

AGREEMENT FOR SERVICES
Between COCHISE COUNTY
and
Western Sky Aviation LLC dba Western Sky
Helicopters, an Arizona Corporation

THIS AGREEMENT ("Agreement") for helicopter services is made this 28th day of February, 2023, by and between Cochise County, a political subdivision of the State of Arizona ("County"), and Western Sky Aviation LLC dba Western Sky Helicopters., an Arizona corporation.

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 Western Sky Aviation LLC dba Western Sky Helicopters to provide air support to the Cochise County Sheriff's Office ("Sheriff").

B. WHEREAS, County and Western Sky Aviation LLC dba Western Sky Helicopters 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:

Western Sky Aviation LLC dba
Western Sky Helicopters
Services and Costs:

- 1.1 **Services:** Cost and Description of Services. Western Sky Aviation LLC dba Western Sky Helicopters will provide Sheriff with the air support of a single engine turbine powered rotorcraft, with a minimum of 5 seats with performance capabilities of operating in the Cochise County area. Helicopter is to be equipped with customary law enforcement equipment, to include a Technisonic TDFM 9100 series P25 dual band radio or similar unit, capable of communicating on police frequencies, including encryption and 700mhz trunked systems, Spidertracks or equivalent tracking system, and a Garmin Aviation GPS unit or similar. Aircraft will have an NVG compatible cockpit for future possible nighttime operations.
- 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 Western Sky Aviation LLC dba Western Sky Helicopters shall be responsible for all communication activities related to airspace operation.

1.4 Western Sky Aviation LLC dba Western Sky Helicopters shall provide all aircraft maintenance. Basic maintenance shall be performed at the aircraft's designated base. Major maintenance, as determined by Western Sky Aviation LLC dba Western Sky Helicopters, shall be performed at the company headquarters in Scottsdale, Arizona.

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

Western Sky Aviation LLC dba Western Sky Helicopters shall provide a base amount of four hundred eighty (480) flight hours of flight time per year, as billed via HOBBS meter as activated by collective control, at a cost to County of Eight Million Dollars (\$8,000,000.00) for five years. This amount includes all costs and expenses associated with aircraft maintenance, aircraft insurance with County and the City of Sierra Vista endorsed on the policy as additional insured parties, pilots (contract pilots to be mutually approved by Sheriff or designee and Western Sky Helicopters), mechanics, fuel, wages to include all state and federal taxes, an Automated Flight Following System and an aviation supervisor. The payment to Western Sky Aviation LLC dba Western Sky Helicopters shall include a fifteen percent (15%) non-refundable deposit at the inception of the contract in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000). The remaining balance of Six Million Eight Hundred Thousand (\$6,800,000) shall be divided into equal quarterly payments over twenty (20) quarters equalling Three Hundred Forty Thousand Dollars (\$340,000.00).

Any hours flown over the basic 480 hours at the end of a twelve (12) month period will be an additional cost to the county in the amount of One Thousand One Hundred Fifty Dollars (\$1,150.00) per hour. This amount includes all costs and expenses associated with aircraft maintenance, aircraft insurance, pilots, mechanics, fuel, wages to include all state and federal taxes, an Automated Flight Following and an aviation supervisor.

1.5 The quarterly payment from County to Western Sky Aviation LLC dba Western Sky Helicopters will be due on the first (1st) day of each quarter (January 1, April 1, July 1 and October 1). Late fees will start on the fifteenth (15th) of the due month at 1% of the total monthly leasing cost. Western Sky Aviation LLC dba Western Sky Helicopters will invoice Cochise County Sheriff's Office Financial Administrator not later than the Fifteenth of each month for payment for the month to follow. For example, the invoice will be received not later than 15 December for the payment for the first quarter. This allows time for processing the payment through Cochise County Finance.

- 1.6 Scheduled Air Unit operations will be 7 days per week (Monday through Sunday) – hours of operations will be general daylight hours, approximately 7am to 7p.m. depending on seasonal daylight times.
- 1.7 Cochise County has received One Million Sixty Nine Thousand Dollars (\$1,069,000) to purchase additional law enforcement equipment for the aircraft. Western Sky Aviation LLC dba Western Sky Helicopters will facilitate the purchase and installation of this equipment however, this equipment is owned by, and the responsibility, of the County. Western Sky Aviation LLC dba Western Sky Helicopters assumes no responsibility to insure, repair or replace any county owned equipment.

2. Services Provided by COUNTY:

- 2.1 The County will provide at least one (1) Arizona Certified Peace Officer or other authorized personnel for every flight to act as crewmember to perform crew duties including communications with 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 Western Sky Aviation LLC dba Western Sky Helicopters will use reasonable efforts to participate in mutually-beneficial public safety public relations events and activities. Neither the County nor Western Sky Aviation LLC dba Western Sky Helicopters 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, this Agreement shall be in effect for a period of Five (5) years. It will commence upon delivery of the aircraft by Western Sky Aviation LLC dba Western Sky Helicopters, to the completion center to install Cochise County Sheriff's Office purchased Law Enforcement Equipment. Any contract hours not flown during the Law Enforcement completion process, will be available to be flown upon delivery of the aircraft to Sierra Vista for full operational use over the course of the remaining contract term.

6. Representations, Warranties and Covenants of Western Sky Aviation LLC dba Western Sky Helicopters:

Western Sky Aviation LLC dba Western Sky Helicopters hereby represents, warrants, and covenants as follows:

- 6.1 Organization: Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters to this Agreement have been authorized by all necessary corporate action on the part of Western Sky Aviation LLC dba Western Sky Helicopters.
- 6.3 Western Sky Aviation LLC dba Western Sky Helicopters's compliance with the Federal Aviation Administration (hereinafter FAA): Western Sky Aviation LLC dba Western Sky Helicopters 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). Western Sky Aviation LLC dba Western Sky Helicopters represents that each aircraft, pilot and mechanic is properly licensed, certified and meets the minimum requirements as set forth in the applicable FAA regulations. Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters and/or Western Sky Aviation LLC dba Western Sky Helicopters's employees, agents, or contractor(s) in connection with the rights and duties arising from this provision. Western Sky Aviation LLC dba Western Sky Helicopters 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. Western Sky Aviation LLC dba Western Sky Helicopters and County Insurance Requirements

- 8.1 Policies and Amounts: Western Sky Aviation LLC dba Western Sky Helicopters, during this Term or any extended Term of the Agreement, shall maintain the following minimum insurance coverage, which policy/ies shall endorse County and City of Sierra Vista as actual insured parties:
- (a) All risk ground and flight aircraft hull insurance. This insurance coverage shall waive the right of subrogation against the County. Western Sky Aviation LLC dba Western Sky Helicopters agrees to provide copies of all insurance agreements to the County. These copies shall be made available within five (5) days of demand. Western Sky Aviation LLC dba Western Sky Helicopters is not responsible to insure County owned equipment.
 - (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 Western Sky Aviation LLC dba Western Sky Helicopters's Indemnification Obligation, the County shall be named as the additional insured party on each and every one of Western Sky Aviation LLC dba Western Sky Helicopters's policies described in paragraph (b) above, to the full limits available. Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters 's Indemnification Obligations: Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters, 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 Western Sky Aviation LLC dba Western Sky Helicopters, 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 Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters 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 with Sixty (60) days advance notice for any reason, less the non-refundable deposit.
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: Western Sky Aviation LLC dba Western Sky Helicopters 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 nonperforming 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 Default Termination: In the event of Default, this Agreement shall terminate and, except as otherwise set forth herein, shall be of no further force and effect thirty (30) 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 12.5 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 here from, shall be deemed null and void, but shall in no way affect the remaining

provisions outlined herein.

- 12.9 Proprietary Information: Western Sky Aviation LLC dba Western Sky Helicopters 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 Western Sky Aviation LLC dba Western Sky Helicopters '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 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

Western Sky Helicopters, LLC
ATTN: Vanessa Clifton
7305 E Greenway Rd.
Scottsdale, AZ 85260
vanessa@westernskyhelicopters.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.

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

Western Sky Helicopters, LLC

Vanessa Clifton
Western Sky Aviation LLC dba Western Sky Helicopters
An Arizona Limited Liability Company

COCHISE COUNTY SHERIFF'S DEPARTMENT

By: _____
Mark J. Dannels, Sheriff
Cochise County Sheriff's Department

COCHISE COUNTY

By: _____
Ann S. English, Chairman
Cochise County Board of Supervisors

ATTEST:

By: _____
Tim Mattix, Clerk of the Board
Cochise County Board of Supervisors

APPROVED AS TO FORM:

By: _____
Christine J. Roberts, Esq., MBA CPCU
Chief Civil Deputy
Cochise County Attorney's Office