

(Amendment No. 1)
AGREEMENT FOR SERVICES
between
COCHISE COUNTY
and
AIRWEST HELICOPTERS, LLC, an Arizona Corporation

THIS AGREEMENT ("Agreement") for helicopter services is made this 15th day of May, 2014, by and between Cochise County, a political subdivision of the State of Arizona, ("County") and Airwest Helicopters, LLC, an Arizona corporation, ("Airwest").

RECITALS

WHEREAS, County has identified an opportunity to improve upon its steadfast commitment to the safety and wellbeing of its citizens by entering into this Agreement with Airwest to provide air support to the Cochise County Sheriff's Office ("Sheriff"); and

WHEREAS, County and Airwest have agreed to work cooperatively to provide Sheriff with helicopter services in furtherance of its core mission of ensuring the safety and wellbeing of its citizens,

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Airwest Services and Costs:

- 1.1 Services: Cost and Description of Services. Airwest will provide Sheriff with the air support of a Bell 206 L4 Helicopter.
- 1.2 In accordance with Federal Aviation Administration regulations, the pilot in command of the aircraft shall have the complete power and authority to make

all decisions concerning the suitability of weather and landing areas, condition of the aircraft for flight, and all other factors affecting flight safety and will at all times maintain operational control of the aircraft.

1.3 Airwest shall be responsible for all communication activities related to airspace operation.

1.4 Cost: The cost of this service shall be as follows:

(a) Airwest shall provide a base amount of thirty (30) flight hours of flight time a month at a cost to County of Eighty-Three Thousand Dollars (\$83,000) per month. This amount includes all costs and expenses associated with aircraft maintenance, aircraft insurance, pilots, mechanics, wages to include all state and federal taxes, an Automatic Flight Following and an aviation supervisor. Fuel for the base amount of thirty (30) flight hours will be an estimated additional cost to the County in the amount of Seven Thousand, One Hundred Twenty-Five Dollars (\$7,125). The total cost to County for the base amount of thirty (30) flight hours per month will be Ninety Thousand, One Hundred Twenty-Five Dollars (\$90,125). The Parties recognize that fuel costs referenced above are estimates only and are subject to change.

(b) Airwest shall provide an additional amount of ten (10) flight hours for a period of four (4) months (November 2014, December 2014, January 2015, February 2015) at an additional cost to the County of Nine Thousand Dollars (\$9,000) per month for the four (4) months listed above. This amount includes all costs and expenses associated with aircraft maintenance, aircraft insurance, pilots, mechanics, wages to include all state and federal taxes, an Automatic Flight Following and an aviation supervisor. Fuel for the base amount of ten (10) flight hours will be an estimated additional cost to the County in the amount of Two Thousand, Three Hundred Seventy Dollars (\$2,370). The total cost to County for the additional amount of ten (10) flight hours per month for the four (4) months will be Eleven Thousand, Three Hundred Seventy Dollars (\$11,370), or Forty-Five Thousand Four Hundred Eighty Dollars (\$45,480) for the four (4) month contract period. The Parties recognize that fuel costs referenced above are estimates only and are subject to change.

1.5 Flight hours incurred beyond this base amount of thirty (30) hours and forty (40) hours for the months as described above will be charged to County based on the hours used at the rate of Nine Hundred Dollars (\$900) per hour and will include all costs and expenses as stated in Section 1.4.

The estimated fuel cost to County for one hour is Two Hundred Thirty-Seven Dollars (\$237). The Parties recognize that fuel costs referenced above are estimates only and are subject to change.

- 1.6 The monthly payment from County to Airwest will be due on the first (1st) of each month. Late fees will start on the fifth (5th) of the month at 1% of the total monthly leasing cost.

2. Services Provided by COUNTY:

- 2.1 The County will provide at least one (1) Arizona Certified Peace Officer for every flight to observe and to communicate information back to ground units and dispatch.
- 2.2 The County will provide flight following dispatch and communication services through the Sheriff's Office. Such personnel provided by County shall be either employees or contractors of County and under the control of County.

3. Utilization of Corporate Identity or Likeness:

- 3.1 The County and Airwest will use reasonable efforts to participate in mutually-beneficial public relations and marketing activities. Neither the County nor Airwest will utilize the other's markings or identities without written permission from the other Party.

4. Relationship of the Parties:

- 4.1 Nothing in this Agreement is intended or shall be construed as creating any kind of partnership, employer/employee, associate, joint venture, or agency relationship between the Parties.

5. Agreement Duration:

- 5.1 Subject to Section 10.3, this Agreement shall be in effect for a period of twelve (12) months, commencing May 15, 2014 and terminating close of business on May 14, 2015 ("Term"). This Agreement is a one year agreement that may be renewed for an additional twelve (12) month period at the sole discretion of the County. Should the County choose to exercise its option to renew this Agreement, it must do so by notifying Airwest in writing on or before March 1, 2015, and each year thereafter, at the address contained herein.

6. Representations, Warranties and Covenants of Airwest:

Airwest hereby represents, warrants, and covenants as follows:

- 6.1 **Organization:** Airwest is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona and has the power and authority to execute, deliver and perform its obligations under this Agreement.
- 6.2 **Authorization:** The execution, delivery and performance of Airwest to this Agreement has been authorized by all necessary corporate action on the part of Airwest.
- 6.3 **Airwest's compliance with the Federal Aviation Administration:** Airwest shall comply with Federal Aviation Administration regulations (hereinafter "FAA") pertaining to the helicopter services furnished by Airwest under this Agreement. Airwest represents that each aircraft, pilot and mechanic is properly licensed, certified and meets the minimum requirements as set forth in the applicable FAA regulations. Airwest will defend, save, hold harmless and indemnify County and any affiliated County participants from any and all liability, direct or indirect, including legal defense costs arising from any act(s) and/or omission(s) of Airwest and/or Airwest's employees, agents, or contractor(s) in connection with the rights and duties arising from this provision. Airwest shall pay the legal defense costs as a part of the indemnity obligation to include any judgment amounts awarded.

7. Representations, Warranties and Covenants of County:

The County hereby requests, warrants and conveys as follows:

- 7.1 **Organization:** The County is a duly organized political subdivision of the State of Arizona, and as such has the power and authority to execute, deliver and perform its obligations under this Agreement.
- 7.2 **Authorization:** The execution, delivery and performance of the County to this Agreement has been authorized by all necessary government action on the part of the County.
- 7.3 **Government Approvals:** The County has obtained, and shall maintain and keep in force, all consents, licenses, permits, approvals and authorization of federal, state and local government authorities which may be required to execute, deliver and perform its obligations under this Agreement.

8. **Airwest and County Insurance Requirements.**

8.1 Policies and Amounts: Airwest, during this Term or any extended Term of the Agreement, shall maintain the following minimum insurance coverage:

- (a) All risk ground and flight aircraft hull insurance. This insurance coverage shall waive the right of subrogation against the County. Airwest agrees to provide copies of all insurance agreements upon demand of the County. These copies shall be made available within five (5) days of demand.
- (b) Aircraft liability insurance covering injuries to passengers or third (3rd) parties and damage to property in an amount not less than Ten Million Dollars (\$10,000,000) for any one accident or a series of accidents that arise out of any one event.
- (c) Worker's Compensation Insurance for its employees at Arizona statutory limits.
- (d) With the exception of Workers' Compensation Insurance, to the extent of Airwest's Indemnification Obligation, the County shall be named as the additional insured party on each and every one of Airwest's policies described in paragraph (b) above, to the full limits available. Airwest insurance coverage shall be primary insurance and non-contributory, with respect to all other available sources.

8.2 The County shall, during the Term or any extended Term, maintain the following minimum insurance coverage:

- (a) Commercial general liability insurance, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence.
- (b) Workers' Compensation Insurance is for its employees at the Arizona statutory limits.

9. **Indemnification.**

9.1 Airwest's Indemnification Obligations: Airwest agrees to defend, protect, indemnify and hold the County harmless, its respective directors, officers, agents, employees, representatives and agents from every kind or character of damages, losses, liabilities, expenses, demands or claims (collectively, "Losses") arising out of, connected with, incident to, resulting from, or relating to the performance of flight services while this Agreement, or the operation of

the program after the effective date, to the extent such Losses are caused by the negligence or fault of any member of Airwest, which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of the County.

- 9.2 County's Indemnification Obligations: The County agrees to defend, protect indemnify and hold harmless Airwest, its subsidiaries, affiliates and subcontractors; and their respective directors, officers, agents, employees, representatives and agents for losses to the extent and only to the extent that such losses are directly related and caused by the negligence or fault of any employee of the County.
- 9.3 Limitations: Neither Airwest nor the County shall indemnify the other Party for any losses resulting from the willful or negligent acts of the other Party or members of its organization. In no event, whether as a result of contract, tort, strict liability or otherwise, shall either Party be liable to the other for any punitive, special, indirect, incidental or consequential damages, including without limitation loss of profits, loss of use or loss of contract; the indemnification obligations shall not be reduced by any insurance coverage or insurance proceeds a Party may have with respect to a claim.
- 9.4 Procedures: Upon written request by a Party entitled to indemnification pursuant to this section (hereinafter the "Indemnitee"), the other Party (hereinafter the "Indemnitor") shall pay the reasonable expenses incurred in defending any claim in advance of its final disposition. The County or Airwest shall promptly notify the other Party of the existence of any claim, or the threat of any claim, to which the indemnification obligations might apply. The Indemnitor shall select, manage and pay the legal defense costs as part of the indemnity obligation, including any judgment amounts awarded. Each Indemnitee shall have the right, at its option and sole expense, to participate in the defense or claim without relieving the Indemnitor of any obligation hereunder. The Indemnitee shall cooperate and comply with all reasonable requests that the Indemnitor may make in connection with the defense and any settlement of a claim.
- 9.5 Duration: The Indemnification Obligations shall continue for a period of no longer than two (2) years after the termination of this Agreement.

10. **Termination:** The County hereby reserves the right to terminate this Agreement for any of the following:

- 10.1 Loss or reduction of private donation monies specifically designated for this Agreement.

- 10.2 Failure of Airwest to comply with any of the terms and conditions as set forth above.
- 10.3 Disregard of or citation for violations of state, local or federal laws or regulations applicable to Airwest.

11. **Arbitration:** The Parties hereby agree to make a good faith effort to resolve any controversy or claim through arbitration pursuant to A.R.S. § 12-1518.

12. Miscellaneous.

- 12.1 Force Majeure: Neither Party shall be liable to the other Party for the failure to perform its respective obligations, including payment, under this Agreement, to the extent that such failure results from cases beyond the non-performing Party's reasonable control, including, and without limitation, such causes as strikes, lockouts, riots, fires, floods or other weather conditions, natural disasters, acts of God, acts of public enemy or any regulations, orders or requirements of any duly authorized governmental body or agency (collectively "force majeure"). If either party is unable to perform as a result of force majeure, it shall promptly notify the other Party in writing of the beginning and estimated ending of each such period. If any period of force majeure continues for thirty (30) days or more, the Party not so failing in performance shall have the right to terminate the Agreement upon written notice to the other party.
- 12.2 Default: A material breach by either Party of any representation, warranty or covenant contained in this Agreement or the failure of either Party to comply with any material terms or conditions set forth in this Agreement shall constitute a default.
- 12.3 Termination: This Agreement shall terminate and, except as otherwise set forth herein, shall be of no further force and effect forty-five (45) days after the non-defaulting Party provides the defaulting Party with written notice of a Default (the "Cure Period"), unless the non-defaulting Party cures the Default prior to the expiration of the Cure Period. Further, this Agreement may be terminated by reason of Force Majeure, as set for in Section 12.1 above.
- 12.4 Severability: In the event that any provision of this Agreement is determined to be unlawful or contrary to public policy, such provision shall be severed herefrom, shall be deemed null and void, but shall in no way affect the remaining provisions outlined herein.

- 12.5 Proprietary Information: Airwest shall cause its employees, agents and affiliates to hold as confidential all criminal history information and all information relating to County's business and the terms and conditions of this Agreement. County shall cause its employees, agents and affiliates to hold confidential all information relating to Airwest's business and the terms and conditions of this Agreement, except as otherwise required under Arizona Public Records Law.
- 12.6 Assignment: Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party.
- 12.7 Waiver: The waiver by one Party of any breach or failure of the other Party to perform any covenant or obligation contained in this Agreement shall not constitute a waiver of any subsequent breach or failure.
- 12.8 Entire Agreement: This Agreement and any exhibits or schedules attached thereto or referenced herein, represent the entire Agreement between the Parties. All other prior agreements being merged herein and this Agreement shall not be modified except in writing signed by the Party against whom such modification is sought to be enforced.
- 12.9 Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
- 12.10 Notice: All notices relating to this Agreement shall be deemed delivered when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other addresses as may be given in writing from time-to-time:

To: Cochise County Sheriff
ATTN: Mark J. Dannels
205 North Judd Drive
Bisbee, AZ 85603
mdannels@cochise.az.org

AND

Airwest Helicopters, LLC
ATTN: Jeffrey Boatman
24017 N. 55th Avenue
Glendale, AZ 85310
jboatman@airwesthelicopters.com

- 12.11 E-verify: To the extent applicable under A.R.S. § 41-4401, each Party and its respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A Party or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Party.
- 12.12 Recitals: The recitals contained in the first portion of this Agreement are made an integral part of this Agreement.
- 12.13 **This Agreement is contingent upon County receipt of monies specifically donated and designated for this purpose. In the event those monies are no longer available, this Agreement shall terminate immediately with no liability to County.**

IN WITNESS WHEREOF, the Parties, through their respective undersigned, authorized officers, have duly executed this Agreement as of the effective date.

AIRWEST HELICOPTERS, LLC:



Jeffrey A. Boatman
Airwest Helicopters, LLC
an Arizona Limited Liability Company

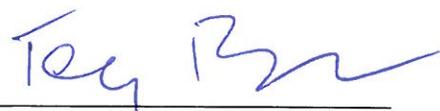
COCHISE COUNTY

By: _____
Ann English, Chairman
Board of Supervisors

ATTEST:

Arlethe G. Rios, Clerk
Board of Supervisors

APPROVED AS TO FORM

By: 

Terry Bannon,
Civil Deputy County Attorney