

GUILFORD COUNTY
OFFICE OF THE COUNTY ATTORNEY

July 5, 2016

Mr. Hal Johnson
Randolph County Manager
Randolph County Office Bldg. 2nd Floor
725 McDowell Road
Asheboro, NC 27205

Mr. Robert Graves, Sheriff
Randolph County Sheriff's Office
727 McDowell Road
Asheboro, NC 27205

Mr. Craig Honeycutt
Alamance County Manager
Alamance County Office Building
124 West Elm Street
Graham, NC 27253

Mr. Terry Johnson, Sheriff
Alamance County Sheriff's Office
109 South Maple Street
Graham, NC 27253

Mr. Shelton Brown
Alamance County Sheriff's Office
109 South Maple Street
Graham, NC 27253

Mr. Ryan McClelland
Randolph County Sheriff's Office
727 McDowell Road
Asheboro, NC 27205

Re: Guilford County Contract No. 00632D-01/15-256
Aviation Program/ Transfer of Airplane – 4/4/2016 – 4/3/2026 (with option for
extensions thereafter)

Gentlemen:

A fully executed original or photocopy of the above-referenced Agreement is enclosed for the County's records. If there are any questions or if I may be of any further assistance, please call me at (336) 641-3048 or email me at dbrown@myguilford.com Thank you.

Sincerely,

Dasha W. Brown, NCCP
Paralegal

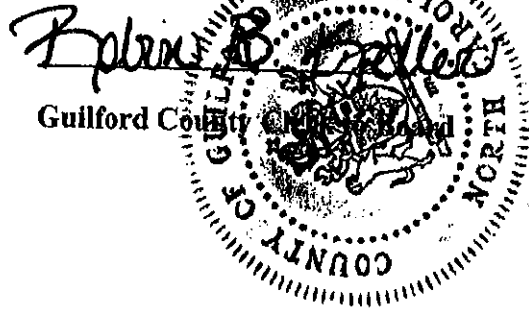
Enclosure

GUILFORD COUNTY

Marty K. Lawing 2-2-16

Marty K. Lawing, Guilford County Manager

ATTEST:



(COUNTY SEAL)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

N/A

Guilford County Finance Director

BJ Barnes

Guilford County Sheriff's Office

BJ Barnes, Guilford County Sheriff

Guilford County POC:

Col. Randy Powers

Address: 400 West Washington St.

Greensboro, NC 27401

Phone: (336) 641-6109

Email: rpowers@co.guilford.nc.us

GUILFORD COUNTY CONTRACT NO. 00632D-01/15-256

ALAMANCE COUNTY

Craig Honeycutt

Craig Honeycutt, Alamance County Manager

ATTEST:

Cory Crunk

Alamance County Clerk to Board



This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan D. Coburn

Alamance County Finance Director

Terry S. Johnson

Alamance County Sheriff's Office

Terry Johnson, Alamance County Sheriff

Alamance County POC:

Name: Shelton Brown, Maj.

Address: 109 S. Maple St
Colum NC 27253

Phone: (336) 516-1421

Email: _____

GUILFORD COUNTY CONTRACT NO. 00632D-01/15-256

RANDOLPH COUNTY

Hal Johnson
Hal Johnson, Randolph County Manager

ATTEST:

Amanda Varner
Randolph County Clerk to Board

(COUNTY SEAL)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

W. Massie
Randolph County Finance Director

Robert Graves
Randolph County Sheriff's Office
Robert Graves, Randolph County Sheriff

Randolph County POC:

Name: Ryan McClelland
Address: 727 McDowell Rd.
Asheboro, NC 27205
Phone: 336-669-9251
Email: Ryan.McClelland@randolphcountync.gov

GUILFORD COUNTY CONTRACT NO. 00632D-01/15-256

GUILFORD COUNTY CONTRACT NO. 00632D-01/15-256

**AGREEMENT TO PARTICIPATE IN THE GUILFORD COUNTY SHERIFF'S OFFICE
AVIATION PROGRAM**

MEMORANDUM OF UNDERSTANDING FOR THE USE OF Tecnam Eaglet, Registration Number N731TE, between THE GUILFORD COUNTY SHERIFF'S OFFICE, ALAMANCE COUNTY SHERIFF'S OFFICE and RANDOLPH COUNTY SHERIFF'S OFFICE

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the "MOU" or "Agreement", is made as of the 4th day of April, 2016, by and between the Guilford County Sheriff's Office (hereinafter referred to as the "GCSO"), Alamance County Sheriff's Office and Randolph County Sheriff's Office (hereinafter collectively referred to as the "Signatory Agencies"). For the purposes of this MOU, the Agencies shall be known collectively as "the Agencies" or "the Parties."

WITNESSETH:

WHEREAS, the Agencies have been utilizing an aircraft pursuant to an Agreement between themselves, the NIJ and the Sheriff's Association of Texas, which has ended and absent this Agreement the Agencies will not have an aviation program or aviation assets to support law enforcement and public safety missions and there is a current need for aviation assets.

WHEREAS, the Agencies severally agree to abide by the terms and provisions of this MOU and agree to form a joint operation to make available to the Agencies the use of the aircraft described herein.

WHEREAS, the Agencies agree to share their collective resources to permit effective, cooperative and coordinated operations through all of their jurisdictions for use of the Aircraft provided through the Guilford County Sheriff's Office.

WHEREAS, through the execution of this MOU agree that they shall adhere to the laws, guidelines and rules set forth governing the use of the Aircraft as a Public Use Aircraft. In compliance with these laws, the Parties shall not compensate one another for the use of the Aircraft, or for the use of personnel in the operation of the Aircraft, pursuant to this MOU. In addition, the Parties to this MOU agree to adhere to the terms and conditions hereof.

WHEREAS, the Guilford County Sheriff's Office is willing to provide the Signatory Agencies, subject to the provisions of this MOU, the use of a Tecnam Eaglet, Registration Number N731TE (the "Aircraft") owned by the Guilford County Sheriff's Office.

WHEREAS, the Agencies will cooperate in sharing the Aircraft to be used by all of the Agencies.

WHEREAS, The Guilford County Sheriff's Office and the Signatory Agencies desire to set forth their understanding of the terms and conditions governing the use and maintenance of the Aircraft.

NOW, THEREFORE, the Guilford County Sheriff's Office and the Signatory Agencies set forth their understanding as follows:

ARTICLE I

DEFINITIONS

- 1.1 Chief Pilot-** An Air Support Unit pilot appointed to the position of Chief Pilot by the Sheriff of Guilford County who is responsible for managing the day to day operations of the Air Support Unit.
- 1.2 Engine Reserve-** Funds dedicated to the overhaul and / or replacement of the Aircraft engine.
- 1.3 Fixed Costs-** Those costs that do not fluctuate with Aircraft usage, such as, but not limited to, hangar fees, annual condition inspections and insurance.
- 1.4 Operational Costs-** Those costs incurred each time the Aircraft is used, such as, but not limited to, maintenance, repairs, inspections and the purchase of fuel and oil.
- 1.5 PIC-** Pilot in Command as defined by the FAA.
- 1.6 Variable Costs-** Operational costs plus engine reserve.
- 1.7 VFR-** Visual Flight Rules as defined by the FAA.
- 1.8 Hobbs Hour-** Aviation flight time recorded by the Hobbs meter onboard the aircraft.

ARTICLE II

TERM AND TERMINATION

- 2.1 TERM:** This MOU shall commence upon execution by the Parties, as of the date first stated above, and shall continue, subject to the termination provisions contained herein, for ten (10) years, at the end of which ten (ten) year period it shall automatically renew for successive one (1) year terms.
- 2.2 TERMINATION:** The Parties may terminate this MOU with or without cause under the following conditions:

- 2.2.1 With Cause:** The Guilford County Sheriff's Office or any of the Signatory Agencies may move to terminate another Agency which is a current Party to this Agreement with cause Termination for cause by the Agencies must be by a majority decision of the Agencies. Cause shall include any of the following:
- Loss of Aircraft
 - Loss of insurance coverage
 - Loss of storage for the Aircraft
 - Failing to make timely payments for fixed or variable costs as set forth herein; or
 - Use of the Aircraft in an unreasonable or unsafe manner as determined by the Guilford County Sheriff's Office or the majority of the Agencies.
- Termination is effective immediately upon written notification of intent to terminate the Agency when such termination is for cause.
- 2.2.2 Without Cause:** The Guilford County Sheriff's Office or the Signatory Agencies may terminate an Agency which is a current Party to this Agreement without cause by providing sixty (60) days written notice to that Agency of its intention to terminate the Agency and that Agency's participation in this Agreement. The Agencies may only terminate an Agency without cause if a majority of the Agencies vote for termination.
- 2.2.3 Voluntary Separation by Single Agency:** An Agency which is a current Party to this Agreement may voluntarily terminate its participation in the Agreement and the Aviation Program for any reason, without penalty, and without the consent of the other Agencies by providing sixty (60) days written notice of its intent to terminate to the other Agencies who are Parties to this Agreement.
- 2.2.4 Effect of Termination:** No Amendment is required in the instance of a Party being removed from the Agreement, however, at the time of termination of a Party, copies of the written notification of intent to terminate are also to be provided to the Guilford County Finance and Legal Departments by the Guilford County Sheriff's Office as notification of a significant change in this Agreement. Voluntary or involuntary termination of an Agency as being a Party and of its participation under this Agreement shall not terminate this Agreement as between the remaining Parties; this Agreement shall continue to exist and be effective. In the event that this Agreement is terminated the Aircraft will be promptly returned to the custody of the Guilford County Sheriff's Office and any and all unexpended funds set aside for the Aircraft engine reserve pursuant to Section 4.4.5 shall be transferred to the Guilford County Sheriff's Office. Any liabilities existing prior to the termination of a terminating or terminated Agency's use of

the Aircraft, such as, but not limited to, hangar fees, fuel fees, maintenance bills or tort liability shall remain the responsibility of the Agencies after termination of this Agreement. After all accounts have been settled, each Agency shall be entitled to the return of its remaining account balance, if any; if an Agency's account balance is negative, the Agency shall be responsible for paying the shortfall.

ARTICLE III

AGENCIES POINT OF CONTACT

- 3.1 Point of Contact:** Each Agency shall designate one individual to be the Point of Contact (hereinafter referred to as "POC") for purposes of this Agreement. All notices shall be sent to the Sheriff and to the POC. The POC shall be responsible for representing his/her agency at all meetings and votes. Each POC should have authority to bind his/her agency to any lawful decision made on behalf of his/her Agency with regard to the operation and maintenance of the Aircraft and participation in the Guilford County Sheriff's Office Aviation Program unless such POC's Sheriff revokes that authority. The Agencies shall provide the name and contact information of the POC to the Guilford County Sheriff's Office and to all other Signatory Agencies named in this MOU.
- 3.2 Vote:** Any decision made by the Agencies with regard to the operation and maintenance of the Aircraft or any Agency's participation in the aviation program shall be made by majority vote of all participating Agencies. Each Agency's POC shall be responsible for casting his/her Agency's vote. All votes shall be conducted in writing and results of those votes shall be immediately provided to the Guilford County Sheriff's Office.
- 3.3 Chief Pilot:** The Chief Pilot shall be Greg Russell of the Guilford County Sheriff's Office, or other pilot as the Guilford County Sheriff may designate. The Chief Pilot shall have the following responsibilities:
- 3.3.1** The Chief Pilot shall communicate with the Agencies regarding Aircraft maintenance, operations, and other matters concerning the Aviation Program.
 - 3.3.2** The Chief Pilot shall be responsible for managing the scheduling of Aircraft use and shall have the final authority in deciding scheduling priority for Aircraft use.
 - 3.3.3** The Chief Pilot or his/her designee shall be responsible for collecting and managing all funds relating to Aircraft use. The Chief Pilot shall ensure that all invoices arising out of the use of the Aircraft are paid in a timely manner.
 - 3.3.4** The Guilford County Sheriff's Office is responsible for managing the collective account for the aviation program. All Agencies contributed an initial start-up amount of \$10,000.00 under the predecessor MOU. Any remaining account balances under the former MOU shall carry forward under this MOU. Each Agency's portion of the costs shall be debited from its contribution (though this shall not relieve an Agency from responsibility for its share of costs in the event it exhausts its account balance). When an individual Agency's account balance falls

below \$1,000.00, the Agency will be notified in writing to replenish its account with sufficient funds to permit uninterrupted participation in the aviation program. Agency contributions under this MOU shall originate, to the fullest extent possible, from federal forfeiture funds received under the United States Treasury forfeiture program, but may be paid from other sources at the discretion of each Agency's Sheriff.

3.4 Supervision: Operational supervision will be vested in the Sheriff of the Agency utilizing the Aircraft and may be delegated through the chain of command to the Sheriff's designee.

3.4.1 The Sheriff of Guilford County or his designee has executive responsibility for the overall operation of the Aviation Unit. The Chief Pilot has operational responsibility. All pilots, observers and other personnel performing aviation related functions shall report directly to the Chief Pilot while performing aviation duties. The Chief Pilot reports directly to the Sheriff of Guilford County or to his designee for operational purposes.

Nothing contained in this MOU shall be construed to alter the employment relationship existing between each Party and its respective employees nor does it create a joint agency. Each Agency will determine which of its employees will participate in operations covered by this MOU. If a member sustains an accidental injury or loss of life in the line of duty, the employing Agency will be liable for all benefits awarded, including but not limited to workers' compensation benefits and any death and disability benefits of the affected employee and his/her family.

3.4.2 During the period of assignment to the cooperative effort, each Agency will remain responsible for maintaining and providing all benefits and protections for its employees(s) as set forth by each Agency, including, but not limited to, any pension, relief, disability, workers' compensation, and other benefits enjoyed by those employees while performing their duties, whether performed within or outside the jurisdictional boundaries of the employee's employing Agency. Each employee assigned to the joint operation or investigation will keep and submit accurate time records. In addition, when an employee is assigned to operate or be present in the Aircraft outside of his or her own jurisdiction, he or she shall be directly compensated for any time spent related to that assignment by his/her own Agency.

3.4.3 Supervision is divided into two areas of responsibility to ensure proper management of personnel and resources. Ground Command is maintained in the normal chain of command through first line supervisors as designated by the respective Agencies' chain of command. Air Command is the responsibility of the Chief Pilot. The Pilot in Command shall have direct supervisory control over other personnel serving onboard the Aircraft during flight and ground activities associated with a mission.

ARTICLE IV

UTILIZATION OF THE AIRCRAFT

- 4.1 Law Enforcement Purpose:** The Parties understand that the Aircraft shall be used exclusively for law enforcement or other public safety operational missions and related training purposes.
- 4.2 Individuals Permitted to Use the Aircraft:** The Parties understand that the Aircraft may only be operated by agents or employees of one of the Parties who have received appropriate training such that their use is covered by the Parties' insurance. In addition, use of the Aircraft shall conform to the Guilford County Sheriff's Air Support Unit Standard Operating Procedures. Any additional SOP's developed by any other Agency must be in compliance with or, at a minimum, be as restrictive as the Guilford County Sheriff's Office Air Support Unit SOP. The use of the Aircraft shall at all times conform with all applicable Federal, State, and Local laws, regulations, and ordinances.
- 4.3 Scheduling:** The Agencies shall be responsible for utilizing a scheduling system for the Aircraft. The Chief Pilot shall be responsible for maintaining the schedule. Each agency will have access to the Aircraft through the schedule. Scheduling shall be made on a first come, first serve basis. In the event of a law enforcement emergency, however, the Agency needing the Aircraft for such law enforcement emergency mission shall have priority over any other Agency using the Aircraft for routine law enforcement or training missions. Also, in the event an Agency uses the Aircraft for more than fifteen (15) hours in one calendar month, any Agency with less than fifteen (15) hours of use during that same calendar month shall have priority during that month over the Agency who has used the Aircraft for more than fifteen (15) hours in that calendar month. Any disputes arising out of scheduling shall be resolved by the Chief Pilot, who has final authority in resolving such disputes.
- 4.4 Operational Cost:** The Agencies shall be responsible for operational costs. Operational costs shall be divided into fixed costs, variable costs and fuel costs.
- 4.4.1 Statement of Aircraft Use:** The Statement of Aircraft Use shall include the date of and purpose for each flight, the amount of flight time as indicated on the Hobbs meter, and the identity of the Pilot-in-Command. HOBBS usage calculation is based upon usage of hours by each participating Agency.
- 4.4.2 Fixed Costs:** The Agencies shall be responsible for sharing equally in the fixed costs of the Aircraft. Fixed costs presently include, but are not limited to, storage, insurance, and annual condition inspections. The initial fixed costs shall be established by the Guilford County Sheriff's Office but may be modified by the Agencies pursuant the provisions of Section 3.2. Any modification to the fixed costs must be approved by the Guilford County Sheriff's Office before the modification becomes effective.

- 4.4.3 Variable Costs:** The Agencies shall each be individually responsible for their share of the variable costs of operating the Aircraft. Variable costs include, but are not limited to, fuel costs and contributions to the engine reserve account based on HOBBS hours logged.
- 4.4.4 Fuel Costs:** The Aircraft will be filled with fuel at the conclusion of each flight. Agencies shall supply their own credit cards to pay the fuel supplier for the purchase of fuel for the aircraft. Additionally, the credit card receipt (both the merchant and customer copy) will be signed by the Pilot in Command and submitted to the appropriate Sheriff's Office and its representative for fuel purchase accountability. The Pilot in Command will also note on the bottom of the customers' copy of the receipt the name or names of the Agency(s) for which the fuel was purchased.
- 4.4.5 Engine Reserve:** The account of each Agency operating the Aircraft shall be debited \$15.00 per HOBBS hour of use by that agency. The debited amount of \$15.00 shall be deposited into an account titled "Engine Reserve Account."
- 4.4.6 Inspection Costs:** The cost of the annual condition inspection of the Aircraft shall be allocated to each agency based on fixed cost responsibilities noted in Section 4.4.2 of this MOU.
- 4.4.7 Payment:** The Agencies will assign personnel to oversee the creation and maintenance of flight and financial records. The Parties to this MOU shall keep accurate and current records documenting the usage and operational expenses of the Aircraft. Charges to individual agency accounts shall be executed by the Guilford County Sheriff's Office based upon all expenses incurred by participating Agencies whether fixed, variable, or fuel. All Agencies can request detailed financial information related to expenses incurred as a part of this MOU and the Aircraft program at any time.
- 4.4.8 Maintenance Cost:** The Agencies shall be responsible for their portion of the annual condition inspection of the aircraft based on fixed cost responsibilities noted in Section 4.4.2 of this MOU. For items repaired or replaced that have been determined to be attributable to a single Agency's use of the Aircraft, the cost to repair or replace such parts shall be charged to the responsible Agency's account at 100% of the total cost of repair or replacement. The Guilford County Sheriff's Office will be responsible for the maintenance costs for any general wear and tear items not otherwise expressly covered in other sections of this Agreement. In the event the aircraft needs maintenance, repair or inspection, the Chief Pilot or the Chief Pilot's designee will use the monies in the General Account or the Engine Reserve Account, as appropriate, to pay for such expenses.
- 4.4.9 Maintenance:** The Chief Pilot shall have the authority to agree to any and all needed maintenance on the Aircraft and shall bind the Parties in expending funds for such maintenance.

ARTICLE V

ADDITIONAL PARTIES

- 5.1 Additional Public Law Enforcement Agencies may be added as Parties to this MOU by a written Amendment hereto executed by all Parties.

ARTICLE VI

REPORTING

- 6.1 The Pilot in Command shall be responsible for submitting individual mission reports to the Chief Pilot. Failure to submit mission reports in a timely manner may be cause for immediate termination from the program. The Chief Pilot shall be responsible for submitting monthly operational and cost reports to the Guilford County Sheriff's Office describing the use of the Aircraft.

ARTICLE VII

INSURANCE

- 7.1 The Agencies shall be responsible for obtaining and maintaining insurance for the Aircraft at all times. Insurance shall include at least \$126,065.00 in hull insurance and at least \$1,000,000.00 in general liability insurance with the Guilford County Sheriff's Office as a named insured.

ARTICLE VIII

INDEMNIFICATION AND RELEASE OF LIABILITY

- 8.1 To the extent permissible under applicable law, each Agency hereby indemnifies and holds the Guilford County Sheriff's Office, the other Agencies and each of their employees, agents, contractors, invitees, or licensees harmless and hereby waives and releases such other Parties from and against any and all losses, costs, damages, liability and expenses for any damage to property, or for injury to or death of any person arising out of such Agency's, its employees', agents' or contractors' use of the Aircraft. Without limiting the foregoing, each Agency shall be individually responsible for the cost of any damage to the Aircraft while the Aircraft is being used by that Agency, to the extent not covered by insurance. For purposes of this paragraph, the Agency using the Aircraft shall be deemed to be the Agency whose mission or training flight is being flown at the time of the incident in question, regardless of the affiliation of the persons piloting or occupying the Aircraft. Each person occupying the Aircraft, including all pilots, passengers and observers, must sign a release of liability in a form acceptable to the Chief Pilot before being permitted to occupy the Aircraft.

ARTICLE IX

NOTICES

- 9.1** All notices and communication to the Parties must be in writing and will be delivered to the Party's POC by hand or sent by registered or certified mail, return receipt requested, or by overnight delivery service that provides a receipt to the sender. Receipt of a notice by the Party to whom the notice is transmitted will be deemed to have occurred: (a) upon receipt, if hand delivered; (b) five days from the date of the mailing, if mailed; or (c) the next business day after delivery by overnight delivery service that provides a receipt to the sender.

All notices and correspondence will also be sent to the Chief Pilot and POC of the Guilford County Sheriff's Office.

All notices and correspondence to the Agencies will be delivered to each Agency's POC and to the address (es) and addressee(s) listed on the signature pages.

ARTICLE X

GOVERNING LAW

- 10.1** This MOU and its performance shall be governed by and construed in accordance with the laws of the State of North Carolina, including N.C.G.S. 143-129(j) regarding E-Verify. By execution of this MOU, the Parties consent to submit exclusively to the jurisdiction of the state courts of the State of North Carolina and the federal courts of the Middle District of North Carolina.

ARTICLE XI

WAIVER

- 11.0** Waiver by the Guilford County Sheriff's Office of a breach of any provision of this MOU shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the MOU unless and until the same shall be agreed to in writing by the Guilford County Sheriff's Office.

ARTICLE XII

SEVERABILITY

- 12.1** If any provision of this MOU shall, to any extent, be determined to be invalid or unenforceable, then the remainder of this MOU shall not be affected thereby and each remaining provision of this MOU shall be valid and be enforceable to the fullest extent permitted by applicable law.

ARTICLE XIII
MODIFICATION

- 13.1** No modification, amendment, waiver or release of any provision of this MOU or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless made in writing and duly executed by all Parties, except as expressly allowed elsewhere in this Agreement.

ARTICLE XIV
FORM OF AGREEMENT

- 14.1** This written MOU contains all of the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or bind any of the Parties hereto, or to vary any of the terms contained herein.
- 14.2** Inclusion of titles of paragraphs or section headings, capitalization of certain words or phrases and/or bold face typestyle of certain words or phrases in this Contract are for convenience purposes only and shall not be used to interpret or construe the provisions of this Agreement. The terms "Contract," "Agreement," "Memorandum of Agreement," and "Memorandum of Understanding" all have the same meaning and may be used interchangeably throughout this document.

ARTICLE XV
IMMUNITIES

- 15.1** Nothing in this MOU shall be construed to waive the governmental immunity of any Party, the public official immunity of any officer or employee, or any other privilege or immunity afforded by state, federal, or local law. There are no intended third-party beneficiaries of this MOU.

ARTICLE XVI
EXECUTION AND EFFECTIVENESS

- 16.1** Separate copies of this MOU may be executed by the Parties and signature pages or copies thereof brought together to form the completed document. The Parties acknowledge that the effectiveness of this MOU is subject to ratification by resolutions of the County Commissioners of Guilford, Alamance, and Randolph Counties in accordance with N.C.G.S. 160A-461.