

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Air Methods Lease Agreement

DATE: March 12, 2024

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

ANNUAL-

OTHER

CAPITAL-

PRESENTED BY: Bill Harden

COMMISSION ACTION REQUESTED ON: March 18, 2024

PURPOSE:

To seek approval of the new Air Methods Lease Agreement at the Habersham County Airport for the period of July 1, 2023 – June 30, 2024

BACKGROUND / HISTORY:

Air Methods has leased Hangar M-1 for several years for their helicopter ambulance service. The company requested first right of refusal on the remainder of the M hangar. In researching, it was discovered that Air Methods had not signed our new 2023 lease agreement for this hangar. The lease was also revised to change the monthly rent amount from \$400 to \$700. The airport commission and attorney Ralph Taylor have worked closely together to revise this lease agreement.

FACTS AND ISSUES:

- a. Air Methods is an important community partner based at our airport in M-1
- b. Rent amount has been increased from \$400 to \$700 per month
- c. Air Methods will have first right of refusal on the other half of the hangar
- d. The Airport Commission recommended approval by the BOC at their regular meeting on March 12, 2024.

OPTIONS:

- 1) Approve recommendation.
- 2) Deny recommendation.
- 3) Commission defined alternative.

RECOMMENDED SAMPLE MOTION: Motion to approve the Air Methods Lease Agreement for the term of July 1, 2023 through June 30, 2024.

DEPARTMENT:

Prepared by: Bill Harden

Director _____

ADMINISTRATIVE

COMMENTS: _____

_____ **DATE:** _____

County Manager

HANGAR LEASE AGREEMENT

HABERSHAM COUNTY AIRPORT

This Hangar Lease Agreement ("Agreement") is entered into as of the last date of signature below but made effective as of July 1, 2023, by and between HABERSHAM COUNTY, GEORGIA, ("County") and AIR METHODS, LLC (fka Air Methods Corporation), a Delaware limited liability company, having its principal place of business at 5500 S. Quebec St., Ste. 300, Greenwood Village, CO 80111 ("Lessee") (hereinafter collectively referred to as "Parties"). In consideration of the promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged by the Parties, the County does hereby agree to lease to Lessee the Premises stated herein, and Lessee does hereby agree to lease the Premises from the County, on the following terms and conditions:

1. GENERAL DEFINITIONS.

- (a) "Default" shall mean the failure to timely perform or comply with any requirement, term, provision or condition of this Agreement.
- (b) "Material Breach" shall mean any default not cured by the time specified in this Agreement.
- (c) "Lessee" shall mean the party named as Lessee, herein.
- (d) "Airport" shall mean the Habersham County Airport located in Habersham County, Georgia.
- (e) "Premises" shall mean one-half (50%) of Hangar No. M1 located at the Airport.
- (f) "Aircraft" shall mean the aircraft identified in this Agreement.

2. TERM.

The term of this Agreement commenced on July 1, 2023 ("Commencement Date"), and shall be for a term of one (1) year, expiring at midnight on the 365th day after the Commencement Date. Provided Lessee is in compliance with the terms and conditions of this Agreement, this Agreement shall automatically renew for an additional one (1) year term at the rental rate set forth herein.

3. RENTAL RATE.

- (a) The rental rate shall be Seven Hundred and Fifty Dollars (\$750.00) per month, payable on the first day of the month. In the event the County has not received Lessee's payment by the tenth (10th) day of the month, in addition to the monthly rent, Lessee shall be assessed a late fee of \$50.00, which shall be due and payable along with the rent due for that month.

- (b) For any renewal term, the rental rate shall be adjusted to fair market value rates as determined by rates for comparable hangar space in airports located throughout north Georgia. Lessor shall notify Lessee of the adjusted rental rate thirty (30) days prior to the renewal term.

4. USE OF PREMISES; REGISTRATION AND STORAGE OF AIRCRAFT.

- (a) All Aircraft stored within the Premises must be (i) owned by Lessee, or (ii) in the event the Aircraft is owned by a partnership or corporate entity, Lessee must have an ownership of at least 51% in such entity, unless a lesser ownership interest is approved by the Airport Manager.
- (b) Upon County's reasonable request, Lessee shall provide County with copy of the FAA aircraft registration evidencing the ownership of the Aircraft.
- (c) Lessee shall have the right to use and possess the Premises for the purpose of operating an air ambulance service and uses which are necessary for such operation and which are not excluded by this Agreement, subject to, and pursuant to, the Rules and Regulations of the Habersham County Airport, as may be amended from time to time and provided to Lessee upon such amendment.
- (d) Unless Lessee provides proof that Lessee is paying ad valorem taxes on the Aircraft to another state and/or county in connection with Lessee's rental and storage of the Aircraft at such location, Lessee agrees to return and pay ad valorem taxes on the valuation of the Aircraft to the Tax Commissioner of Habersham County, Georgia.
- (e) Lessee shall not exercise the rights granted herein in any manner which would interfere with the departure or arrival of aircraft or with the rights granted by the County to other customers assigned space in hangar building.
- (f) No more than two Aircraft may be stored in the Premises.
- (g) Use of the Premises as a workshop, repair shop, maintenance shop, or any commercial activity is strictly prohibited. Major aircraft repairs, including painting, or any activity involving "open flame" is strictly prohibited. Repairs and preventative maintenance authorized by F.A.R. Part 43 are allowed. With prior authorization of the Airport Manager, final assembly of finished aircraft that are homebuilt or restored may be allowed. Disassembled aircraft and aircraft parts shall not be stored therein indefinitely. Storage of equipment unrelated to Lessee's aviation activity is disallowed. However, temporary storage of the Lessee's vehicle in the Premises while Lessee's aircraft is in flight (or for short term travel) is allowed. Lessee's storage of all other items shall be in compliance with rules and regulations of the Fire Marshall's office.
- (h) Lessee is strictly prohibited from operating a business (as defined and discussed in the Minimum Standard for the Habersham County Airport) within the premises without the prior written consent of the County.
- (i) Lessee's CONEX located adjacent to the Premises is a permitted use.

5. MAINTENANCE OF PREMISES; ALTERATIONS.

- (a) County shall maintain, repair and make replacements of the following: roof, foundation, concrete floors, interior and exterior walls, windows, doors, hangar doors (to include an annual inspection of the door and hoist), and all HVAC, electrical, plumbing and other mechanical systems within and exclusively serving the Premises. Lessee will promptly give County written notice of any known defect or need for repairs.
- (b) Lessee shall maintain the Premises in a good, clean and secure manner which is acceptable in appearance and does not create fire or other safety hazards. Lessee agrees to return the Premises in the same clean and good condition as delivered at the termination of the Agreement, reasonable wear and tear excepted.
- (c) Lessee shall not make nor allow any alterations, improvements or additions to the Premises without prior written permission of the County. All such alterations, improvements or additions shall become fixtures and the property of the County. As such, no alteration, improvement or addition shall be removed without the express written consent of the County. Lessee shall permit County free access to Premises upon not less than twenty-four (24) hours' advance notice, except in emergencies, in which case County will provide Lessee with as much notice as possible prior to entry.

6. UTILITIES.

Lessee shall during the term hereof pay all charges for telephone, gas, electricity, sewage and water, if any, used in or on the Premises and for the removal of rubbish and trash therefrom in a timely manner, and shall hold County harmless for any liability therefor.

7. COMMON AREAS.

Lessee shall have the right, during the term of this Agreement, to use in common with County and each Party's employees and invitees, all common walks, drives, and parking within and around the Premises and for access to the Premises. All common areas shall be subject to the control and management of County.

8. NOTICES.

Any notice required to be sent hereunder shall be sufficient when sent by first class mail; email, or by facsimile to the following address (must be street address):

Lessee:

Air Methods, LLC
5500 S. Quebec St., Ste. 300
Greenwood Village, CO 80111
Attn: Vice President, Southeast Region
with copy, which shall not constitute notice, to Legal Dept.
and realestate@airmethods.com

County:

Habersham County, Georgia
130 Jacob's Way, Ste. 301
Clarksville, GA 30523
Attn: County Manager

9. TERMINATION.

- (a) Lessee shall have the right to terminate this Agreement on thirty (30) days written notice to the Airport Manager.
- (b) County shall have the right to terminate this Agreement at any time and without prior written notice in the event of (i) any action or conduct of Lessee which violate the rules, and regulations of the Airport and constitutes a threat to public safety, or (ii) Lessee's failure to cure an event of default as set forth in Paragraph 16.
- (c) Termination of this Agreement for any reason shall not relieve Lessee from obligations and/or liability incurred by Lessee prior to termination. No later than three (3) calendar days following termination, Lessee shall, at Lessee's cost and expense, remove Lessee's aircraft and all other property belonging to the Lessee from the Premises, and shall restore the Premises as nearly as practicable to the same state and condition as at the inception of this Agreement, reasonable wear and tear excepted. Should Lessee fail to remove Lessee's aircraft and/or personal property as provided herein, County shall have the right to remove said aircraft and all personal property, without further notice and without court order. The County will also have the right to repair and restore the Premises to rentable condition, and Lessee shall be responsible for all costs or repair or restoration directly necessitated by Lessee's breach of its obligations set forth in this Section.
- (d) In the event termination occurs in one month, but any property of, or property subject to the control of Lessee remains in Premises for any portion of a subsequent month, the rent for the next successive month is due and payable in its entirety.

10. LESSEE'S OBLIGATION TO COMPLY.

Lessee agrees to and shall, at Lessee's sole expense, comply with all statutes, ordinances, resolutions, rules, and regulations of the federal, state and local governmental agencies and the County, the covenants and restrictions of this Agreement, any and all directives concerning Airport operations and flight safety issued by County, and requirements of any fire insurance underwriter or rating bureau. Lessee understands and agrees that Lessee is subject to any and all new regulations which may be imposed by the local, state or federal agencies whether or not they reflect a change in law and/or policy from that now existing, during the term hereof, relating in any manner to Lessee's occupation of the Premises. Lessee also understands and agrees that Lessee is subject to severe restrictions on Lessee's activities on the Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to conform its use of the Premises to lawful uses only. County may elect to treat any violation of statutes, ordinances, resolutions, rules, regulations or directives not corrected within thirty (30) days of notice by County as a material breach of this Agreement by Lessee.

11. INDEMNITY - CASUALTY - FORCE MAJEURE.

- (a) Lessee agrees to release, indemnify and hold harmless the County and its agents, officers, employees, successors and assigns from and against any and all liability, damages, delays, losses, claims, judgments of any kind whatsoever including all costs, reasonable attorneys' fees, and expenses incidental thereto, (a) to the extent caused by or arising out of the negligence or willful misconduct on the part of Lessee or Lessee's employees, agents or contractors, on, in, or about the Premises of other common areas of the Premises, or (b) to the extent caused by or arising out of any

breach or default by Lessee in the performance of its obligations under this Agreement beyond applicable periods of notice and cure. In case any action or proceeding is brought against County by reason of such matter, Lessee, upon notice by County, shall defend the same at Lessee's cost. The County needs not have paid any such claim in order to be so indemnified.

- (b) To the extent permitted by applicable law, County agrees to release, indemnify and hold harmless Lessee, its agents, officers, employees, successors and assigns from and against any and all liability, damages, delays, losses, claims, judgments of any kind whatsoever including all costs, reasonable attorneys' fees, and expenses incidental thereto, (a) to the extent caused by or arising out of the negligence or willful misconduct of County, its employees, agents or contractors, or (b) to the extent caused by or arising out of any breach or default by County in the performance of its obligations under this Agreement beyond applicable periods of notice and cure.
- (c) Except for injuries or damages caused by County's negligence or willful misconduct, the County will not be responsible for theft, loss, injury, damage or destruction of Lessee's property or any injury to Lessee, or Lessee's agents, contractors, employees, invitees, clients, partners, successors or assigns, it being specifically understood that the fees and rents charged hereunder are for the privilege of storing aircraft on the Premises only.
- (d) Neither Party shall be liable to the other for failure to perform this Agreement or for any loss, injury, damage or delay of any nature whatsoever caused by or resulting from any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, civil disturbance, war or any other cause beyond its control.
- (e) In no event shall either Party, its employees, agents, or contractors be liable under this Agreement to the other Party for any consequential, incidental, indirect, exemplary, special or punitive damages, including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not either Party was advised of the possibility of such damages.

12. INSURANCE.

- (a) Without limiting Lessee's indemnification of the County, Lessee shall provide and maintain, at its sole expense, during the term of this Agreement, the policy or policies of insurance with the following limits of coverage covering its operations and liabilities hereunder. Such insurance shall be secured through a carrier satisfactory to County, and evidence of such insurance satisfactory to County shall be delivered to County on or before the effective date of this Agreement and upon each renewal date without notice from the County. Such evidence shall contain express conditions that County is to be given written notice, at least thirty (30) days in advance, of any termination of any policy of insurance. Such insurance shall be primary and noncontributory to any other insurance and shall name the County as additional insured.

Bodily Injury Liability - \$100,000 per person/\$1,000,000 per occurrence
Property Damage Liability - \$1,000,000 per occurrence
Single Limit Liability - \$1,000,000 per occurrence

- (b) Failure to Procure Insurance. In the event of failure of the Lessee to procure or maintain the above insurance, this Agreement shall automatically terminate and Lessee shall promptly surrender the Premises.

The amount of insurance required herein shall be subject to annual review by the County to assure adequate coverage limits apply. County shall have sole discretion with respect to any adjustment of insurance limits and coverages.

14. LIMITATION OF LIABILITY.

In no event shall either Party, its employees, agents, or contractors be liable under this Agreement to the other Party for any consequential, incidental, indirect, exemplary, special or punitive damages, including any damages for business interruption, loss of use, revenue or profit, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not either Party was advised of the possibility of such damages.

15. VEHICULAR PARKING.

Motor vehicles located at the Airport as a result of Lessee's use of the Premises must be parked inside the Premises or in parking lots designated by County. Motor vehicles parked at the Airport must display current tags and meet applicable Georgia environmental and insurance requirements. Motor vehicles shall not be parked in Airport public parking lots for more than a 14-day time period without prior approval by the Airport Manager. Parking of motor vehicles in an Airport Operation Area (AOA) is strictly prohibited. Any vehicle parked at the Airport in violation of this paragraph shall be subject to being impounded or towed by the County and the owner's expense.

16. ENVIRONMENTAL HAZARD.

- (a) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including reasonable attorneys' and consultants' fees) of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement, which are incurred as a result of the existence of Hazardous Material on, under or about the Premises, including without limitation: (1) damages for personal injury or injury to property or natural resources occurring on the Premises or the Airport, foreseeable or unforeseeable; (2) reasonable fees incurred for attorneys, consultants, contractors, experts, laboratories and all other reasonable costs incurred in connection with the investigation or remediation of Hazardous Material, including but not limited to, the preparation of any feasibility studies or reports or any cleanup, remediation, removal, abatement, containment, closure, restoration, or monitoring required by any federal, state or local governmental entity.
- (b) "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any federal, state or local governmental entity.
- (c) In no event shall County be liable for incidental, special, exemplary or consequential damages including, but not limited to, loss of profits or products, or inability to use the Premises. Lessee shall be liable for Environmental Damages due to any act or omission of Lessee with respect to the use, storage, or disposal of any Hazardous Material or with respect to damages caused by Lessee.

- (d) Lessee shall not cause or permit any Hazardous Material to be brought on, treated, kept, used, stored, disposed of, discharged, released, produced, or generated in, on, under or about the Premises and/or the Airport by Lessee, its agents, employees, contractors, subtenants, assignees, or invitees without the prior written consent of County, except for aircraft fuel stored in an appropriate container approved by the Airport Manager.
- (e) Lessee shall defend, indemnify and hold County harmless from any and all Environmental Damages resulting from any Hazardous Material brought on, treated, kept, used, stored, disposed of, discharged, released, produced or generated by Lessee, its employees, agents, contractors, assignees, tenants or invitees during Lessee's occupation of the Premises and/or the Airport, even if done with County's consent, and in addition, from any and all Environmental Damages resulting from Lessee's acts or omissions with respect to Hazardous Material in, on, under or about the Premises and/or the Airport as a result of Lessee's occupancy of the Premises.
- (f) Notwithstanding Lessee's obligation to indemnify County, Lessee shall, at Lessee's sole cost and expense, promptly take action to remediate the Premises and/or the Airport resulting from Lessee's acts or omissions with respect to Hazardous Material caused by Lessee's use or occupancy of the Premises. Such action includes, but is not limited to: investigation of the environmental condition of the Premises and/or the Airport, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup or remediation. Lessee shall proceed continuously and diligently with such investigatory and remedial action. All action shall be performed in a good, safe and workmanlike manner. Lessee shall promptly provide to County copies of testing results and reports in connection with Lessee's action pursuant to this paragraph.
- (g) If, in the discretion of the County, Lessee fails to complete remediation as described above within a reasonable time, County may, at its sole option, take action to cleanup or remediate Premises or other affected areas. In the event such action is taken by County, Lessee will reimburse County for all reasonable costs associated with the cleanup or remediation. This sub-paragraph does not limit Lessee's obligations under this Agreement nor does it obligate County to perform any activities described herein.

17. INSPECTION OF PREMISES AND RIGHT OF ENTRY.

Lessee shall provide a key to any locks maintained by Lessee to secure the Premises. Lessor shall have the right to inspect the Premises for compliance with the terms of this Agreement by giving the Lessee forty-eight (48) hours prior notice of the inspection. Lessee agrees to provide access to the Premises for the inspection.

In the event of emergencies, or in the event of Lessee's default in the terms of this Agreement, Lessor shall have the right of entry with no prior notice to the Lessee. In such event, Lessor shall have the right to remove any locks which may have been placed upon the hangar in order to gain entry to the Premises.

18. FIRE OR OTHER CASUALTY.

If the Premises is destroyed or rendered untenable for Lessee's accustomed use by fire or other casualty, this Agreement shall terminate immediately, and any prepayment of rent shall be refunded pro rata to Lessee by Lessor. If the Premises is damaged or rendered partially untenable for Lessee's accustomed use by fire or other casualty, and if the

Premises can be repaired within ninety (90) days from the date of such casualty, Lessor, at its option, shall repair the Premises to substantially the same condition as immediately prior to such casualty. If Lessor chooses to repair the Premises, Lessor shall provide thirty (30) days written notice to Lessee of its intent to repair. From the date of such casualty until the Premises are so repaired and restored, the rent payments shall abate in such proportion as the part of the Premises so damaged or untenable bears to the total Premises. Notwithstanding the foregoing, if the damaged portion of the Premises cannot be repaired within ninety (90) days of such casualty, or if said damage materially interferes with Lessee's use of the remainder of the Premises, then either Lessor or Lessee may terminate this Agreement and any prepayment of rent shall be refunded pro rata to Lessee by Lessor. Lessor shall not be obligated to repair and restore if such casualty is caused in whole or in part by the negligence of Lessee, its agents or employees.

19. DEFAULT.

(a) In the event of Lessee's default in the terms of payment or any other provision of this Agreement, Lessor shall provide notice of such event of default to the Lessee, via email, or regular mail, at the address for Lessee stated herein. In the event Lessee does not cure such default within thirty (30) days of the date of the notice, Lessee shall be in default of this agreement. In the event of default, Lessor shall have all remedies at law, including but not limited to the right to terminate this Agreement and take possession of the Premises. No remedy or election of County hereunder shall be deemed exclusive, but shall be cumulative with all other remedies at law or equity.

(b) In the event that Lessor defaults under the terms of this Agreement, Lessee shall give Lessor written notice specifying the nature of the default and Lessor shall have thirty (30) days after receipt of such notice to cure said default. Any default by Lessor which shall continue uncured shall give Lessee the right to terminate the Agreement immediately, in addition to all available rights or remedies in law or in equity.

20. HOLDING OVER.

In the event Lessee remains in possession of the Premises beyond the term, Lessor may take legal action to remove Lessee. If Lessor accepts a rent payment for a period of time beyond the term, or otherwise acknowledges the tenancy, Lessee shall be deemed a Lessee from month-to-month, and shall pay rent at the rate established by this Agreement. Any month-to-month tenancy is subject to the conditions, provisions, and obligations of this Agreement.

21. RIGHT OF FIRST REFUSAL.

Lessor grants Lessee a right of first refusal to lease the other 50% of the space at Hangar M1 ("ROFR Premises") at the then-current market rate if and when the current lease term with the current tenant expires or terminates. Lessor shall give Lessee at least thirty (30) days advanced notice prior to the current lease expiration to exercise its right of first refusal. Such notice shall include the then-current market rate for the ROFR Premises. Lessee shall notify Lessor within thirty (30) days following its receipt of such notice if it wants to lease the ROFR Premises or not. If Lessee wants to lease the ROFR Premises, the Parties will effectuate any necessary paperwork at that time.

22. MISCELLANEOUS.

- (a) Assignment and Subleasing. Lessee shall have no right to sublease all or a portion of the Premises, or assign Lessee's rights in this Agreement without the written consent of the County, which shall be in the County's sole discretion and shall not be unreasonably withheld; provided, however, that Lessee may, without the prior consent of the Lessor, assign all of its rights under this Agreement to (i) a parent, subsidiary, or affiliate, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Lessee is participating. Any permitted assignee shall assume all obligations of its assignor under this Agreement.
- (b) Attorneys' Fees. In the event that it becomes necessary for either Party to enforce any rights or obligations outlined herein, through litigation, arbitration, or other similar proceeding, the Party substantially prevailing in any such action shall be entitled to recover all costs associated therewith from the non-prevailing Party, including without limitation all reasonable attorneys' fees, expert witness fees and all other fees and costs, provided that such fees and costs have been awarded by a court of competent jurisdiction.
- (c) Cumulative Rights. No right or remedy provided under this Agreement is intended to be exclusive of any other right or remedy hereof provided by law or equity. Each right and remedy shall be cumulative and in addition to every other right or remedy provided under this Agreement.
- (d) No Partnership, Joint Venture or Principal/Agent Relationship. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Parties.
- (e) Amendment. No amendment of this Agreement shall be valid unless it is in writing, specifies the nature and extent of the amendment, and is signed by the Parties.
- (f) Entire Agreement. This Agreement contains the entire understanding of, and supersedes all prior agreements and understandings between, the Parties with respect to the subject matter of the Agreement.
- (g) Waiver. Any waiver by any Party of default of any other Party to this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the Parties which varies from the terms of this Agreement shall be a waiver of any Party's right to demand exact compliance with the terms of this Agreement. A waiver will only be effective when signed by the Party against which it is used.
- (h) Authority to Execute. Each of the persons executing this Agreement as or on behalf of Lessee represents and warrants that he/she is signing and agrees to indemnify and hold the County harmless in the event such authority is found lacking.
- (i) Governing Law. This Agreement shall be controlled and governed by the laws of the State of Georgia.
- (j) Usufruct. The Parties intend that the interest of Lessee in the Premises is a usufruct only.

(k) Severability. The terms of this Agreement are severable, and the unenforceability of any particular provision shall not affect the enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day, month, and year first below written.

Date: _____

HABERSHAM COUNTY:

By: County Manager

Date: _____

LESSEE:

By: