term of this agreement or any extension thereof for refueling and other airport services. It is expressly agreed that when the employee on duty is not authorized to perform routine aircraft maintenance and repair work, a person authorized to perform such work shall be available on an on-call basis and able to perform required service work within Four (4) hours of notification.

At the discretion of the Contractor, a callout fee may be charged to customers requiring fuel service or routine aircraft maintenance after hours, which shall be defined as the period from 5:01 PM local standard time through 7:59 AM local standard time daily. The call out rate can be set by the Contractor.

6. Use of Fire Protection Equipment: CONTRACTOR'S employees shall become familiar with the operation and use of the fire protection equipment located at the Cochise County Airport and shall utilize said equipment to the extent possible to control fires occurring in aircraft or elsewhere on the airport premises.

7. Inspection of Runway lights and Beacons: CONTRACTOR shall inspect runway lights and beacons on a daily basis, will maintain lights and change timing on beacons as required and will notify the COUNTY immediately of any major maintenance or repair that may be required.

8. Runway Inspection and Maintenance: CONTRACTOR shall inspect all active runways on a daily basis to identify present or potentially hazardous conditions and will perform such minor maintenance, including mowing and weed control, as may be required to maintain said runways in a safe condition for aircraft use. In the event a hazardous condition cannot be immediately corrected, CONTRACTOR shall take such steps as may be required to prevent aircraft from using the runway until corrective action is taken. CONTRACTOR shall immediately notify the COUNTY of hazardous conditions that CONTRACTOR is unable to correct.

9. Fire Protection Equipment Maintenance: CONTRACTOR shall inspect fire protection equipment on a monthly basis to insure its availability and proper function and will insure that all routine maintenance, repair, testing and certification are accomplished as required. CONTRACTOR shall immediately notify COUNTY in the event that major repair or replacement is required.

10. Fuel Sales Fees: CONTRACTOR agrees to pay COUNTY a flowage fee for each gallon of aircraft fuel pumped by the CONTRACTOR at the Cochise County Airport during the effective term of this agreement or any extension thereof. The initial flowage fee schedule shall be as follows:

\$.07 per gallon minimum. If within two (2) consecutive quarters, fuel sales are less than 3,000 gallons per quarter in either Jet A OR AVGAS aviation fuel the flowage fee may be renegotiated.

Money owed to the COUNTY pursuant to this section shall be due and payable on a quarterly basis. Payments shall be made on or before October 10, January 10, April 10 and July 10 of each year. Payment shall be accompanied by a statement showing the monthly quantity of fuel pumped by category. CONTRACTOR shall maintain, and make available to the County on demand, a record of all fuel purchased during each quarter for the effective term of this agreement or any extension thereof. Terms and conditions of this section are subject to annual review and negotiation by the COUNTY and CONTRACTOR

11. Indemnification: Contractor shall indemnify, defend, save and hold harmless the County of Cochise, its departments, agencies, boards, commissions, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

12. Insurance Requirements: Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County of Cochise in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: *“The County of Cochise, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees shall be named as additional insured’s with respect to liability arising out of the activities performed by or on behalf of the Contractor”.*

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$500,000

- a. The policy shall be endorsed to include the following additional insured language: *“The County of Cochise, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees shall be named as additional insured’s with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.*

3. **Worker's Compensation and Employers' Liability**

- a. This requirement shall not apply to: Separately, each contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. **Hanger Keepers Liability** \$200,000
(Total amount at risk at one time)

Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

1. The County of Cochise, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources. Including section B, titled Duties of County, paragraph 6 incorporated herein
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

Notice of Cancellation: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the County of Cochise. Such notice shall be sent directly to **Terry Hudson, Senior Buyer, Cochise County Procurement Department, 1415 W. Melody Lane, Bisbee, AZ 85603** and shall be sent by certified mail, return receipt requested.

Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The County of Cochise in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage: Contractor shall furnish the County of Cochise with certificates of insurance (ACORD form or equivalent approved by the County of Cochise) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the County of Cochise before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Terry Hudson, Senior Buyer, Cochise County Procurement Department, 1415 W. Melody Lane, Bisbee, AZ 85603**. The County of Cochise project/contract number and project description shall be noted on the certificate of insurance. The County of Cochise reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

DO NOT SEND CERTIFICATES OF INSURANCE TO THE COUNTY'S RISK MANAGEMENT DIVISION.

Subcontractors: Contractors' certificate(s) shall include all subcontractors as insured's under its policies or Contractor shall furnish to the County of Cochise separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

Approval: Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

Exceptions: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

13. **Financial and Operating Records:** CONTRACTOR shall maintain complete and separate financial records for its operations at the Cochise County Airport. For purposes of this section, operations shall include not only those activities specifically set forth in this agreement, but also any other revenue or expense generating activities carried on by CONTRACTOR at the Cochise County Airport. Copies of CONTRACTORS annual financial and operating statements for the Cochise County Airport operation, and for the corporation as a whole, shall be submitted to COUNTY at the close of each fiscal year during the effective term of this agreement or any extension thereof. CONTRACTOR'S financial and operating records are subject to inspection by COUNTY at any time during CONTRACTOR'S normal business hours.

B. DUTIES OF COUNTY

1. **Physical Facilities and Equipment:** COUNTY will provide adequate space and facilities for administrative operations, fuel service operations, customer service operations and other duties to be performed by CONTRACTOR pursuant to this agreement. COUNTY will also provide at no charge the open bay maintenance hangar for use by CONTRACTOR. COUNTY will also provide, at no charge, space and such utility hook-ups as are currently in place (except propane gas) for a mobile home to be occupied by CONTRACTOR or CONTRACTOR'S on-site employee. Utilities and insurance costs for such mobile home shall be borne by the CONTRACTOR.

2. **Equipment:** COUNTY will provide such equipment as is currently located at the Willcox Airport, and such additional equipment as the parties may agree, for CONTRACTOR'S performance of the duties set forth in this agreement.

3. **Utilities:** COUNTY shall pay telephone, electrical and water use charged as required to maintain airport operations at the current level as of the effective date of this agreement. All other utility charges shall be paid by CONTRACTOR unless otherwise agreed in writing by the parties.

Any changes in airport operations or facilities which may increase COUNTY'S utility costs shall be subject to prior written approval of the COUNTY. CONTRACTOR shall reimburse COUNTY for additional utility costs incurred where such prior approval has not been obtained.

4. Runway Repairs and Maintenance: COUNTY shall maintain and repair all active runways and drainage channels along such runways except that CONTRACTOR shall be responsible for mowing and weed control. Where CONTRACTOR observes, or otherwise becomes aware of a hazardous condition on an active runway or drainage way, it shall immediately notify the COUNTY'S Facilities Management Department to obtain authorization to make repairs.

In the event Facilities Management cannot be reached, CONTRACTOR may make emergency repairs at a cost not to exceed \$500.00. Where authorization is not obtained and repairs exceed \$500.00 CONTRACTOR shall close the runway, if necessary, until such time as repairs are made.

5. Other Repairs and Maintenance: COUNTY shall be responsible for general repair and maintenance of airport facilities where the cost of any individual maintenance or repair item exceeds \$100.00. The scope of work required and its cost shall be subject to review and approval by COUNTY prior to COUNTY's performance of any work or payment of any charges.

6. Insurance: COUNTY shall obtain such insurance as may be necessary to insure the physical facilities at the Cochise County Airport and to protect CONTRACTOR and COUNTY from any and all suits, claims or costs, including reasonable attorneys fees, arising out of COUNTY's performance pursuant to this agreement. It is understood and agreed that COUNTY may elect to self-insure any or all of its liability as set forth herein.

II

INDEPENDENT CONTRACTOR STATUS

It is agreed and understood that the parties to this contract intend that the relationship between them is that of vendor and recipient of independent contractor services. No agent, employee, subcontractor or officer of CONTRACTOR shall be deemed to be, in any respect or for any purpose, an employee of COUNTY. CONTRACTOR shall be solely and entirely responsible for the performance of duties as set forth herein and for its actions and those of its employees, officers, agents or subcontractors.

III

TERM OF AGREEMENT

The initial term of this agreement shall become effective on August 1, 2011 and shall terminate on July 31, 2021 unless otherwise terminated pursuant to this agreement.

The COUNTY may, at their option and with the written approval of the CONTRACTOR, extend the contract period for up to two (2) additional five (5) year terms.

IV

EXTENSION OF AGREEMENT

The terms and conditions of the agreement as set forth herein shall apply to said option period except that the parties understand and agree that the compensation to be paid to the COUNTY during the option period shall be subject to review and revision as mutually agreed by the parties prior to the effective date of the option period.

In no event shall the total of the initial term and the optional renewal period exceed twenty (20) years.

V

TERMINATION

- a. Upon breach of this agreement by either party, the party claiming breach may terminate the agreement upon 60 days written notice to the other party. It is expressly understood and agreed that the COUNTY may determine that CONTRACTOR has breached the Agreement upon COUNTY'S finding that CONTRACTOR is financially insolvent or that CONTRACTOR'S performance of the services and duties as set forth herein has failed to meet the reasonable needs of the COUNTY or users of the Willcox Airport.
- b. Either party may terminate this agreement for convenience with 180 days notice in writing to the other party.

VI REMOVAL OF FIXTURES AND EQUIPMENT

In the event of termination of this agreement CONTRACTOR may remove all owned fixtures and equipment placed by CONTRACTOR and situated upon the airport premises, provided such removal can be accomplished without damage to property owned by the COUNTY.

VII ALTERATIONS AND IMPROVEMENTS

CONTRACTOR may not make any alterations or improvements to the airport premises without the express, prior, written consent of the COUNTY.

VIII ASSIGNMENTS OR TRANSFERS

CONTRACTOR shall not assign any rights or duties under this Agreement and shall not, in any manner, transfer or convey any right, title or interest in the airport premises without the express written consent of COUNTY. Any action which purports to effect any such assignment or transfer shall automatically void this Agreement. County reserves the right to assign this agreement to another government agency with 90 days notice and under the same terms and conditions of this contract.

IX WAIVER

Waiver or the failure of either party at any time to require performing by the other of any provision hereof, shall in no way affect the party's subsequent rights and obligations under that provision. Waiver by either party of any breach or any provision hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.

X ENTIRE AGREEMENT

This written Agreement, and attachments hereto, constitute the entire Agreement between the parties with respect to the subject matter hereof, and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing, agreements, and all other communications between the parties. It may not release, discharged, changed or modified except by an instrument in writing, signed by a duly authorized representative of each of the parties, except as specifically provided otherwise in this Agreement.

NEGOTIATED CHANGES/CLARIFICATIONS
REQUEST FOR PROPOSALS NO. 11-40-FAC-04

(not already incorporated herein)

Section 1.0 – FBO Facilities

- Change 10,000 square foot conventional hanger to 11,000 square foot conventional hanger

Section 1.0 – Established Fee's – T-Hanger

- Change Indoor Rental, Spaces 1-6 to Indoor Rental Spaces 1 & 6

Section 1.0 – On-Site Employee Facility

- Remove the words “utility hook ups” and replace with the word “utilities”

Section 2.0 – Scope of Services - Specific

- Delete the following as they are not applicable to this contract:
 - Sale of insurance other than aviation and aviation trip insurance
 - Auto parking for hire

Section 3.0 – Submittal Requirements

Delete 3.5, 3.6, 3.9, 3.10, in their entirety

Section 4.0 – Proposal Evaluation

- Delete Marketing Plan

APPROVAL BY THE PARTIES

Before this Agreement shall become effective and binding upon the parties, it must be approved by COUNTY'S Board of Supervisors and by duly authorized representative of CONTRACTOR. In the event that either party fails or refuses to approve this Agreement, it shall be null and void and of no effect whatsoever.

Approved and agreed on this _____ day of _____

IN WITNESS WHEREOF, the COUNTY has caused this instrument to be executed by the Chairman of its Governing Board and attested to by Clerk of said Board; and CONTRACTOR has caused this Agreement to be executed by a duly authorized party, on the day and year first above written.

CONTRACTOR:


Authorized Signature
JAMES WALDEN CONTRACTOR
Print Name and Title

APPROVED BY:

Cochise County Board of Supervisors

Pat Call, Chairman
Board of Supervisors

ATTEST:

Katie Howard
Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney