

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20031324

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the Support By the Hour (SBH) Agreement between Turbomeca USA Inc. and Lee County Board of County Commissioners to provide maintenance and parts for the new helicopter's engines.

WHY ACTION IS NECESSARY: Board approval is required for all agreements.

WHAT ACTION ACCOMPLISHES: Provides engine parts and maintenance for the new EMS helicopter at a fixed price.

2. DEPARTMENTAL CATEGORY:

7. Public Safety
COMMISSION DISTRICT #:

C7B

3. MEETING DATE:

12-16-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE AC-44
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Public Safety
- C. DIVISION
- BY: John Wilson, Director

7. BACKGROUND:

This agreement will normalize major engine maintenance and overhaul expenses through the assessment of monthly charges at a fixed rate of 215.20 per hour. It also limits County's cost for extraordinary maintenance charges for engines and engine items that fail unexpectedly. Per hour refers to engine operational hours. P.M.

Annual escalation is limited to three (3) percent.

Funds are available in account #KF5260100100.506410.71 and KF5260100100.506410.7100. P.M.

8. MANAGEMENT RECOMMENDATIONS: Staff recommends approval.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services 11/5/03				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i> 11/4/03	<i>[Signature]</i>	N/A		<i>[Signature]</i> 11/5/03	<i>[Signature]</i> 11/5/03	<i>[Signature]</i> 11/5/03	<i>[Signature]</i> 11/5/03	<i>[Signature]</i> 11/5/03	HS 11-5-03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED FOR TWO OTHER WEEKS TO 12-02-03.

ON 12-02-03 - Deferred Indefinitely.

Rec. by CoAtty
Date: 11/5/03
Time: 9:00
Forwarded To: Budget
11/5/03 9:45AM

RECEIVED BY
COUNTY ADMIN: AM
11/5/03
10:35AM 54
COUNTY ADMIN
FORWARDED TO: HS
11/5/03

Arriel 1 *Support By the Hour (SBH)*® Agreement

TURBOMECA USA, INC.
Support By the Hour (SBH)® AGREEMENT

This *Support By the Hour (SBH)*® Agreement ("Agreement") is made as of the _____ day of _____, 2003 by and between Turbomeca USA, Inc., a Delaware corporation with its principal offices at 2709 Forum Drive, Grand Prairie, Texas 75052 ("TMUSA"), and Lee County Board of County Commissioners, Emergency Medical Services, with principal offices at 14752 Six Mile Cypress Parkway, Fort Myers, Florida 33902, ("Customer").

WHEREAS, TMUSA is engaged in the business of providing depot level maintenance of aeronautical engines; and

WHEREAS, Customer desires to limit major engine maintenance and overhaul expenses and TMUSA desires to provide this opportunity to Customer to limit major engine maintenance and overhaul expenses through the assessment of monthly charges based on a fixed rate for each hour of equipment operation or operational cycle;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, TMUSA and Customer hereby agree as follows:

ARTICLE 1

Certain Definitions

- 1.1. "COVERED EQUIPMENT" means the Equipment specified in Exhibit I hereto and other Equipment included as Covered Equipment in accordance with Section 2.2 hereof.
- 1.2. "CYCLE" denotes an operational gas generator cycle as reported in the Engine Log Book, in accordance with Turbomeca instructions as outlined in the Engine Maintenance Manual held by the Customer. Cycles are recognized since the last general overhaul (CSO) and since new (CSN).
- 1.3. "EQUIPMENT" denotes according to context, an engine, a module, an accessory, LRU or a spare part, and includes any component or part thereof.
- 1.4. "LRU" denotes any engine Line Replacement Unit or item of Equipment as defined in Exhibit I hereto.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 1.5. "OPERATING HOURS" denotes an hour of operation as recorded in the Engine Log Book in accordance with TMUSA instructions as outlined in the Engine Maintenance Manual held by the Customer. Operating hours are recognized since the last general overhaul (TSO) and since new (TSN).
- 1.6. "MODULE" denotes a sub-assembly of the basic engine as described in the Engine Maintenance Manual.
- 1.7. "REFERENCE DOCUMENTS" denotes the following Turbomeca documents, and any amendments thereto (collectively, "Reference Documents"):
 - 1) Engine Maintenance Manual (field and modular maintenance),
 - 2) Service Letters,
 - 3) Turbomeca Service Bulletins,
 - 4) Maintenance Tools Catalog, and
 - 5) Maintenance Spare Parts Catalog.
- 1.8. "SPARE PART" denotes spare parts to be used for field and/or modular maintenance procedures. Authorized spare parts are identified in the Spare Parts Catalog issued by Turbomeca.
- 1.9. "STANDARD EXCHANGE" denotes replacement of malfunctioning Covered Equipment with serviceable, repaired/overhauled repairable Equipment in working condition delivered from TMUSA stock irrespective of the previous operator, place of operation, reason for its being handed in, operating hour/cycles available, or modification standard.
- 1.10. "TMUSA OWNED EQUIPMENT" denotes Equipment owned by TMUSA.
- 1.11. "TBO" denotes Time between Overhaul as defined in the Engine Maintenance Manual and Service Letters.
- 1.12. "TOOL" denotes special field and/or modular maintenance tool. Tools are identified in the Engine Maintenance Tools Catalog held by the Customer.

Arriel 1 *Support By the Hour (SBH)*® Agreement

ARTICLE 2

Purpose and Scope

- 2.1. Purpose. The purpose of this Agreement is to specify the conditions under which TMUSA will provide to Customer, and Customer will obtain from TMUSA, maintenance and overhaul support for Covered Equipment (as hereinafter defined) at a fixed hourly or cyclical rate.
- 2.2. Scope. This Agreement applies only to the Covered Equipment. The inclusion as Covered Equipment of any Equipment not listed in Exhibit I hereto must be made in writing, and signed by TMUSA and the Customer.
- 2.3. Similar Equipment. As a condition to this Agreement, Customer shall enter into a *Support By the Hour* Agreement with TMUSA for any and all Equipment owned or operated by Customer that is the same as or similar to Covered Equipment.
- 2.4. Non-Zero Time Engines and Modules. Subject to Section 6.6 of this Agreement, a Customer may enter into this Agreement with non-zero time Equipment if the prospective Covered Equipment has greater than fifty percent (50%) of its TBO remaining and the Covered Equipment is qualified by TMUSA. Qualification shall consist of a power assurance check and inspection of the engines and modules by TMUSA (at TMUSA's primary facility) or by a representative of TMUSA at Customer's facility to determine current condition of the equipment, the results of which must be acceptable to TMUSA. If deemed necessary by TMUSA, all engine and module records must also be made available for review at TMUSA's primary facility, and must be acceptable to TMUSA after review, prior to coverage.
- 2.5. Property Rights in Covered Equipment. Covered Equipment that is removed from the Customer's helicopter remains the property of the Customer. Covered Equipment that is replaced on Customer's helicopter with Standard Exchange. Equipment becomes the property of TMUSA, and such Standard Exchange Equipment becomes the property of Customer. Both parties shall execute a certificate of title transfer substantially in the form of Exhibit II to this Agreement.

ARTICLE 3

Duration

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 3.1. Term. The term of this Agreement shall commence as of the date hereof, set forth in the initial paragraph of this Agreement (the "Effective Date"), and shall be effective for a period of five (5) years from the date of execution (the "Completion Date").
- 3.2. Renewal. This Agreement may be renewed beyond the Completion Date by separate amendment to this Agreement signed by TMUSA and Customer.

ARTICLE 4

TMUSA's Obligations

- 4.1. Parts Provided by TMUSA. TMUSA agrees to provide all parts required for the Covered Equipment, including periodic inspection kits and "on condition" maintenance repairable items. Also included are consumables such as high-energy igniters, injectors and pipes. Lubricants and Fuel are not included.
- 4.2. Mandatory Bulletins. TMUSA agrees to bear all labor and parts costs for incorporation of mandatory Service Bulletins on or in the Covered Equipment. If labor from the Customer is required to incorporate mandatory Service Bulletins, TMUSA shall pay Customer the Customer's actual direct labor expenses, not to exceed the TMUSA labor rate as published in the current TMUSA Basic Policies and Prices catalog.
- 4.3. Premature Wear or Failure. In the event of a breakdown or deterioration of the Covered Equipment due to defects in design, material, or workmanship in the manufacture, repair or overhaul of the Covered Equipment ("Premature Wear or Failure"), TMUSA will replace or repair the Covered Equipment; provided, however, that the choice between replacement or repair of Covered Equipment shall be made at the sole discretion of TMUSA.
- 4.4. Repair or Replacement. In the event that any Covered Equipment reaches TBO or exhibits Premature Wear or Failure, TMUSA will, at its sole discretion and consistent with its obligations hereunder, determine the extent of repair or replacement required. TMUSA shall provide the repair with a Standard Exchange, a repaired part or new part.
- 4.5. TMUSA's Right to Replace Parts. TMUSA reserves the right, at its sole discretion, to use new or serviceable used replacement parts in the course of repair or overhaul performed pursuant to this Agreement.
- 4.6. Force Majeure. TMUSA shall not be liable for a delay or failure to perform hereunder due to causes beyond its reasonable control, including but not limited to, fires, explosions,

Arriel 1 *Support By the Hour (SBH)*® Agreement

floods, earthquakes, embargoes, wars (declared or undeclared), riots, insurrections, or civil commotion.

- 4.7. Technician Training. TMUSA agrees to provide to Customer two (2) positions in TMUSA's Arriel Field Maintenance training course for the first year and one (1) position thereafter each year this Agreement remains in effect. Customer is responsible for its Technician's travel, transportation, lodging and meals expenses incurred while attending the Field Maintenance training course at TMUSA.
- 4.8. Publications Revisions. TMUSA agrees to provide, at no additional charge, revision service for Turbomeca publications including the Engine Maintenance Manual, Spare Parts Catalog, Service Bulletins, Service Letters, and General Information Letters, for each year this Agreement remains in effect.
- 4.9. Tool Rental. TMUSA agrees to lend, at no additional charge, special engine tools to Customer for carrying out field and/or modular maintenance works described in the Engine Maintenance Manual for each year this Agreement remains in effect. Customer is responsible for repair or replacement of special engine tooling if lost or damaged due to misuse, abuse, or breakage while in their possession. Customer agrees to promptly return special engine tools borrowed from TMUSA within three (3) days after completion of the field and/or modular maintenance. Beyond this time limit, Customer will be liable without further notice to a penalty equal to the daily rental rate of the tools as set forth in the current Price Catalog for tool rental.
- 4.10. Exclusions. The following supplies and services are excluded from the scope of this Agreement:
 - 1) Procurement of spare Equipment not covered elsewhere in this Agreement;
 - 2) Monitoring of Covered Equipment by spectrometric oil analysis or by particulate analysis;
 - 3) Supplying fuels or lubricant materials (other than for Covered Equipment testing);
 - 4) Carrying out field maintenance works to include module removal described in the Engine Maintenance Manual, except pursuant to mandatory Service Bulletins; and
 - 5) Purchase of spare equipment and tools for carrying out field and/or modular maintenance of the Covered Equipment.

ARTICLE 5

Customer's Obligations.

- 5.1. Hardware Provided by Customer. Customer agrees to provide all hardware, common tools, and similar items associated or required in connection with the removal and reinstallation of Covered Equipment by Customer.
- 5.2. Preservation of TMUSA Owned Equipment. Customer agrees to safely keep, carefully use, and keep in good mechanical and working condition at all times any and all TMUSA Owned Equipment with which customer is entrusted.
 - 1) Insurance In Transit. Customer agrees to provide and maintain ALL RISK PHYSICAL DAMAGE INSURANCE in the amount of full replacement value for all TMUSA Owned Equipment or supplies while in the custody of Customer or in transit to and from TMUSA. Such insurance is to take effect at the time and place of shipment to Customer and shall remain in effect until return delivery of said property to TMUSA.
 - 2) Insurance In Use. Customer further agrees that during such time any TMUSA Owned Equipment or supplies are installed in Customer's aircraft, Customer shall maintain ALL RISK GROUND AND FLIGHT HULL INSURANCE thereon in an amount sufficient so that TMUSA will recover fully the amount of any loss of said Equipment or supplies. Customer shall also maintain at all times Aircraft Bodily Injury and Property Damage Insurance, including Passengers, in an amount of at least \$20,000,000.00 Combined Single Limit.
 - 3) Required Insurance Provisions. Any and all insurance policies required herein shall include the following provisions:
 - (a) Except in cases of gross negligence which could be directly attributed to Turbomeca, S.A. or TMUSA, Customer waives its right to bringing any action against Turbomeca, S.A. and/or TMUSA implicating them in any injury, expense or damages suffered because of operation or preservation of the Covered Equipment or TMUSA owned Equipment.
 - (b) Customer will provide TMUSA with proof of adequate insurance coverage evidencing that the coverage respects the indemnification clause contained in Article 9 of this Agreement;

Arriel 1 *Support By the Hour (SBH)*® Agreement

- (c) All policies must provide that TMUSA be given thirty days advance notice of material change in or cancellation of the above coverage; and
 - (d) In the event of loss, any deductible is to be paid solely by the Customer.
- 4) Evidence of Insurance. Customer shall furnish TMUSA, within fifteen days prior to the commencement of the Agreement and within fifteen days prior to the expiration of any existing policy, evidence of coverage, for all of the insurance requirements set forth herein in the form of Certificates of Insurance satisfactory to TMUSA, indicating that coverage is in full force and effect.
- 5.3 Notice of Incident. Customer agrees to inform a TMUSA representative within twenty-four (24) hours of any incident occurring to, or caused by, the Covered Equipment or any other TMUSA Owned Equipment in the custody of Customer and, as a general rule, of any situation which will or may result in injury, damage or loss to TMUSA's property in the custody of Customer. A written report shall be submitted as soon as practicable. Notice must precede return of any failed equipment to TMUSA.
- 5.4. Notice of Modification. The Customer agrees not to undertake any modification or carry out any servicing, maintenance or repair to TMUSA Owned Equipment, Components, or Covered Equipment which is not provided for in Reference Documents for the specific Equipment, without prior written agreement and not unreasonable withheld.
- 5.5. Recordkeeping. Covered Equipment or component documentation such as log book module sheets and component log cards will be fully maintained in an up-to-date status by Customer. TMUSA will update the module sheets and component log cards, if required and as required, after a repair event is performed.
- 5.6. Operation and Maintenance Records. Customer shall keep records of Covered Equipment operation, maintenance and running time, and shall permit TMUSA to inspect and copy such records at any reasonable time.
- 5.7. Monthly Report. Each month Customer shall submit to TMUSA a written report, in the form of Exhibit III, incorporated by reference, of Covered Equipment operation, as of the last day of the prior calendar month, including: beginning hours, run time, ending hours, CSO, CSN, TSO, and TSN (the "Monthly Report"). The Monthly Report must be received by TMUSA by the fifth day of the month or Customer is subject to a \$75.00 fee for non-reporting.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 5.8. Change of Ownership; Liens. Customer shall not, except in compliance with Section 10.1 hereof, make or suffer to be made any change in the ownership, leasehold, operational interest, or financial interest or utilization of the Covered Equipment or any aircraft on which Covered Equipment is installed without prior written notice to and written approval by TMUSA. Customer shall not do any act that would result in the imposition of any lien, security interest, or other encumbrance on any TMUSA Owned Equipment.
- 5.9. Non-Covered Repairs and Maintenance. Customer agrees to provide for or obtain, at its own expense, all repairs and maintenance not covered by this Agreement.

ARTICLE 6

Pricing and Payment

- 6.1. Fixed Rate. The current fixed rate per operating interval of Covered Equipment is \$107.60 PER HOUR, per engine (the "Fixed Rate"), based on 1.0 Cycles per Hour. Additional Cycles or partial Cycles in excess of 1.0 cycles per Hour will be invoiced to Customer at a rate of \$4.72 PER .5 CYCLES PER HOUR. The Fixed Rate is valid for the calendar year (January through December), and is subject to adjustment each January 1, beginning January 1, 2004. The Fixed Rate will be subject to annual escalation effective each January 1st based on current economic conditions, but in no event shall the escalation exceed three percent (3%) for any one year. The Fixed Rate is valid only while Covered Equipment is operated within North America. Covered Equipment which is operated outside North America will be subject to the applicable Fixed Rate for the country of operation as determined by Turbomeca France.
- 6.2. Notification of Change of Operation. If any change occurs in operation or maintenance conditions or operation site that would place the helicopter in a corrosive or erosive environment on a continuous or repetitive basis, TMUSA and the customer will review and jointly agree to adjust the rate. The Customer shall notify TMUSA of any such changes within forty-eight (48) hours from the change occurring.
- 6.3. Balance between hours/cycles declared and hours/cycles logged. When covered equipment is returned to TMUSA, if the total hours/cycles declared and paid disagrees with the entries in the log book or log card, TMUSA and the customer will jointly agree to issue an invoice adjustment applying the Fixed Rate in effect at the time of adjustment to the difference in operating hours or cycles.
- 6.4. Supplemental Charges for Abnormal Wear, Accident, Modification or Transformation.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 1) Exclusions. This Agreement specifically excludes from coverage the repair or replacement of Covered Equipment arising from failures of Covered Equipment due to causes beyond normal wear and tear, including, without limitation, failure of Covered Equipment which:
 - a) Has not been operated in accordance with the procedures and standards set forth in the Reference Documents;
 - b) Has not been maintained in accordance with the procedures and standards set forth in the Reference Documents;
 - c) Has been subject to misuses, accidents, incidents, abuse, or force majeure (acts of nature) by any party other than TMUSA;
 - d) Has not been properly stored, installed, maintained, utilized or packed for transport by any party other than TMUSA in accordance with the procedures and standards set forth in the Reference Documents;
 - e) Has suffered damage due to corrosion, erosion or foreign object damage, beyond unacceptable manufacturer specifications, unless such damage was caused while the equipment was in the possession or control of TMUSA; or
 - f) Has suffered primary breakdown or deterioration of any component which was not acquired by Customer from TMUSA or other sources specifically approved by TMUSA in writing in advance of acquisition.

- 2) TMUSA Discovery of Exclusion. TMUSA shall advise Customer upon the discovery of any observed damage to Covered Equipment which appears to have been caused by any of the reasons set forth in Subsection 6.4(1) above. In such cases, Customer shall be responsible for the parts and labor costs of any such repair or replacement of the Covered Equipment ("Excluded Costs") actually caused by any of the reasons set forth in Subsection 6.4(1), and reimbursement to TMUSA of the Excluded Costs shall be made by Customer in addition to other payments made pursuant to this Agreement. If TMUSA labor is required to repair or replace any Covered Equipment as a result of damage caused by any of the reasons set forth in Subsection 6.4(1),

Arriel 1 *Support By the Hour (SBH)*® Agreement

Customer shall pay TMUSA the lesser of (1) TMUSA's actual direct labor expenses or (2) the TMUSA labor rates as published in the current TMUSA Basic Policies and Prices catalog.

6.5. Miscellaneous Expenses.

- 1) Taxes. The customer shall be liable for all federal, state, local or foreign taxes (except income taxes) applicable to the sale, exchange, use, delivery or transportation of Covered Equipment or services provided hereunder and all duties, imports, tariffs and similar payments shall be paid by Customer.
- 2) Missing Parts. In the event that Covered Equipment is delivered to TMUSA which is not complete because it is missing parts or components, TMUSA will replace any missing parts or components and shall be entitled to charge Customer no more than catalog list price (with any applicable discounts) for the same.
- 3) Travel. Customer agrees to bear its reasonable and customary labor and transportation costs for the removal, installation, normal modular and "on condition" maintenance and troubleshooting.
- 4) Reimbursement for Non-Covered Services. TMUSA shall not be liable for, and Customer agrees to reimburse TMUSA on demand for, any expenses, costs, or liabilities sustained in connection with the removal or replacement of Equipment or Covered Equipment in an aircraft or engine, other than those costs and expenses sustained by TMUSA in carrying out repairs and overhauls pursuant to this Agreement.

6.6. Purchase of Used Hours and Cycles. With respect to non-zero time Equipment to be covered by this Agreement, Customer will be required to purchase the used hours and cycles for a fee (the "Non-Zero Time Fee") equal to eighty-five percent (85%) of the Fixed Rate Charge currently in effect multiplied by the number of used hours and cycles, at the signing of this Agreement (Effective Date).

6.7. Premature Overhaul. If Covered Equipment is removed for overhaul at Customer's convenience, prior to its scheduled TBO, Customer shall be invoiced for the difference in the actual hours and cycles consumed on the Covered Equipment up to the time of removal and the scheduled TBO, based on the current Fixed Rate.

6.8. Payment Address. Customer shall send all payments due under this Agreement to:

Arriel 1 *Support By the Hour (SBH)*® Agreement

TURBOMECA USA, INC.
P.O. Box 841250
Dallas, Texas 75284-1250

For amounts over \$1,000.00 a transfer of funds to TMUSA may be made electronically. Customer should contact TMUSA for funds transfer instructions, should it elect to exercise this payment option.

Each payment should indicate the Covered Equipment serial numbers and the invoice numbers that it covers.

6.9. Monthly Payments.

- 1) Payment. Customer will be invoiced and shall pay to TMUSA monthly, an amount equal to the Fixed Rate multiplied by the actual hours or cycles of Covered Equipment operation (the "Fixed Rate Charges") as set forth in the Monthly Report and specified in this Agreement, plus any supplemental fees and other charges as calculated in Sections 6.3, 6.4, 6.5, 6.6, 6.7, and 7.6 hereof.
- 2) Interest on all amounts past due thirty (30) days or more shall be invoiced and paid at the rate of one and a half (1.5%) per annum.

ARTICLE 7

Shipment

7.1. Shipment to Customer. Unless otherwise specified in an order, TMUSA will ship, prepaid, at Customer's expense, Covered Equipment and supplies in packaging which conforms to the manufacturer's specification for long distance air freight, freight prepaid, to the following address (the "Customer Shipping Address"): LEE COUNTY EMERGENCY MEDICAL SERVICES, Six Mile Cypress Parkway, Fort Meyers, FL 33902

7.2. Delivery Leadtime.

- 1) Standard. In the case of scheduled removal of Covered Equipment pursuant to this Agreement, TMUSA will make every effort to ensure that Standard Exchange Equipment delivery to Customer will take place two (2) days before the removal date declared by the Customer on the Standard Exchange Equipment order, so long as such Standard Exchange Equipment order was received by TMUSA at least three (3) weeks in advance of the scheduled removal date.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 2) Emergency "AOG". On occasions when an unscheduled failure occurs to Covered Equipment, and the aircraft is out of service due to the unscheduled failure, TMUSA will make every effort to have the replacement item(s) delivered to the freight carrier within eight (8) hours following TMUSA's receipt of a written order (including FAX) from the Customer.
 - 3) TMUSA's failure to provide the AOG replacement item(s) to the freight carrier within twenty four (24) hours following TMUSA's receipt of a written order (including FAX) from the Customer, will result in a \$500.00 credit to Customer's *Support By the Hour (SBH)*® account at TMUSA. Additional \$500.00 for every day AOG is not to the freight carrier.
- 7.3. Shipment to TMUSA. The Customer shall ship, at its own risk and expense, Covered Equipment and other Equipment in packaging which conforms to the manufacturer's specification for long distance air freight, to TMUSA at the following address (the "TMUSA Shipping Address"):
- TURBOMECA USA, INC.
2709 Forum Drive
Grand Prairie, Texas 75051
- 7.4. Documentation. Any Covered Equipment delivered to TMUSA pursuant to this Agreement is to be accompanied by COMPLETE AND UP-TO-DATE DOCUMENTATION.
- 1) Engines and Modules. For engines and modules, documentation shall include the engine or module log book together with its appendices and, if Covered Equipment is to be repaired, the Customer's order and the engine removal report reference.
 - 2) Other Covered Equipment. For other Covered Equipment, documentation shall include the component log card and, if Covered Equipment is to be repaired, the order and a completed MMIR reporting form.
- 7.5. Promptness of Return. Any Covered Equipment delivered to TMUSA pursuant to this Agreement must be complete, including its documentation as stated in Section 7.4 above, and MUST BE SHIPPED TO THE TMUSA SHIPPING ADDRESS WITHIN TEN (10) DAYS counting from the day when the operating defect was deTMUSAd and the Covered Equipment removed. Beyond this time limit (in the case of a return) or beyond the time limit specified in Section 8.5 (with respect to termination), Customer will be liable, without any further notice, to a daily penalty equal to 0.2 percent of any such Covered

Arriel 1 *Support By the Hour (SBH)*® Agreement

Equipment's retail list price (for similar new items) in force at the time of removal or termination.

- 7.6. Costs Incurred on Return. It will be jointly decided that costs incurred by TMUSA for the examination, diagnosis and handling of Covered Equipment which has been returned to TMUSA with unconfirmed defects, will be invoiced separately, and paid by Customer.

ARTICLE 8

Termination and Cancellation

- 8.1. Default By Customer. If the Customer fails to comply with any of the terms or provisions of this Agreement within 30 days of written notice of any such default, TMUSA may terminate this Agreement by written notice (the "Cancellation Notice") to Customer, without any liability whatever on the part of TMUSA beyond the termination date.
- 8.2. Default By TMUSA. If TMUSA fails to comply with any of the terms or provisions of this Agreement within 30 days of written notice by Customer of any such default, Customer may terminate this Agreement by written notice to TMUSA.
- 8.3. Termination for Convenience. This Agreement may be unilaterally terminated by either party hereto, without cause, upon sixty (60) days prior written notice (the "Termination Notice") to the other party.
- 8.4. Loss of Covered Equipment. In the event that the Covered Equipment is lost or destroyed, the customer has the option to replace with like equipment of equal value based on hours and cycles. If not the Agreement will be deemed "Terminated" as of the date of loss.
- 8.5. Termination Date. This Agreement will terminate on a date (the "Termination Date") which will be the earliest to occur of the following: (1) immediately upon the Cancellation Notice, (2) sixty (60) days after the Termination Notice, or (3) unless renewed pursuant to Section 3 hereof, on the Completion Date.
- 8.6. Customer's Duties. Within five (5) business days after the Termination Date, Customer must return any and all Equipment and supplies belonging to TMUSA to the TMUSA Shipping Address, and pay in full the amount of accrued and outstanding charges owed to TMUSA under this Agreement.

Arriel 1 Support By the Hour (SBH)® Agreement

8.7. TMUSA's Duties. If this Agreement is terminated for convenience, a pro-rated portion of the Fixed Rate Charges paid by Customer will be applied as a credit to the Customer's trade account at TMUSA. This credit shall be calculated as follows for each module and fuel control unit:

$$\text{CREDIT} = \frac{\text{Equipment exchange List price}}{\Sigma \text{ Modules + FCU Exchange list price}} \times 60\% \text{ of the current hourly rate} \times \text{TSO of the Equipment at Contract Termination}$$

NOTE: In the case of "on condition equipment, this credit does not apply.

ARTICLE 9

Indemnification and Warranty

9.1. Indemnification. The County, to the extent allowed by Section 768.28, Florida Statutes, will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida.

1)

9.2. Airworthiness. TMUSA warrants to Customer that:

- 1) All work performed by TMUSA will be in compliance with applicable published airworthiness specifications in effect at the time said work is performed;
- 2) All work performed by TMUSA will be in compliance with applicable published directives and regulations of the Federal Aviation Administration in effect at the time the work is performed;
- 3) All work performed by TMUSA will conform to standards of good workmanship which are customarily recognized in the industry at the time the work is performed;
- 4) Equipment, if sold or supplied to Customer by TMUSA, is either new or in serviceable condition at the time of delivery.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 9.3. Warranty. This Agreement is separate from the Turbomeca limited warranty. No agreement or understanding varying or extending the terms of the Turbomeca limited warranty shall be binding on TMUSA unless expressed in writing and executed by a duly authorized representative of TMUSA.

ARTICLE 10

Transfer of Covered Equipment

- 10.1. Sale or Transfer of Covered Equipment. In the event of a sale or transfer of Covered Equipment (the "Transfer") to a third party (the "Transferee"), TMUSA has the right, but not the obligation, to allow the Transferee to obtain coverage under this Agreement.
- 1) Notice of Intent to Transfer. Customer shall notify TMUSA of Customer's intentions to Transfer, and shall pay all sums normally due to TMUSA up to the date of Transfer, at least fifteen (15) days prior to Transfer.
 - 2) Termination of Coverage. In the event that TMUSA does not offer the Transferee, or Transferee does not accept, coverage under this Agreement, the notice by TMUSA to Customer, or Transferee to TMUSA, of such decision shall be the Cancellation Notice and this Agreement shall terminate as of the date of Transfer as if Customer exercised his right to terminate this Agreement pursuant to Section 8.2 of this Agreement.

ARTICLE 11

Miscellaneous

- 11.1. Place of Performance and Governing Law. This Agreement is made in the State of Texas and shall for all purposes be governed by and construed in accordance with the laws of such State and the laws of the United States applicable to transactions in the State of Texas.
- 11.2. Further Actions. Each of the parties hereto agrees that they will perform all such other actions as may be necessary or reasonably appropriate to carry out the intent and purposes of this Agreement.
- 11.3. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by all the parties hereto. No waiver of any term or condition of this Agreement shall be enforceable unless it

Arriel 1 *Support By the Hour (SBH)*® Agreement

shall be in writing signed by the party against which it is sought to enforce. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by such other party.

- 11.4. **Cost of Enforcement.** If any action at law or in equity or any other proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.
- 11.5. **Arbitration.** The parties hereto agree, and consent on advice of counsel, that any controversy with respect to performance under the terms of the Agreement, or arising out of the Agreement will be submitted to arbitration pursuant to the provisions of the Texas General Arbitration Act, Title 10, Vernon's Tex. Civ. Stat. Ann. Art. 224 - 238. Arbitration will be jointly agreed to in writing.
- 11.6. **Severability.** Customer acknowledges and agrees that each agreement or covenant set forth in this Agreement constitutes a separate agreement or covenant independently supported by good and adequate consideration and that each such agreement or covenant shall, if necessary, be severable from the other provisions of this Agreement. The existence of any claim or cause of action of Customer against TMUSA, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by TMUSA of those separate agreements and covenants. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never constituted a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- 11.7. **Assignability.** The rights and benefits of either party under this Agreement may not be assigned, nor the duties thereunder delegated by such parties, without written consent, signed by the parties hereto.
- 11.8. **Headings.** The Article and Section headings used in this Agreement are for reference and convenience only and shall not affect the interpretation of this Agreement.

Arriel 1 *Support By the Hour (SBH)*® Agreement

- 11.9. Amendments. This Agreement, and any attachments hereto, set forth the complete understanding and agreement of the parties hereto and shall be amended only in writing, signed by both parties.
- 11.10. Gender. Whenever in this Agreement the context so requires, the male gender shall include and the neuter shall include the male and the female.
- 11.11. Number. The use in this Agreement of the singular number shall include the plural, and the plural number shall include the singular wherever appropriate.
- 11.12. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.
- 11.13. Notifications. All orders, messages, or notifications relevant to the Agreement shall be by when they are handed personally, sent by registered mail, or sent by FAX to the address given below:

TURBOMECA USA, INC.
2709 Forum Drive
Grand Prairie, Texas 75052
Manager of *Support By the Hour (SBH)*®
FAX: (972) 606-7668

Customer's Address:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
Emergency Medical Services
14752 Six Mile Cypress Parkway
Fort Meyers, Florida 33902
FAX: (239) 335-1638

Arriel 1 *Support By the Hour (SBH)*® Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first written above.

TURBOMECA USA, INC.

BY: 
J. RUSSEL SPRAY
President & CEO

DATE: 3 December 2003

ATTEST:
CLERK OF CIRCUIT COURT

COUNTY: LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM

BY: _____
County Attorney's Office

Arriel 1 *Support By the Hour (SBH)*® Agreement

EXHIBIT I

COVERED EQUIPMENT

This Agreement covers the following Equipment:

Description	Aircraft S/N	Engine S/N	TSN	CYCLES
Arriel 1E2 Engine	_____	_____	_____	_____
Arriel 1E2 Engine	_____	_____	_____	_____

Each Arriel Engines listed above includes the following LRU items:

- | | |
|------------------------------|-------------------------|
| Bleed Valve | Tach Transmitter |
| Check Valve | Thermocouple Harness |
| Control & Monitoring Harness | Torque Transmitter |
| Drain Valve | Tach Box |
| Electro Valve | Exhaust Duct |
| Fire DeTMUSAtors | Free Wheel Shaft |
| Fuel Control Unit | H.E. Generators |
| H.E. Igniters | Low Oil Pressure Switch |
| Oil Pump | Overspeed Pickup |
| Pressurizing Valve | Start Drain Valve |
| Start Fuel Injectors | Starting Electro Valve |

Arriel 1 *Support By the Hour (SBH)*® Agreement

EXHIBIT II

CERTIFICATE OF TITLE TRANSFER

From: _____

TO: TURBOMECA

SUBJECT: *Support By the Hour (SBH)*® AGREEMENT

Dear Sirs:

On behalf of _____, I (state name and job description) hereby acknowledge receipt of and right title and interest to the following Standard Exchange Equipment pursuant to the terms of the above mentioned Agreement.

EQUIPMENT RECEIVED FROM TURBOMECA:

Description	Serial Number	Quantity

I further confirm that the following Equipment has been returned to TMUSA, and that right title and interest to the Equipment has been passed to TMUSA by virtue of the above mentioned Agreement.

EQUIPMENT RETURNED TO TURBOMECA:

Description	Serial Number	Quantity

Name and date: _____

EXHIBIT II
(continued)

BILL OF SALE

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT §

That the undersigned, Turbomeca USA, Inc., ("Seller"), for and in consideration of the transfer this day by _____ ("Buyer") to Seller of certain property, and other good and valuable consideration, the full receipt and sufficiency of which are hereby acknowledged and confessed, does hereby BARGAIN, SELL, and DELIVER unto the Buyer, its successors and assigns all of the property described on Exhibit A attached hereto and incorporated herein by reference (the "Property") TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging unto Buyer, its successors and assigns.

Executed this ____ day of _____, 2003.

TURBOMECA USA, INC.

By: _____

Title: _____

Arriel 1 *Support By the Hour (SBH)*® Agreement

EXHIBIT III

TURBOMECA USA, INC.
 (FAX) 972-606-7608

Support By the Hour (SBH)® AGREEMENT
 MONTHLY OPERATING REPORT

Date _____ Reporting Month _____

Aircraft No. _____ Engine Model _____

Customer Name _____ Telephone No. _____

Engine No. 1

Engine	S/N	Hours			Cycles		
		Start	End	Usage	Start	End	Usage
MO1							
MO2							
MO3							
MO4							
MO5							

Engine No. 2

Engine	S/N	Hours			Cycles		
		Start	End	Usage	Start	End	Usage
MO1							
MO2							
MO3							
MO4							
MO5							