

**HABERSHAM COUNTY BOARD OF COMMISSIONERS**

**EXECUTIVE SUMMARY**

**SUBJECT:** Intergovernmental Agreement with Tallulah Falls.

**DATE:** 12/27/2023

**RECOMMENDATION**

**POLICY DISCUSSION**

**BUDGET INFORMATION:**

**STATUS REPORT**

**ANNUAL-**

**OTHER**

**CAPITAL-**

**COMMISSION ACTION REQUESTED ON:** January 16, 2023

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**PURPOSE:**

To seek Commission approval of an IGA with Tallulah Falls regarding the donation of a drone to Habersham County Emergency Services for the use during emergent situations, including rescue and reconnaissance of rescue type situations.

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**BACKGROUND / HISTORY:**

- a. The Emergency Services department, along with Tallulah Falls Fire, Police and Rabun County Rescue respond to Tallulah Gorge State Park multiple times every year to assist and rescue individuals.
- b. The technology will better allow rescuers to the situation of the individuals, prior to hiking down and determining needs at that time.
- c. The drone is being donated by Tallulah Falls from funds gained through the speeding fines as detected by the camera system at Tallulah Falls School.

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**FACTS AND ISSUES:**

- a. In 2022, Emergency Services responded to Tallulah Gorge 33 times.
- b. In 2023, 41 responses were requested at the Gorge.
- c. So far in 2023, 28 responses have been dispatched to the location.
- d. Many times, the individuals need minimal assistance and being able to survey the situation before sending crews to the individual would minimize energies spent.
- e. Rescues at the Gorge range from 30 minutes to 6 hours, depending on needs. The drone will better prepare rescuers for needs prior to the descent.
- f. The drone is equipped with infrared technology to help with rescues in the dark.
- g. Its use is not limited to the State Park, so it could be used for other rescue situations, including structure fires, Panther Creek, and lost individuals.

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**OPTIONS:**

- 1) Approve recommendation: Approve Intergovernmental Agreement with Tallulah Falls.
  - 2) Deny recommendation: Deny approval of IGA with Tallulah Falls.
  - 3) Commission defined alternative: As specified
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**RECOMMENDED SAMPLE MOTION:**

**Motion to approve Intergovernmental Agreement with Tallulah Falls for the donation of the Matrice 30 T drone to Habersham County Emergency Services.**

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**DEPARTMENT:**

Prepared by:

Jeffrey D. Adams

Director: \_\_

Jeffrey D. Adams \_\_\_\_\_

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**ADMINISTRATIVE**

**COMMENTS:** \_\_\_\_\_

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\_\_\_\_\_ **DATE:** \_\_\_\_\_

County Manager

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## **INTERGOVERNMENTAL AGREEMENT AND CONTRACT FOR DRONE SERVICES**

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Tallulah Falls, Georgia (hereinafter "Purchaser") and Habersham County, Georgia (hereinafter "Operator"). Operator and Purchaser may be referred to herein each as a "Party" or, collectively, as the "Parties". The parties hereby witnesseth that:

**WHEREAS**, Purchaser is engaged in the business of providing services to its customers;

**WHEREAS**, Operator will provide emergency services flown by an Unmanned Aircraft System (hereinafter referred to as "UAS") after receiving a Certificate of Authorization (hereinafter referred to as "COA"), waiver from the Federal Aviation Administration (hereinafter referred to as a "waiver") or pursuant to 14 C.F.R. § 107;

**WHEREAS**, Purchaser desires to contract with Operator to provide UAS emergency services, including the aircraft, personnel, Certificates of Authorization or waivers or emergency services flown pursuant to 14 C.F.R. § 107 and other equipment necessary to safely provide those services subject to and in accordance with such terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, conditions and agreements contained herein, the parties hereto do mutually agree as follows:

### **(1) Nature and Term of Agreement.**

**Nature and Term of Agreement.** Purchaser wishes to have the Operator provide emergency UAS services employing an unmanned aircraft system ("Services"). Purchaser is not in the business of providing aviation services. As a result, Purchaser is relying on the specialized knowledge and expertise of Operator. It is incumbent upon Operator to immediately review any requested mission and determine if the mission can be flown safely and in accordance with the law. If the missions cannot be so performed, Operator must notify Purchaser as soon as practicable to inform them of any such concerns. If any particular mission cannot be flown safely and in accordance with the law, then it shall not be flown. This Agreement assumes, unless specifically covered in the Order (as defined below), Operator will provide, as applicable at a time and place designated by Purchaser: (i) an unmanned aircraft; (ii) flight crew; (iii) appropriate sensor or camera capable of collecting the requested data; (iv) all equipment or other personnel such as visual observers necessary to safely provide the Services in accordance with all applicable law; (v) all data obtained from the UAS, including but not limited to images and other electronic data.

- a. Purchaser and Operator further agree that Purchaser shall not provide any UAS, drone, or equipment until Operator has a Certificate of Authorization, waiver or the ability to provide services pursuant to 14 C.F.R. § 107, under which they can fly the UAS or Drone pursuant to federal and state laws and regulations. Operator agrees to furnish a copy of said Certificate of Authorization, waiver or proof of ability to operate pursuant to 14 C.F.R. § 107 to Purchaser, at which point purchaser shall provide the UAS or Drone for Operator to fly. Until Operator has obtained such Certificate of Authorization, waiver or ability to provide services**

**and operate under 14 C.F.R. § 107 and provided a copy of the same to Purchaser, Operator shall not have possession of the UAS or Drone.**

**(2) Delivery of Data and Data Rights.**

**Delivery of Data and Data Rights.** Operator agrees to provide Purchaser with all data obtained from the performance of the Services within a timely manner, unless a different time is contained herein and the parties have mutually agreed thereto. Operator warrants that it transfers all rights to any data obtained to Purchaser, including any copyright, when the data is delivered. In addition, Operator agrees that it will not retain any copies of the data and will not resell or provide any of the data to any other person or entity without the express written permission of Purchaser.

**(3) Term and Termination.**

- a. Term.** This Agreement shall commence on the Effective Date. As the Agreement is an intergovernmental agreement and unless terminated pursuant to this section, this agreement shall terminate at the expiration of five years (the "Term") unless extended, in writing, by the Parties prior to termination; provided, however, that if any work is then in progress pursuant to an Order, the term of this Agreement shall be extended to allow completion of such work.
- b. Termination for Cause.** This Agreement may be terminated by notice in writing from Purchaser to Operator if Operator commits any material breach of the terms of this Agreement and does not take steps to cure within ten (10) days of written notice of such breach; or immediately if any of the following occur: Operator fails to operate under a valid COA/Waiver or pursuant to 14 C.F.R. § 107; Operator fails to follow the Federal Aviation Administration (hereinafter referred to a "FAA:") regulations; or if Operator fails to follow any applicable state or federal law.
- c. Termination without Cause.** This Agreement may be terminated by either Party giving thirty (30) days' advance notice, in writing, of its intent to terminate to the other Party.
- d. Survival.** Despite completion of the Services or termination of this Agreement for any reason, all provisions in this Agreement containing representations, warranties, releases, defense obligations and indemnities, and all provisions relating to confidentiality, insurance, disclaimer of certain remedies, limitations of liability, dispute resolution and governing law, and all causes of action which arose prior to completion or termination, survive indefinitely until, by their respective terms, they are no longer operative or are otherwise limited by an applicable statute of limitations.
- e. Return of Property.** Upon termination for any reason, Operator will return to Purchaser all aircraft that Purchaser provided to Operator under this agreement. Operator will also return any other property that may belong to Purchaser under this agreement.

**(4) Independent Relationship.**

**Independent Relationship.** This Agreement does not create, and Operator and Purchaser stipulate and agree that the said Agreement shall not be construed to create, any agency relationship, employer/employee relationship or master/servant relationship by or between any of the agents and/or employees of Purchaser and the agents and/or employees of Operator. To the contrary,

Purchaser in the course and scope of activities in furnishing Orders under this Agreement is contemplated to be and stipulated to be independent of Operator for any and all purposes. Each Party has the respective full power and authority to select the means, methods, and manner for performance under this Agreement. Neither Party shall have any power or authority to bind the other.

**(5) Operator Representations and Warranties.**

- a. **Authorization.** Operator has authority to enter into and perform this Agreement, and has taken all actions necessary to authorize its performance under this Agreement.
- b. **Airworthiness.** Operator is responsible for the airworthiness of its aircraft and warrants, that at a minimum, all aircraft are maintained and operated in accordance with: (i) All applicable manuals inclusive but not limited to the manufacturers and Operators maintenance manuals; (ii) Mandatory Advisory Circulars or other Airworthiness Directives issued by the FAA; (iii) The manufacturer's airworthiness limitations; (iv) Manufacturer or FAA mandated inspection schedules, overhaul schedules, and calendar retirement dates; and (v) Service Bulletins.
- c. **Crew Qualifications.** Operator warrants that all crew, including pilot in command, visual observer, sensor or payload operator, or other persons necessary for the safe operation of the flight have the qualifications, experience, licenses and certificates required by applicable regulations and that all have the necessary skill required to perform their duties.
- d. **Operational Procedures and Operations Manual.** Operator warrants that its Services are provided pursuant to an Operations Manual, that the Operations Manual addresses the subjects set forth in Schedule A, that it is sufficient to perform the Services safely and comply with all applicable federal, state, and local laws.
- e. **Certificate of Authorization, Waiver or Operation Pursuant to 14 C.F.R. § 107.** Operator warrants that it will obtain a Certificate of Authorization, waiver or the ability to operate pursuant to 14 C.F.R. § 107, which it can operate UAS's under on behalf of Purchaser. Operator further warrants that it will ensure the COA/Waiver is renewed each year or ensure it meets any and all requirements pursuant to 14 C.F.R. § 107, as well any other applicable federal, state, and local laws.
- f. **Insurance.** Operator warrants that it will cause the UAS systems provided by purchaser to be added to Operator's insurance or obtain insurance for the UAS or Drone as Operator will be operating the UAS systems on behalf of Purchaser. Operator further warrants that should the UAS or Drone become damaged, lost or destroyed, Operator shall bring a claim under said insurance for the replacement value of the UAS or Drone, which shall then be furnished to Purchaser.

**(6) Purchaser Representations and Warranties.**

**Purchaser Representations and Warranties.** Purchaser has authority to enter into and perform this Agreement and has taken all actions necessary to authorize its execution and performance of Services under this Agreement.

**(7) Indemnification and Limitation of Liability.**

- a. Indemnification.** Operator hereby agrees to release, indemnify and hold harmless the Purchaser, its affiliates, and their respective directors, officers, agents, employees, and operators from and against any and all loss, damage, injury, claims, expenses (including attorney's fees and expenses of litigation) and demands arising out of or connected in any way with the Services (including but not limited to claims for personal injury, death, property damage or damage to the environment) to the extent caused or arising out of the negligence, willful misconduct, breach of this agreement, or violation of law of or by the Operator.
- b. Limitation of Liability.** In no event shall either party have any liability to Operator for any lost profits, loss of use, costs of procurement of substitute equipment or services, or delays, or for any indirect, special, incidental, exemplary, consequential or punitive damages or penalties, however caused, and whether in contract, tort, or under any other theory or combined theories of liability. Nothing contained herein shall be construed to waive the sovereign immunity of any party and any party entitled to assert sovereign immunity hereunder shall be required to do so and take action to defend accordingly.

**(8) Compliance with Applicable Law.**

**Compliance with Applicable Law.** All the provisions of this Agreement shall be expressly subject to all applicable laws, orders, rules, and regulations of any governmental body or agency having jurisdiction over the operations, and all Services and conduct contemplated hereunder shall be conducted in conformity therewith.

**(9) Aircraft Operation.**

**Aircraft Operation.** No guidelines or requirements specified in this Agreement are to be construed as authority to operate aircraft or conduct operations in any manner other than strict compliance with the regulations of the country in which an aircraft is registered or operated. Operator holds a valid exemption, operating certificate, or other necessary authorizations issued by the FAA required to conduct specific operations. When providing service to Purchaser, the Operator will operate in accordance with the rules and regulations contained in the FAA Regulations and the exemption. Operator will notify Purchaser in the event that the FAA or other regulatory body with jurisdiction over it takes any action against the Operator's exemption, operating certificate, or other authority to offer these Services. It is the sole obligation of the Operator to report any accidents, incidents, or other reportable mishaps to the appropriate governmental agency, including but not limited to the FAA and National Transportation Safety Board ("NTSB").

**(10) Notices.**

**Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the mail, postage prepaid, to the addresses indicated on the signature page.

**(11) Drug and Alcohol Policy.**

**Drug and Alcohol Policy.** Unless further restricted by local regulatory authorities, Operator agrees and warrants that no person will act as a crewmember, pilot in command, visual observer, payload operator, sensor operator, or other person necessary for the safe operation of the aircraft,

or perform maintenance on an aircraft when: (i) affected by or under the influence of alcohol, but in no case within 8 hours after the consumption of any alcoholic beverage and/or (ii) while using any drug that adversely affects the person's ability to perform required duties.

**(12) Aircraft Operation.**

**Disputes and Applicable Law.** With regard to disputes between the Parties, the responsible businesspersons representing each Party will negotiate in good faith to attempt to resolve such dispute. Exclusive jurisdiction for any disputes under this Agreement shall be a court of competent jurisdiction sitting in Rabun County, Georgia, and the Parties shall consent to personal jurisdiction for such purposes. This Agreement including any Schedules shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia, exclusive of the choice of law or conflict of law's provisions thereof. In the event Purchaser brings an action in connection with this Agreement, and Purchaser is the prevailing party, Purchaser shall be entitled to recover its costs and actual attorneys' fees.

**(13) Assignments.**

**Assignments.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party.

**(14) Waiver.**

**Waiver.** Except as otherwise set forth herein, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof. Waiver by either Party of any default of the other will not operate to excuse the defaulting party from further compliance with this Agreement, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**(15) Modification.**

**Modification.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both Parties.

**(16) Survival.**

**Survival.** All indemnification provisions, warranty provisions, and all other provisions contained in this Agreement which, by their terms, may extend beyond the termination, rescission, or revocation of this Agreement shall survive the termination, recession, or revocation of this Agreement.

**(17) Severability.**

**Severability.** The parties hereto agree that in the event any provision of this Agreement is deemed illegal or unenforceable by any court or tribunal of competent jurisdiction then such provision shall be deemed not to be a part of this Agreement and shall be deemed to be automatically modified and reformed as to comply with any applicable law and so as to carry out the intent of the parties hereto to the greatest extent possible; however, if such provision shall be deemed to be void and stricken in its entirety from Agreement, with all other remaining provisions of this Agreement remaining in full force and effect.

**(18) Full Agreement.**

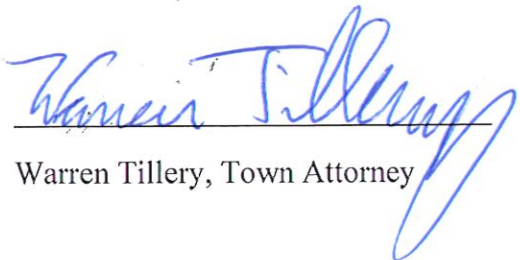
**Full Agreement.** This Agreement, including attached schedules, represents the complete and exclusive agreement between the Parties regarding the subject matter of this Agreement, and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into before the Effective Date.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Town of Tallulah Falls, Georgia**

  
\_\_\_\_\_  
Mike Early, Mayor

Approved as to form:

  
\_\_\_\_\_  
Warren Tillery, Town Attorney

Attest:

  
\_\_\_\_\_

Linda Lapeyrouse, City Clerk

(Seal)



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Habersham County**

\_\_\_\_\_  
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Attest:

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(Seal)

DRONE SERVICES AGREEMENT SCHEDULE A  
OPERATIONS MANUAL MINIMUM REQUIREMENTS

- A. Procedures and checklist information for pre-flight, in flight, post flight, emergency procedures, and limitations.
- B. Information on aircraft systems and performance.
- C. A pre-flight briefing that includes mission planning and the following considerations:
  - 1) Mission overview
  - 2) Hazards unique to the mission being flown
  - 3) Weather (current and forecast ceiling, visibility, and winds)
  - 4) Mission altitude and operating area
  - 5) Lost Link, divert, and flight termination procedures
  - 6) Identification of any public or residential areas near flight path and associated privacy concerns
  - 7) Flight time and fuel/battery requirements
  - 8) Fuel reserves/minimum voltage requirements
  - 9) Frequencies to be used for communications
  - 10) COA and/or 14 C.F.R. § 107 Requirements
  - 11) Emergency procedures including contingences for lost link or fly-away
- D. Information on aircraft and other system maintenance
- E. Normal Flight Operations
- F. Abnormal Operations and Emergency Procedures
- G. Accident and Incident Reporting
- H. Required Recordkeeping
- I. Communications Plans and Procedures