

AGREEMENT FOR SERVICES
between COCHISE COUNTY
and
H5 Productions, INC., an Arizona Corporation

THIS AGREEMENT ("Agreement") for helicopter services is made this 3rd day of November, 2015, by and between Cochise County, a political subdivision of the State of Arizona ("County"), and H5 Productions, INC., an Arizona corporation, ("H5").

RECITALS

- A. 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 H5 to provide air support to the Cochise County Sheriff's Office ("Sheriff").
- B. WHEREAS, County and H5 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:

H5 Services and Costs:

- 1.1 **Services:** Cost and Description of Services. H5 will provide Sheriff with the air support of an Airbus AS350-B2 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 H5 shall be responsible for all communication activities related to airspace operation.
- 1.4 **Cost:** The cost of this service shall be as follows:

H5 shall provide a base amount of forty (40) flight hours of flight time a month at a cost to County of Ninety Two Thousand, Five Hundred Twenty One Dollars (\$92,521) per month. This amount includes all costs and expenses associated with aircraft maintenance, aircraft insurance with County endorsed on the policy as an actual insured party, pilots, mechanics, wages to include all state and federal taxes, an Automatic Flight Following and an aviation supervisor. Fuel,

paid for separately by the county for the base amount of Forty (40) flight hours, will be an estimated additional cost to County in the amount of Six Thousand, Four Hundred Dollars (\$6,400) per month. The total cost to County for the base amount of Forty (40) flight hours per month will be Ninety Eight Thousand, Nine Hundred Twenty-One Dollars (\$98,921). The Parties recognize that fuel costs referenced above are estimates only and are subject to change.

Any hours flown over the basic 40 hours per month will be an additional cost to the county in the amount of Nine Hundred Dollars (\$900) per hour. Fuel costs for the additional hours are the responsibility of the county. 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.

1.5 The monthly payment from County to H5 will be due on the first (1st) each month. Late fees will start on the fifth (5th) of the month at 1% of the total monthly leasing cost.

1.6 Scheduled Air Unit operations will be 7 days per week (Monday through Sunday) – hours of operations 7:00am to 5:00pm.

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 H5 will use reasonable efforts to participate in mutually-beneficial public relations and marketing activities. Neither the County nor H5 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 Fourteen (14) months, commencing November 3, 2015 and terminating close of business on December 31, 2016 ("Term"). The November and December 2015 time period is for start-up activities. The Forty (40) hour per month helicopter support will begin on 1 January 2016.

6. Representations, Warranties and Covenants of H5:

H5 hereby represents, warrants, and covenants as follows:

- 6.1 **Organization:** H5 is an incorporated 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 H5 to this Agreement has been authorized by all necessary corporate action on the part of H5.
- 6.3 **H5's compliance with the Federal Aviation Administration (hereinafter FAA):** H5 will conduct all flight operations under a PAO (Public Aircraft Operations) Use and shall comply with certain operating rules of the NAS (National Airspace System) as published in Advisory Circular (AC No. 00-1.1A) reference: 7.f. FAA regulations for PAO and 8.c.(2) (e.g. 14 CFR & Part 91:119, minimum safe altitudes: General). H5 represents that each aircraft, pilot and mechanic is properly licensed, certified and meets the minimum requirements as set forth in the applicable FAA regulations. H5 will defend, save, hold harmless and indemnify County and any affiliated County participants to the fullest extent under the law from any and all liability, direct or indirect, including legal defense costs arising from any act(s) and/or omission(s) of H5 and/or H5's employees, agents, or contractor(s) in connection with the rights and duties arising from this provision. H5 shall pay the legal defense costs as a part of the indemnity obligation to include any judgment amounts awarded.

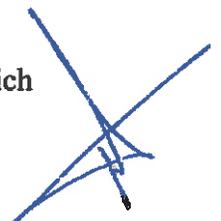
7. Representations, Warranties and Covenants of County:

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 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 obligation under this Agreement.

8. H5 and County Insurance Requirements

- 8.1 **Policies and Amounts:** H5, during this Term or any extended Term of the Agreement, shall maintain the following minimum insurance coverage, which policy/ies shall endorse County as an actual insured party:



- (a) All risk ground and flight aircraft hull insurance,. This insurance coverage shall waive the right of subrogation against the County. H5 agrees to provide copies of all insurance agreements to 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 Worker's Compensation Insurance, to the extent of H5's Indemnification Obligation, the County shall be named as the additional insured party on each and every one of H5's policies described in paragraph (b) above, to the full limits available. H5 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 Workers' Compensation Insurance is for its employees at the Arizona statutory limits.

9. Indemnification.

9.1 H5's Indemnification Obligations: H5 agrees that it shall, to the fullest extent under the law, 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 H5, 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 H5, its subsidiaries, affiliates and subcontractors, as well as 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 H5 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 H5 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 H5 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 H5.
- 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 **Non-discrimination:** The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
- 12.2 **Conflict of Interest:** This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
- 12.3 **Inspection and Audit:** H5 agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
- 12.4 **Public Records Law:** Notwithstanding any other provision of the agreement, the parties understand that Cochise County is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
- 12.5 **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.

- 12.6 **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.
- 12.7 **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.
- 12.8 **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.
- 12.9 **Proprietary Information:** H5 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 H5's business and the terms and conditions of this Agreement, except as otherwise required under Arizona Public Records Law.
- 12.10 **Assignment:** Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party.
- 12.11 **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.
- 12.12 **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.
- 12.13 **Governing Law:** This Agreement shall be governed and construed construed in accordance with the laws of the State of Arizona.

12.14 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

H5 Productions, LLC
ATTN: Mitch Kelldorf
16114 North 81st Street
mitch@h5productions.com

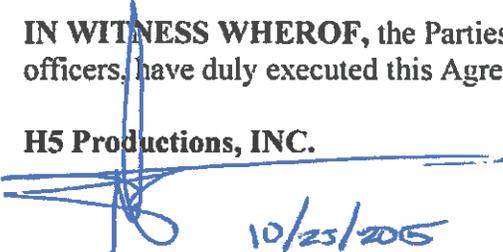
12.15 E-verify: To the extent applicable under A.R.S. § 41-4401, each Party and its respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A Party or its subcontractor's 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.

12.16 Recitals: The recitals contained in the first portion of this Agreement are made an integral part of this Agreement.

12.17 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.

H5 Productions, INC.


10/25/2015

Mitch Kelldorf
H5 Productions, INC.
An Arizona Limited Liability Company

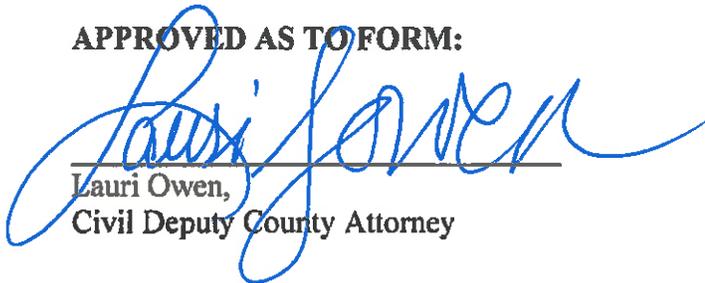
COCHISE COUNTY

By: _____
Pat Call, Chairman
Board of Supervisors

ATTEST:

Arlthe G. Rois, Clerk
Board of Supervisors

APPROVED AS TO FORM:



Lauri Owen,
Civil Deputy County Attorney

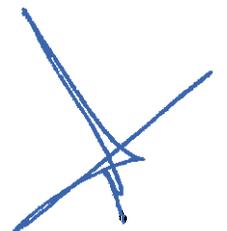


Exhibit A 2015/2016

Aircraft: \$97,639.60/month X 12 Months = \$1,171,675.20 (includes flight hours, mechanic, maintenance and program administration to include hangar/ office costs)

Fuel: 520 hrs @ 40 gallons/hour = 20,800 gallons X \$4.00 = \$83,200.00

(480 year 2016 hours plus 40 hours pilot flight training November and December 2015)

Phase 1: \$ 31,750.00

Phase 2: \$ 80,754.20

Phase 3: \$ 63,754.20

Phase Total: \$176,258.40

Personnel:

12 months X 40 hours/month = 480 hours X \$60.00 = \$28,800/year actual flight time OT

480 hours (30 minutes pre and 30 minutes post flights) = \$28,800/year OT

365 days on-call X 12 hours/day = 4380 hrs X 2 LEO's = 8,760 hours X \$2.00 = \$17,520

Training (December) 3 hours X 12 LEO's X \$60 = \$2,160

Personnel Total: \$77,280/year

Costs/year

Aircraft 2016 \$ 1,171,675.20

Phase 1,2,3 (set-up) \$ 176,258.40

Total Aircraft \$ 1,347,933.60 (includes pilot holiday/weekend approved 102215)

Fuel: \$ 83,200 (6400 for November/December pilot training)

Personnel: \$ 77,280

Total: \$ 1,508,413.60

