

AGREEMENT
For
REIMBURSEMENT OF COCHISE COUNTY For IMPACT OF BOEING STARLINER LANDING
On The WILLCOX PLAYA

THIS AGREEMENT is made and entered into by and between Cochise County, a political subdivision (hereinafter called the "County") and The Boeing Company, a corporation organized under the laws of the State of Delaware (Boeing), for the purpose of setting forth the terms and conditions on which the County will provide assistance to Boeing in its effort to land a space capsule on the Willcox Playa.

Recitals

1. Boeing has a contract with the United States government, through the National Aeronautics and Space Administration ("NASA"), to transport astronauts to and from the International Space Station; and
2. Boeing has selected four possible sites at which the space capsule, known as the Boeing CST-100 Starliner ("Starliner") that will transport astronauts from the Space Station, might land, depending on weather and other conditions; and
3. One such site, commonly known as the Willcox Playa, a former bombing range owned by the United States Army and operated through its Post at Fort Huachuca, Arizona (the "Playa"), is located in Cochise County, Arizona;
4. It is unknown if or when Boeing will land the Starliner at the Playa, but purposes of this Agreement the first such landing shall be deemed the "Landing";
5. Boeing expects that if the Landing occurs at the Playa, it will generate significant public interest, resulting in crowds of spectators to observe the Landing; it understands that it must plan for unexpected events during the Landing that could conceivably require local first responders and other emergency personnel to assist in resolving; and it further acknowledges that the Landing will impact public health, safety and welfare of County residents and visitors, such as road blocks and closures, crowd control, preventing members of the public from encroaching on the Playa during the Landing, and additional security measures;
6. The County has informed Boeing, and Boeing acknowledges, that the County lacks sufficient personnel and equipment to adequately address the potential impacts of the Landing on public health, welfare and safety, and further acknowledges that the

County must also attend to its duties to provide personnel and equipment to deal with public health, safety and welfare needs in other parts of the County;

7. Boeing acknowledges that due to lack of personnel and equipment, in order to adequately address the potential impacts on public health, safety and welfare due to the Landing, and to deal with the public health, safety and welfare needs in other parts of the County, the County will need to coordinate with, and obtain the assistance of, other local and State agencies that can help the County in providing crowd control, emergency medical services, security services, information management and communication, road blocks, command and control support, fire suppression and rescue services, and related services;
8. Because of the potential impacts of the Landing on public health, welfare and safety, and thus the need for the County to increase the availability of its own personnel and equipment, as well as coordinate with, and obtain the assistance of, other local and State agencies, Boeing is willing to reimburse the County and other local and State agencies for personnel and equipment costs incurred. The maximum rates are set forth on Exhibit A hereto for preplanned resources and at department standard rates for any agency that responds to support an extraordinary event should planned resources be ineffective.

IT IS HEREBY AGREED THAT:

1. If the Landing occurs on the Playa, Boeing agrees to reimburse the County and other local and State agencies for personnel and equipment costs incurred. The maximum, rates are set forth on Exhibit A hereto for preplanned resources and at department standard rates for any agency that responds to support an extraordinary event should planned resources be ineffective.
2. The County has provided Boeing with an estimate of costs incurred by the local resources beyond normal operations, and thus the amount of reimbursement, as set forth on Exhibit B hereto; provided, however, that both parties acknowledge and agree that number and amount of personnel and equipment that will be called upon to assist with public, safety and welfare due to the Landing will depend upon many factors. These include the time and date of the Landing, which may affect the number of citizens and visitors who observe the Landing, as well as affect the willingness of personnel of the County and other local and State agencies to volunteer for overtime. Accordingly, the parties acknowledge and agree that the costs to be incurred, and thus reimbursed by Boeing, cannot be known with certainty in advance.

3. The parties further acknowledge and agree that, due to the nature of the Playa and lack of barriers to it, no amount of manpower could ensure that persons can be prevented from accessing it.
4. To assist with crowd control, and to enhance public health, safety and welfare due to the Landing, Boeing agrees to provide for a safe viewing area in the Willcox area. As with other aspects of the Landing, the County, with the assistance of and coordination with other local and State agencies, will endeavor to address, within their capabilities, public health, safety and welfare concerns of those in the safe viewing area.
5. In order for the County and other local and State agencies to effectively mobilize resources to attempt to address public safety concerns caused from the landing, Boeing agrees to provide the County with as much notice as practicable as to whether the Playa has been selected as the proposed site, or as an alternative site, for the Landing.
6. The County will track the costs incurred by the County in providing for the impacts on the public health, safety and welfare on the day of the Landing. The maximum rates are set forth on Exhibit A to this Agreement. Further, the County will either act as the pass-through fiscal agent for the local and State agencies set forth on Exhibit A or arrange for another local or State agency to do so. As such, the County or such other local or State agency will bear responsibility for reimbursing these agencies. After the Landing, the County or such other agency will provide Boeing with an itemized statement of costs of such personnel and equipment at the rates applicable to the day of the event. Boeing will reimburse the County or such other agency within thirty (30) days of receiving the statement.
7. Cochise County recognizes the potential educational value of being associated with the Starliner project, both to local students and to other citizens. In recognition of the County's substantial investment in planning to provide for the public health, safety and welfare due to the Landing, the County requests that Boeing agree, when feasible, to provide speakers to student and other citizen groups to educate them about the Starliner project, the Space Station, the role of astronauts, and related subjects. Boeing agrees to use its best efforts to provide such speakers.
8. It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee

or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

9. To the extent allowed by law, Boeing shall indemnify, defend, and hold harmless the County, and its officers, 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 (including death), personal injury, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any acts or omissions whatsoever relating to the Starliner project to the extent arising out of the negligence or willful misconduct of Boeing or any of its officers, directors, agents, employees, subcontractors or affiliates. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law. It is the specific intention of the parties that the Indemnitee shall, in all instances be indemnified by Boeing from and against any and all claims to the extent provided for in this Section 9. It is agreed that Boeing will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of this Agreement, and the support of the County, Boeing agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the Starliner project to the extent such claims are covered by the indemnity set out in this Section 9. The scope of this indemnity will not be limited by the Insurance Requirements contained herein.

a. It is acknowledged and agreed that the County had and has no role in the selection of the Playa as a potential site for the Landing; that it had and has no role, or expertise, in the manner of Landing or the safety thereof; that it has necessarily relied on the expertise and representations of Boeing, its agents and affiliates in determining how to support the Landing; and that although in providing support for the Landing from time to time it may necessarily make operational decisions without being able to consult with Boeing, this is a Boeing project, and Boeing shall bear all responsibility and liability for its acts and omissions.

10. Boeing shall maintain insurance in the amounts and types as set forth on the Memorandum of Insurance dated October 2, 2019, and attached hereto as Exhibit C. Each policy (except Workers' Compensation) shall be endorsed to include the following additional insured language: "The County of Cochise, its departments, agencies, boards, officers, officials, agents and employees shall be named as an

additional insured with respect to liability arising out of the activities performed by, or on behalf of the County's support for the Starliner Project to the extent of the indemnity obligation of The Boeing Company." The policies shall include, or be endorsed to include, that the insurance afforded by Boeing shall be primary and that any insurance carried by the County, its agents, officials, employees shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E). Each policy shall be endorsed to include a waiver of subrogation in favor of the County as required by this Agreement. Insurance provided by Boeing shall not limit Boeing's liability assumed under the indemnification provisions of this Agreement.

11. Applicable to all insurance policies required by this Agreement, Boeing's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the County. Within two (2) business days of receipt, Boeing must provide notice to the County if it receives notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to:

Gabe Lavine, Emergency Management Director
Cochise County Office of Emergency Services
520-432-9220 Office
520-559-2147 Cell
520-432-5913 Fax
GLavine@cochise.az.gov

With a copy to:

Julie Morales, Risk Management Director
520-432-9833
520-255-1503
jmorales@cochise.az.gov

12. Boeing shall furnish the County with certificates of insurance (valid ACORD form or equivalent approved by the County) evidencing that Boeing has the insurance as required by this Agreement. An authorized representative of the insurer shall sign the certificates. All such certificates of insurance and policy endorsements must be received by the County within fifteen (15) days of the execution of this Agreement by the parties. The County's receipt of any certificates of insurance or policy endorsements that do not comply with this Agreement shall not waive or otherwise affect the requirements of this Agreement. All certificates required by this

Agreement shall be sent directly to Mr. Lavine and Ms. Morales at the contact information provided above.

13. The following provisions shall apply to this Agreement:

- a. Neither party shall unlawfully discriminate against any employee, applicant, patient, or student based on race, color, creed, sex (including sexual preference/identity), religion, marital status, disability, veteran status, age, or national origin.
- b. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
- c. Boeing agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of this contract. In addition, Boeing agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
- d. The parties agree that any dispute arising under this Agreement involving the sum of \$65,000 or less in money damages only shall be resolved by arbitration pursuant to A.R.S. § 12-1501 et. seq. The decision of the arbitrator shall be final.
- e. Disclosure of any documents or records relating to this Agreement, or implementation thereof, are subject to Arizona public records law, A.R.S. § 39-121 et. seq.
- f. This Agreement shall be governed by Arizona law and jurisdiction shall be in Arizona courts with venue in Cochise County, Arizona.
- g. Boeing hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Boeing's employment of its employees, and with the requirements of A.R.S. § 23-214(A). Boeing shall further ensure that each sub-contractor who performs any work for Boeing under this Agreement likewise complies with the State and Federal Immigration Laws.
- h. If Boeing engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Boeing certifies

it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

- i. This Agreement shall remain in effect so long as is necessary to implement its objectives, through the Landing, and such time as is necessary to account for it, to debrief and to determine what went as planned and what did not, and how to improve operations in anticipation of the next Landing. It is acknowledged and agreed that this Agreement shall apply to the first Landing on the Playa, manned or unmanned, whenever that may occur. The parties anticipate that additional landings are planned for the future, and will in good faith negotiate similar agreements for County support for such landings.
- j. This Agreement may be executed and delivered in counterparts. It may be signed electronically by any and all parties, with the same effect as though signed in pen and ink.

Boeing and the County have executed this Agreement as of the dates set forth below:

COCHISE COUNTY

Thomas E. Borer
Chairman, Board of Supervisors

Date

ATTEST:

Kim Lemons
Clerk of Board of Supervisors

Date

COCHISE COUNTY SHERIFF

Mark Dannels, Sheriff

Date

APPROVED AS TO FORM:

Britt Hanson
Chief Civil Deputy, Cochise County Attorney

Date

The Boeing Company

By: _____
Jaime G. Viera
Procurement Agent

Digitally signed by Jaime G
Viera Chaparro, 3147786
Date: 2020.08.26 16:13:23
-04'00'

8/26/2020

Date

Its: _____